Economic Commission for Africa
Sub-Regional Office for Eastern Africa (SRO-EA)

Sixteenth Meeting of the Intergovernmental Committee of Experts (ICE)

Harnessing the African Peer Review Mechanism (APRM) Potential to Advance Mineral Resources Governance in Africa

13-17 February 2012,
Dar es Salaam, Tanzania

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1. Introduction

1.1 Objectives of the Study

The main objective of the study is to bring to the attention of relevant entities the various angles that the APRM could be harnessed to foster a concrete transformation in the management of mineral resources in Africa. This transformation is intended to create the social compact that is needed to strengthen accountability in order to ensure that mining generates better development outcomes.

By highlighting the various issues pertaining to the effective governance of the Extractive Industries and by emphasizing on the potential and possibilities of the APRM, the background paper also aims at reflecting in depth on how to actually induce the much needed change in management, leadership as well as participation of all the relevant stakeholders.

1.2 The Mineral Resources Sector in Africa

Africa is significantly endowed with mineral resources. Its mineral reserves of bauxite, chromite, cobalt, hafnium, diamonds, manganese, phosphate rock, platinum-group metals, soda ash, vermiculite and zirconium rank first or second in the world. The continent is also a major global producer of these minerals. For example, in 2008, Africa's share of world platinum production exceeded 77%; its share of diamond production was 55%; chromite was 37%; gold was about 22%; and uranium was around 19%.[1] (See Figure 1.1.). With the entry in production of several mines of nickel, bauxite, copper, ilmenite and iron ore across the continent, Africa's role as a mineral producer will be more cemented.

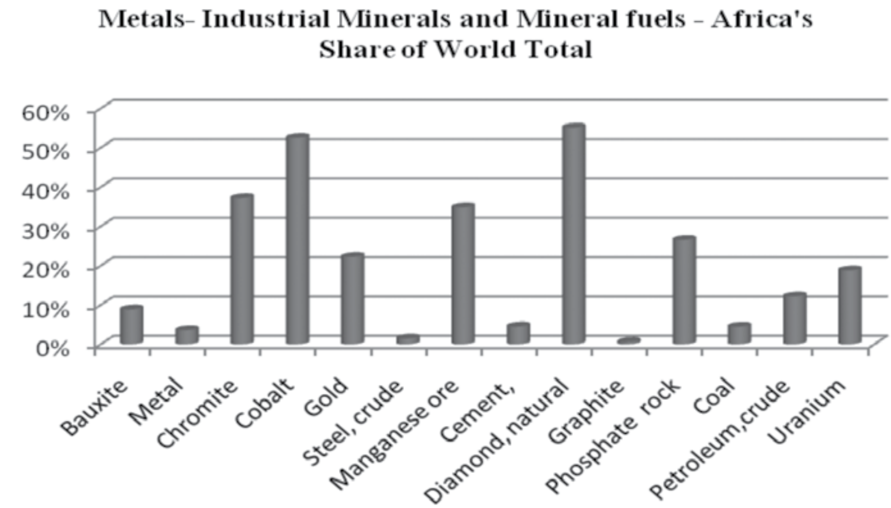
The continent is also becoming an important player in world production of coal, oil and gas. In 2010, Africa accounted for a total share of 12.2% of the global oil production, with countries like Nigeria, Angola, Algeria and Libya accounting for 2.9%; 2.3%; 2% and 2% respectively (See Figure 1.2). Africa's natural gas production capacity grew by 359.5% between 1986 and 2006.[2] In 2010, the continent produced 6.5% of the total world production.[3]

1 http://minerals.usgs.gov/minerals/pubs/country/2008/myb3-sum-2008-africa.pdf accessed on 17-8-2011

2 African Development Bank and African Union: 'Oil and Gas in Africa', Supplement to the African Development Report, 29 July 2009.

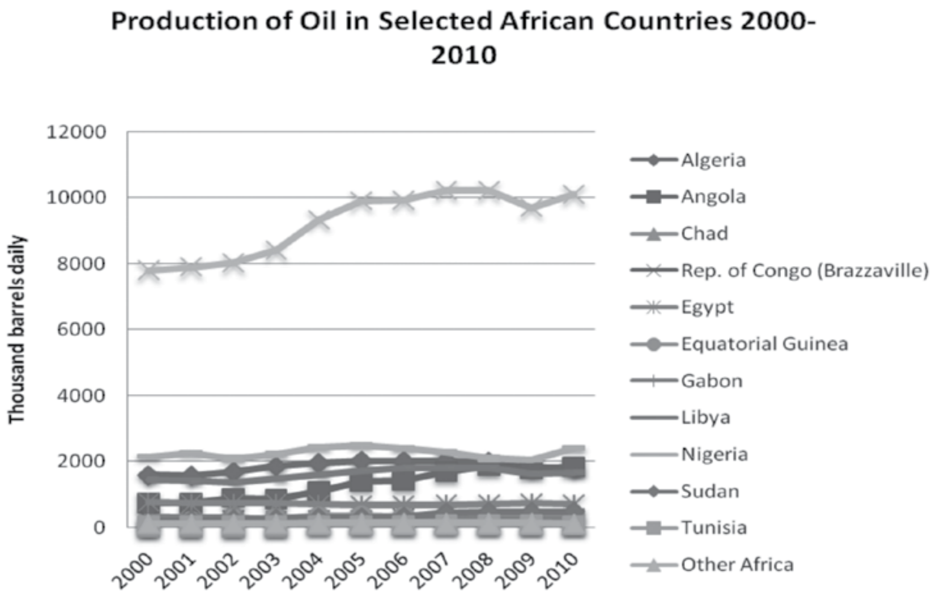
3 BP Statistical Review of World Energy (BP, 2011). http://www.bp.com/assets/bp_internet/globalbp/globalbp_uk_english/reports_and_publications/statistical_energy_review_2011/STAGING/local_assets/pdf/statistical_review_of_world_energy_full_report_2011.pdf. Accessed on 23-8-2011.

Figure 1.1.: Metals, Industrial Minerals and Mineral fuels production-Africa's Share of World Total



Source; Author, with data from United States geological Survey (USGS), 2008.

Figure 1.2: Oil Production in Africa by Country, 2000–2010



Source: Author, with data from BP Statistical Review of World Energy (BP, 2011)

The extractive industry is a dominant sector in many African economies and accounts for a significant share of exports, yet it has not spurred the development that is so much needed on the continent.

1.3 The Paradox of Mineral Wealth and Human Poverty in most African Countries

Empirical findings for a number of African countries show that, on average, African countries endowed with mineral resources, and especially those with oil, perform less than those without resources in terms of achieving sustainable growth and poverty reduction (Ross 1999, Collier 2007, Karl 1997)[4]. Whereas efficient exploitation of extractive industries has contributed to GDP growth in some countries, it has also engendered sub-optimal development in several African countries. Inadequate management of mineral revenues has been indicated as a major cause of this.

In the scholarly literature, the paradox of countries endowed with mineral resources growing less than or similar to non resource rich countries (Sachs and Warner 1995, Karl 1997)[5], and the fact that oil-rich countries had declining per capita income and displayed lower development outcomes (Ross 1999)[6] are well documented. Mineral resources abundance has been considered a resource curse. Economic explanations focused on the 'Dutch Disease' effect produced by a sharp rise in export rents; the flow of production factors from other sectors of the economy to the booming extractive industry, which may trigger de-industrialisation; and an appreciation of the domestic currency that makes the non-resource sectors less competitive, undermines growth, and puts inflationary pressures on the economy (Ross 1999)[7]. Other explanations focused on the negative impact that resource rents have on the workings of political institutions, as they create political incentives for discretionary or non-transparent management of public expenditure to support corrupt and clientelistic government practices (Moore 2004)[8].

Successful harnessing of extractive resources for growth, poverty reduction, and social development depends on good governance and sound management practices. Unfortunately, many African countries endowed with abundant resources are also characterized by a poor governance record and an inadequate management of the extractive industry sec-

4 Ross, M.L. 1999. The Political Economy of the Resource Curse. World Politics, Vol.51, No.2, pp. 297-322; Collier, P. 2007. The Bottom Billion. Why the Poorest Countries are Failing and What Can Be Done About It. Oxford: Oxford University Press; Karl, T. L. 1997. The Paradox of Plenty: Oil Booms and Petro-States, Berkeley and Los Angeles: University of California Press.

5 Sachs, J.D. and Warner, A.M. 1995. Natural Resource Abundance and Economic Growth. Development Discussion Paper N. 517a. Cambridge: Harvard Institute for International Development; Karl, T. L. 1997. The Paradox of Plenty: Oil Booms and Petro-States, Berkeley and Los Angeles: University of California Press.

6 Ross, M.L. 1999. The Political Economy of the Resource Curse. World Politics, Vol.51, No.2, pp. 297-322.

7 Ibid.

8 Moore, Mick, 2007. How Does Taxation Affect the Quality of Governance? IDS Working Paper 280, Brighton: Institute of Development Studies.

tor. There are however notable exceptions in Africa where mineral resources revenues have been well managed for economic and social development. Botswana, Morocco, Namibia and South Africa are such examples. It would be useful to learn from the success of these countries and reflect on ways to replicate the best practices in other African countries.

Apart from those countries mentioned above, others have not succeeded in utilizing mineral wealth to built resilient, diversified and competitive economies. In most cases, the sector remains an enclave and the potential for mineral resources driven industrialization remains untapped in most countries.

It has been argued that transparent resource governance is a vital ingredient to promote resource-based industrialisation and broad-based development. This has been the Achilles' Heel of many African countries and has fueled many initiatives and mechanisms to strengthen governance in the extractive industry sector. There has been a proliferation of initiatives and mechanisms to strengthen governance in the extractive industry sector. Most are externally designed and have had mixed results. An account of the record of the most important ones, starting with the EITI, is provided below.

1.4 International Initiatives towards Sustainable Development in the Mining Sector

1.4.1 The Extractive Industries Transparency Initiative (EITI)

The EITI, which was launched in 2002, aims to strengthen governance by improving transparency and accountability in the extractive sector. The EITI is a coalition of governments, companies, civil society groups, investors and international organizations. EITI developed a standard for monitoring which is verified through a validation process. As of June 2011, 2 out of 22 countries have completed the validation process (Azerbaijan and Liberia) and 29 countries have candidate status, given more time to complete the process.[9] EITI is a voluntary process and EITI compliance is monitored by the global civil society coalition Publish What You Pay (PWYP). PWYP campaigns for transparency in the payment, receipt and management of revenues from the oil, gas and mining industries.

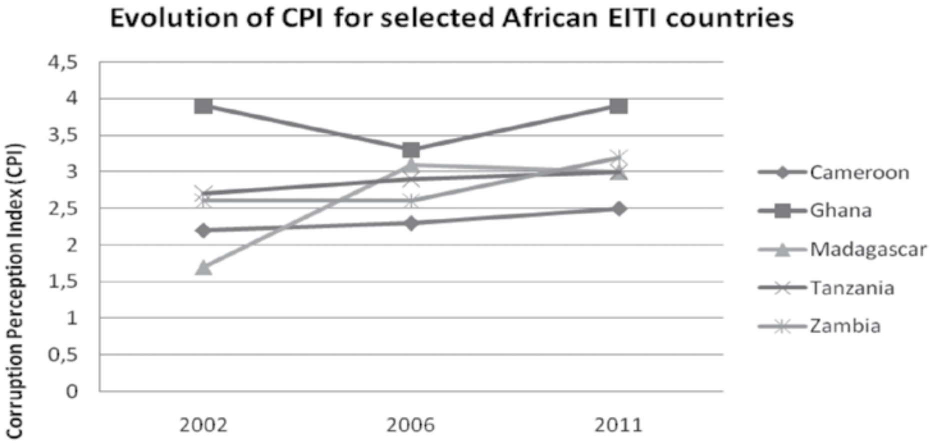
Opinions expressed by a number of stakeholders suggest that the EITI has had a positive impact. According to the EITI Secretariat, in Liberia, EITI is seen as a strong indication that the government is committed to accountability and through the EITI process suspicion and mistrust are being reduced. In Nigeria, EITI is perceived as both an instigator of civic interrogation of public servants and as curbing social unrest as it directed youthful energies from resorting to violence to engaging in public debate. In Cameroon, it has helped improve the management and monitoring capacity of the relevant government agencies and in Gabon, it has provided a platform for civil society to point at challenges

9 Cameroon, Democratic Republic of Congo, Republic of Congo, Côte d‟Ivoire, Gabon, Ghana, Guinea, Kazakhstan, Kyrgyzstan, Mali, Mauritania, Madagascar, Mongolia, Niger, Nigeria, Peru, Sierra Leone, Timor-Leste ,Yemen, Cote d‟Ivoire, Central African Republic, Norway, Tanzania, Albania, Burkina-Faso, Mozambique, Zambia, Afghanistan, Iraq, and Chad

in the development and management of natural resources. In Ghana, it has helped local communities to engage with companies involved in natural resource extraction.[10]

However, governance indicators do not show a clear improvement in EITI countries as opposed to non-EITI countries for corruption perception, while there is improvement in business climate and voice and accountability.[11] Olcer D. (2009) reiterates the above mentioned findings as she suggests that countries that have signed up to the EITI have seen no visible effect in relation to perceptions of corruption. She concludes that the EITI must be embedded in a broader reform process and linked to credible institutions, particularly judicial ones.[12] A quick comparison of the Corruption Perception Index (CPI) from Transparency International of African countries that have adhered to EITI in 2002 before their adherence and in 2006 and 2011 shows that there is no apparent correlation between the progress in perception of corruption and adherence to EITI (see Figure 1.3).

Figure 1.3: Evolution of Corruption Perception Index for selected EITI African countries



Source: Author, with Data from Transparency International (2002, 2006, 2011) http://www.transparency.org/.

10 EITI, 2010, Impact of EITI in Africa: Stories from the ground' EITI Secretariat. http://eiti.org/files/EITI%20Impact%20in%20Africa.pdf.

11 Aaronson S., 2008, 'Can Transparency in Extractive Industries Break the Resource Curse?' VoxEU.org http://voxeu.org/index.php?q=node/1395.

12 Olcer, D., 2009, 'Extracting the Maximum from the EITI', OECD Development Centre, Working Paper no. 276 http://www.oecd.org/dataoecd/56/60/42342311.pdf.

1.4.2 The Kimberley Process Certification Scheme (KPCS)

A review of the Kimberly Process Certification Scheme (KPCS) is also revealing. The KPCS is a joint government, industry and civil society initiative to stem the flow of conflict diamonds, which are rough diamonds used by rebel movements to finance wars against legitimate governments. The trade in these illicit stones has fuelled conflicts in countries such as Angola, Côte d'Ivoire, the Democratic Republic of Congo (DRC) and Sierra Leone. KPCS imposes requirements on its members to enable them to certify shipments of diamonds as 'conflict free'. As of June 2011, the Kimberly Process has 49 members, representing 75 countries.

The UN General Assembly 64th session Resolution notes that the implementation of the KPCS has had a positive impact in reducing the opportunity for conflict diamonds to play a role in fuelling armed conflict. It further notes that the KPCS would help to protect legitimate trade and ensure that the effective implementation of the relevant resolutions on trade in conflict diamonds.[13] In contrast, the Global Witness (2006), while acknowledging the fact that KPCS controls have reduced significantly the market for illicit diamonds, notes that in Côte d'Ivoire, the revenue from diamond production had provided income to rebel movements. There is also strong evidence that diamonds from Liberia, which remained under UN sanction, were being smuggled into bordering Kimberly participant countries. Serious problems in the DRC were also reported. The report concludes by stating the importance of the KPCS as a tool and effort to prevent diamonds from fueling instability.[14]

1.4.3 The Dodd Frank Act

The Dodd Frank Act, which was signed into law by President Obama on 21 July 2010, is a set of a comprehensive financial regulatory reform bill entitled the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). The Dodd-Frank Act requires that all companies active in the extractive industry (minerals, oil and gas) in third world countries and registered with the Securities and Exchange Commission (SEC) publicly report (via a devoted website) the different types of payments they make to host governments on a country-by-country and project by- project basis. The Dodd-Frank Act was introduced as a way of ensuring greater transparency. It is yet too early to evaluate the impact of the Dodd Frank Act, but it is a forceful signal to all companies operating in the area that they have to be very transparent about their dealings regarding 'conflict minerals' in DRC and neighboring countries. An unintended consequence of this Act could be an embargo from minerals coming from that area, even licit ones. This could affect the

13 U.N. General Assembly, 64th Session. Resolution adopted by the General Assembly. 64/109 The role of diamonds in fuelling conflict: breaking the link between the illicit transaction of rough diamonds and armed conflict as a contribution to prevention and settlement of conflicts (A/RES/64/109) http://www.un.org/depts/dhl/resguide/r64.shtml.

14 Global Witness, 2006, 'An Independent Commissioned Review Evaluating the Effectiveness of the Kimberley Process', Global Witness http://www.globalwitness.org/media_library_get.php/272/1277890630/GW%20Commissioned%20Report%20on%20KP.pdf.

income of several small scale artisanal miners whose earnings are based on the sale of these minerals.[15]

1.4.4 OECD Due Diligence Guidance

The OECD Due Diligence Guidance for Responsible Supply Chain Management of Minerals for Conflict Affected and High Risk Areas provides good practice guidelines to businesses from OECD member States operating in conflict areas. The objective of the guidance is to help companies respect human rights and avoid contributing to conflict through their mineral sourcing practices. The Guidance is also intended to support transparency in mineral supply chains and sustainable corporate engagement in the mineral sector with a view to enabling countries to benefit from their natural mineral resources and prevent the extraction and trade of minerals from being a source of conflict, human rights abuses, and insecurity.[16]

1.4.5 The Certified Trading Chains scheme

The Certified Trading Chains scheme is an initiative spearheaded by the Federal Institute for Geosciences and Natural Resources (BGR) from Germany with a pilot project in Rwanda. It guarantees the origin and traceability of materials and also certifies that the conditions under which the minerals were mined and traded have met certain standards with regards to safety, health, environment, gender, etc. It was conceived in 2007 and implementation started in 2008. Through a process of international and local consultations, BGR developed a set of certification standards on traceability, transparency, as well as social and environmental aspects. The BGR initiative not only professes alignment with the Regional Initiative against the Illegal Exploitation of Natural Resources (RINR) of the International Conference on the Great Lakes region (ICGLR), it also participates in the EU led Task Force on Illegal Exploitation of Natural Resources in the Great Lakes Region and was part of the OECD working group establishing the Guidance.

1.4.6 The EITI++ or Extractive Industries Value Chain

The Extractive Industries Value Chain was launched by the World Bank in 2008 with the objective of supporting selected countries, mainly in Africa, to formulate and implement policies and adopt measures throughout the entire mineral resources value chain by addressing upstream and downstream issues (such as licensing, procurement, ownership, corporate social responsibility, sustainable development, etc.).This was an effort by the World Bank, with other development partners to provide a more integrated and comprehensive approach to managing the full EI value chain, including all the steps of EI development and impact. The EI value chain encompasses awarding contracts and li-

15 Paul Weiss, "the Dodd-Frank Act Requirements Relating to Conflict Minerals and Mining and Resource Extraction Companies", September 2010, http://www.paulweiss.com/files/upload/27Sep10CM.pdf.

16 The OECD Due Diligence Guidelines for Responsible Supply Chains of Minerals from Conflict-Afflicted and High Risk Areas, http://www.oecd.org/document/36/0,3746,en_2649_34889_44307940_1_1_1_1,00.html.

censes, monitoring operations, enforcing environmental protection and social mitigation requirements, collecting taxes, distributing revenue in a sound manner, and implementing sustainable development policies and projects. This approach aims to support countries in their efforts to translate mineral and hydrocarbon wealth into sustainable development.[17]

1.4.7 The Equator Principles

Launched in June 2003, the Equator Principles are a voluntary set of standards for determining, assessing and managing social and environmental risk in project financing. They were developed by private sector banks that chose to model the Equator Principles on the environmental standards of the World Bank and the social policies of the International Finance Corporation (IFC).

As of July 2011, 72 financial institutions have adopted the Equator Principles, which have become the de facto standard for banks and investors on how to assess major development projects around the world. In July 2006, the Equator Principles (EP) were revised, increasing their scope and strengthening their processes. Equator Principles Financial Institutions (EPFIs) commit to not providing loans to projects where the borrower will not or is unable to comply with their respective social and environmental policies and procedures that implement the EPs.

The EPs have greatly increased attention and focus on social/community standards and responsibility, including robust standards for indigenous peoples, labour standards, and consultation with locally affected communities within the project finance market. They have also promoted convergence around common environmental and social standards. Multilateral development banks, including the European Bank for Reconstruction & Development (EBRD), and export credit agencies through the OECD Common Approaches are increasingly drawing on the same standards as the EPs.

The EPs have also helped spur the development of other responsible environmental and social management practices in the financial sector and banking industry (for example, Carbon Principles in the US, Climate Principles worldwide) and have provided a platform for engagement with a broad range of interested stakeholders, including NGOs, clients and industry bodies.

1.4.8 The Global Reporting Initiative (GRI)

The GRI is a network-based organization that produces a comprehensive sustainability reporting framework that is widely used globally. GRI's core goals include the mainstreaming of disclosure on environmental, social and governance performance. GRI's Reporting Framework is developed through a consensus-seeking, multi-stakeholder process. Partici-

17 Eleodoro Mayorga Alba, , "The Extractive Industries Value Chain, A Comprehensive Integrated Approach to Developing Extractive Industries, Working Paper by the Oil, Gas and Mining Policy Division and the Africa Poverty Reduction and Economic Management Department, The World Bank, March 2009. http://siteresources.worldbank.org/INTOGMC/Resources/ei_for_development_3.pdf.

pants are drawn from global business, civil society, labor, academic and professional institutions. The Reporting Framework sets out the principles and Performance Indicators that organizations can use to measure and report their economic, environmental, and social performance. The cornerstone of the Framework is the Sustainability Reporting Guidelines.

In 2004, a multi-stakeholder working group co-convened by the GRI and the ICMM developed the Global Reporting Initiative (GRI) on Mining and Metals Sectors Supplement to accompany the GRI 2002 Sustainability Reporting Guidelines. The supplement together with the guidelines contains indicators to allow tracking of performance against the ICMM SD Framework. By identifying and targeting economic, environmental, and social performance issues and indicators specific to the mining, minerals, and metals industry, the supplement assists companies to address these issues in a common fashion, producing more relevant, meaningful and comparable reports.

1.4.9 The International Council on Mining and Minerals (ICMM) Sustainable Development Framework

ICMM was established in 2001 to act as a catalyst for performance improvement in the mining and metals industry. It brings together 20 mining and metals companies as well as 31 national and regional mining associations and global commodity associations.

ICMM emerged out of a multi-stakeholder research initiative – the Mining, Minerals and Sustainable Development (MMSD) project – which examined the role of mining in a sustainable future. ICMM now serves as an agent for change and continual improvement on issues relating to mining and sustainable development. Member companies have made a public commitment to improve their sustainability performance and are required to report against their progress on an annual basis.

In 2003, the ICMM adopted the ICMM Sustainable Development Framework, which is a key tool to assist members to improve their sustainable development performance. The Framework is made up of four elements and ten Principles, supported by public reporting, independent assurance, and sharing good practice. The Principles seek to cover "important aspects of sustainable development", including corporate governance, health and safety, human rights, responsible product design, environment and biodiversity, social, economic and institutional development, appropriate materials choice, public engagement and independently verified reporting arrangements.

In some areas, ICMM has made considerable progress. Performance on some objectives has been impressive, such as the development of best practice protocols encouraging third party verification and public reporting, promoting understanding of the concepts and application of sustainable development, and engagement in constructive dialogue with key constituencies.

There is room for improvement in other areas in that although anecdotal evidence points to member practices creating significant sustainable development-related improvements, for example, objective documentation and assessment of overall progress remains elusive.

1.4.10 The Mining, Minerals and Sustainable Development (MMSD) report

The report entitled "Breaking new ground: Mining, Minerals and Sustainable Development" was published in 2002. The report analyses the role of the mining sector in the transition to sustainable development and provides a basis for a strategic and ongoing process for the implementation of sustainable development principles in the mining and minerals industry. The MMSD enabled the establishment of the ICMM which examined the role of mining in a sustainable future. MMSD's findings recognized the industry's potential contribution, identified core challenges and set out an agenda for change that would form the backbone of ICMM's mandate.

2. Governance of Mineral Resources: The Building Blocks

Natural resources can be a source of great good…., or dreadful ill. The key element is not the resource itself, but how it is exploited. An orderly mining regime, operating within a transparent and predictable legislative and fiscal framework, can be a major source of prosperity for governments and people. Without it, mineral wealth… will be a magnet for the greedy and corrupt to line their own pockets at the expense of the people.- Nicky Oppenheimer, Chairman, De Beers, Address at the Commonwealth Business Forum, November 1999 Diamonds working for Africa

Broadly defined, governance is the manner in which public officials and institutions acquire and exercise the authority to shape public policy and provide public goods and services (World Bank 2007)[18]. Good governance of mineral resources implies the orientation of the income generated from the exploitation of mineral resources towards broad-based growth and the fight against poverty. Quality of governance has come to be viewed as a key factor influencing the ability of countries to use mineral resources revenues for development. It is imperative to approach issues of governance systematically as the goal is to unlock wealth from mineral resources in order to contribute resources for human development and productive investments for the long term. Sustainable development requires integrated systems of governance – i.e. roles, responsibilities and instruments for coherent and effective change. Unfortunately, many African countries still lack adequate frameworks to turn minerals investment into broad-based growth and development.

The Africa Mining Vision, adopted in February 2009 by the African Union Heads of State and Governments, represents a credible and ambitious blueprint to unleash the transformational potential of mineral resources-driven development on the continent. The Vision advocates for "transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development". It is anchored on the understanding that transient mineral wealth should be used to build other forms of lasting capital which outlive the currency of mining. The Vision calls for a structural transformation of the minerals sector in Africa through enhanced linkages with the local economy, increased value addition, promotion of local content and empowerment, and a judicious and prudent use of mineral revenue to build up Africa's capital stock and contribute to a knowledge economy. Furthermore, the African Mining Vision provides a framework which allows state and citizens to hold mining companies accountable. The realization of the Vision would require sustainable commitment, effective leadership and smart partnerships at both local and international levels. In addition, there would be a need to formulate development oriented mineral regulatory regimes; improve accountability and transparency of mineral revenue use; and promote good governance and the participation of a broad range of stakeholders in decision making, management and ownership of mineral assets. This needs to be coupled with efforts to strengthen institutional

18 World Bank (2007). "Strengthening World Bank Group Engagement on Governance and Anticorruption". Operations Policy and Country Services (21 March).

capacities and competencies at government and other levels for efficient long-term planning, prudent management and smart spending, saving and investment of mineral wealth.

The Africa Mining Vision has informed the choice of the building blocks for an effective governance of the mineral resources sector on the continent. These are: peace, security and political stability; clear, transparent, predictable and efficient legal and regulatory frameworks to ensure mineral wealth creation; fair and equitable fiscal regimes to facilitate equity in the distribution of benefits; credible public participation to enhance ownership and shape shared development outcomes; transformational leadership and followership to harness mineral wealth with a view to building resilient, diversified and competitive economies; strong institutions to ensure effective management of the sector; and adequate infrastructure including an advanced human development to remain competitive; and to build a future beyond mining.

2.1 Peace, Security and Political Stability

Peace, security and political stability in countries endowed with mineral resources are prerequisites to attract investment and for the sustained management of these resources. Moreover, mineral resources have been shown to play a key role in the conflicts that have plagued a number of African countries over the last decade, both motivating and fuelling armed conflicts. Ensuring an environment of peace, security and stability is therefore crucial for the governance of mineral resources to lead to better development outcomes. In surveys such as the Fraser Institute[19] and the World Bank Worldwide Governance[20], the indicator 'political stability' is considered to be important for investors.

2.2 Clear, Transparent, Predictable and Efficient Legal and Regulatory Frameworks

Attracting investment through clear, transparent, predictable and efficient legal and regulatory frameworks is important as it enables investors to plan on the basis of a framework that is consistent throughout the life cycle of the project.

As attested by the outcome of surveys such as the Fraser Institute having a clear and predictable regulatory regime is a factor that gives investors confidence.

For governments, a framework that is rooted on sound legal regulatory systems provides for better accountability, informed administration of the sector and overall strong admin-

19 The Fraser Institute's Annual Survey of mining companies' policy potential index is a composite index which measures the effects of government policies on mining activities including uncertainty concerning the administration, interpretation and enforcement of existing regulations; environmental regulations; regulatory duplication and inconsistencies; taxation; indigenous land claims and protected areas; infrastructure; socio-economic agreements; political stability; labour issues; geological database and security. See http://www.fraserinstitute.org/uploadedFiles/fraser-ca/Content/research-news/research/publications/mining-survey-2010-2011.pdf.

20 See http://info.worldbank.org/governance/wgi/index.asp.

istration, which are the basis for building strong institutions. These systems require checks and balances and the establishment of independent oversight bodies.

A legal and regulatory framework would not function without well trained and skilled staff in the areas of budget, auditing, and financial planning. Unfortunately, in most countries in Africa, there is a serious capacity dearth, which should be addressed urgently.

Building a sound legal framework entails public sector institutions that are transparent in all their dealings with the private sector and civil society, including the approval and implementation of action against corruption, the use and creation of legal recourses, and the development of transparency policies, including consultative processes with stakeholders. There should also be reduced discretionary powers wherever possible, particularly in procurement arrangements and issuance of permits/licenses.

Indicators relevant to regulatory frameworks can provide benchmarks for evaluating the efficiency of a given system. For instance, the World Bank Doing Business Indicators on enforcing contracts measure the efficiency of the judicial system in resolving a commercial dispute. The World Bank Worldwide Governance Indicators such as Government Effectiveness and Regulatory Quality provide information on a country's soundness of regulatory frameworks.[21]

2.3 Fair and Equitable Fiscal Regimes

Obtaining an adequate share of mineral revenue and utilizing it in an equitable manner is crucial. An efficient, fair, equitable and transparent fiscal regime should catalyze social, physical and knowledge infrastructure development - The Africa Mining Vision

A fair and equitable fiscal regime can ensure balanced mineral revenue collection and share of benefits. The choice of fiscal regime thus becomes critical to achieve contract stability and fair rewards. Accordingly, these regimes should be designed to apportion "rent" fairly between the investor and the country in which the minerals are located. The investor must be compensated through a rate of return for investment risk, and the host government must be compensated for the exploitation of its non-renewable resources. This can be achieved through modeling fiscal terms for extractive industry operations with a view to establishing negotiation positions on issues such as royalty rates, loss carry forward, depreciation schedules, capitalization, withholding taxes, import duties, and indirect taxes[22] and other levies.

21 Government effectiveness measures the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies. Regulatory quality measures the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development. The Rule of law indicator measures the extent to which agents have confidence in and abide by the rules of society; and Control of corruption measures the extent to which public power is exercised for private gain. See http://info.worldbank.org/governance/wgi/index.asp.

22 UNECA and AUC: "Minerals and Africa's Development', A Report of the International Study Group on Africa's Mineral Regimes", Draft February 2011.

A fair and equitable fiscal regime is essential for raising the revenue required to finance the public goods and services to sustain a well functioning society. Taxation, especially direct taxation, also improves state-citizen accountability. One approach to supporting a fair and equitable fiscal regime is the establishment of a sovereign wealth fund. A sovereign wealth fund allows for the alignment of mineral revenues to long-term development goals. Indeed, by setting up a fund the rents from natural resources are viewed as investment finance in comparison to finance to support consumption.

Local communities' expectations need to be factored in designing a fair and equitable fiscal regime where there is discovery of an extractive resource. In order to avoid grievances that could potentially lead to conflict, governments at various levels need to develop clear guidelines for distributing the benefits and wealth between the central government and local authorities and communities. A fair and equitable fiscal regime is essential for raising the revenue required to finance the public goods and services to sustain a well functioning society. Taxation, especially direct taxation, also improves state-citizen accountability.

Concern has been expressed that allocation of benefits to communities or regions can potentially fuel political dislocation and secessionism. A study by the International Council on Mining and Metals revealed that most governments regard minerals as part of a nation's natural endowment, implying the need for equitable distribution of benefits across the nation. It argues that, although local communities should receive compensation for the harm caused by mining, governments should not accord them unnecessary privileges, just because they are close to a national asset. In order to avoid grievances that could potentially lead to conflict, governments at various levels need to develop clear guidelines for distributing benefits and wealth between the central government and local authorities and communities and design the fiscal regimes accordingly. This effort should be done with adequate care so that the allocation of benefits to communities or regions does not fuel political dislocation and secessionism.[23]

2.4 Credible Public Participation

An efficient management of mineral resources requires the active participation of all relevant stakeholders to ensure that there is a bottom up approach that will eventually lead to broad-based growth. Participatory approaches have been shown to enhance quality, ownership, and sustainability; empower targeted beneficiaries; and contribute to long-term capacity building and self-sufficiency. Since the late 20th century, there has been a flurry of initiatives to advance public participation in the mining sector. International and national laws have been integrating the notion of 'human dimension' in the planning, financing, licensing and mining in general. Public consultation and stakeholders' engagement are progressively being viewed not as a 'luxury', but as an essential tool to gain the 'social license to mine', to avoid conflicts, enhance transparency in the management of revenues, and to adhere to the principles of corporate social responsibility. In this regard, it is worth

23 International Council on Mining and Metals (ICMM) (2009). Minerals Taxation Regimes: A review of issues & challenges in their design & application, London: ICMM & Commonwealth Secretariat.

noting the 1990 Arusha Declaration on Popular Participation[24], which stresses the centrality of citizen participation and emphasized democracy as a prerequisite for African development and the Charter on Democracy, Elections and Governance[25], which was adopted by the African Union in January 2007 and has been hailed as a milestone in Africa's bid to promote and develop its governance systems. Indeed, strengthening demand side accountability can support the call for adequate legislation for the mineral resources sector.

A considerable step in public participation has occurred with the entry into force on 30 October 2001 of the 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental matters (Aarhus Convention)[26] (See Box 1).

The Aarhus Convention represents a milestone in the discourse and practice of public participation. It establishes a greatly expanded role for the public in government decision making. Aarhus and its "three pillars" include (i) Access to information: knowledge is vital if the public is to participate in a meaningful, informed way; (ii) Public participation in decision-making: Aarhus adopts the liberal democratic justifications supporting public participation in government decisions and (iii) Access to justice: if access to information or public participation fails, the public must have recourse to objective, third-party tribunals for review. Effective implementation of the Aarhus Convention remains a major challenge in many mineral jurisdictions in Africa.

Box 1: The Aarhus Convention

ARTICLE 6

Public Participation in Decisions on Specific Activities

(…)

2. The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of:

(…)

3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.
4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.
5. Each Party should, where appropriate, encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit.
6. Each Party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, free of charge and as soon as it

24 African Charter for Popular Participation in Development and Transformation (Arusha1990) http://www.afrimap.org/english/images/treaty/file4239ac8e921ed.pdf.

25 http://www.un.org/democracyfund/Docs/AfricanCharterDemocracy.pdf

26 The Aarhus Convention. http://live.unece.org/env/pp/welcome.html.

becomes available, to all information relevant to the decision-making referred to in this article that is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in accordance with article 4, paragraphs 3 and 4. The relevant information shall include at least, and without prejudice to the provisions of article 4:
(…)
7. Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.
8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.
9. Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures.
10. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.
11. Each Party shall ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this article are applied mutatis mutandis, and where appropriate.
12. Each Party shall, within the framework of its national law, apply, to the extent feasible and appropriate, provisions of this article to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.

ARTICLE 7

Public Participation Concerning Plans, Programmes and Policies
Relating to the Environment

Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.

ARTICLE 8

Public Participation During the Preparation of Executive Regulations and/or
Generally Applicable Legally Binding Normative Instruments

Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. To this end, the following steps should be taken:
(a) Time-frames sufficient for effective participation should be fixed;
(b) Draft rules should be published or otherwise made publicly available; and
(c) The public should be given the opportunity to comment, directly or through representative consultative bodies.
The result of the public participation shall be taken into account as far as possible.

Citizen transformation

Active citizen participation in development processes can effectively lead to better and shared development outcomes. Increased access to information and knowledge can empower citizens and strengthen their bargaining power and capacity to act as agents of transformative development. This 'citizen transformation' process is particularly relevant for the mineral resources sector where asymmetric power relations between private companies/government and ordinary citizens and local communities are a norm.

The AU/NEPAD Capacity Development Strategic Framework, which was developed under the auspices of the NEPAD Planning and Coordinating Agency (NPCA), recognizes 'citizen empowerment' (See Box 2 below) as one of the cornerstones for capacity building.[27]

Box 2: Citizen Transformation

Citizens who are informed and organized to foster and claim accountability and quality services, and responsibly take charge of their own development without waiting for government.

Key components are:

1. The sense of ownership of development processes by the citizens.
2. Self-responsibility and self-organization for action.
3. Information level and analytical/strategic thinking of citizens to be able to de-politicize issues.
4. Articulation of demand for quality services and claiming accountability of service providers and government.
5. Ability to claim accountability from leaders and managers by citizens and employees.

Tri-sector partnerships

In the past, the development of mineral resources involved mostly interactions between governments and investors. The views and opinions of other stakeholders were not considered and platforms to facilitate their participation in discussions did not exist. In the 21^{st} century, this practice has changed considerably. Equally, Civil Society Organizations (CSOs) have become a key vehicle to channel the aspirations and expectations of the society at large in these negotiations. The private sector acknowledged that their investment goals and wealth creation agenda can only be successful if they support a range of development activities in partnership with the public sector and CSOs in what is now called tri-sector partnerships. Tri-sector partnerships are now considered an optimal way to build trust, to gain a social license to operate, to agree on shared outcomes and to assign roles and responsibilities. This increases project acceptability, can contribute to better management of expectations and facilitates agreement on development outcomes.[28] In this regard, multi-stakeholder meetings may provide opportunities for debate on local job creation; poverty reduction; socio-economic development; and assess priorities for action and follow-up. These partnerships enhance social capital and are a sine qua non condition for a successful development of the mineral sector.

2.5 Transformational Leadership and Followership

27 NEPAD Secretariat: "The AU/NEPAD Capacity Development Strategic Framework (CDSF)". 2009. http://www.oecd.org/dataoecd/1/11/43508787.pdf

28 Compiled from the website of Business Partners for Development Natural resources Cluster http://www.bpd-naturalresources.org.

Noth*ing great was ever achieved without enthusiasm. (Ralph Waldo Emerson)*

Setting an example is not the main means of influencing another, it is the only means. (Albert Einstein)

The goal of transformational leadership is to "transform" people and organizations in a literal sense – to change them in mind and heart; enlarge vision, insight, and understanding; clarify purposes; make behavior congruent with beliefs, principles, or values; and bring about changes that are permanent, self-perpetuating, and momentum building.- Steven Covey, Author of 7 Habits of Highly Successful People

Promoting sustainable development in the mineral sector is a huge challenge. Policy makers and other stakeholders have to be confronted with a combination of issues ranging from the irreversibility of mineral resources given their non-renewable nature; the legacy challenge since mining is dominated by outsiders; the distribution challenge to ensure a fair and equitable sharing of mining benefits; the investment challenge to transform mineral wealth into permanent wealth; and the macroeconomic and governance challenge in managing revenue from the mineral sector and in addressing externalities, among others.

In the case of Africa, ensuring better linkages between the mineral sector and other sectors of the local economy is of paramount importance. Increased local processing and value addition are equally a priority. Similarly, diversifying the economy with the objective of reducing dependency on natural resources is critical. The realization of these goals, as reflected in the Africa Mining Vision, requires a new type of leadership, i.e. transformational leadership. A transformational leader garners the support of multiple stakeholders to implement an inspirational goal.

The key requirements for a successful leader are: the ability to take decisions; integrity; enthusiasm; imagination; willingness to work hard; analytical ability; understanding of others; ability to spot opportunities; ability to meet unpleasant situations; ability to adapt quickly to change and willingness to take risks, among others.[29]

A transformational leader is ambitious and has inspirational goals that can motivate people across sectors to accept these challenges. Being a transformational leader also means identifying the strategic options that are available, building partnerships to implement them and motivating others to stay the course.

The AU/NEPAD Capacity Development Strategic Framework, which was conceived with a view to guiding capacity development in Africa, identifies 'leadership transformation' as one of six cornerstones that are deemed the most critical success factors for capacity building in Africa by the NEPAD consultation process (See Box 3 Below)[30]

29 John Adair: Effective Leadership: How to be a Successful Leader, 2009.

30 NEPAD Secretariat: "The AU/NEPAD Capacity Development Strategic Framework (CDSF)". 2009. http://www.oecd.org/dataoecd/1/11/43508787.pdf.

Box 3: Leadership Transformation

Leaders and managers at all levels (junior to senior, local to national), who are committed to collective transformation and to performance while fostering growth and development of African human potentials.

Key components are:

1. An enhanced commitment and accountability of African leadership to results.
2. Inclusive and consultative leadership which seeks for solutions from within, rather than relying on external resources.
3. Leadership that recognizes people as a resource and which provides and fosters 'space' for African citizens, staff and institutions at all levels to grow.
4. Leadership which is dynamic and strategic and fosters the capacity to strategize and organize for achieving results.
5. Leadership which is entrepreneurial and encourages entrepreneurial behavior in all spheres of society.
6. A feedback culture and continuous improvement processes as integral parts of leadership and management.

Attention should also be paid to followers as leaders do not operate in a vacuum. The followers have to be motivated in moving forward towards the intended goal. The leader has to be able to influence and motivate followers that are resistant to change to become part of the shared vision. This is particularly true for the mining sector as the leaders depends on empowered and enlightened followers to accomplish his goal (See Box 4).

Box 4: Assumptions about Followers:

- Followers constitute a group that, although amorphous, nevertheless has members with interests in common.
- While followers, by definition, lack authority, at least in relation to their superiors, they do not by definition lack power and influence.
- Followers can be agents of change.
- Followers ought to support good leadership and thwart bad leadership.
- Followers who do something are nearly always preferred to followers who do nothing.
- Followers can create change by circumventing their leaders and joining with other followers instead.

Compiled from Barbara Kellerman, Followership: How Followers Are Creating Change and Changing Leaders[a]

a. Barbara Kellerman: 'Followership: How Followers are Creating Change and Changing Leaders'. Harvard Business Press, 2008. p.241.

The pursuit of a well governed mineral sector is a public good[31] for which both leaders and followers should be committed and accountable to. This should be filled in a social

31 A Public Good is a product that one individual can consume without reducing its availability to another individual and from which no one is excluded. Economists refer to public goods as "non-

compact with clear definition of roles and responsibilities of each party and as a scorecard to measure progress.

2.6 Strong Institutions

Without strong institutions, it would not be possible to implement an ambitious agenda such as the one contained in the Africa Mining Vision. The existence of strong institutions has been linked to positive development outcomes in countries endowed with mineral resources such as Botswana.[32]

Institutions are not just formal structures that are exogenous but should be considered as endogenous entities with linkages amongst them. Their growth should be organic and context specific. Strong institutions are needed since the challenges of governance of the mineral sector are complex; the agenda is ambitious and the barriers for an effective implementation are enormous. These barriers include restricted market access, tariff and non-tariff barriers; the fact that the skill base for linkage programs is limited and the existing institutional models do not necessarily apply to the countries' specificities; and yet the opportunities available are equally appealing.

Two types of institutions are essential for the mineral sector: strong institutions that regulate the state's capacity to tax and spend; and institutions with responsibility for technical education, infrastructure development (especially power, transport and telecommunications), trade, industry, research and development, and finance. Increased coordination among these institutions is key to harnessing the potential of mineral resources endowments.

Given the fact that the Africa Mining Vision is centered on linkages, a new institutional set-up beyond the confines of mines would be required to promote resource-based industrialization and broad-based development. This set-up includes both state and non-state actors to administer the sector. Transplanting institutional models from other jurisdictions without considering local context and social infrastructure can compromise the efficacy of these institutional models. Institutions' autonomy, transparency and public accountability are crucial as they should serve as an oversight mechanism and this is particularly important for the mining sector.

2.7 Adequate Infrastructure

Sustaining economic opportunities in the mining sector requires good geological database, reliable hard and soft infrastructure, and an overall enabling business environment in addition to the other building blocks that were mentioned above. While hard infrastructure includes adequate roads, energy and power supplies, soft infrastructure involves human

rivalrous" and "non-excludable".
http://www.investopedia.com/terms/p/public-good.asp#ixzz1cWrqhZRx

32 Dougherty, Michael L. 2011. "A Policy Framework for New Mineral Economies: Lessons from Botswana", Illinois State University. October. http://www.uvm.edu/ieds/sites/default/files/Botswana_Minerals.pdf.

and social capital. Indeed, mineral economies that have successfully built broad-based competitive and resilient economies have done so on the basis of the strength of their human and social capital rather than on the mere exploitation of their mineral resources endowments. Using mineral resources wealth to build sustainable forms of capital that can outlast the currency of mining is therefore crucial for the development of a sustainable mineral sector.

In order to gain optimally from the exploitation of mineral resources, the mining environment should be attractive to investment. In surveys such as the Fraser Institute and the World Bank Worldwide Governance, the indicator 'infrastructure', included in both surveys and the 'sustainable economic opportunity' category of the Mo Ibrahim index come consistently as prerequisites for investors. To continue to be competitive investment destinations, host countries need to pay attention to the results of these surveys and act accordingly.

It is worth noting that the International Council on Metals and Mining (ICMM) has developed a toolkit where it identifies five policy domains on the impact of mining operations on governance structures, institutions and policy choices at different levels of government. These five policy domains are: legal and regulatory frameworks; fiscal regime, economic policies and public administrative capacity; production inputs; human capital development; and social cohesion.[33]

33 International Council on Metals and Minerals (ICMM). 2011. Mining: Partnerships for Development TOOLKIT. http://www.icmm.com/mpdtoolkit.

3. The APRM: Architecture, Achievements and Lessons Learned

While the international initiatives mentioned in the introduction should be commended, they have mixed results. In any case, ownership by Africa is important as enshrined in NEPAD guiding principles and was also recognized at the 2007 Big Table on "Managing Africa's Natural Resources for Growth and Poverty Alleviation".[34] It is also indicated as one of the G20 principles in the Seoul Development Consensus as encapsulated in the statement "Engage developing countries, particularly LICs, as equal partners, respecting their national ownership and recognizing that the most important determinant of successful development is a country's own development policy'[35]. Ownership of the development process is also key to the realization of the Africa Mining Vision (The Vision) adopted in February 2009 by the African Union Summit of Heads of State and Government. In that regards, the African Peer Review Mechanism (APRM), an Africa owned initiative, will be explored in details along with its potential to bring about the much needed change to achieve sustainable development through the effective management of mineral resources.

3.1 The APRM: A unique Africa-owned initiative

In 2001, the New Partnership for Africa's Development (NEPAD) was launched and officially adopted as Africa's development vision by the Summit of Heads of State and Government of the Organization of African Unity (OAU), now the African Union (AU). NEPAD was created as a vision and a framework for addressing Africa's myriad development and governance challenges.

Key among NEPAD's noble principles included: (a) Good governance as a basic requirement for peace, security and sustainable political and socio-economic development; (b) African ownership and leadership, as well as broad and deep participation by all sectors of society; (c) Anchoring the development of Africa on its resources and resourcefulness of its people; (d) Acceleration of regional and continental integration; (e) Building the competitiveness of African countries and the continent; (f) Forging a new international partnership that changes the unequal relationship between Africa and the developed world; and (g) Ensuring that all partnerships with NEPAD are linked to the United Nations Millennium Development Goals (MDGs) and other agreed goals and targets. The four main priority programme areas of NEPAD include (a) peace and security (b) democracy and good governance (c) regional cooperation and integration and (d) capacity building.

More recently, the integration of NEPAD into AU has led to establishment of the NEPAD Planning and Coordination Agency (NPCA) as a technical body replacing the former NEPAD Secretariat. While retaining its essential mission and vision, the NPCA Action Plan identifies four main intervention priorities in the area of governance as follows: (a) supporting democracy and the democratic process; (b) supporting good governance; (c)

34 UNECA and African Development Bank: The 2007 Big Table: "Managing Africa's Natural Resources for Growth and Poverty Reduction", 1 February 2007.

35 G20 Seoul Summit 2010: Seoul Development Consensus for Shared Growth.

promoting and protecting human rights; and (d) furthering economic and corporate governance. The major operational vehicle for implementing the NPCA governance agenda is the APRM.

The APRM - a key component of NEPAD - was adopted by African Heads of State and Government as a systematic peer learning and self-assessment mechanism based on the NEPAD foundational document, the "Declaration on Democracy, Political, Economic and Corporate Governance" adopted in Durban, South Africa in July 2002.2 It is a mutually agreed instrument voluntarily acceded to by AU member States as an African self-monitoring mechanism. The APRM is often described as "Africa's unique and innovative approach to governance" with the objective of improving governance dynamics at the local, national, continental and international levels. Since its adoption, the APRM has become the most visible achievement of NEPAD in promoting good governance in Africa.

What Makes the APRM Unique?

The APRM constitutes one of the most ambitious and innovative governance exercises undertaken in Africa and provides important opportunities for public policy dialogue. Its approach is unique in both its scope and breadth, because the comparable OECD is limited to a sectoral review of member States and the consultation process involved is technical but not political in nature. The initiative is the first of its kind in Africa, and indeed in the world. It takes a comprehensive view of all aspects of a country's governance system. It marks a paradigm shift by providing a new mechanism and with a participatory process that identifies governance deficiencies, verifies the adoption, consolidation and prescription of appropriate policies for the achievement of the socio-economic and political objectives of NEPAD. In addition it has an emphasis on fact finding and first hand information gathered at the ground level while it also allows afor a customized approach.

The assessment thus aspires to reach an agreed standard and to test the performance of the peer. Four main governance aspects can be strengthened through the mechanism:

Transparency: As the review addresses national rules, practices and procedures, these features are often not only shared with the peers but are also made public in reports. This enhanced transparency contributes to the effectiveness of the peer review.

Policy dialogue: Dialogue between the peers – participating states – is an integral component of the mechanism.

Capacity building: As the goal is to help the states in improving their policy making, one result of a peer review is the exchange of best practices, i. e. occasions of mutual learning. By doing this, the peer review serves as an important capacity building instrument.

Compliance: By monitoring the policy making of the member state in respect to agreed standards and principles the compliance by the countries with these agreed goals is enhanced

In sum, these four effects of the reciprocal evaluation tend to create a "system of mutual accountability". Plus, the APRM would allow a collective bargaining position among African states in terms of negotiating mining contracts/legal frameworks vis-a-vis Multinational companies.

3.1.1 APRM Structure and Processes

APRM Continental Structures

The APRM is composed of a set of bodies that support and coordinate implementation of the review process both at the continental and national levels. At the continental level, APR structures include the Committee of Participating Heads of State and Government (APR Forum), the Panel of Eminent Persons (APR Panel), and the APR Secretariat.

Forum of Heads of State and Government of Participating Countries

The highest decision-making body in the review process is the APR Forum, which is composed of all Heads of State and Government of participating countries. The APR Forum considers and makes recommendations for the review reports on the member States and authorizes publication of the APRM reports. It is also responsible for nomination and selections of members to the APR Panel.

The Panel of Eminent Persons

The APR Panel is the executive body of the APRM, in charge of directing and managing its operations. It leads and oversees the country review processes and provides ad hoc guidance to the country teams to ensure the integrity of these processes. The Panel is ultimately responsible for the contents of the report. The APR Panel is composed of five to seven Africans of "high morale stature and committed to the ideals of Pan-Africanism", who have distinguished themselves in areas relevant to the work of the APRM such as political governance, macroeconomic management, public financial management and corporate governance. They are nominated by participating countries, short-listed by a Committee of Ministers and appointed by the APR Forum to reflect a regional, gender and cultural balance.

The APR Secretariat

The APR Panel is supported in its operation by a secretariat based in South Africa, in charge of providing "secretarial, technical, coordinating and administrative support" to the APRM process. It is headed by an executive director who is supported by a team of experts in the four review areas. Among other functions, the secretariat maintains an extensive database on political and economic development in participating countries, prepares background documents for the peer-review teams, and tracks the performance of individual countries. It is also responsible for constituting the APR Country review teams to conduct the country visits, and the composition of which is intended to ensure a "balanced, technically competent and professional assessment of the reviewed country".

APRM National Structures

At country level, each country is required to establish a national coordinating structure as well as a national focal point to ensure smooth coordination and communication between the various APR institutions.

APR Focal Point

At the national level, each country is required to set up a national mechanism to play a communication and coordination role and serve as a liaison between national and continental structures.

The form and profile of the focal point is left to the discretion of the participating countries, but it is recommended that it should be composed of high-level officials reporting directly to the Head of State or Government and with access to all national stakeholders.

National Coordinating Structure

Each country is also required to set up a national coordinating structure, often in the form of a National Governing Council, in which key stakeholder groups are represented, including government, civil society and the private sector. This body is responsible for conducting the country's self assessment through a "broad-based and all-inclusive" consultation of key stakeholders in the public and private sectors. Countries have a relative margin of discretion as to how they implement this requirement.

Review Process

According to the various official documents, APRM reviews can be conducted in four major situations: a) when a country officially accedes to the APRM process (base review); b) follow up reviews which are meant to be conducted every two-four years; c) upon a special request by an APRM member State; and 4) at any moment when early warning signs suggest an impending political, economic or social crisis in an APRM member State. The APRM covers 91 indicators in four governance areas: Democracy and Political Governance; Economic Governance and Management; Corporate Governance; and Socio-Economic Development. The review process includes country self-assessments based on a questionnaire, expert review teams, and onsite visits by expert review teams which consult with government, private sector and civil society representatives, organizes active plenary discussions and revision of country reports and action plans by the APR Panel. Specifically, the review process involves five major steps as follows:

Stage 1: Preparations of the Country Self Assessment Review and Report

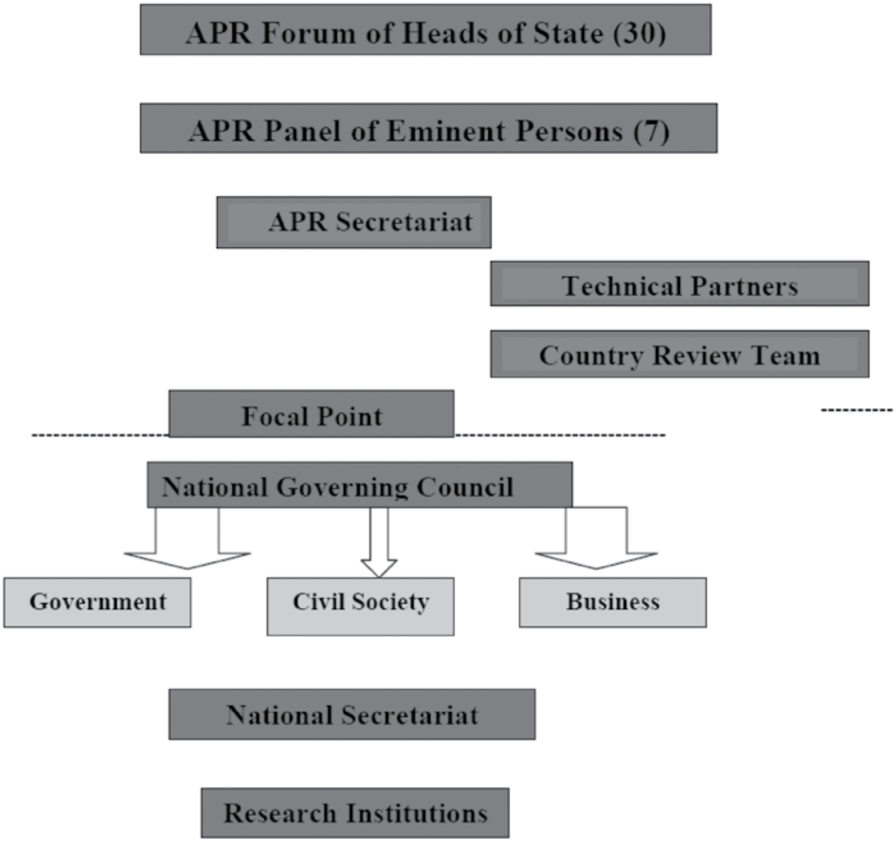
Stage 2: Country Review Mission by APRM Panel and External African Experts

Stage 3: Compilation of a final Country Review Report

Stage 4: Submission to the APR Forum for Heads of State Peer Review

Stage 5: Report made available to the Public and tabled at pan-African institutions

Continental and National Structure



3.2 Achievements, Lessons Learned and main Challenges of the APRM

Since its first mention in the NEPAD official documents in 2001 and the subsequent adoption of the accession of the Memorandum of Understanding (MOU) in 2003, the APRM has made considerable progress in terms of the number of countries acceding, the rolling-out of the structures, institutions and organization of the review process, as well as the degree of active participation and engagement of stakeholders, both nationally and continentally. And the implementation of the APRM process has brought about innovations seen in the setting up the national structures and institutions and in the marshalling of organizational capacity for undertaking the country self-assessment processes.

Although country experiences have varied both in terms of political will and commitment to allow participation and engagement of stakeholders, there is invariably a certain amount of respect for the rules and regulations underlying the "APRM game" as it were.

In the end, the nature and quality of civil society participation in the APRM process is directly linked to the political context in each country.

More importantly, the APRM has showcased its potential to diagnose systemic and structural issues that confront most African States in their governance systems. These issues require a holistic approach in the search for solutions because of the wider impact they have on the quality of governance in all its dimensions.

Generally, the APRM Country Review process has unveiled four of the major systemic issues: (a) Managing Diversity (b) Corruption; (c) Land Resource Management and Governance (d) and Elections. One important value added from the APRM process in flagging these systemic issues is that it allows opportunities for African leaders and their citizens to have open and frank discussions and analysis, and find collective solutions through the sharing of best practices and peer learning.

First, nearly all the peer-reviewed countries have challenges in managing diversity, which is reflected in the form of race, ethnicity and/or religion. These countries stand to gain from the full potential of diversity by managing it at political, economic and social levels. The APRM reports see this as a formidable pre-condition for ensuring democratic and well governed States in Africa.

Second, nearly all of the APRM countries reports identified corruption as a major governance problem that cuts across all the thematic areas examined under the APRM Country Review reports. Corruption poses a serious development challenge for Africa. In the political realm, it seriously undermines democracy and good governance. In elections and in legislative bodies, it reduces accountability and representation in policy-making if unchecked; and in the judiciary, it erodes the rule of law. Corruption undermines fairplay, justice and equal opportunities, equity and non-discrimination, which are underlying principles of human rights. In the economic realm, corruption generates economic distortions in the public sector by pulling public investment away from priority sectors and into projects where bribes and kickbacks are more plentiful. Corruption lowers compliance with construction, environmental, and other regulations; reduces the quality of government services; and, increases budgetary pressures on government. In corporate governance, it undermines economic development by increasing the cost of doing business through bribes, the management cost of negotiating with officials, and the risk of breached agreements or detection.

Third, the issue of land and resource management and governance was seen as highly contentious and political in nearly all APRM countries. The APRM reports show that the participating countries have large populations with no access to land, which is vital for the livelihoods of the citizenry. Management of land distribution and the security of tenure are at the forefront of the land situation. Despite its centrality, several African countries have not articulated a comprehensive land policy, or taken the impact of land governance into account their development and poverty reduction strategies, or allocated sufficient resources for land development and management.

The consequences of poor planning and management of land use continue to manifest in land degradation, abject poverty, food insecurity, war and famine. (See Box 5 for the case of land in Kenya)

Box 5: How the APRM successfully impacted on land reform in Kenya

Kenya acceded to the African Peer Review Mechanism in March, 2003. The Country Review Report commended Kenya's achievements in many areas, e.g., primary school enrolment, widening scope of democratic rights, and public service reforms, and improved health services. But it also recommended reforms to manage ethnic diversity better, to deal with land rights, and inequalities in personal incomes, regions and gender. As a response to the APRM assessment, the then President of Kenya announced policies the Government would be implementing to deal with the challenges cited. Some of the policy recommendations can be found in very concrete terms in the Kenya Vision 2030. While the APRM looks at past achievements and lessons learned, the Vision 2030 looks to the future, taking on board the lessons of APRM.

Some examples of how the APRM recommendations were taken up include issues relating to: meat and leather-processing industries in the pastoral districts; a new transport corridor from Lamu's new port, to the new resort city in Isiolo and then Lake Turkana; new tourism circuits covering districts that have not previously benefited from that industry, value addition in agriculture and fisheries; and, evenly-distributed access to health, water, and education. It is also worth noting that the APRM country review had recommended land reforms as a central issue, and the Vision 2030 has adopted land reform as one of the cross-cutting foundations of national transformation, among others like corruption, security and rule of law.

To date, progress has been made in addressing the overarching issues raised by the APRM Country Review Report. In the area of land reform, the Government finalized the National Land Policy, which has received Cabinet approval and Parliamentary debate and adoption in 2009. As advised by the AU Framework and guidelines on land policy in Africa, Kenya needs now to efficiently plan for the effective implementation of the new land policy and to monitor and evaluate progress achieved so far. This will go a long way in instituting the land reforms advocated for in the APRM Country Report. In the fight against corruption, a legislative framework has been enacted and institutional structures for dealing with corruption and other economic crimes have been established such as the Kenya Anti-Corruption Commission and the National Anti-Corruption Steering Committee District Oversight Committees.

And fourth, the APRM country reports raised the issues of elections and electoral management in Africa. Although undisputed elections are becoming increasingly evident in Africa, the results of many elections have been disputed. In fact, some recent elections have been plagued with serious irregularities, thus failing the true test of democracy which, among other factors, involves peaceful regime change in free and fair elections. With the exception of few notable countries, both the electoral system and process of elections, the former being the organizational infrastructure for managing elections, and the latter the precepts and procedures of elections, are not up to scratch. The reports generally noted an emerging trend is also the qualitative decline in the conduct of successive multiparty elections, coupled with the low and declining level of participation.

While these issues are not entirely new, the overriding message from these systemic issues has been that ignoring them could be costly and damaging to a country's governance system as well as to the project of nation-state building that is still on-going in many African countries. While the APRM is not a panacea to all African governance problems, it is showing that by overcoming leadership challenges — including vision, commitment, continuity and technical capacity — the process can make a tremendous contribution towards identifying and addressing many such systemic issues underlying African governance problems.

When assessing the overall progress, results and impact of the APRM one can state that, although the APRM is still at early stages of implementation, there are signs of impact in terms of governance gains from countries that have inaugurated the process and engaged in reforms processes. The APRM is contributing in a very significant manner to open discussion of hitherto taboo subjects regarding governance within the continent. As a short- to medium-term effect, showcasing and highlighting best practices of governance within African has tremendous impact on peer countries within the APRM mechanism. The 'best practices' that are meant to be highlighted in each report are a way to celebrate achievements and to enhance the constructive and non-punitive character of the APRM. Each country review report therefore contains brief mention of 'best practices' both in terms of unique national approaches to addressing governance challenges or contributions to regional public goods including peace, security and socio-economic development. Thus, we have for instance, Ghana being praised for a deepening democratic culture; South Africa for its unique "decentralized governance system"; Kenya for decreasing its dependence on foreign aid; Rwanda for outstanding achievements in social services and gender equality; and Nigeria for contributing to regional peace and security in West Africa. These best practices foster opportunities and a conducive environment for systematic mutual learning and exchange based on participation, openness and trust within and between countries, while internalizing and mainstreaming lessons learned, new thinking and best practices.

In addition, the APRM reports are serving as an early warning system of impending threats to peace and stability in Africa. For example, the APRM report for Kenya had anticipated potential political unrest before ethnic-related violence broke out in 2007, while the South Africa report had warned against xenophobic tensions that erupted in South Africa in May 2008. The dire consequences of the fragility of ethnic balance and tense electoral disputation in Kenya and the explosion of the phenomenon of xenophobia in South Africa soon after that country's peer review both underline the depth of the APRM in identifying systemic and structural governance issues as well as its predictive value as an early warning system. The diagnostic strength of the mechanism makes it a promising tool to identify key areas of intervention and to set priorities for reform.

Another achievement concerns the fact that the APRM is legitimizing the demand for public accountability by the African citizenry and is opening up space for civil society participation in governance processes. This process is leading to an institutionalization of domestic accountability as opposed to external accountability in Africa. Historically, accountability in Africa has been directed upward toward donors and central governments and not downward to citizens as tax payers and users of services. Upward accountability is further balkanized when limited local resources are tapped by different donor requirements that demand the creation of parallel systems of accountability. As a result, mechanisms of participation, even when they exist, have often failed to provide the necessary domestic accountability systems. The APRM, if successfully implemented across Africa, will reshape and reverse accountability away from donors to domestic constituencies.

Beyond governance issues, evaluation of the APRM suggests positive outcomes towards supporting the achievement of development goals. The APR makes a useful contribution especially with regard to ensuring respect for international commitments including the MDGs.

Even if not entirely achieved in practice, the level of citizen participation in the review process and the identification of development priorities come closer to the ideals of 'right to development criteria" in terms of process and content than any other similar mechanism.

Despite this remarkable progress of the APRM there remain some challenges, both at the continental and at the national level. These concern mainly the voluntary nature of the process which lead to the need to ensure that AU member states continue to enlist and sign-up to the mechanisms. In addition, the APRM Heads of States Forum seems to be losing steam, with reduced commitment and waning of the initial enthusiasm and dynamism that characterized their work, and the continental APRM Secretariat has been bedeviled with weak institutional and organizational constraints despite remarkable efforts in organizing and delivering first-rate APRM Country Review Missions and Reports. And one of the biggest continental challenges and major weakness of the mechanism is the lack of effective follow-up particularly, the implementation of the National Programs of Action. At the national level, the biggest challenge facing the APRM is the political will to carry through all the precepts and principles contained in the MOU which countries have voluntarily committed to undertake. In theory, the APRM represents a valuable opportunity for civil society to get critical issues onto the national agenda and to engage the State in policy issues affecting the citizens' interest. In practice, however, the level and extent of participation greatly varies across countries depending on the government's political will to truly and meaningfully engage all stakeholders in the review process.

3.3 Harmonization of NPoAs and other National Development Frameworks

Starting in 2003, a number of African countries undertook a rigorous assessment of the performance of national institutions in the areas of democracy and political governance, economic governance and management, corporate governance, and socio-economic development as part of the APRM process. As described in chapter 3.1.1.1 above, the findings from these assessments then became the basis for the production of National Programmes of Action (NPoAs) intended to address the challenges discovered during the self-assessment. These two documents, together with independent research conducted by the Continental Secretariat of the APRM, are fed into a Country Review Report prepared by the Secretariat. This document was then presented for discussion to the APRM Forum, the grouping of African Heads of State whose countries had acceded to the APRM. To date, this Peer Review of African countries has become the highlight and focal point of the APRM process. However, it became clear that as important as the task of preparing the Country Self-Assessment Report (CSAR) was for the countries involved, the real challenge was in implementing the NPoAs. The preconditions for this included: ascertaining by how much the NPoAs had added to the nation's development funding need; determining how the funds to cover the additional costs would be raised and from where; integrating the NPoA into the national budget and the Medium Term Expenditure Framework (MTEF); ensuring that the NPoA was actually implemented; and finally properly monitoring and evaluating, it. In short, it was important to establish that the NPoAs had been accurately costed, adequately financed, efficiently implemented, and diligently monitored. In a recent series of studies in Benin, Ghana, Rwanda and Uganda, a number of specific findings and challenges of harmonizing the NPoA with other national development plans have been identified. These include the following.

Integrating the National Governing Councils into the National Planning System

All countries had an established institutional framework within which project and programme preparation and costing were conducted. The issue was therefore the extent to which the new APRM institutions were brought into this existing framework. Essentially, there were three ways in which the APRM structures were integrated into the national system. The first was to place them within an existing national planning institution. The second was to give them a place within the national planning system as an independent and autonomous body. The third was to make key members of the national planning system members of the APRM National Governing Council.

These mechanisms of integration improved the likelihood that the resulting NPoA would have the buy-in of the intended implementing agencies because they had been involved in the design phase of the projects and programmes they were supposed to implement. On the other hand one of the possible dangers was that those elements of the NPoA that were on-going initiatives would remain with their pre-existing nomenclatures and not acquire APRM identities, a potential problem during the monitoring phase. A different problem was that the new initiatives, although they had been developed with the active participation of the national planning body responsible for costing, could still end up not being owned by the intended implementing agency. In the event that the on-going initiatives came to constitute a large proportion of the NPoA, this could prove to be quite a challenge during its implementation phase.

Harmonizing NPoAs with National Plans

One of the more novel aspects of the APRM is that the process of project and programme identification provided for input from sections of society not normally included in national planning exercises. Of relevance is the extent to which the design and costing roles were centralized. In some countries, there were separate institutions responsible for designing, financing, implementation, and monitoring. In others, some, if not all, of these stages were centralized, usually in the Ministry of Finance and Economic Planning. It was into this framework that the APRM institutions – the National Focal Point, the National

Governing Council, the chairperson of the NGC, the Secretariat, and the Chief Executive of the Secretariat – were integrated.

Content Overlap

The APRM combines three sets of governance indicators with one set of socio-economic performance assessment. The result is a governance improvement plan, driven in part by a concern to improve governance assessments indicators, but also intended to help improve the nation's socio-economic development. As a result, the NPoAs inevitably overlapped in content with pre-existing national plans. The process of mapping pre-existing plans and the NPoA depended on the exact timing of the cycles. Some allowed authorities to fully integrate the NPoA into an overall national strategic plan. In at least one instance, the national planning authorities were able to take the NPoA and map the investment programme arising from its four thematic areas into the framework being used at the national planning level. In other instances this was not possible. Nevertheless, the NPoA retains its character as a twofold mechanism. On the one hand, the NPoAs were intended to improve the results of the governance assessments, and also to improve socio-economic performance.

Monitoring and Evaluation

In any monitoring system, a necessary precondition is the collection of relevant data. Thus the ability of the institutions of government to collect the data necessary to assess the performance of the NPoA is crucial. All countries had a network of institutions concerned with monitoring projects and programmes, experienced mainly in the monitoring of national projects. Thus NGCs had to develop a capacity to monitor governance, both in the form of governance indicators and targets and perceptions of governance issues among the general population. . This could prove to be one of the major legacies of the APRM: the augmentation of the capacity to collect strategic development data.

The APRM embraces a complex policy mix. In the area of democracy and political governance, it aims to increase the breadth and depth of the democratic process. In the area of economic management it seeks to promote macroeconomic stability, while promoting African integration. In the area of corporate governance it seeks to create an enabling environment for entrepreneurship. Finally, in the area of socio-economic development, it seeks to improve the development indicators. One of the potential sources of value added is, therefore, not only the APRM's ability to improve capacity to identify and collect the relevant data, but also a culture of objectively evaluating that data, learning the lessons it has to teach, and logically applying them. In this regard, the APRM-NPoAs may assist in increasing the capacity to evaluate the existing poverty reduction strategies more closely. In so doing, it would assist the continent in moving in a direction in which planners already appear to be moving. In all the countries visited, sustained growth and structural transformation have been given a higher place among policy objectives. It may be that the experience of the NPoAs will produce other insights that will further shape the trajectory of Africa's current development strategy.

4. The APRM and Governance of Mineral Resources

The APRM, as a home grown and African owned mechanism unlike the many other externally designed governance initiatives, offers a great opportunity to improve Africa's governance standards in the extractive sector and the management of Africa's mineral resources. This chapter will highlight emerging lessons and insights for mineral resources management from the assessment of APRM reviews of selected pioneering countries; and then discuss the APRM with a particular focus on the building blocks.

4.1 Emerging Lessons and Insights for Mineral Resources Management from the Assessment of APRM Reviews of Selected Pioneering Countries

This section draws insights from the APRM findings for the management of natural resources in the cases of Nigeria, Algeria, South Africa and Uganda. These countries were selected based on their different experiences with the management of natural resources. As mentioned before, the APRM assesses participating countries along four thematic areas, i.e. Democracy and Political Governance; Economic Governance and Management; Corporate Governance; and Socio-economic Development. The APRM cycle is characterised by four major reports: the Country Self Assessment Report; the Country Review Report led by the APR Panel of Eminent Persons; the resulting National Plan of Action and the monitoring of this implementation process through Progress Reports.

The Country Self Assessment Report (CSAR) and the Country Review Report (CRR) comprise a comprehensive assessment of the performance on each of the specific APRM objectives. These findings provide a balanced review of different perspectives and facts as the CSAR voices the perspectives and perceptions of various domestic stakeholders; and the CRM provides an independent and balanced external review of these findings. The National Plan of Action (NPoA) and the Progress Report are prepared by the respective Governments and identify the concrete measures and strategies the country has adopted to improve the management of natural resources.

This section will give a summary of insights and lessons from all of these reports and findings for the four countries mentioned above. For further details, please refer to Annex 1. The case study on Nigeria and particularly the Niger Delta Region is of profound influence to various cross-cutting themes in the country. Therefore, the analysis focused on all four themes covered in the APRM analysis. The issue of oil and natural resources management in Algeria reflects predominantly on the promotion of macroeconomic policies that support sustainable development and the promotion of sound public finance management and thus focuses merely on the theme of Economic Governance and Management. In the case of South Africa, lessons learned and best practices could be drawn from all the four themes of the APRM report. As Uganda has relatively recently discovered oil, the analysis will focus on determining through the APRM report if the prerequisites for an efficient management of mineral resources exist and make recommendations if they don't.

4.1.1 Nigeria

The APRM findings relating to the management of natural resources in the Niger Delta revealed important lessons and good practices, which could be replicated by other resource rich African countries. More importantly, they demonstrate the extent to which the APRM assessment contributes and lives up to the building blocks of good governance for the mineral resources sector.

The case study (see Annex I- Fact Sheet 1) has shown the importance of having peace, security and political stability as well as clear, transparent, predictable and efficient legal and regulatory frameworks. Drawing from both the positive and negative experiences, the case study informs that it is important to analyse the various laws that govern the use of land and to ensure that the local community retains ownership of the land (See Box 6).

Box 6: Conflict in the Niger Delta

In Nigeria, the laws that were passed to nationalise all land and mineral resources located in the oil-rich communities including the Niger Delta has caused grievances in the communities that have turned into conflicts. The core grievances of the Niger Delta are: local control of oil and gas resources, greater representation at the federal level, economic empowerment, infrastructure development and environmental sustainability. This is a clear example where the divides between national and sub-national claims to ownership, and grievances between the population, give rise to disenfranchised local stakeholders who do not have access to mineral rights.

Furthermore, there is an urgent need to increase transparency about the amount of crude oil extracted by oil companies as well as, information about the revenues generated through oil export by the Federal government. In fact, legal frameworks are deemed to be of utmost importance as they protect the rights of communities living in the Niger Delta. Transparency about the amount of crude oil extracted by the oil companies enables parliament and civil society to exercise their oversight functions thus ensuring accountability with regard to the use of public resources. In this regard, the implementation of the Extractive Industries Transparency Initiative for the management of mineral resource is an exemplary measure that could be taken up by other countries. However, this initiative does not suffice as a stand alone transparency instrument but rather needs to be corroborated by other measures. A study[36] finds that increased transparency through the EITI in Nigeria's oil industry did not lead to improvements in governance as such. The study argues that civil society has not been meaningfully empowered and increased transparency has not been influential in calling Nigeria's rulers to account (See Box 7). This shows that a comprehensive framework as elaborated through the various building blocks is required in addition to specific governance initiatives such as EITI.

36 Shaxson, N. 2009. Nigeria's Extractive Industries Transparency Initiative: Just a Glorious Audit?". London: Chatham House

Box 7 : Nigeria and the EITI

A report by Shaxson (2009) aimed to explore the extent to which Nigeria EITI lived up to its goals of improving transparency and fostering better governance (including civil society participation). The report finds that: the publication of the 1999-2004 audits is EITI's main achievement; Nigeria EITI has informed but has not meaningfully empowered civil society; it is not certain that more capacity building and work will overcome the fundamental problems faced by civil society as this is likely to be linked substantially to Nigeria's dependence on mineral revenues, which drives leaders not to take their citizens' needs into account; the consumers of Nigeria EITI information may have been the elite groups and might have gained in understanding the Nigerian oil and gas sector better; the minor discrepancies discovered by Nigeria EITI audits show that the 'reconciliation exercise' did not help address the main problem; the global EITI process would be best to focus on countries where the political dynamics for governance and reform already exist; and the global EITI concept of transparency did penetrate into Nigerian policy-making. [b]

b. Shaxson, N., 2009, 'Nigeria's Extractive Industries Transparency Initiative: Just a Glorious Audit?' Chat House http://eiti.org/document/shaxson-neiti-glorious-audit.

The establishment of fair and equitable fiscal regimes is critical for utilising mineral revenues in an equitable manner. Moreover, the development of the fiscal regime is needed as mineral resources reduce the need for the government to tax citizens. As a consequence accountability relations between the state and citizens are not developed. The case study on Nigeria illustrates this by emphasizing the need for effective and efficient tax administration so as to increase domestic tax collection; introducing fiscal policy reforms in order to achieve macroeconomic stability, internal balance and fiscal transparency so as to develop an improved revenue base; decentralised control of resources by the local communities; and an adequate revenue sharing formulate for the distribution of oil revenues to lower tiers of government (state, district, province, municipality) (See Box 8).

Box 8: Fiscal Policy and Mobilisation of Domestic Resources

The Nigerian government has introduced fiscal policy reforms to achieve macroeconomic stability, internal balance, fiscal transparency and an improved revenue base. An oil-based fiscal rule seeks to separate government expenditure from volatile oil prices and ensures that excess crude revenues are saved. However, effective and transparent public administration can be enhanced by increasing non-oil related revenues. Indeed, fiscal policy continues to be limited by a narrow tax base. Also, new measures that were adopted to improve tax collection were unable to reduce tax evasion. The government has attempted to mobilise domestic resources and to diversify the economy through port concessions, reforming the customs service, increasing tariffs on utilities, expanding businesses by creating micro-credit facilities, consolidating the banking sector, and establishing a Revenue Mobilisation, Allocation and Fiscal Committee. This can be further stimulated by exploiting revenues from groundnuts, rubber, cocoa, palm oil, coal and other unexploited mineral and agricultural resources. More than 34 commercially viable minerals have been identified in different parts of the country with every State at least having one major resource, but these are still unexploited.

The importance of Credible Public Participation for efficient management of mineral resources is clearly illustrated in the case of Nigeria as the local communities in the Niger Delta Region feel excluded in the management of the natural resources. Ensuring access to state power by the local communities, including minority representation; and utilising public-private partnerships and dialogue between communities and oil companies to support the implementation of Corporate Social Responsibility programmes is critical to support bottom-up development approaches and ultimately will lead to broad-based growth. The latter could be seen as an example of establishing the 'social licence to mine", thereby avoiding conflict and enhancing transparency in the management of natural resources (See example of Shell in Box 9).

Box 9: Shell and Corporate Governance

Multinational oil companies in the Niger Delta at first took the position that there was no legal or moral obligation to provide socioeconomic assistance to their host communities. However, companies such as the Royal Dutch/Shell group later revisited their position on human rights, environmental protection and sustainable development, as well as the content of its Statement of General Business Principles. Shell defined a new community development strategy in 1997. The company created a community development organisation to support broad socioeconomic development in the Niger Delta in 1998. It included introducing best practices from development professionals; transforming existing community programmes by partnering with expert agencies, nongovernmental organisations (NGOs) and governments; promoting rather than opposing advocacy for the Niger Delta communities; supporting the capacity building of government institutions so as to improve their management of regional development projects; and increasing their funding of community development programmes. Since then, other oil companies operating in the region have adopted Shell's approach

An enabling business environment characterized by adequate infrastructure is critical to gain optimally from the exploitation of mineral resources. In this regard, it is first and foremost important to harness economic development of the oil producing region by infrastructure development and preventing environmental degradation. In addition it is critical to mobilise domestic resources and diversify the economy through incentives such as: port concessions, reforming custom services and expanding business by creating micro-credit facilities as illustrated by the case on Nigeria. This will ensure sustained resilience and reduce external shocks. Furthermore, ensuring due process mechanisms in public procurement and contracting as illustrated by the reforms initiated by the Nigerian government aimed at strengthening the management of public expenditure are critical for improving transparency and accountability.

Developing strong institutions can support positive development outcomes in countries endowed with mineral resources. In this regard, setting up a sovereign wealth fund (i.e. Excess Crude Account in Nigeria) can stimulate effective use of the revenues for socio-economic development. Indeed, benchmarking the budget on an oil price that is lower than the actual market price reduces vulnerabilities to internal and external shocks. There is a need, however, to establish supportive legislation to govern such accounts in order to ensure full accountability and transparency.

4.1.2 Algeria

The APRM findings with regard to the management of natural resources in Algeria (See Annex 1- Fact Sheet 2) revealed the exemplary practices and approaches below that could be emulated by other African countries. These exemplary practices are in line with the building blocks of governing the mineral resources sector and demonstrate the value added of the APRM process and analysis.

The APRM findings highlight the importance of conforming fully to international good practices on budgetary practices as elaborated on in the building block on clear, transparent, predictable and efficient legal and regulatory frameworks. Indeed, developing transparent budgetary practices will support an overall strong administration and form the basis of building strong institutions. Consequentially, this will support the efficient and effective use of a sovereign wealth fund such as the Oil Stabilisation Fund in Algeria. (See Box 10).

Box 10: Oil Stabilisation Fund

The Algerian government introduced an Oil Stabilisation Fund to improve public finances in Algeria as nearly 70% of the state budgetary receipts derive from oil revenues. In order to reduce the economy's vulnerability to shocks, the Algerian government has based its Financial Acts on a price of US$19 per barrel since 2000. Any surplus from oil taxation receipts that are higher than those estimated by the Financial Act increases this Fund. The Fund is built up from revenues from additional oil taxation received as a result of the difference between the oil reference price and the average effective price of that year. Since its establishment in 2000 until August 2006, the Fund had been credited with an amount of DA4009.32 Billion. The funds are utilized to repay public debt and finance deficits of the Treasury. Remaining funds are placed with the Central Bank.

Combining good budgetary practices with a sovereign wealth fund allows for the effective mobilisation of domestic resources and accumulation of capital which can be used to repay public debt and financing possible deficits of the Treasury.

Box 11: Oil and Socio-Economic Development in Algeria

The oil revenues have had a profound impact on socio-economic development in Algeria and have put the country on the path to achieving the Millennium Development Goals. The oil boom and social policies has led to radical improvements in public sector delivery of basic services and the development of vast systems of health, education and social protection. Education is free for all Algerian children; the human poverty index went from 25.23 per cent in 1995 to 16.6 per cent in 2005; life expectancy at birth has consistently improved since independence; and regional disparities are reducing following programmes that target disadvantages regions funded from a 2 and 3 per cent levy on oil tax revenue. In this context, several enterprises such as Sonatrach, Naftec, Enafor, and Naftal have created an observatory office on female employment. The enterprises have taken a deliberate decision to promote women employment in a sector that is dominated by male employees

It is also important to ensure civic participation and control in the management of public finances. Establishing legislation to guarantee the right to information for citizens and civil society is an important component for this. Credible Public Participation in the management of natural resources can enhance quality, ownership and sustainability. Furthermore, diversifying the economy through strategies such the promotion of foreign trade, export promotion and export financing can support adequate infrastructure. As the APR Panel rightly notes, the dominance of the hydrocarbon industry in the economy reduces the incentives to develop other non-oil related markets. Diversifying the economy is a major endeavour that governments have to take on. Oil is a non-renewable energy and increased climate change mitigation strategies will direct "buyers" to consume alternative energies. This calls for governments to embrace economic strategies directed at diversifying the economy and promoting sustainable economic opportunities.

Box 12: Economic Diversification through Intergrated Rural Development and Industry Promotion

The Algerian government adopted a new Industrial Strategy which has the objectives to promote new industries, strengthen the export capacities of SMEs and for public institutions to assist and support exporting SMEs. The strategy envisions the development of the industrial sectors, which should move away from a state of mere exporter of primary products to a producer with more value added (petrochemicals, steel and aluminium, hydraulic binders, chemicals). In addition, the Rural Revival Programme boosted by the Rural Rehabilitation Programme (2007-2013) provides the framework and modalities for progressive revival of the rural areas. The programme covers the following four components: modernisation of the villages and ksour for improved living conditions of rural households; diversification of economic activities; protection and development of natural resources; and protection and development of tangible and intangible rural heritage. The programme is expected to impact on 2,738,059 households.

4.1.3 South Africa

The consultative process of the APRM in South Africa was extensive, included various segments of the society, and involved all the nine provinces of the country (See Annex 1 Factsheet 3). The launch of the APRM was undertaken amidst a wide range of publicity throughout the country. It would thus be judicious to say that the APRM process has contributed to the enforcement of a credible public participation and had an impact in creating the social compact that is much needed for the management of mineral resources as described in Chapter 3 of this paper. The "Peer Review" report gave an honest and accurate look of the country, its problems and challenges and most importantly, it triggered an important national conversation, put the key issues on the table, and moved towards solutions. Furthermore, the progress reports on the implementation of the NPoAs show in the case of South Africa that it is striving to implement what was promised in the NPoA.

The decentralization process has enabled broader participation of the public at all levels. The new legislations enacted to that effect and the creation of institutions and mechanisms to ensure better dissemination of information and knowledge has significantly contributed the empowerment of the people. Some initiatives such as the Imbizo, the 'taking Parliament to the people programme' and Batho Pele should be commended. These processes could lead to the creation of strong institutions and unleash the transformational leadership and citizen transformation which are key to realizing the Africa Mining Vision as described in Chapter 3. The robust constitutional framework and the independence and effectiveness of the Parliament provides for clear and predictable legal and regulatory frameworks as well as strong oversight institutions which are key in attracting investment as described in the building blocks for an efficient management of mineral resources.

Box 13: Popular participatory governance through imbizo[c]

Imbizo is a public participation government initiative, which consists of a period of face-to-face interaction and engagement between senior government officials from all spheres of government – national, provincial, and local – and the public. It provides government the opportunity to communicate to the public its "Programme of Action" and how far it is being implemented, the challenges being experienced and areas that may need review. Imbizo also affords local communities the opportunity to voice their needs, concerns and grievances in the various areas of governance and service delivery. Thus, Imbizo is a forum for enhancing dialogue and interaction between the leadership and the governed (citizens). It gives back a voice to the majority of people that were excluded from decision-making by apartheid. As such, Imbizo gives effect to the ideals of participatory democracy.

There exist presidential Imbizo and other government-led Imbizo. During the "Presidential Imbizo", the President visits communities and see for himself some of the challenges that people are grappling with, and the conditions under which local people live. Similarly, communities are afforded the opportunity to air their concerns and communicate their suggestions and aspirations directly with the President and, in the President's presence, with the Premier, the Members of the executive council (MECs), the Mayors and local councils. In this way, Imbizo strengthen cooperative governance and enable citizens to hold the three spheres of government accountable. Two Imbizo periods a year are held in South Africa.

c. Compiled from APRM South Africa Report. 2006.

Box 14 : Taking the Parliament and provincial legislatures to the people programme[d]

The "taking Parliament to the people programme" underscores and promotes people participation in their governance. It is an outreach programme whereby the parliament and provincial legislatures go to the grassroot to interact with members of the communities and listen to their concerns, needs and aspirations. It strengthens Parliament's commitment as a people-centered institution that is responsive to the needs of the electorate in order to realize a better life for all the people of South Africa. By visiting these rural communities, the National Parliament gives a voice to those who would not necessarily have the opportunity to address or discuss (in their home language) issues with their representatives. This creates a platform for people to engage government and Parliament on various issues of concern. The Parliament would, during its interaction with the people, gain a deeper understanding of the issues confronting the area and the rest of the province. The Parliament, through its oversight role, will help to highlight and overcome the constraints faced by local people. The gathering gives the Parliament and the local sphere of government the opportunity to enhance the spirit of cooperative governance. Finally, Parliament will be able to assess the impact of the legislation it has passed, on the development and empowerment of people and their communities.

d. Compiled from APRM South Africa Report. 2006.

Box 15 : Batho Pele[e]

A unique feature in the new era South African governance system is the inauguration of "Batho Pele"--- essentially a Citizens Charter, based on the traditional Sesotho adage, meaning 'people first'. The objectives of Batho Pele are to ensure that the people are sufficiently informed about the governance processes, the functions of the various ministries and departments, those in charge and what to expect from them. That the people are consulted, that they have access to the necessary information regarding their citizenship entitlements and civic obligations. In light of South Africa's previous system of governance and experience of legalised racism, Batho Pele is clearly a deliberate measure to empower all the people to participate effectively in public affairs and enjoy the benefits of citizenship, and ensuring transparency and accountability.

e. Ibid

An effective Revenue Authority such as the South African Revenue Service (SARS) and the oversight roles of other independent institutions has led to the accountability of the public sector and has provided for the rationalization of revenue distribution. While the independence and capacity building of institutions should be strengthened, this could be the basis for a fair and equitable fiscal regime and could enhance the building of strong institutions that are among the prerequisites for a good governance of the mineral sector. The strong budget discipline reinforces predictability and the formulation of sound policies, which is key to boosting investors' confidence.

Box 16: Best Practice on the Budget Formulation Process[f]

South Africa has one of the model MTEF processes, with heavy involvement by the Cabinet and other key stakeholders throughout the process. One result is that the budget, and therefore policy, is highly predictable and the government has consistently maintained strong budget discipline. The two annual lekgotlas set the tone. The cabinet in various forms (regular, extended, and lekgotla) has at least eight meetings a year on budgetary matters. The MCB, which meets four or five times a year, is explicitly intended to act as a substitute for the cabinet, acting in collegial mode.

Frequent meetings of Ministers, further encourage collegiality, or at least collectivity, for other purposes: six cabinet subcommittees meet every two weeks, and the cabinet itself meets in the intervening weeks. The president or his or her staff, or both, have the chance to be involved at all stages of the process. Working relationships between the president and the minister of finance are said to be close. The MTEF, which has reduced the significance of the annual budgeting process by putting it into a three-year context, has encouraged both longer term thinking and planning, on the one hand, and some propensity to prioritize, on the other.

f. Compiled from APRM South Africa Report. 2006.

Box 17: The South African Revenue Services (SARS)[g]

In spite of the challenges in revenue projection noted in this Chapter, the South African Revenue Service (SARS) has been effective in consistently exceeding its revenue target. SARS was established by the South African Revenue Service Act 34 of 1997. Unlike many revenue agencies worldwide, the service is an administratively autonomous organ of the state: it is outside the public service but within the public administration. Thus, although South Africa's tax regime is set by the National Treasury, it is autonomously managed by SARS. The main functions of SARS are to: collect and administer all national taxes, duties and levies; collect revenue that may be imposed under any other legislation; provide protection against the illegal importation and exportation of goods; facilitate trade; and advise the Minister of Finance on all revenue matters. Due to efficiency gains in tax administration, SARS has over time been able to implement fundamental tax policy reforms that have improved the culture of tax compliance and contributed to SARS's success in consistently exceeding its revenue target. Consequently, the South African economy has an impressive tax revenue to GDP ratio of over 26 percent.

g. Ibid

The King I and II reports have contributed significantly to the improvement of Corporate Social Responsibility (CSR) and had an impact on the social transformation, ethics, environment and socially responsible investment thus contributing to human development, one of the prerequisites for a sustainable mining sector. The development of BEE charters which has transformed the manner in which commercial and industrial activities are undertaken is a case in point. While the regulatory framework for commercial activity is largely adequate, the report points out to cumbersome processes of registering a business. Whereas clear, predictable, transparent and efficient legal and regulatory frameworks contribute to attracting investment, the cumbersome processes of registering business could raise the cost of doing business, both factors considered as one of the building blocks for an efficient management of the mineral sector. The inclusion of the Triple Bottom Line in the JSE and the adherence to the King Code also contribute to boosting investors' confidence through the availability of sustainable economic opportunities and reduced of cost of doing business as well as human development.

Box 18 : The King Reports

The King I and II Reports that are home-grown to South Africa have been accepted by many countries in Africa and worldwide as being very comprehensive and this is a remarkable achievement. These reports will continue to influence corporate governance in South Africa, Africa and the world for many years to come. King II not only touches on the significant aspects of Corporate Governance: Boards and Directors; Risk Management; Internal Audit, Integrated Sustainability Reporting; Accounting and Auditing and Compliance and Enforcement but also establishes the nexus between economic, societal and environmental goals. It addresses issues such as social transformation, ethics, safety, health, environment and social responsibility in Africa.

In the South African context the King's Code deals specifically with matters relating to Employment Equity and Black Economic Empowerment. It emphasises the need for companies to move from the single to the triple bottom line which embraces the economic, environmental, and social aspects of a company's activities.

The King II Report has played a pivotal role in promoting corporate integrity in South Africa through its influence on legislative reforms and regulatory measures, the JSE listing requirements and the banking sector regulations. It has also led to the update of the "Protocol on Corporate Governance" for the Public sector.

The King Reports introduce seven characteristics of good corporate governance, namely: discipline, transparency, independence, accountability, corporate responsibility, fairness, and social responsibility.

The Promotion of Access to Information Act (PAIA) which provides the right for the public to access information contributes to clear, predictable, transparent and efficient legal and regulatory frameworks and will undoubtedly reduce the cost of doing business as it enables investors, shareholders and other stakeholders to make informed decisions.

Self-reliance and ownership of development programs will likely lead to taking into account the social and environmental aspects of any given programme, especially with regards to the mining sector and is susceptible to enhance the establishment of a transformational leadership and strong institutions of domestic accountability.

Box 19: Self-Reliance in Funding Development Programmes

The CRM commends the South African government and the country's overall leadership for their efforts in materialising the principles of socio-economic development ownership and self-reliance, particularly in the areas of ownership and funding. Unlike most African countries, South Africa's self-funding amounts to 99.6 percent of its development expenditures. The country receives only 0.4 percent from foreign donors.

Income tax constitutes South Africa's main revenue source. Residents are taxed on their world-wide income and non-residents are taxed on income generated from South African sources. Companies are taxed at a rate of 29 percent. Additionally, a secondary tax is levied on companies at a rate of 12.5 percent on all income distributed by way of dividends. In addition to income tax, there are capital gains tax (tax on disposal of assets); VAT (14 percent on goods and services) and other duties such as customs, excise, estate and stamp duties.

Generally, SARS is fairly efficient and effective at mobilising revenue. The result is a self-reliant country which is able to take charge of its destiny and align resources towards identified national priorities. This is a best practice, which all African countries should strive to attain.

4.1.4 Uganda

By pointing out the various strengths and weaknesses in different areas, it is believed that the APRM process has enabled Uganda to face its challenges and to make efforts in addressing them. The NPOA has for the most part taken into consideration the recommendations of the APR Panel. The progress report more or less shows that the country has attempted to address the issues and recommendations raised by the APR Panel. It also gives some specific recommendations with regards to the relatively recently discovered oil. It is the onus of the Ugandan government to take into account the recommendations of the APRM. Below is a summary of the findings from the APRM that could influence the governance of the mineral sector in the future.

As political stability is essential for sustainable economic opportunities and the reduction of the cost of doing business, the fact that Uganda is addressing intra and inter-state conflicts in the region is a positive sign and a factor that could boost investors' confidence and reduce the cost of doing business.

While the decentralization process is commendable and could if properly undertaken lead to transformational leadership and followership, there is a concern about the level of public participation at all levels. As mentioned before, credible public participation and empowerment of the civil society are prerequisites for an effective governance of the mineral resource as they serve as a credible oversight and could be effective whistle blowers. There is also genuine concern about consultations with the private sector and in general the lack of tri-sector partnerships between the government, the civil society and the private sector.

Box 20- Best Practice: The Decentralisation Process in Uganda

The decentralisation system that was established in Uganda in 1993 has increased opportunities for citizens to participate in decision making regarding the type and quality of public services they want. At district level, the District Chairman (LC 5), the political head of the district and the District Council, who execute governance functions, are elected by their communities. The District Council caries out its functions through a number of committees, which include the Production and Marketing Committee; Health and Environment Committee; Education Committee; General Purpose Committee; Finance Committee; and Works and Transport Committee. The District Council performs all the legislative functions of local government, while the local public service headed by the Chief Administrative Officer (CAO) is charged with the responsibility of implementing the decisions of the District Council. Every local government is required to produce a budget framework paper with a clear plan for enhancing local revenue.

Since the decentralisation process began, numerous achievements have been realized in terms of improving governance and service delivery through democratic participation and community involvement. Despite these achievements, Uganda still faces a number of challenges that include, among other things, technical capacity deficiencies in the local governments to undertake required activities adequately; lack of a clear monitoring and evaluation system that feeds into the decision-making process; limited financial resources and devolution of financial resource allocation; and limited effective participation of community members due to lack of capacity.

Source: Compiled by the CRM, February 2008.

There is also concern about the existence of strong institutions as discussed above. Independent institutions such as the Uganda Human Rights Commission, the Inspector-General of Government and the Auditor General have resource constraints. The dominance of the executive over the judiciary and the legislative is a sign of weakness of these institutions. This would lead to a lack of credible, predictable, transparent and efficient legal and regulatory frameworks if not addressed properly and the ability of these institutions to address corruption in the country could be very limited. The unpredictability and perceived unfairness and inequitable nature of the fiscal regime, including the preferential treatment given to foreign investment through the allocation of long-term tax holidays or industrial land and the possible over taxation of the formal economy could hamper investment in the long run. The formulation of an Oil and Gas Policy and the drafting of a National Oil and Gas law are good signals for credible, predictable, transparent and efficient legal and regulatory frameworks, which is essential for effective management. The various capacity building schemes being undertaken by the government in the collection of revenue from the anticipated oil industry are commendable and could contribute to building a strong institution.

Uganda should address its aid dependency as it can overload institutions and weaken them; create revenue instability and fragment budgets; lower tax efforts, and undermine accountability and democratic decision making. It can also potentially undermine institutional quality by weakening accountability; encouraging rent seeking and corruption; stirring up conflict over control of aid funds; siphoning off scarce talent from the bureaucracy, and alleviating pressures to reform ineffective policies and institutions. Aid therefore obviates the need for taxation, and since governments do not need to collect taxes, they do not need voter support either, hence will reduce any effort in enhancing credible public participation and citizen transformation. Other pernicious effects include a lack of initiative in development strategy; weak institutions weighed down by a multitude of donor activities and undermined by technical assistance; policy directed from the outside; the presence and intrusion of donors at every point, and a reactive, rather than proactive, government, contrary to the transformational leadership that is needed for effective management of mineral resources.

Box 21 : Uganda – Avoiding the "Curse of Oil"

The reported discovery of oil in the Lake Albert Basin in Uganda has generated a great deal of excitement about economic prospects for the country. Revenues from oil can help fund infrastructural projects and improve social service provision. More significantly, the oil revenues can be used to reduce the country's high dependence on donor funding. Although the size of the oil field has not yet been confirmed and there is no guarantee that production will be commercially viable, the early indications are positive. Even limited oil production would make it possible for Uganda to satisfy its own requirements for refined petroleum products. Yet the dangers of the oil discovery are obvious. Given the track record of other African oil producers, there is a very real danger that oil production could cause more problems than it solves. The sudden injection of large amounts of money – or even the prospect of its arrival – could destabilise a political system. Ambitious politicians can become eager to take power in order to take a share of the new revenues. At the same time, rapidly rising income can create inflationary pressures and divert attention from other sectors of the economy that may be more important for employment creation.

This negligence could result in an economic phenomenon known as the "Dutch disease". It is, therefore, important that the government should take measures that will enable the country to maximise its gains from the oil proceeds without causing distortions in other sectors of the economy and political conflict.

Source: Fieldwork notes, Uganda, 3–23 February 2007.

4.2 The APRM and the Building Blocks

Overall, there are four specific areas and principles that enable the APRM to support all the building blocks of efficiently managing mineral resources. First, the APRM is not limited to one sector alone. Any governance issue, be it corruption or public participation does not respect sector-specific boundaries. Thus, it is necessary to look at these issues more broadly, involving all relevant institutions and parties.

Secondly, the APRM rests on creating both supply and demand for good governance. Supply in the form of suggested laws, policies and development of institutions, and demand, or pull, for good governance through strengthening civil society and private sector involvement. As previously discussed, a number of approaches were externally driven and relied mainly on supply side interventions, thus neglecting the need for local grounding.

Third, the APRM is based on first hand empirical data from on the ground missions, subsequently allowing a customized approach to addressing governance questions, since there is no universal approach to governance challenges. While benefiting from lessons learned and best practices, each APRM mission and NPoA is tailored to the specific country it assessed. As such, the aim of the APRM is threefold - to align stakeholders with a common vision, to increase accountability and transparency, and to inform policies and strategies.

Fourth, the APRM, through the NPoA provides specific frameworks to turn investment in minerals into sustainable development. The NPoAs outline the respective areas of responsibility of all relevant stakeholders, and outlines integrated systems of governance that encompass roles, responsibilities and instruments for a coherent and effective management of mineral resources. The aim is to ultimately leverage large scale mineral resource activities to enhance the socio-economic development of host country populations. It is essential to spur economic growth and subsequently achieve sustainability and a reduction in poverty levels. The cause and effect of such interventions is however not automatic and often poverty levels might even increase. This has been the case in Chile for example, where in the early days of the economic reform program, poverty did increase and social conditions did deteriorate. Poverty levels have come down markedly due in part to efforts on the part of government to enforce trickle down mechanisms through effective public policies that have encouraged growth in human capital, allowed the private sector to flourish and promoted consensus building across different social groups to share the benefits of increased economic activity (ICMM, 2007). The APRM through the NPoA can support governments in identifying ways to ensure that trickle down mechanisms are in place, including through effective public policies that encourage growth in human capital while allowing the private sector to flourish.

It is worth noting that the APRM questionnaire is currently being revised and new questions specifically on the Extractive Industries are being incorporated. With the inclusion of these questions and specific indicators, the APRM questionnaire will provide for more robust country reviews and targeted discussions on the governance of Extractive Industries.

Turning towards the specific building blocks outlined in chapter three (3) above, this section discuss the APRM contribution to three specific areas, i.e. fair and equitable fiscal regimes, strong accountable and participatory institutions and public participation. In each of the areas the distinct, actual and/or potential value added of the APRM will be outlined.

4.2.1 Fair and Equitable Fiscal Regimes

The APRM provides an ideal framework for linking the institutional issues around taxation and natural resources governance to strengthen domestic accountability. Taxation is at the center of good governance and plays a key role in building a social contract between citizens and the state. The quality of governance in developing countries usually reflects the degree to which the state relies on tax revenue versus non-tax revenues and how the government taxes natural resource revenues (Moore, 2007). Taxes can build the political legitimacy of the state if they are raised in ways that increase political accountability and economic growth.

The APRM is a mechanism that can support promoting better tax systems. In its questionnaire, the APRM looks beyond the issue of public expenditures and also includes questions on how taxes are raised in order to increase domestic resource mobilization. Taxation is a deeper driver of state and society relations because it is historically central to building accountability processes; and it is increasingly being seen in the context of domestic resource mobilization in order for African countries to progress towards an eventual exit from aid dependency (OECD, 2010).

According to the Fraser Index, that lists countries in terms of their attractiveness for mining investments, most countries south of the Sahara still lack some of the cornerstones of attracting investments including predictable taxation systems. Moreover, most countries lack the capacity to fully exploit the potential for government revenues due to a lack of transparency, corruption and inadequate tax administration and collection. In 2006 for example, Zambia exported minerals for over US$ 3 billion and only received US$ 61 million while Namibia received about US$ 175 million with exports at US$ 1.5 billion. According to the Overseas Development Institute, countries such as Sudan, Angola, Gabon, Congo Brazzaville or Nigeria could each generate more annual public revenue from extracting oil than needed to achieve the MDGs (ODI 2005).

Donor support to tax reforms as governance issue has been low, historically. However, bargaining between state and organized citizens can be crucial to state foundation and the development of political accountability institutions, and as such should be high on the donor agenda. It will also ensure that mineral tax revenue be channeled into development expenditure in order to relax constraints on government spending.

Given the above context, the APRM provides an innovative mechanism that could facilitate a national dialogue between government, civil society, parliamentarians and others, on levels and scope of taxation and domestic resource mobilization. By bringing together a wide range of actors and institutions through a systematic assessment and articulation of tax reform as a governance issue, it would be a useful value addition to deepen state-society relations and social contracts. For example, evidence suggests that where state can access other sources of revenue – mineral resources – this can undermine the development of more legitimate and sustainable tax-based social and fiscal contracts between state and citizens. This is illustrated in the case of Algeria (see Annex 1 Fact Sheet 2), where the CRM finds that the country remains vulnerable to external shocks as the hydrocarbons industry represents 70% of public revenue, 45% of GDP and 97% of export earnings.

This has huge implications for the structure and management of the economy as incentives to diversify the economy are weakened. Also, it has created an imbalanced tax base as authorities are encouraged to neglect other sources of revenue (both at the central and local level). This has resulted in a gradual increase in government spending and an increased tendency towards deficits. The primary budgetary deficit and overall cash balance have deteriorated substantially since 2002. The CRM notes that "the structure of the budgetary revenue reveals the vulnerability of public funds to potential external shocks". Ordinary taxation remains weak and this is also attributed to poor private sector development. The same has been found by the CRM in Nigeria, where it is recommended to enhance effective and transparent public administration by increasing non-oil related revenues. In fact, the CRM indicates that the country can derive as much revenue from other minerals as from crude oil, however, nothing has been done to achieve this potential so far.

In South Africa, the CRM underscored an improved collection of revenue that it attributed to increased efficiency, which has led to the widening of the tax base and to the rationalization of the fiscal regime. It mostly attributed it to the sound public finance management system and the robust independent South African Revenue Service. In Uganda, the unpredictability and perceived unfairness and inequitable nature of the fiscal regime that is reported by the APRM, including the preferential treatment given to foreign investment through the allocation of long-term tax holidays or industrial land and the possible over taxation of the formal economy could hamper investment in the long run.

Moreover, assuming that the contribution of taxation as an accountability institution in many African countries is negligible owing to the structure of most economies, the National Program of Action produced by the collective deliberative process engendered by the APRM can serve as a social contract that would invariably engage state and society in governing the mineral resource sector. Consequently, the APRM should be geared towards raising more taxation issues in order to strengthen state and society relations so fundamental to strengthening representations institutions and accountability.

4.2.2 Strong Accountable and Participatory Institutions

As an African owned and led initiative, the APRM presents a unique opportunity and potential for African states to build strong institutions of domestic accountability that could foster accountability required in transforming state-society relations in governing the mineral resources sector. Particularly, the APRM may support governments by increasing capacity and knowledge to adequately manage the natural resource sector.

The APRM was essentially designed to enhance domestic accountability of policies, program and projects from externally driven pressures for change to greater ownership and control by Africans for reforms and change. Thus, the overriding logic and strategic agenda of the APRM is to transform Africa's governance systems from being accountable to its external partners, to being accountable to its primary constituents, its citizens. The normative value of the mechanism is to defend a particular vision of ownership – one that involves African citizens and governments setting their development own policies and priorities. This is achieved in three major ways: reforming African governance systems through restructuring the relations between the state and society; strengthening the capacity of civil society to impact policy reforms; and creating a domestic-driven accountability system of governance whereby the judiciary, the parliament, media and civil society would be the determinants of policies. This is followed by a National Plan of Action that has the interest of domestic stakeholders attached to it in terms of implementation. The stakeholders for implementation, however, are not just domestic, but also regional neighbors and continental peers who are legitimate stakeholders in African development. This unique mechanism is an inverse accountability approach to the externally driven approaches that have dominated the African development landscape over the past 50 years since independence. The value added of this approach can be assessed when comparing it to externally driven initiatives in the mineral resources sector such as the EITI. In a study on the EITI experience in Nigeria, for example, it was concluded that EITI did not drive reform in Nigeria and has not meaningfully empowered civil society (Shaxson, 2009). The APRM process in Nigeria in contrast has positively contributed to strengthening the demand side of governance and provided Nigerians with a rare and welcome opportunity to express their opinions about the way the country is governed and its challenges faced (OSIWA, 2008). Particularly, the APRM comprises a more holistic approach in comparison to EITI as it focuses on several aspects of the value chain of natural resources.

In addition, the government of Nigeria has taken up the APRM ideas and recently launched the Nigeria State Peer review Mechanism at the sub-national level. The aim is to accelerate the development of Nigeria's States through – inter alia – a highly participatory approach that involves different stakeholders, both from within and outside government. The APRM case study on Algeria further suggests that the country has established a specific pattern of policy consultations and that this type of collaboration between public institutions, citizens and the private sector has been an important factor contributing to accountability and the country's economic success. Participation was also ensured through setting-up Committee for the allocation of funds from the oil Stabilization Fund. It expands the concept of ownership of natural resource projects to include local communities as important stakeholders to ensure that a lasting social contract will operate. In South Africa, the independence, efficiency and strength of the South African Revenue Service has led to an improved collection of revenue as well as the expansion and rationalization of the tax base, very important for the management of revenue from the extractive industries. In Uganda, the lack of strong and independent institutions highlighted in the APRM report has been flagged as an issue that could hamper the use of mineral resources for sustainable development outcomes.

The APRM operates through existing accountability institutions within the national governance system – parliaments, civil society, media, courts, private sector, and human rights organizations – by bringing them together to press for governance reforms through a systematic self-assessment. The mechanism offers opportunities for building coalitions around governance reforms by providing a deliberative platform between the state and society to discuss, negotiate, bargain and agree on such fundamental development issues such as election and diversity management, taxation and budget process, corruption, land service delivery and gender inequality. These are issues that have the potential to strengthen engagement between the state and society in more fundamental ways. Thus, the APRM can shape and transform state versus society relations in the context of governing the mineral resources sector.

The APRM is also a unique diagnostic tool when it focuses on how institutions operate and interrelate with each other. Currently, most other diagnostic tools assess issues either on the macro level or they are utilized to diagnose issues at the transaction level. However, for the mineral resources sector with large scale resource, a single transaction can impact or change the institutions that regulate it. Thus the idea of focusing on the transaction level would not be fruitful. On the other hand, an assessment purely at the national level would be too abstract. The APRM has the ability to build a bridge between these approaches, i.e. looking at the relevant activities, institutions and actors that should be regulated, strengthened or otherwise influenced to improve management of mineral resources. A case in point is the South African Revenue Service (SARS), an administratively autonomous organ of the state which is outside the public service but within the public administration, which was identified by the APRM as a best practice. Due to efficiency gains in tax administration, SARS has over time been able to implement fundamental tax policy reforms that have improved the culture of tax compliance and contributed to SARS's success in consistently exceeding its revenue target.

Another example in this regard is the case of Algeria, for which the APRM report highlights the use of a Stabilization Fund as a best practice. In order to attenuate the effects of external shocks on budgetary policy, a Fund for the Regulation of Receipts (Oil Stabilization Fund – FRR) was instituted in 2000.

It was built up from receipts derived from additional oil taxation received as a result of the difference between the oil reference price and the average effective price of that year. The Fund is an account in dinars held by the government, and - unlike sovereign wealth funds of oil-rich Gulf nations – it does not have any specific investment targets, but is rather seen as a safety deposit to be held in custody. So far it has allowed the government to hedge its financial risks. The proof is that it has allowed the government to maintain stability despite the global market turbulence in recent years (Oxford business group, 2010). Since its establishment, and by the end of September 2011 the stock of the Fund reached DZD 5,016 billion (nearly $70bn), up by DZD 216 billion in comparison with late 2010. One best practice highlighted by the APRM in particular is the transparent manner in which Algerian authorities have managed the Fund. The status of available funds, as well as expenditure by the FRR, is regularly published in the Financial Acts and posted on the Ministry of Finance's website. The APRM further mentions that funds like this have the potential to insulate economic activity from fluctuations in commodity prices; they can address inter-generational challenges, and also encourage fiscal discipline. Nonetheless, these Funds will not be successful without establishing independent, competent and accountable entities to ensure proper management and oversight of these Funds.

This can be seen when comparing the Algerian Fund with the Nigerian Excess Crude Account that was established in 2004 and is managed by the Central Bank of Nigeria (CBN). This is an account into which crude oil earnings and taxes in excess of the price benchmark set by the Federal Government are paid. While the APRM commends the government for the conscious attempt to save a portion of oil windfall gains and to reduce the macro destabilising effects associated with massive expenditures, at all tiers of government, during boom periods, it also states that political factors – such as the lack of supportive legislation to govern the use of Excess Crude Account funds, and systemic governance and transparency issues – may affect the roll out of the initiative. In fact, toward the end of 2008, about $30 billion sat in Nigeria's Excess Crude Account, but the fund had trickled down to about $450 million by mid-2010, and by the beginning of 2011, the fund had diminished to about $300 million. The problem is the vast and largely unaccounted outflow from the Excess Crude Account, where $5 billion to $8 billion, has been spent on so-far unfruitful efforts to upgrade Nigeria's power output. But the rest, some $22 billion or more, remains largely unaccounted for after it had been allocated at meetings of the state governors (Nossiter 2011). Understandably, easy revenues from natural resources are especially tempting in the eyes of politicians in urgent need of public support. Therefore, prudence calls for firewalls to be erected between sovereign wealth funds and the heat of the day-to-day political process. This is a question of checks and balances, of finding ways to reduce the risk that natural resource revenues are misspent or even squandered for short-term political gain (CESifo 2010).

4.2.3 Public Participation

Political inclusiveness, which allows for voice and power by the people, especially the rural communities, is a core component of good governance. Indeed, poverty reduction/eradication is closely linked with the access of people to decision-making structures, their participation in local governance and how their choices are reflected in public policies and how public services are delivered to them (Jütting 2004, 2005).

In Africa, while the emergence of civil society organizations is a relatively new phenomenon in most countries, there is a growing interest of citizens to participate in economic, political and social decision-making processes. Interest in participation is particularly manifested in the process of planning, decision-making, implementation and assessment of public policies towards the attainment of sustainable development.

Despite this, there is still a weak definition of how such participation should be effected across different dimensions of public policy formulation and implementation; through what organizational structures; with what representation, roles and processes; and with what demands for capacity development. The challenge therefore is on how to involve non-state actors in the governance agenda.

The APRM is opening the way for greater public discussion of both policy and development governance among all stakeholders within the APRM participating countries. It is allowing real popular participation – legitimate space to discuss how development policy is being done, what it constitutes and whether or not the needs of the citizens are being met by the chosen strategies and policies. Furthermore, the APRM fosters an open dialogue and is able to create a common language through the implementation of codes and standards. To be sure, the APRM is a means through which collective support can be derived as it brings together various institutions of governance. This is particularly true for the South African case where the unique decentralization of governance and the various initiatives such as the Imbizo, the 'taking Parliament to the people programme' and Batho Pele have empowered citizens and enhanced greater public participation in governance systems.

At the national level, the process can widen political space to involve citizens in assessing the strengths and weaknesses of governance and development policies and to propose remedies. It can also contribute to the quality of national dialogue between government and non-government actors by way of inclusiveness and meaningful engagement. This is illustrated by the research conducted by the CRM on social corporate responsibility in the Niger Delta. The CRM found through community consultation that stakeholders believe that oil companies are not doing enough in terms of social investment. This is attributed to different views of CSR of multinationals operating in the Delta Region and communities affected by their operations. Communities have high expectations and there are blurred distinctions between the legal role of tiers of government and the responsibility of oil companies. In fact, stakeholders expect corporations to take over key government services. Although this might not be realistic, the CRM stated that Economic Partnership Agreements and public-private partnerships are not fully utilized in this region and this could provide a potential solution.

The APRM allows for a specific and participatory pattern of policy consultations and collaboration between the different sectors of society that is an important factor to ensure the success of managing mineral resources. This is particularly important to ensure social cohesion and to address social tensions that might be raised through mineral resource extraction.

5. Towards Mutual Accountability and Shared Responsibility

For the governance of mineral resources to foster sustainable development, a variety of actors and stakeholders have a role to play and responsibilities to fulfill. Sustainable development as defined by the World Commission on Environment and Development (WCED) in its Brundtland report - Our Common Future (WCED, 1987) is "development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs". However, this widely used definition focuses on intergenerational equity and a further expansion of the standard definition was made during the 2002 World Summit on Sustainable Development, using the three pillars of sustainable development: economic, social, and environmental.[37] The Johannesburg Declaration created "a collective responsibility to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development at local, national, regional and global levels." It is now widely believed that concerted and collaborative actions among all relevant stakeholders at the various levels are key to tackling issues related to the optimal exploitation of mineral resources.

This chapter will attempt to summarize the responsibilities and the actions taken by the various actors involved in the mining sector with a view to enhancing optimal exploitation of mineral resources for development. Focus will be made on host country constituencies; home country governments and shareholders; multilateral institutions, and international financial institutions.

5.1 Host Country Constituencies: State and Non-State Actors

Governments in countries endowed with abundant mineral resources have the responsibility to manage the resources efficiently to foster sustainable development. As discussed thoroughly in the chapter on the building blocks for an efficient management of mineral resources, the states are responsible for ensuring that there is a clear, predictable, transparent and efficient legal and regulatory system in the country. This entails that there should be separation of powers between the executive, the legislature and the judiciary; that anti-corruption measures are in place and that the decentralization process is well implemented. Particularly, it is the responsibility of the state to view mineral resources within the broader scope of land based natural resources. The state is also responsible for a fair and equitable fiscal regime whereby the revenue collection system is adequate and the taxation and distribution are perceived to be fair and equitable. Furthermore, the state is responsible for (re)negotiating adequate mining regimes; and ensures the separation of exploration contracts from production agreements as well as to discourage full foreign control of min-

37 April 2005 issue of Environment: Science and Policy for Sustainable Development, Volume 47, Number 3, pages 8–21; quoted from UN Economic Commission for Africa. Africa Review Report on Mining. Committee on Food Security and Sustainable Development (CFSSD-6)/Regional Implementation Meeting (RIM) for CSD-18, Sixth Session Addis Ababa, Ethiopia, 27-30 October 2009.

ing companies. It is also the onus of the state to ensure credible participation of non-state actors including the private sector by opening up space; creating mechanisms to inform and empower them; and enhance their transformation with time. Many African countries have made progress in boosting public participation in framing laws, and in increasing the space for community and civil society organizations to work in. Yet much more can be achieved—in enforcing existing laws, in pursuing accountability of institutions and more generally in protecting human and labour rights.

Adapting to change, transforming systems and ways of doing business are also the responsibility of the state as efficient management of mineral resources requires a complete overhaul and genuine transformation of processes, thus requiring a transformational leadership. As mineral resources are by nature non-renewable, the state's role is critical in linking the mineral resources to other sectors of the economy and also to ensure that the appropriate infrastructure is in place and that the local companies are involved in the process. Strengthening linkages requires the right policies and strategies to leverage mineral extraction and processing operations into broader economic development outcomes. This will undoubtedly reduce the cost of doing business and attract investments. It is also important for the state to guarantee the sustainability of the mining sector through addressing environmental issues, labor and social issues, human rights and potential conflict. Improving state and institutional capacities for making and pursuing policies and regulations is a pervasive challenge, as is ensuring policy coherence and coordination among institutions and sectors. These two challenges go beyond nations to regional and other interstate frameworks. Indeed, it is important to create and maintain space for institutional arrangements nationally and sub-regionally, specifically to promote linkage development.

Non-state actors such as CSOs and the private sector also have various responsibilities. Empowered CSOs that are well informed and participate in decision making processes such as the APRM can play an oversight role on what the state is doing and serve as a whistle blowing mechanism. Non-state actors engagement are progressively being viewed not as a 'luxury', but as an essential tool to gain the 'social license to mine', to avoid conflicts, enhance transparency in the management of revenues, and to adhere to the principles of corporate social responsibility.

As far as the private sector is concerned, acquiring the social license to mine has become a necessity hence it is the onus of the private sector to adopt Corporate Social Responsibility. The private sector acknowledged that their investment goals and wealth creation agenda can only be successful if they support a range of development activities in partnership with the public sector and CSOs in what are now called tri-sector partnerships. Tri-sector partnerships are now considered an optimal way to build trust, to gain a social license to operate, to agree on shared outcomes and to assign roles and responsibilities. This increases project acceptability, can contribute to better management of expectations and facilitates agreement on development outcomes.

Most mining operations in the continent are foreign owned. Participation of local entrepreneurs is limited due to structural impediments affecting the growth of local private sector. The prevailing ownership structure in the mining sector has created perceptions that mining in Africa only benefits home-based shareholders and contributes little to local development. Increased equity participation by locals could potentially raise the sense of ownership. Evidence shows that local beneficiation and economic diversification are the essential means for African countries to increase the benefits they obtain from their mineral resources. If local entrepreneurs and other local stakeholders participate in all stages of the mineral value chain in a manner that is perceived as equitable, it could increase the share of mineral wealth that would be retained locally and promote broad-based growth and development. Small and medium-size enterprises can play an important role in this regard, including in enhancing the value chain, especially in the provision of goods and services for the mining sector.

As illustrated in the case of the Nordic countries, opportunities could be created to develop local natural resources clusters where knowledge would be created, technology developed and skills formed to unleash economic diversification and structural transformation.[38] Most countries in Africa often have a weak business sector that makes it unable to take advantage of the various opportunities provided by the extractive industries. It is therefore important to formulate affirmative and empowerment models to facilitate local participation, develop local capital markets and improve legal and regulatory frameworks to harness domestic resources. If there is a greater participation of local actors throughout the value chain, leakages of knowledge and know-how would be reduced and knowledge would be transferred even after the closure of the mining activity.

Furthermore, artisanal and small scale mining (ASM) is widespread in African countries endowed with mineral resources and is an integral part of the economies of these countries. However, the informal nature of many of the ASM operations often makes it difficult to estimate total global production from the sector or the sector's contribution to national economies and mineral output. Most analyses rely on anecdotal evidence to estimate the overall contribution. The lack of appropriate institutional, financial and technical support mechanisms curtails the development of ASM into sustainable activities. The ASM policy and regulatory environment in most African countries is generally not adequately supportive in vital areas such as access to appropriate financing mechanisms, provision of geological information and services, technical and marketing support as well as facilities for upgrading the skill levels of the miners.

5.2 Home Country Governments, Industries, and Shareholders

Home country governments and industries also have the responsibility of ensuring that the exploitation of mineral resources leads to better development outcomes. They should be accountable about transparency, especially with regards to illicit financial flows and conflict minerals. As a result of tax evasion, African countries lose massive financial resources which, according to the OECD, are larger than the amount received from Official Development Assistance (ODA). The revenues lost from African countries are being accumulated in tax havens before being reinvested in the developed world. In fact, a large part of the illicit financial flows originates from the extractive industries in many African

38 Africa Mining Vision: February 2009

countries. These illicit financial flows that leave Africa to the rest the world are in the form of money smuggled out of the continent which has very consistent channels to be hidden, including secrecy jurisdictions and financial opacity. Lack of transparency of the global financial system makes it extremely difficult to track and recover tax-related illicit financial flows. Transfer pricing enables companies which are part of the same multinational group to trade with each other at distorted market prices. Unfortunately, this practice is used by multinational groups to shift profits to jurisdictions with lower taxation. The OECD guidelines on "Transfer pricing guidelines for Multinational Enterprises and Tax Administrations" recommend the application of the "arm's length principle" for the valuation of cross-border transactions between associated companies that require using market prices in their intra-group trading. However, it is difficult and complex to administer and enforce this measure, as transfer pricing involves huge and expensive databases and high-level expertise to handle.

Even when these guidelines are enforced, the tax authorities of African countries do not have sufficient capacity and resources to examine the facts and circumstances of each and every case so as to determine the acceptable transfer price. Clearly, home countries have a responsibility to address these gaps. In addition, tackling transfer pricing requires a political dialogue that involves both developed and developing countries.

The U.S. legislation, the Dodd-Frank Act, which was signed into law by US President Obama in July 2010, represents an act of good faith of a home country government to improve transparency. A provision on conflict minerals is contained in Section 1502 of the Act and imposes legal obligations with regard to due diligence measures by companies that trade on US Exchanges and are implicated in the supply-chains of tin, tantalum, tungsten and gold, the four main metals extracted from eastern Democratic Republic of Congo (DRC) ores. However, in enacting legislative measures such as the Dodd-Frank Act, it is important that home countries have a complete understanding of the potential impacts (positive and negative) and unintended consequences of the implementation of these measures; deploy necessary resources to help host countries build the necessary capacity and enforce the measures, as well as alleviate the negative impacts.

Other laudable examples include the technical assistance programme provided the German Federal Institute for Geosciences and Natural Resources (BGR) in the issue of minerals certification in the DRC and Rwanda, described in the introduction.

Industry bodies from home countries can also play a significant role in improving governance of the extractive industry sector. The International Tin Research Institute (ITRI)'s efforts represent a clear example of such roles.[39] ITRI articulated a policy on artisanal and small scale mining and set out to design a system for improved due diligence.[40] This system

39 ITRI is a UK based industry association, which includes in its membership actors operating across the supply-chain (smelters/processors, miners, traders, users), some of whom were mentioned in the December 2008 UN GoE report as buyers of cassiterite, coltan and wolframite from Eastern DRC exporters ("comptoirs") sourcing in areas controlled by rebels.

40 Towards a Responsible Cassiterite Supply-chain. Improved Due Diligence and Steps Towards Voluntary Industry Declarations or Audited Certification, ITRI, February 2009. See:www.itri.co.uk/site/upload/.../ITRI%20action%20plan%202009%20"nal2.pdf

was named the ITRI Tin Supply-chain Initiative (iTSCI) and implementation started in July 2009 with the collection of licenses and official documents from comptoirs and traders. ITRI has secured buy-in from the Congolese government and successfully liaised with the other due diligence initiatives. ITRI professes adherence to the OECD Guidance[41], the iTSCI is mentioned in the Lusaka Declaration[42] and gained support from BGR.

In the same group, the role played by the Global e-Sustainability Initiative (GESI) could be included.[43] Responding to such campaigns, and to increasing pressure from US legislators and the UN, GESI set up an Extractives Workgroup in 2008 in cooperation with the Electronics Industry Citizenship Coalition (EICC)[44]. Joint collaboration of GESI and EICC on CSR in supply-chains started in 2008 to develop a smelter certification program, involving the piloting of a purchasing process to be initiated in the DRC, which should ensure that smelters source from socially and environmentally responsible mines.[45]

Shareholders also have roles and responsibilities to play to ensure that the companies they have invested in adhere to certain standards. Throughout the world, institutional investors have become significant shareholders and there is an increasing focus on their responsibility. As there are growing societal and environmental expectations, international guidelines have been developed to promote active responsibility of shareholders. In 2003, the International Corporate Governance Network (ICGN) – established in 1995 by a global grouping of pension funds and other investors – developed principles calling on institutional shareholders to “contribute to improving and upholding the corporate governance of companies and markets in which they invest” and follow up on “serious corporate governance concerns that may affect the long-term value of their investment”. In 2006, the United Nations Principles for Responsible Investment (UNPRI) was introduced, effectively reinforcing the guidelines. Indeed, under the auspices of the United Nations Environment Programme Finance Initiative and United Nations Global Compact, the UNPRI extended the call for active share-ownership to a broad array of environmental, social, and governance matters.[46] With more than 850 signatories by the end of 2010, the UNPRI has been outstandingly successful. Similarly, a number of countries disseminated guidelines on active share-ownership for domestic institutional investors. In 2002, the UK Institutional Shareholders’ Committee developed the Statement of Principles on the Responsibilities of Institutional Investors and Agents. Additionally, references to institu-

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41 See for example: www.itri.co.uk/SITE/.../8_iTSCi_News_Bulletin_October_2010_EN.pdf

42 http://www.icglr.org/IMG/pdf/Lusaka_declaration_”nal_version_english-2.pdf

43 GESI was established in 2001 to further sustainable development in the ICT sector. It is a membership organization bringing together leading ICT companies, industry associations and NGOs. Members include high-profile companies manufacturing products which are sensitive to NGO campaigns targeting consumers, such as mobile phones (Motorola, Nokia, Ericsson) and PC hardware (Microsoft, HP).

44 The EICC was founded in 2004 and is an ICT membership organization aiming at enhancing corporate social responsibility (CSR) policies in the global electronic supply-chain through use of a code of conduct. Its membership consists of 45 global electronics companies such as electronics manufacturers, software firms, ICT firms and manufacturing service providers.

45 www.eicc.info/PDF/PR_Extractives_Nov_Meeting_FINAL.pdf

46 Butler P. and Wong S. 2011. Recent Trends in Institutional Investor Responsibilities and Stewardship. Pensions: An International Journal. May.

tional shareholder responsibilities have appeared in best practice guidance in Australia and the Netherlands.

5.3 Multilateral and International Financial Institutions

Significant efforts to improve the management of the extractive industry sector in Africa have been made by multilateral and international financial institutions, such as the UN, the World Bank, the IMF and the African Development Bank (AfDB), in particular with regards to transparency, conflict minerals and contract negotiations.

The United Nations General Assembly unanimously adopted a resolution in 2001 on the role of diamonds in fuelling conflict, breaking the link between the illicit transaction of rough diamonds and armed conflict. In taking up this agenda item, the General Assembly recognized that conflict diamonds are a crucial factor in prolonging brutal wars in parts of Africa, and underscored that legitimate diamonds contribute to prosperity and development elsewhere on the continent.[47] Countries fuelled by conflict minerals have received UN sanctions (eg Angola, Sierra Leone and Liberia).

More than ten years after the UN Security Council expressed its concern about the illegal exploitation of natural resources in the Democratic Republic of Congo (DRC)[48], international organizations, governments and industry bodies have increased emphasis on the accountability of companies sourcing minerals from eastern DRC and the wider region. The pressure to create conflict-free supply-chains of the minerals concerned mounted further when the UN Group of Experts released its latest report in November 2010, which illustrated in detail how in the DRC both rebels and the national army are profiting from the mineral trade. Political momentum subsequently increased when the UN Security Council strongly expressed its support for the Group of Expert's due diligence guidelines. As the enduring link between minerals and conflict is well-demonstrated in several conflict-affected countries and most dramatically in the eastern part of the Democratic Republic of Congo, standards for responsible mining have, therefore, been defined, at national (for instance the U.S. Dodd-Frank legislation), regional (ICGLR certification) and international level (OECD Due Diligence Guidance and UN Group of Experts (UNGoE) on DRC due diligence guidelines).

To complement the OECD guidance, the United Nations (UN) published in November 2010 guidelines on due diligence[49] specifically addressed to individuals and entities trading, processing and consuming minerals from eastern DRC. The guidelines aim to mitigate the risk of their providing direct or indirect support to Congolese armed groups, sanctioned individuals and entities, and both criminal networks and perpetrators of serious human rights abuses in the Congolese national army, the FARDC. The guidelines distinguish between those in the upstream of mineral supply chains, which means from

47 UN- Conflict Diamonds fuelling conflict http://www.un.org/peace/africa/Diamond.html.

48 See Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo. April 2001. http://www.un.org/News/dh/latest/drcongo.htm.

49 http://www.un.org/News/dh/infocus/drc/Consolidated_guidelines.pdf.

mine to smelter or refinery, and those in the downstream, which means from smelter or refinery to the end user. The eleven heads of state and government of the International Conference for the Great Lakes Region (ICGLR) endorsed the OECD Guidance on 15 December 2010. They call on companies sourcing minerals from the Great Lakes Region to comply with the Guidance.

The endorsement of multilateral bodies to continental institutions such as the Africa Mining Vision could send powerful signals and open up opportunities for resource mobilization for the implementation of these initiatives. In this respect the update on the Raw Materials Initiative includes a considerable 'development' component supported by the European Union and the African Union. In addition, the EC proposed in November 2011 a legislation that requires EU based oil, gas, mining and timber companies to publicly disclose their payments to governments for each project that they invest in around the world.

The proposed legislation plans to make amendments to existing EU directives on market transparency and corporate accounting, which would enable the public to study the flow of payments to governments. Once the proposal is considered and reinforced by the European Parliament and Council, it would send a powerful signal that Europe wishes a trading partnership with resource-rich countries that is based on 'transparency, fairness and mutual benefit'.[50] Moreover, at the European Union (EU) level legislators are currently considering the adoption of legislation on conflict minerals from eastern DRC in the vein of the pertaining provisions in the Dodd-Frank Act.

The World Bank and the IMF have played an essential role in assisting countries in public financial management. The World Bank also provides support for negotiation of mineral resources transaction through the World Bank Extractive Industries Technical Advisory Facility (EI-TAF).

Regional development financial institutions such as the African Development Bank also have an important role to play in advancing the cause of sustainable development in Africa. They should be the key advocates of |Africa's common positions and voice and contribute to securing the necessary policy space and resources to operationalize the continent's development aspirations. This is particularly relevant in the case of building capacity for contract negotiations. In this area, the Africa Legal Support Facility (ALSF)[51] of the

50 Global Witness. 2011. European Oil, Gas and mining transparency plan could help millions. 25 October. http://www.globalwitness.org/library/europe%E2%80%99s-oil-gas-and-mining-transparency-plan-could-help-millions.

51 The African Legal Support Facility (ALSF) of the African Development Bank was formally established in June 2009 as a legally autonomous and independent institution, temporally housed in the African Development Bank ASLF was established mainly as a response to calls from G-8 finance ministers and African finance ministers to assist AfDB's Regional Member Countries (RMCs) address litigation brought against them by vulture funds (and other such entities) which creates obstacles to obtaining the full benefits of debt relief available ; create an avenue for regional members of the AfDB to access technical advice when negotiating complex commercial transactions (especially in the area of infrastructure and natural resources) ; and investing in and organizing the training of legal counsel from participating RMCs to equip them with legal expertise necessary to better repre-

African Development Bank and the UNDP Regional Project Capacity Development for Negotiating and Regulating Contracts[52] are laudable.

sent their countries.

52 UNDP. 2008. Launching of the RBA Regional Project for CapacityDevelopment for Negotiation and Regulation of Investment Contracts. Concept Paper. May http://www.lr.undp.org/Concept%20Note%20and%20Agenda%20for%20Launching%20the%20Regional%20Project%20for%20Capacity%20Development%20for%20Negotiations%20v02a%20Monrovia.pdf.

Conclusions and Recommendations

As empirical findings have demonstrated that despite its significant endowment in mineral resources Africa had not been able to engender sustainable development, this background paper analyses the APRM to assess the extent to which it can be used to advance governance of mineral resources that leads to better development outcomes.

An account of existing international initiatives towards sustainable development for the mineral sector indicates that while these initiatives should be commended, they have mixed results and they are not Africa owned. Indeed, ownership is recognized as being important as enshrined in NEPAD guiding principles; recognized at the 2007 Big Table on "Managing Africa's Natural Resources for Growth and Poverty Alleviation" and indicated as one of the G20 principles in the Seoul Development Consensus. The APRM whose normative value is to defend a particular vision of ownership – one that involves African citizens and governments setting their own development policies and priorities, could be used as a tool for advancing governance of mineral resources in Africa for broad-based growth.

As quality of governance is viewed as being essential in influencing the ability of countries to use mineral resources for development and taking into consideration the Africa Mining Vision which represents a credible blueprint to unleash the transformational potential of mineral resources-driven development on the continent, seven building blocks were identified as being crucial for an optimal management of mineral resources. These building blocks are: peace, security, and political stability; clear, transparent, predictable and efficient legal and regulatory frameworks; fair and equitable fiscal regimes; credible public participation; transformational leadership and followership; strong institutions; and adequate infrastructure.

After a depiction of the APRM's achievements, best practices and main challenges and a description of the harmonization of National Plans of Action with existing development frameworks, the APRM's potential to address mineral resources' governance was thoroughly analyzed against the seven building blocks that were identified. Indeed, as the APRM aims at reforming African governance systems through restructuring the relations between the state and society; strengthening the capacity of civil society to impact policy reforms; and creating a domestic-driven accountability system of governance whereby the judiciary, the parliament, media and civil society would be the determinants of policies, it allows opportunities for African leaders and their citizens to have open and frank discussions and analysis about systemic issues, and find collective solutions through the sharing of best practices and peer learning. The APRM has also contributed to the legitimization of the demand for public accountability and has opened up space for civil society participation, leading to an institutionilzation of domestic accountability in Africa.

The review of APRM reports of Algeria, Nigeria, South Africa and Uganda provide concrete insights and lessons learned on the manner that the APRM could be harnessed to advance the governance of mineral resources in Africa. In Nigeria, the case of the Niger Delta revealed the importance of clear, transparent, predictable and efficient legal and regulatory frameworks; the significance of having a fair and equitable fiscal regime with an adequate formula for sharing revenue; and the participation of local communities in the management of the resources. Concerns have arisen over the lack of tri-sector partnership between the government, the private sector and the communities and the inadequate infrastructure including the lack of a social license to mine. The case of Algeria revealed that developing transparent budgetary practices supported an overall strong administration and formed the basis for building strong institutions. Indeed this has enabled the establishment of an efficient and effective sovereign wealth fund: the Oil Stabilisation Fund in Algeria. In South Africa, the APRM process has contributed to the enforcement of a credible public participation and had an impact in creating the social compact that is much needed for the management of mineral resources. The best practices identified by the APRM report including some initiatives such as the Imbizo, the 'taking Parliament to the people programme' and Batho Pele not only enhance credible public participation but could lead to the creation of strong institutions and unleash the transformational leadership and citizen transformation which are key to realizing the Africa Mining Vision. The report has also highlighted through the various best practices that South Africa had a solid foundation for effective management of mineral resources such as clear and predictable legal and regulatory frameworks (King reports) as well as strong institutions including the South African Revenue Service (SARS) and other independent institutions that play oversight roles. While the independence and capacity building of institutions should be strengthened, this could be the basis for a fair and equitable fiscal regime and could enhance the building of strong institutions that are among the prerequisites for a good governance of the mineral sector. The transformational element of the King reports and the development of BEE charters have contributed significantly to the improvement of CSR and had an impact on the social transformation, ethics, environment and socially responsible investment thus contributing to adequate infrastructure and transformational leadership and followership, two of the prerequisites for a sustainable mining sector. In Uganda, while the decentralization process is commended by the APRM report and could, if properly undertaken, lead to transformational leadership and followership, there is a concern about the level of public participation at all levels and about consultations with the private sector. There is also concern about the existence of strong institutions as the APRM reports points out the dominance of the executive over the judiciary. This would lead to a lack of credible, predictable, transparent and efficient legal and regulatory frameworks if not addressed properly and the ability of these institutions to address corruption in the country could be very limited. The unpredictability and perceived unfairness and inequitable nature of the fiscal regime could hamper investment in the long run. The formulation of an Oil and Gas Policy and the drafting of a National Oil and Gas law are good signals for credible, predictable, transparent and efficient legal and regulatory frameworks, which is essential for effective management. The various capacity building schemes being undertaken by the government in the collection of revenue from the anticipated oil industry are commendable and could contribute to building a strong institution.

The account of mutual accountability and shared responsibility of various actors including that of host countries and constituencies; home countries, industries and shareholders; multilateral institutions and international financial institutions, in particular on transparency, conflict minerals as well as in contract negotiation, show that there is an increasing awareness and sense of responsibility of actors beyond maximization of profits and towards improved social and environmental outcomes.

This background paper has highlighted that the APRM has the propensity to be used to advance the governance of mineral resources in Africa, and in particular it can provide an overarching framework for the multitude of governance initiatives in the area of natural resources. As the APRM questionnaire is currently being revised and new questions as well as explicit indicators specifically on the Extractive Industries are being incorporated, it is believed that the APRM questionnaire will provide for more robust country reviews and targeted discussions on the governance of Extractive Industries. The APRM can be a superior institutional framework to advance governance in the extractive industry in Africa because it is African owned, is growing organically, it is context specific and can ultimately yield better and more sustainable social compacts. Since the review of the APRM reports of selected countries has unraveled a number of issues pertaining to governance of mineral issues, it is recommended to undertake further studies and develop a toolkit or guideline on the APRM and the effective governance of mineral resources. Particularly, it may be worth investigating the possibility of the APRM taking on a more sectoral approach which includes a critical assessment of the entire value chain of the extractive industry. Going forward it is also advised to specifically look at the relation between mineral resources and peace and security as well as environmental sustainable development.

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http://www.un.org/News/dh/infocus/drc/Consolidated_guidelines.pdf.

http://extractiveindustries.ning.com.

http://www.un.org/depts/dhl/resguide/r64.shtml.

http://www.transparency.org/.

Annex 1: Case Studies of Nigeria, Algeria, South Africa and Uganda

Fact Sheet 1: Nigeria

Nigeria and the APRM process

Nigeria under President Olusegun Obasanjo played a leading role in initially establishing the APRM. Indeed, Nigeria was among the first countries to sign the APRM Memorandum of Understanding in March 2003 whereby governments commit to go through the APR process. Nigeria took the necessary steps to establish the relevant national structures following the accession to the APRM. Nigeria appointed the Secretary to the Government of the Federation as the National Focal Point. Also, a 22-member National Steering Group and a 31-member National Working Group was established to oversee the APRM implementation. Nigeria received a support mission of the APRM Panel in March 2005. The complexities related to managing and financing the diverse research institutions that support the country in the implementation of the CSAR led to a stalemate in the process but were ultimately resolved by October 2006. The draft Country Self Assessment Report and the National Plan of Action were produced by end 2006 and a nation-wide validation was initiated. Nigeria held elections in April 2007 which resulted in changes in the management and administrative structures of the APRM at the national level. Also, the National Working Group was expanded to 240 members. The country embarked on a nation wide validation of the CSAR which included hosting stakeholder workshops and serialising the executive summary of the CSAR in six of Nigeria's national dailies and weeklies. The preparations for the NPoA commenced with a two-phase nation wide validation of the CSAR and draft NPoA. This cumulated in a national dialogue on the CSAR and NPoA held in December 2007. The final CSAR and NPoA were submitted to the APR Panel in January 2008. The Country Review Mission (CRM) took place between February and March 2008 and was led by Ambassador Bethuel Kiplagat of Kenya. His Excellency Alhaj Ahmad Tejan Kabbah, former president of Sierra Leone, participated as a high-level observer and African statesperson. The CRM entailed an assessment of the state of governance and socio-economic development and a validation of the CSAR. This entire process resulted in the development of the country review report which was presented and discussed by the APR Forum in June and October 2008. Nigeria presented its first progress report on the implementation of the NPoA in December 2010.

A study[53] on the APRM process in Nigeria came to the conclusion that the APRM self-assessment process "provided Nigerians with a rare and welcome opportunity to express their opinions about the way the country is governed and the challenges faced". However, the study also noted that the process was characterised by too much executive dominance. More effort should have been made to mobilise and include civil society and other branches of government beyond the federal level.

53 Jinadu, L.A., 2008. The African Peer Review Process in Nigeria. Open Society Initiative for West Africa (OSIWA) & Africa Governance Monitoring and Advocacy Project (AfriMAP)

It cautions that stronger and more independent institutional structures are required to be able to implement all the recommendations presented in the NPoA. Moreover, it will be necessary to institute an effective monitoring system.

Experiences and Lessons for Mineral Resource Management: Findings from the APRM[54]

Theme 1: Political and Democratic Governance

The NEPAD Framework Document and the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance identify democracy and political governance as "cornerstones for sustainable development and poverty eradication"[55]. The overall objective as framed in the APRM Guidelines is to "consolidate a constitutional political order in which democracy, respect for human rights, the rule of law, the separation of powers and effective, responsive public service are realised to ensure sustainable development and a peaceful and stable society"[56]. Key issues related to this topic include the prevention and reduction of intra- and inter- country conflicts; constitutional democracy; and the promotion and protection of economic, social, cultural, civil and political rights as enshrined in African and international human rights instruments.

Both the Country Self Assessment Report and the Country Review report point out that the Niger Delta has experienced the most protracted and deadly conflicts since the 1990s. The conflict is considered to be the product of poverty in the midst of plenty and of worsening environmental consequences of oil production that severely affect the livelihood of the surrounding communities. The reports highlight that the crisis in the Niger Delta has pitched the local communities against the oil companies, against the state or against one another. These intercommunal conflicts disrupt economic activities,oil prospecting and extraction, and can result in massive loss of life and property. Hostage abductions and gang warfare among rival youth cults have severe impacts on oil products, estimated in cutback in oil production of about 500,000 barrels per day–a quarter of Nigeria's estimated daily production of 2 million barrels. The reports consider that the conflict is the most formidable and intractable challenge to the Nigerian State since return to civilian rule. The CRM addresses the comprehensive negative consequences of the oil exploitation for the ethnic communities in the Niger Delta. Despite the fact that the mineral resources are worth billions of dollars, the ethnic communities living in the Niger Delta area suffer extreme neglect, lacking basic amenities such as clean drinking water, good schools, health care and good roads. Furthermore, the lands and waterways of these communities have been devastated by exploration activities of both Shell and other transnational companies. Plants and aquatic life forms have been severely affected by regular oil slicks and blow outs, subsequently destroying the source of livelihood of the local people who are mainly subsistence farmers and fishermen.

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54 2009. APRM Country Review Report No. 8 Federal Republic of Nigeria. AU/NEPAD

55 2001. New Partnership for Africa's Development. NEPAD, African Union

56 2003. Objectives, Standards, Criteria and Indicators for the African Peer Review Mechanism. Midrand: NEPAD Secretariat - NEPAD/HSGIC/03-2003/APRM/Guideline/OSC

In conclusion, the CSAR observes that the Niger Delta exemplifies the downside of minority status in terms of centralised resource control and access to state power in the context of the federal arrangement and elite struggle for power and resources.

The CRM further addresses the laws that were passed nationalising all land and mineral resources located in the oil-rich communities and thus denying communities their claim to ownership of the land. The reaction of the government to the community's protests against these laws and environmental pollution has often been to deploy armed troops to suppress communal resistance. Stakeholders agree that the core grievances of the Niger Delta are: local control of oil and gas resources, greater representation at the federal level, economic empowerment, infrastructure development and environmental degradation. Similarly, stakeholders disapprove of the criminalisation of the conflict beyond the Niger Delta region. In order to make the oil industry live up to its social and corporate obligations, militants increasingly seize workers from the oil companies. This has turned the creeks and waterways of the Niger Delta into war zones where state-sponsored counterinsurgency groups join forces with official state troops to fight activists and militants for the control of oil facilities and platforms. Literature on natural resource management has recorded the unique problems that resource towns face. Sudden influxes in mineral investment often lead to economic and social dualism. Economic stratification and maldistribution of wealth influences violence and other social problems. Social stratification can produce social instability and backlashes to the extraction industry, characterized by sabotage and delinquency[57]. The CRM finds that the activities of dissident groups call into question the legitimacy and sovereignty of the state and impose an almost permanent state of uneasiness on the Niger Delta region in particular, and on Nigeria at large. These effects have a global impact as it impacts the global oil economy consistently.

The CRM urges that there is a need for the federal government to provide political and legal solutions for the political, economic and environmental grievances that have been the root cause of conflict for decades. Furthermore, the issue of outstanding funds due to the Niger Delta Development Commission (NDDC), since 2001, hampers the ability to fast-track elements of the NDDC Master Plan for development of the region. Following these findings, the APR Panel recommends that the Niger Delta conflict be resolved. A multifaceted strategy encompassing political, cultural, economic and environmental aspects was necessary. Furthermore, early warning mechanisms should be developed to detect potential conflict situations at all levels of government.

In its 2010 progress report, the government of Nigeria[58] explains that the country has experienced a number of minor and major intra-state conflicts since the base review. In May 2009 there was a large scale government military attack on major militant's camps, which resulted in considerable loss of lives and damages to civilians. The Nigerian government offered amnesty to militants under certain conditions. Unfortunately, rehabilitation and reintegration programmes for ex-militants were not able to stop vandalisation of oil

57 Dougherty, M. L., A Policy Framework for New Mineral Economies: Lessons from Botswana. Institute for Environmental Diplomacy & Security- the University of Vermont.

58 2010. Progress Report on Implementation of the National Programme of Action (NPoA) of the Federal Republic of Nigeria. The Federal Republic of Nigeria.

pipelines and bunkering activities. In July 2010, 1000 self proclaimed ex-militants staged a protest in Abuja and claimed that they were excluded from the ongoing post amnesty retraining programme. Furthermore, gunmen blew up the country home of impeached deputy governor and the governor in the Bayelsa state; and in October 2010 a car bomb went off killing 8 people and injuring more.

Despite conflicts in the Niger Delta Region, the progress report explains that one year after the proclamation of amnesty for militant agitators in the Niger Delta, the regional has become safer. The Federal Ministry of the Niger Delta Affairs was created in September 2008, showing the commitment of the government to the development of the region. The mandate of the Ministry is "is to among other things, implement policies for the infrastructural, environmental and human development as well as security of the Niger Delta region. The Ministry is also mandated to coordinate the activities of Agencies, Communities, Development Partners, etc, operating in the region with the cooperation and assistance of States and Local Governments.

Theme 2: Economic Governance and Management

The NEPAD Framework Document and the Declaration define good economic governance and management as an "essential prerequisite for promoting economic growth and reducing poverty". Key objectives of this theme include the promotion of macroeconomic policies that support sustainable development; implementation of transparent and credible government economic policies; and sound public finance management.

In this context, the CSAR notes that the government has introduced fiscal policy reforms to achieve macroeconomic stability, internal balance, fiscal transparency and an improved revenue base. An oil-based fiscal rule was introduced which seeks to separate government expenditure from volatile oil prices and ensures that excess crude revenues are saved. The oil-based fiscal rule included the separation of government expenditure from volatile oil prices. Furthermore, it ensures that excess crude revenues are saved. .In this regard, the CSAR also highlights the Extractive Industry Transparency Initiative (EITI) as a complementary measure. The initiative comprises of independent audits of the oil and gas sectors to achieve a culture of transparency and accountability for oil and gas companies and the government. Audit results are accessible to the public.

The CSAR further notes that the government of Nigeria has attempted to mobilise domestic resources and to diversify the economy through port concessions, reforming the customs service, increasing tariffs on utilities, expanding businesses by creating micro-credit facilities, consolidating the banking sector, and establishing a Revenue Mobilisation, Allocation and Fiscal Committee. However, the CSAR also mentions the overdependence on crude revenues, the weakness of the manufacturing sectors and the inability of the agricultural sector to meet the food requirements of the economy. This situation can be explained by the nature and characteristics of the oil extraction sector in Nigeria. The oil extraction sector is vertically integrated, which means that exploration, extraction and refining are all carried out by the same company. This exacerbates the enclave nature of the sector and reduces technical spillovers to the rest of the economy. In fact, as the Nigerian oil sector grew and fiscal dependency on oil revenue increased, agriculture production declined fast and manufacturing has remained stagnant. Indeed, the British colonial powers created a dual economy where the economic activity of the elite was isolated from the peasant economy. A system of "divide and conquer" rendered Nigeria incapable of establishing political institutions that build consensus and stimulate sustainable inclusive economic development.

Furthermore, oil firms in Nigeria have been "less transparent, manipulated profit data to consistently underpay royalties, conspired to fix prices, and have systematically sought to corrupt the Nigerian government through bribes[59]. The CSAR also discusses the vulnerability of the economy to internal and external shocks. Recent policy measures such as an increase of the current account surplus balance and an increase of net foreign assets between 2002 and 2005 have been fairly successful in mitigating the effects. Another major step taken by Nigeria to reduce vulnerabilities to shocks has been benchmarking the budget on an oil price that is lower than the actual market price.

Furthermore, the country review mission finds that Nigeria's vulnerability to shocks stems from several interrelated factors namely: high dependence on the oil sector and its resultant lack of diversification in economic activities; mismanagement and embezzlement of resources by those in leadership positions; oil bunkering or bandit activities that undermine the nation's capacity to exploit its oil potential fully; recurring labour strikes because of government's inability to meet the expectations of workers; and civil unrest, particularly in the Niger Delta. The narrow export base is one of few causes linked to the exposure to external shocks. Oil revenues have cushioned the external shocks; however, diversifying the economy remains critical for sustained resilience. In this regard, the APR Panel takes notice of the creation of an Excess Crude Account by the Central Bank of Nigeria. The main purpose of this account is to stabilise revenue from oil exports, and to ensure that funds are used mainly inside the country to fund domestic infrastructure investments. The Panel believes the Account has helped to improve the management of public finances, particularly by the decision to distribute oil revenue according to a budget oil price. However, a lack of supportive legislation to govern the Account and systematic governance and transparency issues may affect the implementation of this project.

However, serious concerns are expressed about the dependence on oil revenue and persistent social unrest in the Niger Delta region. The report notes that Nigeria is paying the constitutionally prescribed 13 percent of derivation funds in respect of oil production to the states in the area. However, the Niger Delta region has demanded an increase to this minimum. In this regard, the launch of the 15-year master plan to develop the region by the Niger Delta Development Commission is mentioned. This Commission is responsible for the development of infrastructure and generating employment in the Niger Delta Region, with an aim to reduce conflict. Specifically, its mission is to "facilitate the rapid, even and sustainable development of the Niger Delta into a region that is economically prosperous, socially stable, ecologically regenerative and politically peaceful" (Niger Delta Commission, 2011)[60]. Despite this, 300,000 barrels per day of crude oil are lost to disrup-

59 Dougherty, M. L., A Policy Framework for New Mineral Economies: Lessons from Botswana. Institute for Environmental Diplomacy & Security- the University of Vermont.

60 http://www.nddc.gov.ng

tions caused by shut-ins. Fluctuating commodity prices; especially of fuel is a source of vulnerability faced by households.

The CRM finds that effective and transparent public administration can be enhanced by increasing non-oil related revenues. Indeed, fiscal policy continues to be limited by a narrow tax base. Also, new measures that were adopted to improve tax collection were unable to reduce tax evasion. Stakeholders were of the opinion that there is a lack of accountability in collecting and disbursing tax revenues.

"The lack of confidence in the tax collection institutions has contributed to a tendency to wait for federal government allocations rather than to generate revenues from taxes at state and local levels". Stakeholders further addressed issues of corruption with regard to the tax administration. Reported was that some tax revenues agency employees pocket tax money and also, some business were thought to have closed down because of poor tax administration. Suggested was by stakeholders to streamline tax administration. Specifically, stakeholders believe that tax evasion is a major reason for the relative low levels of internally generated revenues in states. The factors leading to tax evasion in Nigeria are related to issues such as Taxpayers not being assessed, a lack of clarity about the identity of tax collectors or , high tax burdens emanating from the multiplicity of taxes at state and local government levels, the number of tax collecting agencies or institutions and inadequate coordination between the various agencies the absence of a legal framework that makes registering informal businesses mandatory, as well as, the absence of concrete evidence of services and projects financed from local taxes. There was consensus among stakeholders regarding the fact that government set low revenue collection targets due to a lack of statistical data and skills. Governments recruit contractors to pay certain amounts of revenues before actual collection takes place. It is believed that the contractors collect between 5-10 times more than what they pay to the government and are considered to be corrupt. This further reduces the incentive for tax payers to comply. It is this situation that leads state and local governments to depend excessively on transfers from the federal government despite huge untapped domestic revenue resources.

Stakeholders highlight that many states in the past generated sufficient revenue from groundnuts, rubber, cocoa, palm oil, coal and tin. And there are additional unexploited mineral and agricultural resources. In fact, more than 34 commercially viable minerals have been identified in different parts of the country with every State at least having one major resource, but are still unexploited. The CRM indicates that the country can derive as much revenues from these minerals as from crude oil. However, nothing has been done to achieve this potential. The APR Panel thus suggests that a comprehensive strategy aimed at diversifying the domestic production base and exports away from oil be developed.

Overall, the country review mission notes in the context of effective and transparent public administration that it is difficult to ascertain how much revenue the federal governments derives from oil as there is a lack of transparency about the amount of crude oil extracted by the oil companies. Similarly, figures on actually collected taxes by the federal government to be made available as revenue for distribution according to the agreed formula were lacking. Interviews held by the CRM with officials from EITI showed that accounting problems about crude oil revenues and related revenues to the government were enormous. Officials referred to a number of factors in this regard, including terrain, types of crude deposits, and difficulties of access, equipment in use, company ownership and pipeline tampering. Also, the CRM was repeatedly informed by stakeholders that the revenue sharing formula needs to be revisited. The revenue-sharing formula informs the statutory distribution of revenue from the Federation Account to the different levels of government. "The constitution provides that oil-producing states receive 13 per cent up-front in derivation grants. Of the remaining 87 per cent, the federal government receives 52.7 per cent, states receive 26.7 per cent and local governments 20.6 percent". Up until the 1970s the derivation principle was 50% for oil-producing states.

This consistently reduced over time as the derivation principle had been subject to political power play until the 1999 Constitution sought to solve this.[61] The CRM learned from stakeholders that the formula had an inherent bias against the South and that areas where oil was first discovered remained backward. The main suggestion made to the CRM was that states that generate more revenue should be allocated a larger share in the allocation process and that revenues should be channeled into development activities.

The Panel acknowledges the government's awareness of the need for prudent management of oil resources. However, the Panel was unable to assess the management of the revenue accruing from the oil industry due to the absence of information. The government of Nigeria in its response to the panel recommendations stated that accrued funds are channeled into development projects in congruence with major reform plans of the government.

The 2010 progress report explains that the Federal Inland Revenue Service has made remarkable success during the period under review as it was able to collect 130.68% of its target in 2008. The total number of registered businesses (issued with Tax Identification Number) has increased between 2008 and August 2009 by 34%. Furthermore, in the area of tax administration the following reform projects have been initiated: "Procurement and Logistics Reform Project; Integrated Tax Administration System (ITAS); Bank Payment Process Automation and Taxpayer Database Development Project; Records Management and Document Tracking Project; Finance and Accounts Re-engineering; Human Resource Re-engineering and Placement Assessment Projects". The objective of these reforms is to automate the entire taxation system and streamline human resource management. Additionally, the Federal Inland Revenue Service has initiated stakeholder engagement exercise by which taxpayers are engaged in town hall meetings to discuss issues.

On 18 November 2011, the Senate passed the Sovereign Investment Authority Bill which establishes the country's first Sovereign Wealth Fund. The Fund is set to replace the excess crude account and establishes the Nigeria Sovereign Investment Authority, which will be split into the Nigeria Infrastructure Fund, the Future Generations Fund and the Stabilisation Fund. The Fund will have a governing board headed by the President. Governors of the 36 states along with the ministers of finance, justice and planning, the governor of the

61 A. A. Ikein D. S.P. Alamieyeseigha, S. Azaiki, Oil, Democracy and the Promise of True Federalism in Nigeria, University Press Of America.

Central Bank and the chief economic adviser will also serve on the board. The Bill seeks to invest the excess funds in a diversified portfolio of medium and long term investments "for the benefit of future generation of Nigerian citizens"[62].

Theme 3: Corporate Governance

According to the NEPAD Framework Document, "corporate governance is concerned with the ethical principles, values and practices that facilitate holding the balance between economic and social goals and between individual and communal goals. The aim is to align as nearly as possible the interests of individuals, corporations and society within a framework of sound governance and common good".

Key objectives include the provision of an enabling and effective regulatory framework for economic activities; and ensuring that corporations act as good corporate citizens regarding human rights, social responsibility and environmental sustainability.

A core objective of this theme is to ensure that co-operations act as good corporate citizens with regard to human rights, social responsibility and environmental sustainability. In this regard, the CSAR provides an in-depth look at the status of Corporate Social Responsibility (CSR) in the Niger Delta region. According to community consultation, stakeholders expect the oil companies to contribute to the region's social and economic development and thus be socially responsible. The community believes that companies are morally obliged to give back a substantial part of the profits towards social, human and economic development of the communities in the region. The CSAR explains that multinational oil companies at first took the position of no legal or moral obligation to provide socioeconomic assistance to their host communities. However, companies such as the Royal Dutch/Shell group later revisited their position on human rights, environmental protection and sustainable development, as well as the content of its Statement of General Business Principles. Also, Shell defined a new community development strategy in 1997. The company created a community development organisation to support broad socioeconomic development in the Niger Delta in 1998. It included introducing best practices from development professionals; transforming existing community programmes by partnering with expert agencies, nongovernmental organisations (NGOs) and governments; promoting rather than opposing advocacy for the Niger Delta communities; supporting the capacity building of government institutions so as to improve their management of regional development projects; and increasing their funding of community development programmes. Since then, other oil companies operating in the region have adopted Shell's approach.

The Country Review Mission provides a more critical view of the initiatives taken to ensure CSR in the Delta Region. According to its findings, stakeholders believe that oil companies are not doing enough in terms of social investment. This is attributed to different views of the content of CSR of multinationals operating in the Delta Region and communities affected by their operations. While stakeholders have high expectations toward CSR

62 http://www.thenationonlineng.net/2011/index.php/business/5835-sovereign-wealth-fund-bill-passed.html

programmes, there are different understandings regarding the legal role government and the responsibility of oil companies. In fact, stakeholders expect corporations to take over key government services such as infrastructure development and health services. Although this might not be realistic, the CRM stated that Economic Partnership Agreements and public-private partnerships are not fully utilized in the region. The government through its NEEDS[63] strategy stipulates that "the private sector will be expected to become more proactive in creating productive jobs, enhancing productivity and improving the quality of life. It is also expected to be socially responsible by investing in the corporate and social development of Nigeria".

Another key initiative in the area of CSR is the EITI of which Nigeria was the first African country to sign up in 2003. The most important finding of the independent audits of the Nigerian oil and gas sectors in the context of EITI covered the period from 1999 to 2004.

The findings emphasized the scope for greater use of information technology (IT) systems to improve controls and eliminate inconsistencies arising from duplicated information. In addition, transparency could be improved by sharing data more widely. This resulted in the initiation of a programme in 2006 to correct systemic weakness identified which is currently being implemented by the Nigerian EITI Secretariat. The CRM cautions that improved corporate governance initiatives are not always implemented and that political factors such as the lack of supportive legislation to govern the use of Excess Crude Account funds, and systemic governance and transparency issues may also affect the roll out of the initiative.

The APR Panel recommends that Nigeria continue to use public-private partnerships to improve CSR. Ultimately, all CSR efforts should be aimed at improving the welfare of the communities in which companies operate. Public-private partnerships will increase the benefits for the companies and the communities in which they operate if they are effectively coordinated. It is also recommended to implement EITI fully and ensure that Nigeria becomes a permanent participant in the initiative

Besides these broader policy recommendations, the NPoA specifically includes the following activities:

- Complete the ongoing reforms in the Power, Oil & Gas Sectors (Establishment of National Integrated Power Plans; Privatisation and Unbundling of national Electric Power Authority/Power Holding Company of Nigeria; and Oil & Gas Sector Reform Implementation Committee)
- Encourage strong and better relationship, especially with Oil companies in the Niger Delta of good CSR with respect to their host communities and environment.

63 "Nigeria initiated a programme Nigeria initiated a programme of economic revival embodied in the NEEDS strategy of 2004. NEEDS is a sector-wide strategy. It covers a wide range of key sector-related strategies for agriculture, manufacturing, solid minerals, as well as small and medium enterprises (SMEs). It is being converted into, and contextualised in, the State Economic Empowerment and Development Strategy (SEEDS) at the state level, and the Local Economic Empowerment and Development Strategy (LEEDS) at the local level".

- Encourage communities (especially Niger Delta) to dialogue with both corporations and Government in securing their rights and participating in the implementation of Good CSR programmes.
- Full implementation of NEITI in the Oil & Gas Industry.
- Regular audit of NNPC and Oil & Gas companies' operations.
- Ensure application of NEITI to the Solid Mineral Sector.

Substantial progress on these recommendations has been achieved according to the 2010 Nigeria Progress Report. There has been a rise in revenues generated from non-oil taxes as a result from reforms embarked on by the Federal Inland Revenue Service and the Nigeria Customs Service. This trend is expected to continue as reforms are further consolidated. The petroleum Resources Ministry fully implemented the NEITI in the oil and gas industry thus, promoting regular and accurate information on revenues and expenditures in the oil and gas industry. The Bureau of Public Enterprises has been mandated to carry out the privatization and commercialization of public enterprises. This has been in the context of delinking government expenditure from oil revenues. Towards this end, a draft bill has been formulated and is expected to be passed by the National Assembly in 2012. "Some of the public enterprises whose privatization process has already been initiated by the Bureau of Public Enterprises include among others: twelve (12) River Basin Development Authorities (RBDAs), the Power sector, Oil and Gas, seven (7) National Parks, six (6) National Stadia, Bank of Industry (BOI) and Nigerian Agricultural Cooperative and Rural Development Bank (NACRDB)."

With regard to ongoing reforms in the power, oil and gas sectors, the progress report reads that the privatisation of the power sector (restructuring of the Power Holding Company of Nigeria) is making good progress. An independent regulator, National Electricity Regulatory Commissions has been set up to oversee the process. Oil companies in the Niger Delta will be positively affected by the Petroleum Industry Bill which will pass within a timeframe of three years. Also, a Standing Working Committee on labour issues in the oil and gas sector was set up to produce a draft manual on best practices in industrial relations. This would eventually translate into a National Policy.

A recent UN report has criticized Royal Dutch Shell over pollution in Ogoniland. Shell left the Ogoniland in 1993; however, the UN report urges that it could take another 30 years and at least 1 billion USD to rid the poisoned mangroves of crude. The research found that some families were drinking water contaminated with "900 times as much benzene, a carcinogen, as is deemed safe by the Work Heath Organization". Furthermore, areas that Shell claimed to be clean were in fact still polluted. Also, the report exposes failures on the part of Shell and Nigeria's National Oil Company with regard to following their own best operating practices[64].

64 http://www.economist.com/node/21525963

Theme 4: Socio-Economic Development

The NEPAD Declaration on Democracy, Political, Economic and Corporate Governance identifies the eradication of poverty and the fostering of socio-economic development as the over-arching twin objectives of NEPAD. Key goals include the promotion of self-reliance in development, acceleration of socio-economic development to achieve sustainable development; and strengthening policies, delivery mechanisms and outputs in key social development areas.

In the context of self-reliance, the CSAR notes that Nigeria's dependence on aid is less than 1 percent of the country's GDP. The huge revenues deriving from natural resources have made the country self-reliant. The report asserts that the country has vast resources and has escaped the Paris Club Debt trap in 2006. Reportedly the country has gained about USD 1 Billion that would have otherwise gone into servicing debt. However, the CRM warns that sustainable development in Nigeria is undermined by heavy dependence on oil which negatively affects opportunities for economic diversification. The CRM asserts that efforts by the government to expand the resource base through agricultural and industry have yet to yield tangible results. Nigeria is a prime example of the "resource curse" as the country struggles to use the vast wealth from oil revenues to fight poverty that affects about 54 percent of the population. In this regard, the Niger Delta faces particular education issues as the enrolment and retention rates for boys were declining due to drug abuse and because boys are being engaged in criminal and combative activities. Nigeria is among the top ten petroleum producing states in the world, but it has not been able to harness this potential for sustainable development. "Part of the responsibility for the Nigerian tragedy falls to the dubious role of the major oil companies in reinforcing bad governance to collect greater rents, and part of the responsibility falls to poor management of oil revenues by the government itself". Furthermore, public investment in human and social capital has been hindered due to the fact that the government did not have to rely on its citizenry for taxes.

According to some perspectives, redistributive spending took place based on political interests. Consequentially, the majority of Nigerians suffered abject poverty while a small elite has accumulated large wealth.[65]

The APRM Panel recommends that Nigeria increases the internal resource base (such as by diversifying and promoting the nonpetroleum sectors) to increase financial autonomy of the country so that Nigeria can fund its development agenda fully. Furthermore, it recommends to implement programmes to contain and reverse the declining enrolment and retention rates for boys in the Niger Delta and South Eastern states caused by drug abuse and conflict. The NPoA includes policy strategies that ensure sustenance of integrated development in the Niger Delta.

65 Dougherty, M. L., A Policy Framework for New Mineral Economies: Lessons from Botswana. Institute for Environmental Diplomacy & Security- the University of Vermont.

Fact Sheet 2: Algeria

Algeria and the APRM process

Algeria was one of the six countries that first signed the MoU to voluntarily accede to the APRM in March 2003. The country commenced its APRM activities with the establishment of the national structures, namely the Focal Point and the National Governing Council. Algeria received a country review mission in July 2005. During this visit the technical Memorandum of Understanding was signed and the procedures and mechanisms put in place by the NGC were addressed. The NGC in collaboration with the National Focal Point commenced the work for the CSAR. As part of this work, the NGC visited wilayas to generate discussion; and radio broadcasts and conferences were organized. Furthermore, meetings were held with civil society associations and journalists. Also, the NGC held working series which informed the draft CSAR. The latter was submitted for consideration to an inter-ministerial council on 7 August 2006, and a government council on 29 August 2006. These councils endorsed the draft CSAR and NPoA which were then submitted to the APRM Secretariat in November 2006. The Country Review Mission (CRM) took place between November and December 2006 and was led by Mrs. Marie-Angélique Savané. A final CRM was conducted in March 2007 took into consideration political developments in the country and allowed for the finalisation of the county review report. The country review report was presented at the Forum of Heads of State and Government in July 2007. Algeria presented its first progress report on the implementation of the NPoA in November 2008.

The APRM process in Algeria has been hailed as a technical success. This qualification has been made despite the fact that the APRM process suffered from a democratic deficit described characteristic of governance in Algeria. Particularly, a lack of democracy and respect for public freedoms and human rights as well as a strict control on civil society, trade unions and the media negatively affected the process. However, the APRM has been conceived a significant achievement in a country where the government is not used to being held accountable for its governance. The political commitment shown by the President and at the top levels of government made the implementation of the APRM a success[66].

Experiences and Lessons for Mineral Resource Management: Findings from the APRM[67]

Theme 2: Economic Management and Governance

The APRM Guidelines indicate that the key objectives in the area of Economic Governance and Management objectives are as follows: promoting macroeconomic policies that support sustainable development; implementing transparent, predictable and credible government economic policies; promoting sound public finance management; fighting

66 Boumghar, M. 2009. The APRM in Algeria, A Critical Assessment. Rosebank: Africa Governance Monitoring and Advocacy Project (AfriMAP)

67 2007. APRM Country Review Report Nr. 4 of the People's Democratic Republic of Algeria. AU/APRM Secretariat

corruption and money laundering; and accelerating regional integration by participating in the harmonization of monetary, trade and investment policies amongst the participating states.

With regard to the macroeconomic framework, the Country Self Assessment Report reflects on the mobilisation of internal resources and notes that public savings in Algeria are predominantly derived from oil earnings. These national savings are being directed towards financing capital debt repayment and treasury deficits. As a result the Algerian economy has been highly vulnerable to external shocks. The fluctuation of the oil price has led to commitments by the government to diversify the dependencies on oil production, such as the promotion of foreign trade through export promotion, insurances, export guarantees and financing instruments such as prospecting, international transport costs, halving of transit costs land and local railway transportation costs.

The CRM highlights the establishment of an Oil Stabilisation Fund and regards it to be a best practice put in place to improve public finances in Algeria. As the CRM explains, nearly 70% of the state budgetary receipts are derived from oil revenues. In order to reduce the economy's vulnerability to shocks, the Algerian government has based its Financial Acts on a price of US$19 per barrel since 2000. Any surplus from oil taxation receipts that are higher than those estimated by the Financial Act increases this Fund. The Fund is built up from revenues from additional oil taxation received as a result of the difference between the oil reference price and the average effective price of that year. Since its establishment in 2000 until August 2006, the Fund had been credited with an amount of DA4009.32 Billion.. The resources and expenditures achieved are illustrated in the table below.

Table 1: Oil Stabilisation Fund (in DA million)

	2000	2001	2002	2003	2004	2005	2006*
Resources							
-0 Remainder as at 31/12	0	232	171 534	27 978	320	721	1 842
-1Surplus Value on oil		137			892	688	686
taxation	435 237		26 504	448			
-2 Bank of Algeria advance		123		914	623	1 368	964 466
	0	864	0		499	836	
				0			0
		0			0	0	
Allocations							
-3 Repayment of debt	221 100	184	170 060	156	165	247	101 453
principal		467		000	559	838	
-4 Anticipated repayment of	0		0				0**
foreign debt**		0		0	57 144	0**	
-5 Remainder as at 21/12							
-6 Financing of treasury	232 137		27 978				2 705
deficit		171		320	721	1 842	699
		534		892	688	686	

(*) At the end of August 2006
(**) The anticipated repayment of foreign debt, in 2005 and 2006, was made with advances from the Bank of Algeria

2007. APRM Country Review Report Nr. 4 of the People's Democratic Republic of Algeria. AU/APRM Secretariat; page 159.

The CRM praises the Algerian government for the high level of transparency and special monitoring mechanisms exhibited in the management of this Fund. The funds are utilized to repay public debt and finance deficits of the Treasury. Remaining funds are placed with the Central Bank. The CRM highlights the positive effects of the Fund on the weighting of hydrocarbons for the budget and the increase in public savings.

Subsequently, the Country Review Mission encourages Algeria to continue its activities in the context of the mobilisation of internal resources and accumulation of capital through the Oil Stabilisation Fund, FRR. The CRM praises Algeria's "careful budgetary policy, which has kept the budget deficit to a minimum, even though the latter could have been financed internally". Furthermore, the CRM welcomes the progress made by Algeria towards reducing the country's dependence on oil receipts. The promotion of sound public financial management has benefited from exceptional budgetary results and the adoption of initiatives to reduce the impact of oil price fluctuation on the budget and size of its foreign debt.

However, the CRM emphasizes that vulnerability to external shocks remain a serious concern. The hydrocarbons industry represents 70% of public revenue, 45% of GDP and 97% of export earnings. This has huge implications for the structure and management of the economy as incentives to diversify the economy are weakened. Also, it has created an imbalanced tax base as authorities are encouraged to neglect other sources of revenue (both at the central and local level). This has resulted in a gradual increase in government spending and an increased tendency towards deficits. The primary budgetary deficit and overall cash balance have deteriorated substantially since 2002. The CRM notes that "the structure of the budgetary revenue reveals the vulnerability of public funds to potential external shocks". Ordinary taxation remains weak and this is also attributed to poor private sector development. This is cause for major concern to the CRM as a major drop of the oil price could weaken the economy. According to the IMF, the forecast is that by 2050 oil resources will be completely depleted. Considering also the drop in global demand for hydrocarbons resulted from measures implemented to cope with climate change, it becomes eminent for the CRM that Algeria should adopt an active policy to diversify its economy.

Furthermore, weaknesses exist related to mechanisms that guarantee transparency, civic participation, and control and responsibility in the management of public finances. The CRM notes that Algeria does not conform fully to international good practice on budgetary transparency. There is no Act on the right to information and budgetary information that does exist is often reserved for administrative executives.

Overall, the oil revenues have had a profound impact on socio-economic development in Algeria and have put the country on the path to achieving the Millennium Development Goals. The oil boom and social policies has led to radical improvements in public sector delivery of basic services and the development of vast systems of health, education and social protection. Education is free for all Algerian children; the human poverty index went from 25.23 per cent in 1995 to 16.6 per cent in 2005; life expectancy at birth has consistently improved since independence; and regional disparities are reducing following programmes that target disadvantages regions funded from a 2 and 3 per cent levy on oil tax revenue. In this context, several enterprises such as Sonatrach, Naftec, Enafor, and Naftal have created an observatory office on female employment. The enterprises have taken a deliberate decision to promote women employment in a sector that is dominated by male employees.

Based on the review reports, the National Plan of Action includes recommendations to reduce the dependence on hydrocarbons as part of sustainable and self-productive development, and to promote sustainable development at all levels and diversification of the sources conducive to economic growth.

The APR Panel subsequently recommended continuing to maintain prudent policy with regard to the management of national savings, especially public savings arising from oil surpluses. Any substantial change should only be effected on the basis of serious studies carried out in conjunction with national partners to ensure a strong social consensus.

Furthermore, it is recommended to identify and lift constraints on the extension of its bases and the expansion of economic growth, and to mobilise the competencies and resources to achieve this. The country should also encourage the private sector to become involved in stimulating agriculture and promoting exports. Finally, it is recommended to accelerate the development or finalisation of specific strategies for sectors that are likely to support the diversification of sources of growth, in order to support, or possibly substitute, the predominance of the hydrocarbons sector. The main sectors identified are agriculture, petro-chemistry, tourism and services.

These findings from the APRM review and recommendations of the APR Panel have been taken up in national development strategies of Algeria and reflect the potential of the APRM for strengthening the governance of mineral resources on the continent. The Algeria Annual Progress Report (2008)[68] discusses the state of implementation of the National Plan of Action in detail. It highlights the activities that have been undertaken since commencing the implementation of the Plan of Action. With regard to the management of natural resources, the report highlights that activities are being undertaken to support economic diversification through integrated rural development and industry promotion.

The Algerian government also adopted a new Industrial Strategy which has the objectives to promote new industries, strengthen the export capacities of SMEs and for public institutions to assist and support exporting SMEs. The strategy envisions the development of the industrial sectors, which should move away from a state of mere exporter of primary products to a producer with more value added (petrochemicals, steel and aluminium, hydraulic binders, chemicals). In addition, the Rural Revival Programme boosted by the Rural Rehabilitation Programme (2007-2013) provides the framework and modalities for progressive revival of the rural areas. The programme covers the following four components: modernisation of the villages and ksour for improved living conditions of rural households; diversification of economic activities; protection and development of natural resources; and protection and development of tangible and intangible rural heritage. The programme is expected to impact on 2,738,059 households.

Fact Sheet III: South Africa

South Africa is endowed with an abundance of mineral resources, accounting for a significant proportion of world production and reserves, and South African mining companies are key players in the global industry. South Africa is the world's biggest producer of platinum, and one of the leading producers of gold, diamonds, base metals and coal. With the growth of South Africa's secondary and tertiary industries, the relative contribution of mining to South Africa's gross domestic product (GDP) has declined over the past 10-20 years.[69]

Nonetheless, the industry is continually adapting to changing local and international world conditions, and remains a cornerstone of the economy, making a significant contribution to economic activity, job creation and foreign exchange earnings.[70]

68 APRM/National Focal Point Algeria (2008), Report on the Implementation of the National Acton Programme on Governance. Algiers.

69 South Africa info. http://www.southafrica.info.

70 In 2009, according to the Chamber of Mines of South Africa, the industry contributed: 8.8% directly, and another 10% indirectly, to the country's gross domestic product (GDP); over 50% of merchandise exports, if secondary beneficiated mineral exports are counted; about 1-million jobs (500 000 directly); about 18% of gross investment (10% directly); approximately 30% of capital inflows into the economy via the financial account of the balance of payments; 93% of the country's electricity generating capacity; about 30% of the country's liquid fuel supply; between 10% and 20% of direct corporate tax receipts. See South Africa Chambers of Mines http://www.bullion.org.za.

The objective is to review the APRM reports on South Africa, including the resulting National Programme of Action (NPOA) and the progress reports with a view to analysing elements that could serve as lessons learned, best practices or offer insights for the governance of the mineral sector. Efforts will be made to link the selected focus areas with the building blocks for an effective management of mineral resources as identified in Chapter 2 of this paper.

South Africa and the APRM Process

South Africa was one of the pioneering countries of the APRM as it acceded in 2003. Following its accession, a number of awareness raising and sensitization workshops were organized by the APRM National Governing Council (NGC), which culminated in September 2005 when the first National Consultative Conference on the APRM was held. This grand event brought together 350 delegates from various segments of the society including CSOs and other relevant stakeholders. The then President Thabo Mbeki inaugurated the National Governing Council which is comprised of fifteen members including state and non-state actors. The launch of the APRM was innovative in South Africa as it included the establishment of Provincial Governing Councils in all the nine provinces of the country; efforts to simplify the questionnaire and translate it into the 11 official languages of the country; and an extensive publicity for the APRM process through road shows, newsletters, call-ins and an APRM song.

The APRM Country Support Mission (CSM) was held in November and December 2005 whereby the NGC membership was increased to 29, as the alternate members were included as full members. South Africa submitted its Country Self Assessment Report (CSAR) and its draft National Program of Action (NPoA) in 2006 after having held several seminars and workshops to discuss the draft report at national and provincial levels. A Country Review Mission (CRM) was then dispatched in the country in July 2006. It was led by Professor Adebayo Adedeji and 22 members and the launch was attended by the then President Thabo Mbeki. The first annual progress report on the implementation which was released in January 2009 covered the period from November 2007 to December 2008 and reflected on progress made in the implementation of the Programme of Action. The 2nd progress report on the implementation of South Africa's APRM National Programme of Action details the progress made during the period from January 2009 to November 2010.

Experiences and Lessons for Mineral Resource Management: Findings from the APRM Report

Theme 1: Political and Democratic Governance

Under the theme 'Political and Democratic Governance', it is noted in the APRM report that South Africa envisioned having new local governance structures with a view to achieving institutional development and transformation as well as the building of democratic and participatory local government structures. To that effect, a number of legislations were enacted between 1998 and 2003, which transformed the systems, institutions and processes of local government. Decentralization has increased public participation and has led to the establishment of institutions and mechanisms to ensure broader participation and dissemination of knowledge and information about government service delivery. The Imbizo and "citizen forums" bring together citizens and the leadership at all levels of government to deliberate public issues of concern. These gatherings create space for the public to voice their concerns and grievances and communicate their wishes and aspirations as shown in Box 5.

Box 5: Popular participatory governance through imbizo[h]

Imbizo is a public participation government initiative, which consists of a period of face-to-face interaction and engagement between senior government officials from all spheres of government – national, provincial, and local – and the public. It provides government the opportunity to communicate to the public its "Programme of Action" and how far it is being implemented, the challenges being experienced and areas that may need review. Imbizo also affords local communities the opportunity to voice their needs, concerns and grievances in the various areas of governance and service delivery. Thus, Imbizo is a forum for enhancing dialogue and interaction between the leadership and the governed (citizens). It gives back a voice to the majority of people that were excluded from decision-making by apartheid. As such, Imbizo gives effect to the ideals of participatory democracy.

There exist presidential Imbizo and other government-led Imbizo. During the "Presidential Imbizo", the President visits communities and see for himself some of the challenges that people are grappling with, and the conditions under which local people live. Similarly, communities are afforded the opportunity to air their concerns and communicate their suggestions and aspirations directly with the President and, in the President's presence, with the Premier, the Members of the executive council (MECs), the Mayors and local councils. In this way, Imbizo strengthen cooperative governance and enable citizens to hold the three spheres of government accountable. Two Imbizo periods a year are held in South Africa.

h. Compiled from APRM South Africa Report. 2006.

Recognizant of the facts that lack of awareness and poor access to information could hamper the full enjoyment of human rights and that civil society needed to be given more opportunities to have a say in the delivery and monitoring of public services, the strategies adopted in the National Plan of Action (NPoA) include the strengthening of forums and mechanisms for social dialogue and participation in the provision and monitoring of public services.

The 2nd progress report confirms that efforts to strengthen participation and inclusiveness of civil society and communities are underway. It particularly notes the establishment and strengthening of forums and mechanisms for social dialogue, in particular those around the National Economic Development and Labour Council (NEDLAC). It also observes that this process has resulted in the development of a Framework Agreement with social partners on retention and creation of recent jobs which was launched in February 2009. It further points out to the fact that the government has introduced a dedicated Public Participation Week, in addition to the imbizo.

It is noted in the APRM report that after 1994, South Africa has established a robust constitutional and legislative framework following the new constitutional mandates and aspirations of the country. Since the Constitution recognizes 11 official languages, parliamentary debates can take place in any of these languages. This will give more voice to the people and should be emulated by other countries. The 'taking Parliament to the people program" promotes the participation of people in their governance which is one of the building blocks for good governance of the mineral sector as highlighted in the Africa Mining Vision (See Box 6).

Box 6 : Taking the Parliament and provincial legislatures to the people programme[i]

The "taking Parliament to the people programme" underscores and promotes people participation in their governance. It is an outreach programme whereby the parliament and provincial legislatures go to the grassroot to interact with members of the communities and listen to their concerns, needs and aspirations. It strengthens Parliament's commitment as a people-centered institution that is responsive to the needs of the electorate in order to realize a better life for all the people of South Africa. By visiting these rural communities, the National Parliament gives a voice to those who would not necessarily have the opportunity to address or discuss (in their home language) issues with their representatives. This creates a platform for people to engage government and Parliament on various issues of concern. The Parliament would, during its interaction with the people, gain a deeper understanding of the issues confronting the area and the rest of the province. The Parliament, through its oversight role, will help to highlight and overcome the constraints faced by local people. The gathering gives the Parliament and the local sphere of government the opportunity to enhance the spirit of cooperative governance. Finally, Parliament will be able to assess the impact of the legislation it has passed, on the development and empowerment of people and their communities.

i. Ibid

It is noted in the CSAR that the government created 'Batho Pele' to emphasize the significance of people's participation in development and the commitment to quality service delivery. 'Batho Pele' requires that all service delivery institutions and the governments adhere to set standards and practices as described in Box 7.

Box 7 : Batho Pele[j]

A unique feature in the new era South African governance system is the inauguration of "Batho Pele"--- essentially a Citizens Charter, based on the traditional Sesotho adage, meaning 'people first'. The objectives of Batho Pele are to ensure that the people are sufficiently informed about the governance processes, the functions of the various ministries and departments, those in charge and what to expect from them. That the people are consulted, that they have access to the necessary information regarding their citizenship entitlements and civic obligations. In light of South Africa's previous system of governance and experience of legalised racism, Batho Pele is clearly a deliberate measure to empower all the people to participate effectively in public affairs and enjoy the benefits of citizenship, and ensuring transparency and accountability.

j. Ibid

Theme 2: Economic Governance and Management

Under the theme 'Economic Governance and Management", the APRM Country Review Mission (CRM) noted that the budget formulation in South Africa was "very insightful" as encapsulated in Box 8.

Box 8: Best Practice on the Budget Formulation Process[k]

South Africa has one of the model MTEF processes, with heavy involvement by the Cabinet and other key stakeholders throughout the process. One result is that the budget, and therefore policy, is highly predictable and the government has consistently maintained strong budget discipline. The two annual lekgotlas set the tone. The cabinet in various forms (regular, extended, and lekgotla) has at least eight meetings a year on budgetary matters. The MCB, which meets four or five times a year, is explicitly intended to act as a substitute for the cabinet, acting in collegial mode.

Frequent meetings of Ministers, further encourage collegiality, or at least collectivity, for other purposes: six cabinet subcommittees meet every two weeks, and the cabinet itself meets in the intervening weeks. The president or his or her staff, or both, have the chance to be involved at all stages of the process. Working relationships between the president and the minister of finance are said to be close. The MTEF, which has reduced the significance of the annual budgeting process by putting it into a three-year context, has encouraged both longer term thinking and planning, on the one hand, and some propensity to prioritize, on the other.

k. Compiled from APRM South Africa Report. 2006.

The CRM further underscored an improved collection of revenue that it attributed to increased efficiency. This has led to the widening of the tax base and to the rationalization of the fiscal regime.

Both the CSAR and the CRM note that the Government of South Africa has put in place a sound public finance management system as witnessed by the various structures and legislative frameworks established since 1994. There is a consensus among all stakeholders that the South African Revenue Service (SARS) is efficient as described in Box 9.

Box 9: The South African Revenue Services (SARS)[l]

In spite of the challenges in revenue projection noted in this Chapter, the South African Revenue Service (SARS) has been effective in consistently exceeding its revenue target. SARS was established by the South African Revenue Service Act 34 of 1997. Unlike many revenue agencies worldwide, the service is an administratively autonomous organ of the state: it is outside the public service but within the public administration. Thus, although South Africa's tax regime is set by the National Treasury, it is autonomously managed by SARS. The main functions of SARS are to: collect and administer all national taxes, duties and levies; collect revenue that may be imposed under any other legislation; provide protection against the illegal importation and exportation of goods; facilitate trade; and advise the Minister of Finance on all revenue matters. Due to efficiency gains in tax administration, SARS has over time been able to implement fundamental tax policy reforms that have improved the culture of tax compliance and contributed to SARS's success in consistently exceeding its revenue target. Consequently, the South African economy has an impressive tax revenue to GDP ratio of over 26 percent.

l. Compiled from APRM South Africa Report. 2006.

Theme 3: Corporate Governance

Under the theme "Corporate Governance', it is indicated that South Africa has developed the King I and II reports, which are home grown and widely accepted by many countries in Africa and beyond. The King I report was published in 1994 with a view to enhancing South Africa's private sector competitiveness. It contributed immensely to corporate governance law reform.

The King II report, published in 2002, has contributed significantly to the enhancement of corporate social responsibility and forms the basis for the Triple Bottom Line (TBL)[71] concept which requires companies to report on issues such as social transformation, ethics, environment and socially responsible investment. The reports recommend principle-based benchmarks for corporate governance that are not legally binding. While compliance to the King II Code is a requirement for companies listed in the Johannesburg Stock Exchange (JSE), it is voluntary for those that are not listed. Compliance is expected by state owned companies, non-state owned companies and also South African companies operating outside of South Africa.

The APR Panel recommends that measures to oversee and enforce adherence to King II and the Global Reporting Initiative should be taken (See Box 10).

71 The Triple Bottom Line (TBL) is a move away from the single bottom line (that is, profit for shareholders) to a triple bottom line, which embraces the economic, environmental and social aspects of a company's activities.

Box 10 : The King Reports

The King I and II Reports that are home-grown to South Africa have been accepted by many countries in Africa and worldwide as being very comprehensive and this is a remarkable achievement. These reports will continue to influence corporate governance in South Africa, Africa and the world for many years to come. King II not only touches on the significant aspects of Corporate Governance: Boards and Directors; Risk Management; Internal Audit, Integrated Sustainability Reporting; Accounting and Auditing and Compliance and Enforcement but also establishes the nexus between economic, societal and environmental goals. It addresses issues such as social transformation, ethics, safety, health, environment and social responsibility in Africa.

In the South African context the King's Code deals specifically with matters relating to Employment Equity and Black Economic Empowerment. It emphasises the need for companies to move from the single to the triple bottom line which embraces the economic, environmental, and social aspects of a company's activities.

The King II Report has played a pivotal role in promoting corporate integrity in South Africa through its influence on legislative reforms and regulatory measures, the JSE listing requirements and the banking sector regulations. It has also led to the update of the "Protocol on Corporate Governance" for the Public sector.

The King Reports introduce seven characteristics of good corporate governance, namely: discipline, transparency, independence, accountability, corporate responsibility, fairness, and social responsibility.

The Johannesburg Securities Exchange (JSE), which provides a market for trading in equities, equity derivatives, agricultural products and interest rate products, also has a parallel market for small, medium and growing companies known as the Alternative Exchange (Altx). With a view to enhancing corporate social responsibility as described in the King II report, the JSE developed criteria to measure the 'triple bottom line' performance of volunteering listed companies. The progress made by the JSE to boost investors' confidence and its thrive to adhere to corporate social responsibility can be considered as a best practice for the governance of the mineral sector as shown in Box 11.

Box 11 : The Johannesburg Securities Exchange

The JSE is a world class exchange with simultaneous listing and trading through the London Stock Exchange. All settlements of JSE trades are guaranteed and take place electronically through the STRATE (Share Transactions Totally Electronic). STRATE is a central securities depository that provides the means for the electronic settlement of all financial instruments in South Africa. The JSE has been able to maintain a zero failed- trade status (a 100% success rate since inception of STRATE in the main order book).

The JSE has a real time market surveillance systems used in combating insider trading. All companies listed on the exchange are required to comply with IFRS and the King Code requirements which help boost investor confidence. The Alternative Exchange provides a platform for listing for smaller companies. Yield X provides a one stop shop for interest rate products. The Social Responsibility Index and the Social Investment Exchange help companies assess their triple bottom line activities.

The Broad-Based Black Economic Empowerment (BBBEE) Act (2003), which passed into law in January 2004, is intended to guide the transformation process in South Africa into one that is broad-based. It is designed to allow more equitable distribution of income and to foster changes in ownership and management structures. It also strives to boost the participation of previously disadvantaged segments of the society in various business sectors. As part of its procurement rules, the BBBEE legislation is used at all levels of government to employ black owned contractors. There is a points system that is used in awarding contracts whereas companies with the higher number of previously disadvantaged people and women have extra points. According to the Country Review Mission, the development of BEE charters was considered by stakeholders as having transformed commercial and industrial activities in the country. However, stakeholders emphasized the fact that corporate social responsibility should address the problem of unemployment.

It is observed in both CSAR and CRM that disclosure of material information that is required by the South Africa legislative framework, in particular the legislation that provides the right for the public to access information under the Promotion of Access to Information Act (PAIA) have enabled investors, shareholders and other stakeholders to make informed decisions, which is crucial to attracting investment. The CRM further notes that the PAIA is believed to be the only one in the world that allows access to records of both public and private entities. It is also underscored that the Triple-Bottom Line reporting from the King II report and the Global Reporting Initiative (GRI) have completely transformed information disclosure by private and public entities.

Moreover, the second progress report notes that the Companies Bill, which is a legislation that is key to the governance of companies, has been enacted in February 2009. The Act intends to promote the development of companies and encourages active participation in economic organization. It is also designed to ease regulatory burden and make company registration process more effective, by integrating all procedures into one regulatory regime. It will enable to address the transformation issues such as the BBBEE. The report further notes the release of the King III report in September 2009, which requires a reflection on the impact of business in society and the realization that business should be done ethically. The establishment of an investors' code is also mentioned, whose aim is to provide guidance to institutional shareholders' responsibilities, including consideration for environmental, social and governance issues.

Ownership

Under the theme "Socio-economic development", the CSAR stresses that socio-economic development strategies and programmes are fully owned by South Africa both in their formulation as well as in their implementation and the CRM considered the ownership of development programs as a best practice as illustrated in Box 12 below.

Box 12: Self-Reliance in Funding Development Programmes

The CRM commends the South African government and the country's overall leadership for their efforts in materialising the principles of socio-economic development ownership and self-reliance, particularly in the areas of ownership and funding. Unlike most African countries, South Africa's self-funding amounts to 99.6 percent of its development expenditures. The country receives only 0.4 percent from foreign donors.

Income tax constitutes South Africa's main revenue source. Residents are taxed on their world-wide income and non-residents are taxed on income generated from South African sources. Companies are taxed at a rate of 29 percent. Additionally, a secondary tax is levied on companies at a rate of 12.5 percent on all income distributed by way of dividends. In addition to income tax, there are capital gains tax (tax on disposal of assets); VAT (14 percent on goods and services) and other duties such as customs, excise, estate and stamp duties.

Generally, SARS is fairly efficient and effective at mobilising revenue. The result is a self-reliant country which is able to take charge of its destiny and align resources towards identified national priorities. This is a best practice, which all African countries should strive to attain.

Source: Country Self-Assessment Report, Country Review Mission Findings, and SARS (www.sars.gov.za)-South Africa APRM Report.

The APR Panel recommends the prioritization of environmental protection in light of the mining sector and high rural poverty and to address the issue of institutional and human capacity weakness through a comprehensive capacity building and skill development policy to ensure that the human and institutional dimensions of self-reliance and self-sustaining development are strengthened.

Fact Sheet 4: Uganda

The discovery of oil in Uganda was announced in 2006 but commercial activity and oil revenues are only expected after 2013. There are both high expectations by the general public including those of increased national prosperity and the end of aid dependence and apprehension that Uganda might be affected negatively by oil wealth with increasing corruption, political instability, environmental degradation and increasing inequality.[72] The objective of this case study is to establish through the review of the APRM reports the extent to which the building blocks for a good management of the resource exist in the country.

Uganda and the APRM Process

Uganda is one of the first countries that have acceded to the APRM in 2003. Since the National Planning Authority (NPA) is the agency in charge of managing and harmonizing national and decentralized planning in Uganda, it was designated as the NEPAD/APRM National Focal Point institution. The APRM support mission was conducted in February 2005, led by Professor Adebayo Adedeji. The inauguration of the APRM Commission by

72 African Development Bank. 2009. Managing Oil Revenue In Uganda, A Policy Note. OREA Knowledge Series n1. March 2009. http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/Managing%20Oil%20Revenue_in%20Uganda%20ENG%20version_01.pdf.

President Yoweri Museveni and the launch of the APRM country self-assessment process took place during the National Sensitization Workshop that was held in February 2007. The APRM is comprised of 21 members to ensure representation of all stakeholders.

As requested in the APRM Guidelines, the Country Self Assessment Report and National Plan of Action (NPOA) were validated by national stakeholders in five intensive one-day workshops, one at national level and four in the regions. Uganda submitted its CSAR and a draft NPOA addressing capacity constraints to the APRM Secretariat in December 2007, thus paving the way for fielding the Country Review Mission (CRM). The CRM was conducted in February 2008. The first annual progress report on implementation of the National Plan of Action, covering the period between 1st July 2008 and 30th June 2009 was completed in June 2009.

Experiences and Lessons for Mineral Resource Management: Findings from the APRM Report

Theme 1: Democratic and Political Governance

The history of Uganda has been one marred in conflicts from pre-colonial, colonial and post-independence periods. The APRM acknowledges the efforts made by both government and Non-Governmental Organizations (NGOs) to manage the various conflicts and to move towards peace building and post-conflict reconstruction and development. However, instability persists in some parts of the country. While inter-state conflicts have been resolved for the most part, the Great Lakes Region being an unstable one, political instability could reduce investors' confidence and increase the cost of doing business hence the need to address these issues for the good governance of mineral resources governance. The APR panel recommends to ensure amicable resolution of land disputes and conflicts through amendment of the 1998 Land Act and to step up efforts to ensure peaceful resolution of the armed conflict in collaboration with regional, continental and international bodies, among others. The NPOA more or less took into account the recommendation of the APR Panel and added them as actions to be implemented.

The first progress report on the implementation of the NPOA indicates that the efforts geared towards amending the 1998 Land Act and formulation of the National Land policy, after consultations with a wide range of stakeholders, has laid the basis for achieving consensus on these highly controversial issues. It is also noted that security had been restored in Northern Uganda, despite the failure by the Lords' Resistance Army (LRA) leader, Joseph Kony to sign the Final Peace Agreement in Juba on 10th April 2008. With regards to inter-state conflicts, it is indicated that frameworks have been put in place to manage border disputes, which enabled potentially volatile situations with neighboring countries to be harmoniously and amicably managed.

A well designed decentralisation process, by devolving power from the center to the local areas, has the propensity to transform leadership and empower the local population. If accompanied by an increase in the empowerment and active participation of the population, it addresses two prerequisites for an effective management of mineral resources: transformational leadership and followership; and credible public participation.

Under the theme 'Democratic and Political Governance' It is noted in the APRM report that decentralisation in Uganda had resulted in a 'reasonable' level of popular participation in the process of formulating development policy and planning at all levels. Uganda's decentralization represents a radical transformation of the mechanisms of governance towards political, administrative and fiscal devolution of power.

It happened quickly and with strong political commitment from the top. The APRM Panel considers the decentralization process in Uganda a best practice with lessons for other African countries (See Box 13). However, according to the CRM, it emerged from consultative meetings with key stakeholders that what started off as genuine decentralisation may be degenerating into re-centralisation, as local councils are heavily dependent on central government.

Box 13- Best Practice: The Decentralisation Process in Uganda

The decentralisation system that was established in Uganda in 1993 has increased opportunities for citizens to participate in decision making regarding the type and quality of public services they want. At district level, the District Chairman (LC 5), the political head of the district and the District Council, who execute governance functions, are elected by their communities. The District Council caries out its functions through a number of committees, which include the Production and Marketing Committee; Health and Environment Committee; Education Committee; General Purpose Committee; Finance Committee; and Works and Transport Committee. The District Council performs all the legislative functions of local government, while the local public service headed by the Chief Administrative Officer (CAO) is charged with the responsibility of implementing the decisions of the District Council. Every local government is required to produce a budget framework paper with a clear plan for enhancing local revenue.

Since the decentralisation process began, numerous achievements have been realized in terms of improving governance and service delivery through democratic participation and community involvement. Despite these achievements, Uganda still faces a number of challenges that include, among other things, technical capacity deficiencies in the local governments to undertake required activities adequately; lack of a clear monitoring and evaluation system that feeds into the decision-making process; limited financial resources and devolution of financial resource allocation; and limited effective participation of community members due to lack of capacity.

Source: Compiled by the CRM, February 2008.

The existence of strong institutions is an important feature for good governance as they could serve as oversight mechanisms; improve checks and balances and accountability. The 1995 Constitution provides for four key institutions to promote democracy: the Uganda Human Rights Commission (UHRC); the Inspectorate of Government, or Inspector-General of Government (IGG); the Auditor-General; and the Electoral Commission (EC). While the establishment of the institutional framework for promoting democracy is commendable, it is worth noting that the process faces major constraints. The CRM learnt after consultations with stakeholders that these institutions faced enormous challenges to deliver on their constitutional mandates, in particular the lack of resources that the government is supposed to provide. The APR Panel recommends that Uganda should provide adequate resources for enhancing the institutional capacity of key institutions for promoting democracy, including the UHRC, IGG, Auditor-General and EC.

Although the Constitution prescribes the separation of powers among the key organs of the state, in actual practice the dominance of the executive over the judiciary and the legislature is the norm and hampers the equilibrium between power and checks and balances. The CRM noted that while the judiciary and legislature were administratively and functionally independent, they were not financially autonomous. The APR Panel recommends that Uganda should promote a culture of respect for the Constitution, constitutionalism and the rule of law; ensure an effective balance of power and checks and balances between the executive, the judiciary and the legislature; and develop a constitutional and institutional framework and mechanism for managing disputes between the executive, judiciary and legislature, among others. The NPOA takes into account the recommendations of the APR panel and vows to undertake all the issues that were mentioned in the APR recommendations.

The first Progress report notes that some improvement has been made in upholding the principle of separation of powers between the key organs of the state. It indicates that the legislature is administratively and functionally independent and that the Parliamentary Commission has been significantly strengthened to enhance financial autonomy.

Theme 2: Economic Governance and Management

Under the theme “Economic Governance and Management’, in order to promote macroeconomic policies that support sustainable development, the NPOA vows to build capacity within the government to monitor the volume of oil reserves and production; build capacity within the government to collect revenue from the oil industry; establish mechanisms to ensure transparency in the management of oil resources; broaden the tax base; strengthen the government’s capacity to collect non-oil tax revenue; review existing policies and laws enabling fiscal decentralization; allocate more resources to agriculture, industry and infrastructure in line with agreed targets; and develop a strategy to transform the economy by emphasizing industrialization, among others.

In the progress report, it is noted that an Oil and Gas Policy was formulated in February 2008 with a view to building the capacity of the government to monitor the volume of oil reserves and production on a daily basis. It is also reported that the drafting of a National Oil and Gas Law by the Ministry of Mineral and Energy Development had started with the formulation of the principles for the new petroleum exploration and production. In addition, it is noted that Government has carried out an assessment of the existing capacity within the Department of Petroleum Exploration and Production in the Ministry of Mineral and Energy; that the staffing levels and technical competence requirements in the Department have been reviewed and that more staff has been recruited.

With regards to capacity building in the collection of revenue, it is underscored that training was undertaken for officers at Masters Degree level in Norway, in Petroleum Economics, with support from the Government of Norway. Moreover, it is noted that Uganda had finalized plans to establish in July 2009 an Institute of Petroleum Engineering, affiliated to Makerere University, which would be located in Uganda and would offer a Diploma in Petroleum Engineering. Concerning the enforcement of capacity to collect anticipated revenues from the oil industry, an Inter-Ministerial Taskforce on Oil and Gas, with representation from among others, Ministry of Mineral and Energy and Uganda Revenue Authority (URA), has been established in the Ministry of Finance, Planning and Economic Development. It is tasked to design a mechanism for resource monitoring and revenue collection and administration. The capacity of URA is being strengthened through training. In addition, income tax laws have been amended to incorporate taxation of Petroleum revenue. These proposed amendments have already been incorporated in the Finance Bill.

As a challenge, it is underscored in the report that the government should expedite the enactment of the legislation on the National Oil and Gas. This would lessen the anxiety surrounding the future management of the revenues and also provide the basis for joining the Extractive Industries Transparency Initiative as recommended by the Country Review Report.

Theme 3 : Corporate Governance

Under the theme "Corporate Governance", the APRM report observes that the government should be mindful of sending the wrong signal to investors by interfering in the business sphere through actions that are meant to accelerate the rate of private investments in the country. Indeed, the CSAR reports a widespread opinion among Ugandan employers and employees that foreign investors and business persons are given preferential treatment by public authorities to the detriment of local entrepreneurs. It is reported in the CRM that the allocation of long-term tax holidays or industrial land to newcomers has jeopardised the competitiveness of existing domestic industries in similar sectors and that the inequitable enforcement of tax payments could hamper the leveling of the playing field. If not addressed by public authorities, such practices could enforce market distortions which, in the long run, could be counterproductive for Uganda's image as a potential investment target.

The APRM report noted that the proposed exploitation of oil in the north-western region called for reforms and that Uganda would need to design an adequate policy regarding the utilization of proceeds from oil and environmental protection after consulting local communities to reach consensus on an inclusive framework. It also notes that the northern region has also been deprived of private investments as a consequence of the 20 years of military instability. During interactions with the CRM, business community members complained about the unpredictability of Ugandan tax policy, which prevents adequate business planning.

The APR Panel recommends that Uganda should continue with the establishment of a fully fledged one-stop facility at the UIA to address investors' formalities, and give the institution adequate human and financial resources to promote Uganda as an attractive investment destination, including a comprehensive institutional communication plan targeting both international and domestic investors; accede to the EITI and design a specific policy on oil extraction as a matter of urgency; and develop comprehensive and relevant curricula for industrial training and skills development through a public-private dialogue platform; among others.

Ownership

While commending the achievement of Uganda in building a sound institutional framework, the CRM is of the view that the government should embark on a plan to reduce donor dependence over time. The reported discovery of oil is also likely to fast-track the achievement of this goal. This would, hopefully, reduce the country's overdependence on external aid and over time eliminate it. There is, however, a need for Uganda to handle the use of oil revenue carefully to promote socioeconomic development (Box 14).

Box 14 : Uganda – Avoiding the "Curse of Oil"

The reported discovery of oil in the Lake Albert Basin in Uganda has generated a great deal of excitement about economic prospects for the country. Revenues from oil can help fund infrastructural projects and improve social service provision. More significantly, the oil revenues can be used to reduce the country's high dependence on donor funding. Although the size of the oil field has not yet been confirmed and there is no guarantee that production will be commercially viable, the early indications are positive. Even limited oil production would make it possible for Uganda to satisfy its own requirements for refined petroleum products. Yet the dangers of the oil discovery are obvious. Given the track record of other African oil producers, there is a very real danger that oil production could cause more problems than it solves.

The sudden injection of large amounts of money – or even the prospect of its arrival – could destabilise a political system. Ambitious politicians can become eager to take power in order to take a share of the new revenues. At the same time, rapidly rising income can create inflationary pressures and divert attention from other sectors of the economy that may be more important for employment creation.

This negligence could result in an economic phenomenon known as the "Dutch disease". It is, therefore, important that the government should take measures that will enable the country to maximise its gains from the oil proceeds without causing distortions in other sectors of the economy and political conflict.

Source: Fieldwork notes, Uganda, 3–23 February 2007.

In Uganda, aid dependence is a recurrent concern in all the thematic areas. Many of the country's initiatives, especially its development programmes, are subject to donor funding. The APR panel recommends to prudently harness the expected oil revenue into productive sectors, such as road and energy infrastructures, which contribute to further integrate the national economy and enhance socioeconomic development and strengthen the monitoring and evaluation systems and indicators. The NPOA strategies include to undertake a thorough review of the effectiveness of aid to Uganda; put in place a strategy for further reduction of the country's dependence on donors overtime and prudently harness the expected oil revenue into productive sectors and infrastructure development in order to integrate the national economy further and contribute to enhancing socioeconomic development.