



Towards A Framework for Extractive Industries Governance Assessment (FEIGA)

Report to the World Bank Institute
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'Governance is the exercise of public authority with regard to society through the agencies of government—executive, legislature, judiciary—in the context of the institutional and policy framework in place. It is about the processes by which bargains between state and society are made, including policies and institutions, and how they are subsequently implemented and monitored by organizations.' Rents to Riches, World Bank, 2012

1. Good governance is critical to development. In no sector is this more clearly demonstrated than in extractive industries (EI). Poor choices in resource-rich countries result in poor development outcomes for society at large, for economic and political development, and for the environment. Poor choices often stem from reactive decision making processes along a whole of chain of decisions that need to be made, from initial decisions to explore for resources, to the implementation of sustainable development policies and projects financed by resource revenues. Such decisions are typically characterized by secrecy, corruption, asymmetry of information, poor prioritization and planning, weak capacity, limited participation and a lack of check and balances. Such risks are particularly relevant in Africa where many democratic institutions are young and vulnerable. More than 250 million Africans live in countries where natural resources account for more than 80% of exports and, in some cases, more than 50% of government revenues. Over 50 World Bank client countries are now resource-dependent.
2. Since the launch of the 'Extractive Industries Transparency Initiative Plus Plus' (EITI++) the World Bank Group has made progress on developing and implementing a comprehensive value chain approach on how to translate wealth from extractive industries into growth and development impact in Africa. The approach is framed as one to improve the governance and hence development impact of EI, recognizing that governance weaknesses at one stage of the decision making chain undermine development impact of the whole, even if there may be sound processes at other stages. Integral to this governance approach are measures to strengthen mutual accountability: the accountabilities of business, of government, of

civil society to each other.¹ Greater accountability can be built through multi-stakeholder processes that promote transparency and stakeholder participation.

3. The World Bank Institute is now coordinating World Bank Group efforts to develop guidance for operational staff in resource-rich countries in terms of improving governance and the development impact of the sector on the ground. But the need for a comprehensive analytical framework to diagnose, assess and monitor extractive industry governance is widely recognized among stakeholders and this paper may be able to start to make a broader contribution: a widely accepted, comprehensive analytical framework would facilitate efforts within and across countries to improve extractive industry governance. (In response to a series of independent evaluations, Bank management undertook in 2004 that governance capacity building - which was stated to be a priority for the Bank - would be informed by evaluation of quantitative and qualitative indicators of governance capacity.)
4. This short paper is an attempt to map out a framework for the assessment of the governance of extractive industries. It is intended to serve as a basis for discussion. We do not attempt to generate quantitative indicators here but rather to generate a hierarchy of questions that will start to provide a structured analysis of strengths and weaknesses, and thus start to provide a guide the formulation of prioritised action plans to improve governance. The framework can also be used to understand the risks associated with engagement in the sector, including reputational risks for the World Bank, and policy risks that the mismanagement of natural resource rents may undermine development.

¹ The Extractive Industries Review, December 2003, recommended that the World Bank should, 'lift up civil society so it is balanced in the triangle of partnership between governments, business, and civil society'.

What is the resource paradox?

The existence of a resource paradox or curse is regularly disputed but there is a consensus that the quality of governance is decisive in determining whether a society can convert finite resource wealth into long term sustainable benefits. If weak governance is the starting point it is likely that governance will weaken further. The symptoms of the curse can include: poor economic policies and performance; a damaged social contract and stalled political development; the development of institutionalised corruption; and ultimately the looting of assets and violent conflict.

There are severe macroeconomic problems in managing the volatility that most extractive-based economies face. Exuberant public expenditure programmes tend to be established in good times, and either become unsustainable in bad times, or promote excessive borrowing. Public spending boom and busts harm long run growth prospects. Dutch disease tends to discourage diversification and extractive industries often remain, or become, economic enclaves. Poor economic policies and outcomes discourage further investment. A favorable endowment of natural resources can serve to discourage investment in human resources: in effect, politicians can lose sight of growth promoting policies, and also lose sight of the need to promote 'value for money'.

The existence of revenue flows from an extractive sector - resource rents - can reduce the need for taxation of the broader economy but this in turn can reduce the strength of the contract between the tax payer and the government. The rents provide opportunities for patronage and clientelism. This can damage the development of citizen expectations for accountability by the government and damage the development of democratic processes. Elite capture of resources, combined with reduced economic diversification, can lead to much increased inequality. And economic instability tends to create political instability.

The development process inevitably involves conflict, but the existence of a 'spot source' of income combined with weak governance can lead to violent conflict and open warfare.²

As Paul Collier has said, the 'quality of governance' is just fancy language for whether decisions are well taken and properly implemented. But harnessing natural assets for prosperity depends on a long and complex decision chain, and if any one link is broken the chain as a whole is broken, 'The entire chain needs to be gotten right again and again. Each decision is difficult, critical and reversible ...'³

² Small and medium scale artisanal mining does not give rise to 'spot sources' of income in the same way, and the macro-economic and macro-political effects are much less pronounced. However the sector generates significant challenges and opportunities which are beyond the scope of this paper to address.

³ The Plundered Planet, Paul Collier, Oxford, 2010

5. We do not aim to duplicate the very many existing excellent quantitative indices for the sector, which include:
 - the Revenue Watch Index, an index of disclosure about the natural resources sector;
 - the World Governance Indicators, a research dataset summarizing the views on the quality of governance broadly defined in 215 countries provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries;
 - the World Bank's Country Policy and Institutional Assessment (CPIA), a diagnostic tool applied to all Bank client countries that is intended to capture the quality of a country's policies and institutional arrangements.

These indices offer important perspectives on the issues faced by all developing countries⁴. Similarly, we do not aim to duplicate the excellent advice available to governments on the broad economic, environmental, social and technical issues for management of the sector, such as provided by the Africa Mining Vision⁵, the Natural Resources Charter⁶, or the highly specific IMF Code of Good Practice on Fiscal Transparency. And we would also acknowledge excellent guidance for companies including ICMM's Mining Partnerships for Development Toolkit, and the OECD's Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas⁷.

6. This framework applies primarily to governments overseeing extractive industries, but also raises governance issues relating to private companies and civil society, although there is less consensus on the specifics of good corporate governance and on the essential elements for governance of CSOs. The questions are meant to be relevant to all extractive sectors, but emphases and findings may vary for different commodities.

⁴ Other quantitative and qualitative indices include Afro Barometer, the Bertelsmann Transformation Index, Freedom House, the Mo Ibrahim Governance Index, the UN Economic Commission for Africa Governance Study and the APRM, as well as the World Banks Actionable Governance Indicators (AGI), available through the AGI portal.

⁵ See www.africaminingvision.org. See also Minerals and Africa's Development, The International Study Group Report on Africa's Mineral Regimes, ECA, AU, 2011, as well as the AMV Action Plan.

⁶ See <http://naturalresourcecharter.org/>

⁷ See <http://www.oecd.org/dataoecd/62/30/46740847.pdf>

7. As noted above, this framework is not intended to provide measurable indicators. Many of the issues explored in the framework are not amenable to a single quantitative measure, and there are complex inter-relationships between many of the issues that could be hidden or misunderstood through a simple quantitative approach. But there is scope to develop scoring criteria that would define levels of performance for particular aspects of governance covered in the framework. Some ideas are presented in Annex 2. The situation on the ground can change very quickly and a quantitative index, regularly updated, would provide a glimpse of progress or regression. Traffic lights might be a useful tool, as used by the NR Charter.
8. The development of scoring systems would require initial field testing and then regular calibration, and would be a major exercise far beyond the scope of this paper. There is a danger it could become a displacement activity that would not result in improvements in governance. The purpose of this framework is to map out the scope for assessment, to prompt users to ask the relevant questions, and to test out the inter-relationships between key issues. It is intended to provide a basis for the further development of indicators and assessment criteria.
9. Users of this framework should draw on a wide range of evidence to address the questions. This may include the many excellent existing indexes of governance earlier quoted. The extent to which governments make available information on the regulation of extractive industries and the management of revenues should be assessed. Existing sector studies and reviews should be consulted, along with EITI reports and analyses by independent watchdog organisations, for example Global Witness.
10. This paper has been prepared through a process of consultation with a range of leading organisations and individuals outside the Bank listed at Annex 1. Consultation has also been undertaken across the Bank Group. And this analysis builds on the Bank's own experience, in particular recent work in Ghana and in Mongolia, which has been separately reported upon⁸. That analysis records that the discovery of large-scale mineral, energy or metal resources has significant and immediate impact on development prospects, both positive and negative. Government perspectives and behaviors, policy and programs, will change rapidly, as will public sentiment and expectations. The report suggested

⁸ World Bank Engagement in Resource Rich Economies - Options and Issues with a Focus on Governance, William Kingsmill, The Policy Practice, Julia Mensah, World Bank Institute, February 2013

that, in order to have impact in supporting countries exploit resource windfalls, external players—public and private—will need to have the capacity and resources to respond very quickly to these changed circumstances and incentives. It is important at the outset to establish realistic expectations about the scale of the economic, social and environmental implications of a specific discovery. We believe that the analytical framework presented here will be relevant even in countries where the scale of a discovery is relatively small.

11. The Bank Group has proven it can play a key role in supporting both ‘supply-side’ and ‘demand-side’ governance responses to a discovery, as well as supporting better management of resources. But this level of response requires a strong field presence and an ability to integrate and coordinate Bank approaches and programs, which in turn requires exceptionally strong leadership. It is important that field-based staff have good networks in-country and in HQ and, equally importantly, possess knowledge of other sources of expertise that may be required. The Bank has helped open up policy space for broader participation. (The experience in both Ghana and Mongolia also demonstrates that the Bank has unique strengths to build upon if it can coordinate and integrate work across the whole Group, but that it also needs to be conscious of potential conflicts of interest, and cannot be complacent about its own governance challenges.)
12. There are many different definitions of governance and good governance. In this paper we define governance in terms of three dimensions: accountability (or demand-side governance), capability (or supply-side), and inclusiveness:
 - Accountability is the extent to which citizens can hold governments, political leadership and private companies responsible for their performance and conduct. It covers both transparency and participation. Transparency is the ‘currency of accountability’: transparency allows the generation of information, which can then be communicated and used to place pressure on decision makers or hold them to account. Strong institutions are of fundamental importance. On the whole, countries with strong institutions and good policies do better than those with weak institutions and weak policies. And those that start off with weak institutions may find that the process of resource exploitation weakens them further. Parliaments, political parties, civil society organizations, think tanks, universities, trade unions, business associations, faith-based organisations and the media - which collectively we can term the ‘public sphere’ - can use information to build accountability, while the institutional context, such as free speech laws and courts, provides the framework

in which this takes place⁹. Accountability is doubly important in resource rich economies because the normal ‘social contract’, the taxation of citizens by governments to provide services, is very often attenuated.¹⁰

- Capability is about the ability of governments and public organisations to take decisions and get things done through effective policies and programmes. It's about mobilising and managing resources - human and financial - and deploying information and management systems, within an agreed set of rules. These may be formal rules, such as laws and regulations, or informal ones, such as local customs and traditional practices. For capability to exist, sufficient revenues must be raised - which must be appropriately allocated and properly accounted for - and skilled and motivated people must be recruited to formulate and implement effective policies, to run systems, and to deliver effective programmes. The extractive sector demands strong competencies in managing economic policy (to design appropriate fiscal rules, to manage revenue, to take account of volatility, to promote diversification, to manage the exchange rate, to manage debt), as well environmental and social policy. They also need access to highly technical expertise in metals, minerals and energy. In most countries it is important to build capability both at a national and at sub-national level: the sub-national level has often been neglected in the past but is critical. Just as there is a value chain across the sector, so there is a chain of mutual inter-dependence between various tiers of government. And there are challenges of coordination between these tiers, just as much as there are challenges of coordination along the value chain.
- Inclusiveness in this context is about ensuring that all stakeholders are consulted and taken into account in decision making processes. We need to distinguish between inclusive outcomes (ie an ‘equitable’ distribution of benefits) and inclusive governance processes. We are more interested in the latter. But governments should be concerned that all members of society have a stake in society and are not excluded from the mainstream (or that the mainstream itself is not excluded from opportunities). This is partly about ensuring that rules apply equally to everyone in society. This requires that all groups, but particularly the most vulnerable, have opportunities to improve or maintain their well-being. The availability of revenues from natural resources provide the potential to increase those opportunities, but in fact the

⁹ See The Changing Wealth of Nations, World Bank, 2010

¹⁰ The International Study Group report suggests, ‘There is usually a mismatch between the expression of public participation rights in formal instruments and its implementation. There is a need to redress the weight of existing power relations, especially for marginalized and vulnerable groups, to address the deep seated authoritarian elements of local cultures and some public institutions and reduce the resource constraints of public institutions and those affected by or actively pursuing public participation’.

pattern of development in resource rich economies tends to make diversification of the economy difficult. At the same time, the extractive sector itself, and economies dominated by the extractive sector, provide few opportunities, especially for women¹¹. So governments need to devote particular attention to developing policies and programmes to promote opportunity. A second category of issues relates to the use of the finite revenue from the sector. All countries have to consider how much revenue should be invested to generate sustainable growth, and for future generations, and how much should be used for current consumption. There are also issues relating to the share of revenue between the communities where it is generated and with wider society. 'Equity' is thus an important governance concept, although one that will be defined in different ways in different countries and at different times.

13. It is important to distinguish between governance assessment and political economy analysis. As a governance assessment tool, this framework provides a tool to identify *WHAT* are the governance challenges in the sector and *WHERE* interventions need to be focussed. Political economy analysis would focus on questions of *WHY* these problems occur, and deepen understanding of *HOW* they may be resolved. Governance assessment can be a useful input into political economy analysis. However, it will only provide a static picture of institutions and associated practices, without analysing the changing processes and political dynamics at work. The framework that is proposed here is thus not a substitute for undertaking solid political economy analysis.
14. Political economy analysis is essential, as IDASA suggests, because 'Decision-making within governments and the way in which various institutions, commissions, processes, etc, engage with each other is often dependent on dynamics that include policy, legislation and individual and party interests, amongst others. A structured and clear picture of how decisions are taken and carried out is challenging within a context that is highly fluid, dynamic and often influenced by specific actors and institutions. Hence, a straightforward mapping of institutions and associated processes can only yield a limited insight into internal political dynamics that, ultimately, shape political will. Further limiting the effectiveness of mapping institutions and political dynamics is the ever-changing context, where key stakeholders change over time, rendering mapping exercises highly time-specific. Understanding the political economy of decision-making needs to focus on power, institutions and agency. Key drivers, whether they are individuals, institutions or processes, should be mapped and understood within a broader political context. Socio-political cultures should figure prominently in mapping institutions and associated processes,

¹¹ See The Oil Curse, Michael Ross, Princeton, 2012

as these provide the perceptual framework in which the political economy of decision-making takes place.¹² In both Ghana and Mongolia the Bank teams underpinned their programmes with in-depth political economy analysis.

15. To provide a structure for the ‘long and complex chain of decisions’ we use the value chain developed by the World Bank¹³, slightly amended, consistent with that deployed in the Extractive Industry Source Book¹⁴:



(The original 2009 value chain excluded the first two chevrons, which are particularly important for governance. The Source Book version excludes 3 and 4 as separate elements.) This value chain allows for the fact that different decisions need to be taken at different times. For a country just setting out on the development of its extractive sector the steps will be sequential (although 5 will need to be tackled early on). But the framework is intended to be helpful where countries are at a mature stage of development of the extractive sector, as well as to countries where the sector is relatively small.

16. Below is a simplified matrix using this value chain and the three dimensions of governance defined above. In some cases the designation of particular questions is problematic in that they apply to several boxes. In such cases we have tried to avoid duplication. There is a longer version of Chevrons 1 and 2 of the matrix at Annex 3.

¹² The Development and Use of Governance Indicators in Africa: A Research Overview, IDASA/UNDP-OGC, Oslo, 2010

¹³ Extractive Industries Value Chain, World Bank, 2009

¹⁴ <http://www.eisourcebook.org/>

	Accountability	Capability	Inclusiveness
Chevron 1 Policy, Legislation and Regulation	<p>Do laws give citizens and the private sector opportunities to <u>input into policies and laws and regulations</u>? Are there formal requirements for consultation, including for amendments to policy and legislation. Does policy and legislation contain provisions on citizens' <u>access to information</u>?</p> <p>Is <u>policy and legislation actively debated and discussed</u> within society? Does the government support, or facilitate support and training for, the participation of civil society organisations? Does it provide public education?</p> <p>Are there <u>credible, effective and independent civil society organisations, including think-tanks, academic departments, media, NGOs, unions, faith-based organisations</u>? Are they able to hold government and private companies to account? Do traditional and local leaders play an important role?</p>	<p>Are <u>policy and legislation up to date, coherent and consistent</u>?</p> <p>Is the <u>executive equipped</u> to identify, design and appraise policy options and legislation and regulation?</p> <p>Is the <u>national assembly equipped</u> to debate and evaluate options?</p> <p>Is the <u>justice system equipped</u> to enforce legislation and regulations in a timely manner in the context of policy? Is there evidence of judicial independence?</p> <p>Do <u>patronage systems undermine effectiveness</u>?</p> <p>Are the <u>mandates of the various levels of government</u> - national, regional, local – clear and supportive? Do regional and local governments have the capacity to deliver on their mandates?</p>	<p>Are <u>tri-sector partnerships</u> (government, private sector, civil society) encouraged and utilised?</p> <p>Does policy address the division of benefits between <u>current and future generations, and between</u> directly affected communities and the region and nation? Have 'future generation', 'heritage' or 'stabilisation' funds been established?</p> <p>Do <u>political or executive patronage</u> systems favour particular groups?</p> <p>Is there any evidence that <u>consultation with citizens has an impact</u> on policy, legislation, regulations and projects?</p> <p>Does the legal framework recognise <u>traditional rights of local communities</u>?</p> <p>Does the law provide effective means to <u>resolve disputes</u>, including those related to land and water?</p>

	Accountability	Capability	Inclusiveness
	<u>Is parliamentary scrutiny effective</u>	<p>Is there a '<u>whole government</u>' approach to policy involving all relevant departments and agencies? Are there mechanisms for coordination¹⁵</p> <p>Does policy and legislation ensure effective environmental management?</p>	<p>Does the law provide for <u>integrated use of infrastructure</u>?</p> <p>Does policy and legislation serve the interests of both <u>genders</u>? Do participation processes take into account gender?</p> <p><u>Are there effective - formal or informal - means of mediating conflicts?</u></p> <p>Are <u>human rights</u> protected and advanced, including the right to freedom of association? Are there active programmes to reduce human rights violations?</p>

¹⁵ There is a corollary here for the World Bank: does it have a 'whole Group' approach to the sector in a particular country? Are there mechanisms to address cross-sectoral issues? Are responsibilities, including for co-ordination, clear.

	Accountability	Capability	Inclusiveness
Chevron 2 Sector Organisation and Institutions	<p>Do organisations and agencies have <u>appropriate rules and standards</u> for transparency, and for ethical behaviour? Are there effective sanctions for non-compliance? Do they have systems to tackle corruption? Do they report regularly to parliament and to society? Are their reports timely and meaningful? Are they audited? Is action taken on audit reports?</p> <p>In the case of <u>state owned corporations</u>, are the relationships between government and the corporation(s) clear? Are commercial activities/products cross-subsidised, or otherwise subsidised? Is pricing transparent? Are inventory data, management plans and budgets, and accounts for government owned companies accessible to</p>	<p>Is there a <u>clear division of responsibility between the different government institutions</u>? Do they have clear mandates and mission statements, widely disseminated? Are the agencies <u>co-ordinated</u>?¹⁶</p> <p>Is there appropriate <u>separation between regulatory roles and executive roles</u>¹⁷, avoiding conflict of interest? Are there effective arrangements for managing <u>potential conflicts of interest</u>?</p> <p>Is <u>sub-national government</u> empowered and enabled to play its role?</p> <p>Are the <u>sector organisations</u> adequately resourced financially and in respect of staff? Are they 'fit for purpose'?</p>	<p><u>Do sector organisations have clear directions and guidelines</u> on promoting regional, gender, ethnic, religious, and sexual equality in terms of their mandates and their internal operations? Do they report on their performance? Do they have effective policies on conflict management?</p>

¹⁶ Typically these organisations will include ministries, departments and agencies, including a line ministry (for petroleum or mines for example), the Ministry of Finance, the Central Bank, the Attorney General's Chambers, the Ministry for the Environment or Environmental Protection Agency, and often a national oil or mining corporation.

¹⁷ This is a critical issue. There is also a question as to whether there is appropriate separation of advisory and investment roles in the World Bank, especially where there is direct investment in companies by the IFC.

	Accountability	Capability	Inclusiveness
	<p>appropriate scrutiny?</p> <p>Have <u>private companies signed up to codes of conduct</u> for responsible operations in the extractive sectors? To what extent is their behaviour monitored, and are they called to account for improper conduct?</p> <p>Are state owned and private companies required to adopt and implement <u>environmental and social safeguards</u>? Are they required to comply with <u>international codes of conduct and standards and safeguards</u>?</p> <p>Do CSO's have <u>clear and transparent accountabilities</u> to their members?</p> <p>Is the relevant <u>media independent</u>? Is it subject to self-censorship or political control or influence?</p>	<p>Are there effective arrangements in place for recruitment of <u>well qualified staff</u>? Are staff held accountable? Are there codes of conduct that address bribery and corruption?</p> <p>How are appointments made? If on the basis of patronage, does this conflict with effectiveness?</p> <p>Do the agencies and their staff maintain <u>public confidence</u>?</p> <p>Is there appropriate <u>channels for reporting corruption</u>? Are allegations investigated and action taken?</p> <p>Is there institutional capacity to tackle any <u>human rights abuse</u> in the sector?</p> <p>Is there institutional capacity to undertake <u>conflict risk analysis</u>? To prevent or mediate conflict?</p>	

<p>Chevrons 3 and 4</p> <p>Award of contracts and licences. Regulation and monitoring of operations.</p>	<p>Are there clear and transparent criteria, which are implemented, for award of licenses and contracts? Are there clear and transparent appeal processes? Are there channels for resolving disputes or breaches? Are arbitration mechanisms effective? Is the justice system effective?</p> <p>Is geological and contractual information put in the public domain? Are the public notified of proposed projects?</p> <p>Does the contracting process require the demonstration of requisite management, technological and financial capability by contractors?</p> <p>Are systems designed to be resistant to corruption? Are there systems for public officials and politicians to be required to report conflicts of interest or register interests?</p> <p>Are companies required to register political donations?</p>	<p>Are laws implemented, including for safety, for environmental protection? Are contracts enforced? Does the government retain or have access to the appropriate environmental, social and technical expertise?</p> <p>Are licences, concessions and contacts allocated according to efficient and transparent rules? Are there arrangements for independent oversight? Are the agencies and individuals responsible for oversight genuinely independent, and well qualified?</p> <p>Are companies required to adopt and implement environmental and social safeguards? Do they have HIV/AIDS codes and programmes? Does the government actively monitor enforcement of safeguards?</p> <p>Does the government encourage/require companies to comply with recommended international codes of conduct and standards and safeguards?</p>	<p>Are processes open to all interested companies, public and private, domestic and foreign?</p> <p>Do contracts and licences contain provisions requiring companies to promote equality?</p> <p>Do the environmental and social impact assessments adequately identify impacts on affected communities and vulnerable people? Do they propose mitigation and is that mitigation enforced?</p>
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	<p>Are environmental and social <u>impact assessments required</u>, and are they made public?</p> <p>Is the government implementing the <u>Kimberley Process</u>?</p> <p>Are <u>sanctions for accidents and offences</u> large enough to fit the offence, and are they applied? Are reports of serious accidents or crimes investigated?</p>	<p>Does the government <u>track the level of criminal activity</u> in the sector? Is there inter-agency collaboration to combat crime and corruption?</p> <p><u>Is the justice system effective and independent</u>? Are prosecutors and judges knowledgeable about the sector and potential offences? Are legal decisions enforced in a timely manner? Is there appropriate international co-ordination and collaboration?</p> <p>Do contracts include appropriate provisions for <u>rehabilitation on closure of a facility</u>?</p>	
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<p>Chevron 5 Fiscal policy design and administration</p>	<p>Is there a <u>public discussion</u> on key fiscal policy issues such as the balance between investing for growth today and for future generations? On management of volatility and the need to stabilise the economy? On the balance between consumption and investment? On the balance between affected communities and other parts of the nation?</p> <p>Is comprehensive <u>budget information</u> provided in the form of annual budgets, budget execution reports and a medium term financial framework? Do these include all government operations? Is previous out-turn information provided? Is an assessment made of effectiveness of controls?¹⁸</p>	<p>Does the government have a <u>transparent, accessible and comprehensive fiscal policy and budget</u>? Is there a clear link between policy and budget decisions? Is there a fiscal stability law? Are there rules about the deficit/surplus, about savings/borrowing, about expenditure growth, about management of the cycle? Are there policies or rules to deal with volatility? Are there policies or rules to deal with exchange rate appreciation? Does the budget address risks?</p> <p>Are the requisite <u>skills</u> available in the executive and legislature?</p>	<p>Are there arrangements for <u>resource sharing between tiers of government</u>? Is that information publicised by each tier?</p> <p>Are <u>payments made directly to citizens</u>?</p>
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¹⁸ The International Budget Partnership says in its 2010 Open Budget Survey that, 'The overall state of budget transparency is poor. Only a modest minority of countries can be considered to have open budgets while a large number of countries provide grossly insufficient budget information.' See <http://internationalbudget.org>

	<p>Are <u>audits</u> up to date and recommendations implemented?</p> <p>Is <u>parliamentary scrutiny</u> effective? Is there a Public Accounts Committee and is it effective?</p> <p>Are there any <u>CSOs</u> monitoring fiscal policy and the budget? Are they able to access training? Is the <u>media</u> effective?</p> <p>Are systems designed to be <u>resistant to corruption</u>?</p>		
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	Accountability	Capability	Inclusiveness
Chevron 6 Revenue management and allocation	<p>Is the revenue regime <u>transparent</u> and comprehensible?</p> <p>Is the government implementing the <u>EITI</u>? What strengths and weaknesses in EITI implementation have been noted?</p> <p>To what extent are <u>independent watchdogs</u> monitoring revenue flows?</p> <p>Are systems designed to be <u>resistant to corruption</u>?</p>	<p>Does the government have a clear policy on <u>revenue mobilisation</u> from the sector (signature bonuses, royalties, taxes, fees and other payments)?</p> <p>Does the government have a transparent, accessible and comprehensive system of <u>tracking</u> revenue?</p> <p>Are there measures to avoid <u>transfer pricing</u>?</p>	<p>Is the revenue system seen to be <u>fair to both the state and the investor</u>?</p> <p>Is the system suitably <u>flexible</u> in the event of changed circumstances (eg in the case of significant price or cost variation).</p> <p>Are <u>stabilisation clauses</u> designed fairly and appropriately?</p>
Chevron 7 Policies and programmes for sustainable development	<p>Are <u>public expenditure programmes</u> designed to be transparent and readily understood?</p> <p>Does the government <u>actively monitor</u> corruption?</p> <p>Does the government actively and effectively <u>monitor inequality and poverty</u>?</p>	<p>Does the <u>capacity exist to identify, design, appraise, implement, monitor and evaluate public expenditure programmes</u>?</p> <p>Are <u>procurement</u> arrangements best-practice and adhered to?</p> <p>Are there arrangements for <u>independent evaluation</u> of programmes, and are evaluations of good quality?</p>	<p>To what extent are government and civil society actors concerned with policies <u>promoting more equitable opportunities and outcomes</u> from the development processes linked to extractive industries and their revenues?</p>

	Do contracts and licences set targets for <u>local value added and employment</u> ?		Is there a concern with promoting <u>local employment and value addition</u> by developing backwards and forwards linkages? Is there a demand for policies promoting diversification, technology transfer and skills formation, and is government responsive to this demand?
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17. The framework above (and in the Annex) aims to provide a basic structure on which additional dimensions and granularity may be added. It is a draft for consultation. The next step is consultation and, possibly, field testing. The framework can be used in whole or in part, depending on the purpose and the intended audiences for the results. It would be possible to start to put together an approach to quantification, perhaps developing a scorecard and traffic lights, which could be used to define priorities within countries and allow Bank teams and others to compare and contrast performance over time and between countries.
18. Ideally, the selection of governance components to measure and possibly track within a country should be undertaken through a multi-stakeholder process that enables the expression of all stakeholders' priorities and concerns. This could involve creating a new multi-stakeholder forum or mobilizing existing fora, such as those established in the context of existing initiatives like the EITI. Multi-stakeholder processes could undoubtedly improve the specification of indicators for a particular country and for particular institutional circumstances. Verification, triangulation and peer review would greatly enhance the accuracy, reliability and credibility of indicators and the governance assessments. And the dialogue and discussions provoked by the results of the indicator analysis may turn out to be more important than the results themselves. Ultimately improvements to governance will be achieved only through multi-stakeholder action.

Annex 1

People and organisations consulted:

DFID: Justine Davila

Dundee University: Peter Cameron

EITI: Eddie Rich

GIZ: Jana Leutner, Michael Roesch

IADB: Juan Cruz Vieyra

ICMM: Kate Carmichael, Kathryn McPhail

IFC: Clive Armstrong, Liane Lohde

Natural Resources Charter: Jim Cust and Tony Venables

Publish What You Pay: Marinke van Riet

Revenue Watch: Alexandra Gillies, Antoine Heuty, Marie Lintzer, Juan Carlos Quiroz

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Annex 2

Indicators for the Extractive Industries Governance Assessment

It is recommended that the framework should be developed through a process of field testing that includes the identification, testing and development of measurable indicators. Not all of the issues covered by the framework are amenable to easy quantification, and it will be important to avoid falling into the trap of placing too much faith in numbers and giving less emphasis to governance issues that are more difficult to measure. Quantitative indicators should be triangulated against more qualitative evidence so that judgements can be informed by a wide range of sources.

There are essentially three types of indicator that could be used to extend the assessment framework:

- *fact-based measures*
- *expert judgements*
- *perceptions based measures.*

Examples are provided of each in the paragraphs that follow. Given the nature of the assessment framework most of the indicators will focus on the integrity and transparency of processes rather than measurements of inputs, outputs and outcomes.

Fact based measures

Fact based indicators are objective measures based on facts where there is limited scope for interpretation or dispute. One example would be *EITI data comparing company payments to government revenues*. There is little room to dispute these numbers that have been subject to careful verification and reconciliation by recognised auditors. Another example would be the *percentage (by number or value) of exploitation licenses awarded through competitive procedures*. In theory it should be possible to construct this measure by classifying each licence according to the procedure followed. However, in practice there is likely to be a degree of subjectivity in assessing whether competitive procedures have been applied fairly. In practice, few fact based measures are wholly objective, and most require a degree of subjective judgement.

Expert judgements

More subjective aspects of governance are commonly measured on the basis of expert judgements against established scoring criteria. For example, the Revenue Watch Index is based on a questionnaire of 55 questions covering revenue transparency and the legal and regulatory framework for extractive industries. The questionnaires are initially completed by researchers and subsequently validated through peer review.

The indicators are judged against a 100 point scale. The robustness of the results depends for a large part on the scoring system is based on clear and objective criteria that are interpreted in the same way by different users.

Perceptions based measures

Perceptions surveys are useful for assessing how people subjectively experience aspects of governance. There are many examples, including Afrobarometer surveys, the World Value Survey and the component surveys used in the Corruption Perceptions Index. However, perceptions based measures have rarely been used in relation to governance issues linked to extractive industries. Perception based data could prove useful in revealing of cross-country differences in perceptions of the governance of extractive industries, and in gauging the views of particular types of stakeholders. For example, perceptions survey could be used to assess the extent to which stakeholders value their participation in public policy processes, or to assess how industry actors view the level of corruption on the part of regulatory agencies.

All three types of indicators should be used to inform assessments of the governance of extractive industries. However, in practice there will probably be a preference for easily obtainable fact based measures, or indicators based on expert judgements. A range of approaches are possible for developing specific indicators for the framework. The minimum option would involve the development of guidance notes for each question indicating relevant sources and indicators that could be used on an optional basis. A more ambitious approach would involve a PEFA-style assessment where each group of questions would be scored by local and international experts subject to explicit scoring system. Typically each question would be broken down into components with weighted scoring criteria as illustrated in the following example:

Indicator - Competitiveness of the process for the award of exploitation licenses:

Component criteria:

Details of bidding process published – 10%

Standard bidding documents available – 10%

Eligibility and compliance requirements clearly communicated and understood – 10%

Transparent assessment criteria clearly communicated and applied – 20%

Prescribed procedures and timeframes adhered to – 20%

Standard terms and conditions for the award of licenses – 10%

Publication of results and contract terms – 10%

Functioning dispute procedure – 10%

Clearly the process of developing such indicators would be resource intensive and would require extensive testing and validation. However, as has been the experience of PEFA the results could be useful as a diagnostic tool, a data source for comparisons between countries and over time, and a process for stimulating national discussion of the strengths and weaknesses of the governance framework.

Annex 3

Chevron 1 Policy, Legislation and Regulation	<p>Do laws give citizens and the private sector opportunities to <u>input into policies and laws and regulations</u>? Are there formal requirements for consultation, including for amendments to policy and legislation.</p> <p>Is <u>policy and legislation actively debated and discussed</u> within society? Does the government support, or facilitate support and training for, the participation of civil society organisations? Does it provide public education?</p> <p>Are members of the legislature and executive required to register commercial interests or <u>conflicts of interest</u>?</p> <p>Does policy and legislation contain provisions on citizens' <u>access to information</u>?</p>	<p>Is the executive equipped to identify, design and appraise policy options and legislation and regulation? (Does it have appropriate budgets, qualified staffing, access to IT, etc?) Does the civil service retain the appropriate social, environmental, economic and technical expertise?</p> <p>Are <u>policy and legislation up to date, coherent and consistent</u>?</p> <p>Does the government have the <u>capacity to engage in consultation</u> with stakeholders (civil society and private sector)?</p> <p>Is the <u>national assembly</u> equipped to debate and evaluate options?</p> <p>Is the <u>justice system</u> equipped to enforce legislation and regulations in a timely manner in the context of policy? Is there evidence of judicial independence, or a lack of independence?</p>	<p>Are <u>tri-sector partnerships</u> (government, private sector, civil society) encouraged and utilised?</p> <p>Is there a concern in the policy process with the whole life cycle of exploitation and investment of resources for <u>current and future generations</u>? Does the law set out a framework for achieving sustainable benefits? Have 'future generation', 'heritage' or 'stabilisation' funds been established? Are they protected from early depletion? Are the trade-offs identified?</p> <p>Does the law require a <u>wealth accounting framework</u> to be utilised? Does the government have an optimal depletion policy?</p> <p>Do <u>political or executive patronage</u> systems favour particular groups?</p>
	Do citizens have access to legal		

	<p><u>recourse in the event of government non-compliance with legislation and regulation? Are there sanctions for non compliance? Can citizens seek review or reconsideration of decisions?</u></p> <p><u>Are affected communities given a formal voice to influence policy, legislation and programmes and projects? Are affected communities given a voice in management of projects?</u></p> <p>If ministers or civil servants have <u>discretion</u>, are they required to account for that use?</p> <p><u>Are there credible, effective and independent civil society organisations, including think-tanks, academic departments, media, NGOs, unions, faith-based organisations.</u></p> <p>Are they able to hold government</p>	<p><u>Do patronage systems undermine effectiveness?</u></p> <p>Are the <u>mandates of the various levels of government</u> - national, regional, local – clear and supportive? Do regional and local governments have the capacity to deliver on their mandates, both in terms of the executive and the legislature?</p> <p>Is there a '<u>whole government</u>' approach to policy involving all relevant departments and agencies? Are there mechanisms to address cross-sectoral issues? Are responsibilities, including for ensuring coordination, clear?¹⁹</p> <p>If the law grants <u>discretion</u> to ministers or civil servants does the law include standards for that</p>	<p><u>Is there any evidence that consultation with citizens has an impact on policy, legislation, regulations and projects?</u></p> <p>Does the legal framework recognise <u>traditional rights of local communities</u>? Are informal and formal rights in conflict? Is consultation required with affected communities?</p> <p>Does the law provide effective means to <u>resolve disputes</u>, including those related to land and water?</p> <p>Does the law provide for <u>integrated use of infrastructure</u>, including transport and energy, or is infrastructure protected for exclusive use by companies?</p> <p>Does policy and legislation serve the interests of both <u>genders</u>? Do participation processes take</p>
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¹⁹ There is a corollary here for the World Bank: does it have a 'whole Group' approach to the sector in a particular country? Are there mechanisms to address cross-sectoral issues? Are responsibilities, including for co-ordination, clear? In both Mongolia and Ghana the issue of co-ordination of different parts of the Group, and different task managers for different operations, were demanding and required exceptional leadership by the CMU. In Ghana, IBRD, IDA, IFC and MIGA were all in play, and the CMU co-ordinated inputs from SEGOM, PREM and the SDD. A whole range of operational instruments were deployed in both countries. Whilst there can be tension, one of the Bank's distinctive comparative advantages is its ability to work on both the governance demand side and the supply side, and play a facilitating and convening role, linking both. But if the Group invests in the private sector at the same time it can damage its reputation for neutrality.

	<p>and private companies</p> <p>to account? Do traditional and local leaders play an important role?</p> <p>Are there <u>credible parliamentary committees that scrutinise the executive</u></p> <p>Are the <u>media</u> (print, broadcast and internet) independent and free to publish reports on all aspects of the sector? Are the media self-censoring? Are journalists able to acquire suitable training?</p> <p>Are <u>civil society activists safe</u> when working on corruption issues?</p> <p>Is the extractive sector included in the <u>Africa Peer Review Mechanism</u> reviews and reports, and national programmes of action?</p>	<p>discretion?</p> <p>Does policy and legislation ensure environmental costs are internalised? Are <u>non-marketed goods protected</u> (e.g. ecosystem integrity, water quality, cultural resources)?</p> <p>Are the <u>safety issues for and health risks</u> to workers in the sector monitored and managed?</p>	<p>into account gender?</p> <p>Is there an agreed policy on <u>sharing the benefits between the local communities affected and the region and nation</u>?</p> <p>Are there conflicts between the state and stakeholders? Are there conflicts between different communities? <u>Are there effective - formal or informal - means of mediating conflicts</u>?</p> <p>If the government extinguishes <u>rights to land</u>, are the effected rights holders provided with fair compensation? Are there compensation mechanisms for economic displacement?</p> <p>Are <u>human rights</u> protected and advanced, including the right to freedom of association? Are there active programmes to reduce human rights violations?</p>
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	Accountability	Capability	Inclusiveness
Chevron 2 Sector Organisation and Institutions	<p>Do organisations and agencies have <u>appropriate rules and standards</u> for transparency, and for ethical behaviour? Are there effective sanctions for non-compliance? Do they have systems to tackle corruption? Do they report regularly to parliament and to society. Are their reports timely and meaningful? Are they audited? Is action taken on audit reports?</p> <p>In the case of <u>state owned corporations</u>, are the relationships between government and the corporation(s) clear? Are commercial activities/products cross-subsidised, or otherwise subsidised? Is pricing transparent? Are inventory data, management plans and budgets, and accounts for government owned companies accessible to</p>	<p>The structure and functions of government should be clear. Is there a <u>clear division of responsibility between the different institutions</u>? Do they have clear mandates and mission statements, widely disseminated to all their staff? Are the agencies <u>co-ordinated</u> and mutually supportive?²⁰</p> <p>Is there appropriate <u>separation between regulatory roles and executive roles</u>²¹, avoiding conflict of interest? If the state holds equity in the sector are civil servants effectively trained and are there effective arrangements for managing <u>potential conflicts of interest</u>?</p> <p>Is <u>sub-national government</u> empowered and enabled to play its role?</p>	<p><u>Do sector organisations have clear directions and guidelines</u> on promoting regional, gender, ethnic, religious, and sexual equality in terms of their mandates and their internal operations? Do they report on their performance? Do they have effective policies on conflict management?</p>

²⁰ Typically these organisations will include ministries, departments and agencies, including a line ministry (for petroleum or mines for example), the Ministry of Finance, the Central Bank, the Attorney General's Chambers, the Ministry for the Environment or Environmental Protection Agency, and often a national oil or mining corporation.

²¹ This is a critical issue. There is also a question as to whether there is appropriate separation of advisory and investment roles in the World Bank, especially where there is direct investment in companies by the IFC.

	Accountability	Capability	Inclusiveness
	<p>appropriate scrutiny?</p> <p>Have <u>private companies signed up to codes of conduct</u> for responsible operations in the extractive sectors? To what extent is their behaviour monitored, and are they called to account for improper conduct?</p> <p>Are state owned and private companies required to adopt and implement <u>environmental and social safeguards</u>? Are they required to comply with <u>international codes of conduct and standards and safeguards</u>?</p> <p>Do CSO's have <u>clear and transparent accountabilities</u> to their members? Is the relevant <u>media independent</u>?</p>	<p>Are the <u>sector organisations</u> adequately resourced financially and in respect of staff? Are they 'fit for purpose'?</p> <p>Are there effective arrangements in place (including suitable benefit packages) for recruitment of <u>well qualified staff</u>? Are there suitable arrangements for staff performance management? Are staff held accountable? Are there codes of conduct that address bribery and corruption?</p> <p>How are appointments made? If on the basis of patronage, does this conflict with effectiveness?</p> <p>Do the agencies and their staff maintain <u>public confidence</u>?</p> <p>Is there appropriate <u>channels for reporting corruption</u>? Are allegations investigated and action taken?</p> <p>Is there institutional capacity to tackle any <u>human rights abuse</u> in</p>	

	Accountability	Capability	Inclusiveness
		<p>the sector?</p> <p>Is there institutional capacity to undertake <u>conflict risk analysis</u>?</p> <p>To prevent or mediate conflict?</p>	