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Global and Regional Governance Mechanisms for Managing the 'Resource Curse'

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Introductory Themes: Three Stories

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- **Facts and Figures:** The Kofi Annan's Africa Progress Report, May 2013, reported that between 2010 and 2012 5 under-priced mining concessions were sold in the DRC in highly opaque and secretive deals, costing \$1.3 billion in lost revenues. How did the DRC government respond? The country lost nothing, the assets were ceded in total transparency, according to Mining minister;
- **Facts and Figures:** Between 2005 and 2009, 500,000 copper mine workers in Zambia paid a higher tax rate than the leading mining companies. Government response? Silence.

Introductory Themes: Three Stories

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- **Facts and Figures:** The NGO Partnership Africa Canada reported in November 2012 that Mugabe and his allies had plundered the Marange diamonds, costing \$2 billion, a conservative estimate;+ it went on to state that: %Marange\$ potential has been overshadowed by violence, smuggling, corruption, and lost opportunity. The scale of illegality is mind-blowing and has spread to compromise most of the diamond markets of the world.+
- **Facts and Figures:** Tendai Biti, Zimbabwe Finance minister noted in his 2012 budget that he had been promised \$600 million in diamond revenues to help finance health care, education, and other public services; he had only received one-fourth of that pledge;

End of the Three Stories

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- **Mbeki, Marange, and Mugabe:** Addressing members of the African Diamond Producers Association in November 2012 Mbeki suggested that the Association should not allow Western countries to abuse the Kimberley Process to overthrow Mugabe's government: "I would appeal to you, as members of the KP, not to allow the important process to be abused by anybody whatsoever for political purposes, among others to achieve the objective of regime change in Zimbabwe."
- **Sounding Nice and Balanced?** "I would implore the Zimbabwean government to ensure that the country's diamond industry is not governed by a predatory elite that uses access to power to enrich itself in collusion with mining companies at the expense of the public."

Introductory Themes: The Two Puzzles

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- **Regimes of Restraint:** Natural resource governance mechanisms that are punitive, assume that actors (states) are irresponsible, that there is institutional failure, hence the need for firm hands from without to restrain predatory behavior; Collier popularized this notion in the 1980s to underscore the significance of external supervision for African economic reforms;
- **Regimes of Responsibility:** Consensual, participatory, collective problem-solving approaches to crafting common norms and rules around natural resource governance; Basic assumption: local authorship and ownership;
- **Reconciliation:** Given the tensions between the two, how do we reconcile these two practices? When can restraint regimes become responsible ones? How do we wean ourselves out of restraints?

Revisiting Governance

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- **Fixation with Transparency:** There are three pillars to governance that should undergird the discourse on natural resource frameworks: transparency, accountability, and participation; transparency dominates natural resource management regimes, but it has limits as a form of governance; Problem: how do we overcome these limits?
- **Transparency without Accountability:** The frameworks are long on transparency (more information on contracts, payments, revenues etc) without the mechanisms to translate them into accountability; Is it true that transparency fosters accountability? Yes and No: there has been considerable investment in transparency, but little to show in accountability terms;

Revisiting Governance: The Centrality of Participation

- **Tenuous Links to Participation:** If the links between transparency and accountability are weak, there are even weaker with participation, the puzzle of broadening public voice and stakes; participation pertains to that little irritant called democracy; this is, of course, much more difficult to engineer from without, hence the conundrum of most of the frameworks; participation assumes that states can create popular mechanisms that are broad-based and functional;
- **RR I and RR II:** Inter/regional mechanisms have invested in transparency via RR I), but have barely addressed accountability and participation via RR II, where there could be self-policing and self-reinforcing mechanisms that promote local ownership of the agenda on natural resource management;

The Dilemmas

- **Sequencing?** Do we focus on more transparency around the Marange diamonds with the expectation that accountability and participation issues will sort themselves out over time? What if these diamonds, like the alluvial diamonds in Koidu (SL), are exhausted before we attain the golden regime of responsibility?
- **All Good Things Go Together?** Ideally, therefore, the challenge is how to embed all the three salient components of governance into a framework of natural resource governance; this calls for more debates about the balance between international strictures and sanctions and locally-owned standards; probably it also means that we need to graduate from restraints and internalize practices and patterns that become our own;

Global Mechanisms: Comparative Experiences

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- **Context:** Global policies emanated from the pessimistic perspectives that underlay the ~~resource~~ resource curse;+they reflected yearnings for institutional reforms in ~~failed~~ failed+or conflict-afflicted states; how would the international community contribute to redress the problems of resource management in weak and collapsing states?
- **Publish what You Pay (PWYP):** A significant multi-faceted initiative of international civil society to promote transparency since 2002, galvanized by questionable role of foreign business in Angola's civil war; the goals of the campaign: mandatory publication of payments by companies to governments in resource-rich countries; and mandatory publication of revenues received by governments;

Comparative Experiences

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- **Innovative Agenda Setting:** PYWPs lobbying for mandatory disclosures plus other sources of pressures paved the way for subsequent frameworks that launched the Transparency Revolution; there are new efforts for a global PYWP
- **The Extractive Industries Transparency Initiative (EITI):** The most ambitious norm of extractive industry transparency, established in 2002, via the efforts of Tony Blair and others; its goal is simple: voluntary scheme for extractive industries to reveal publicly what they pay governments and governments to acknowledge what they get; signatories create multi-stakeholder EITI process to oversee that the numbers match up;

Comparative Experiences: EITI

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- **18 and Growing:** Thus far, there are eighteen compliant countries: in Africa CAR, Ghana, Mauritania, Mozambique, Nigeria, Tanzania, and Zambia; a few are waiting in the wings (Kenya, Uganda);
- **Successes?** In 2009, EITI reported a discrepancy of nearly \$37 million between what the companies said they paid and what the government said it had earned; in 2010, the discrepancy had dropped to nearly \$4 million (blatant theft had gone down!); in December 2012, EITI declared Tanzania a compliant country; it would be interesting to compare Tanzania's TI rankings with EITI reports;
- **More Successes?** Proliferation of multiple actors and constituencies around reforms and governance in these countries;

Comparative Experiences: EITI

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- **Successes:** 70 of the world's largest oil, gas, and mining companies have chosen to become EITI supporting companies; the campaign is to double that number, particularly as more states join the regime;
- **Problems:** Who is on this list? Why is Nigeria on this list when the country has not yet passed the basic oil and gas legislation? The New Nigerian Petroleum Industries Bill has been languishing in the legislature for the last three years; Why is the CAR on this list? The Bozize regime, before it was kicked out, never had transparency in its governing vocabulary; What does EITI compliance mean for Mozambique where there is no separation between the dominant Frelimo and the state treasury?

Comparative Experiences: EITI

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- **Universalization?** As part of the triple themes of Trade, Taxation, and Transparency at the G8 summit last weekend in Northern Ireland, David Cameron indicated that Britain would be joining the EITI; France also said it would join, potentially wrapping the G8 into the fold; why is this significant? It would make this regime universal, remove the negative connotations of RR I, denude it of its conflict dimensions; and normalize it; normalization may be the road to efficacy;
- **South African exceptionalism?** South Africa did not join EITI because it said it was a strong state that could police its own extractive industry and did not need any external hand-holding, thank you; it is probably time for Pretoria's own Perestroika on this question;

Comparative Experiences: Kimberley Process Certification Scheme (KPCS)

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- **Blood Diamonds:** Equally an innovative system of preventing the trade in conflict diamonds established in 2003, seeking to undercut the financing of rebellions in Angola and Sierra Leone;
- **Broad Victories:** The decline of civil conflicts in Africa is in part attributable to the KPCS, despite the flaws around leakages and non-compliance; in the real world, it is difficult to have a leakage-free certification system, particularly of diamonds; diamonds via Cote d'Ivoire are the only ones that are still technically conflict diamonds, but they are less than 1 per cent of global trade;

Comparative Experiences: KPCS

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- **Victim of its own Success?** As indicated earlier, conflicts over the Marange diamonds underscore the crisis that confronts the KPCS; Marange diamonds are not technically conflict diamonds, they are no rebels in the region, only peasants digging under the watchful eyes of the Zimbabwean military;
- **Definitional Conflicts:** Western NGOs and governments have launched spirited campaigns to have Marange diamonds classified as conflict diamonds because of the violence and militarization of the region; African governments have opposed this campaign, leading to their certification;
- **Search for new Definitions:** Gillian Milovanovic, current chair of the KPCS, has stated the need to redefine conflict diamonds: "make some changes- breadth, depth, whatever;+

Comparative Experiences: KPCS

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- **Where do we go from Here?** There are two options: First, declare victory and close the regime; this may not happen, given the investment in the institutions around it; Second, broaden the definition of conflict to encompass governance-related dimensions; this would essentially alter the terms of the KPCS away from civil conflicts to basic governance; states that are misgoverned should not have their diamonds certified;
- **Universalization and Normalization:** The second option comes close to expanding the regime to capture more actors and meet more objectives that improve transparency, accountability, and participation; without universalization the contestations and confusions around Marange will not go away;

Comparative Experiences: Dodd-Frank Act

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- **The Three Ts:** Like diamonds before, tin, tantalum, and tungsten in the Eastern DRC have driven efforts since 2008 in the US to undercut militias and negative forces using these resources to fuel conflict in the region; Dodd-Frank Wall Street Reform and Consumer Protection Act thus aims to target US-listed companies;
- **Section 1502:** This is the specific Dodd-Frank legislation that requires companies that source minerals from the DRC and neighboring countries to adopt Due Diligence measures to ensure that their purchases do not promote further conflicts or human suffering;
- **Problems:** Too many exemptions for companies; moreover, these measures won't work in the absence of resuscitation of state institutions;

Comparative Experiences: Cardin-Lugar, Dodd-Frank Plus

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- **Section 1504:** This is a more comprehensive version of the Dodd-Frank that requires all extractive industries listed on American Stock Exchanges (about 1,100) to report project-level payments of more than \$100,000 to foreign governments, with no exceptions; this is part of the Cardin-Lugar Extractive Transparency Amendment, part of Dodd-Frank; the SEC upheld the regulations in August 2012;
- **Universal?** Companies have opposed 1504, pleading exemptions because of confidentiality clauses etc, but similar disclosure requirements have been passed by the EU and are under consideration in Singapore and Hong Kong;

Comparative Experiences: EU

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- **In the footsteps of 1504:** In 2012, the European Parliament and Council agreed on EU Accounting and Transparency Directives that will require all EU-listed extractive industries to disclose payments of over Euro 100,000 to foreign governments; the directive is project-based, requiring publication of information for each individual resource project that companies invest in;
- **Exemptions, Exemptions:** European companies have fought tooth and nail (to no avail) to get exemption from publishing payments in certain countries; as one European critic rebutted: %Why should revenues from oil, gas, and mining companies be a state secret?+
- **G8 Open Data Charter:** Seeks to evolve common reporting standards to increase transparency in payments from extractive industries;

African Regional Mechanisms

- **Contexts:** As targets and recipients of global norms on transparency, African institutions have responded with attempts to create local mechanisms that address these issues; these efforts reflected broader behavioral and institutional change around the African renaissance, NEPAD, and APRM;
- **Content:** The key puzzle is one of content: what is new in African regimes? What do they borrow and incorporate from global norms, standards, and strictures?;
- **Problem of Duplication:** Some regional norms are cut and pasted from global conventions, raising the question of whether resources should be expended on further reiteration of existing norms or whether the priority should be domestication and implementation;

African Mechanisms

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- **Mo Ibrahim's Counsel:** Responding to the Cardin-Lugar legislation in the US, he noted: ~~%w~~ we need to ensure that we are enacting similarly transparent legislation. If we are to ensure good governance- covering all aspects of transparency, corporate and social responsibility- becomes the norm in Africa for all foreign investors and African governments, it can only be achieved through domestic legislation.+
- **AU Mining Vision Framework, 2009:** The objectives of the AMV are transparency, equity, and optimal exploitation of natural resources; in addition to building multiparty engagement in the management of natural resources, it puts emphasis on the integration of mining enclaves into local and national development objectives;

African Mechanisms

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- **African Development Bank:** ADB has a number of governance initiatives to support member states implement resource governance mechanisms such as the EITI; the African Legal Support Facility created in 2008 seeks to assist countries to negotiate complex commercial and extractive industry contracts, providing a solution to the problem of asymmetric relations between African actors and MNCs;
- **RECs:** SADC, ECOWAS, COMESA, IGAD are some of the RECs with natural resource governance provisions in their treaties designed to facilitate collective solutions to problems posed by natural resource governance; but most of these provisions borrow primarily from existing national and international mechanisms; others;

Conclusions

- **Ideology of the Resource Curse:** Regimes around natural resource governance are of recent vintage, germinating within the inhospitable environments of civil war, violence, war-lordism and state collapse; over time, they have become second nature, obvious and necessary;
- **Restraints and Responsibilities:** To endure, they require an intricate balance of the two components, captured in solid norms and institutions at the level of states; international actors can prescribe but not force the pace and parameters of change around these issues; the ultimate solution is how to transform negative regimes of restraint into normalized regimes of responsibility;

Conclusions

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- **Second Wave of Exploration Explosions:** These discoveries from Mozambique, Tanzania, Kenya, Uganda, and Somalia etc underscore the need for preparedness with regard to natural resource governance; as one analyst put it last year: %Tanzania could do with some radical transparency. The window to set up a decent resource management regime is short and closing fast, probably no more than 18-24 months.+
- **But Grim Statistics Remain:** The African Tax Forum (ATF) said recently that Africa lost \$3 trillion in the last 3 years through tax corruption in extractive industries concluding that: %There is evidence that African countries receive less revenue from natural resources than many other countries in the world.+

Bibliography