

Social Accountability in the Extractive Industries: A Review of the Ethiopian Experience

By

Fenta Mandefro, PhD¹

**Presented at “Public Dialogue on Governance and Transparency in Extractive
Industries and Natural Resource Management”
Addis Ababa, August 2010**

¹ Assistant professor, Department of Public Administrative and Management, College of Management, Information and Economic Sciences, Addis Ababa University

Table of Contents

1.	Introduction.....	2
2.	Governance of the Extractive Industry: a Prelude	2
3	The Concept of Social Accountability.....	3
4.	Social Accountability in the Extractive Industries.....	4
4.1	Principles of human rights	6
4.2	Principles of sustainability.....	10
4.3	Social license to operate.....	11
5.	Actors of Social Accountability in the Extractive Industries.....	12
5.1	State Actors	12
5.2	Citizens	14
5.3	Civil society Organizations (CSOs).....	15
5.4	Private Sector Actors	16
5.5	Media	17
6.	Mechanisms of Social Accountability	17
7.	Social Accountability in Ethiopia.....	20
7.1	Politico-administrative and Economic Changes in Ethiopia: an Overview.....	20
7.2	Social Accountability in Ethiopia: An overview	23
7.3	Governance of the Extractive Industries in Ethiopia	26
7.4	Legal Regimes for Social Accountability in the Extractive Industries of Ethiopia.....	27
7.4.1	Principles of human rights	28
7.4.2	Principals of Sustainability	33
7.4.3	Social license to operate.....	34
7.5	Actors of social accountability in Ethiopia.....	35
7.6	Mechanisms of Social Accountability in Ethiopia.....	39
8.	Conclusions and the way forward.....	40
	References.....	42

1. Introduction

Resource rich countries of Africa, except few, have not succeeded in reducing poverty and improving the living conditions of the majority poor of citizens. In fact, studies show that extractions of resources have exacerbated poverty in such countries due to displacement of the indigenous peoples from their lands, territories and resources on which their livelihoods depend². Lack of a proper social accountability system and practice are among the major factors contributing to the problem. As a result, social accountability has received attention from policy makers, policy researchers and donors. Moreover, indigenous peoples and their advocates are putting pressure on national governments and demanding international organizations, such as the United Nations, to stop the unsustainable and socially irresponsible exploitation of natural resources. This research is part of such initiatives towards improved social accountability of the extractive industries. This research, based on desk reviews, tries to discuss the concepts, actors and mechanisms of social accountability and then reflects on the Ethiopian experience in general and on legal regimes for social accountability in the extractive industries in particular.

2. Governance of the Extractive Industry: a Prelude

Governance is a very fluid term which may mean different things unless the context is clearly stated. In the context of a broader public sector, it generally refers to the process and institutions by which authority is exercised in a country. The capacity of governments to manage resources efficiently; formulate, implement and enforce sound policies and regulations; rule of law and respect for institutions that govern political, economic and social interactions; and transparency, accountability and equity in decision-making are key attributes of governance in the public sector³.

Governance has gained popularity in the development discourse in general and in Africa's development agenda in particular. This is due to the fact that over the last 45 years, Africa's development problems have been mainly linked to governance issues⁴. Today, African leaders are trying to apply the principles and attributes of democracy and good governance⁵.

² United Nations Institute for Training and Research (not dated) 'Governance of Extractive Industries' <http://www.unitar.org/event/governance-extractive-industries> (accessed on 09/06/10)

³ The International Bank for Reconstruction and Development (2005) Stocktaking of Social Accountability Initiatives in the Asia and Pacific Region; Economic Commission for Africa (2005) Workshop on Economic and Corporate Governance and Accountability in Southern Africa, 7 – 9 December 2005 Lusaka, Zambia

⁴ Economic Commission for Africa (2007) An Overview of Corporate Governance and Accountability in Southern Africa

⁵ Economic Commission for Africa (2005) Workshop on Economic and Corporate Governance and Accountability in Southern Africa, 7 – 9 December 2005 Lusaka, Zambia

Extractive industries remain the economic bedrock for many developing countries, generating the main, if not the sole, source of fiscal revenues and foreign exchange earnings. Studies, however, indicate that most of the countries have been unable to effectively use the resources from extractive industries and hence, are characterized by poor economic performance where the majority of their populations live in poverty. In fact, in many instances large extractive industries even appear to have retarded economic and social development through a number of phenomena often referred to collectively as the "resource curse". Many of the problems are related to the quality of governance⁶. A growing body of academic research and evaluations reveal that good governance is an essential ingredient to proper management of natural resources and distribution of benefits. Hence, it is crucial that governance issues be addressed prior to investment in the extractive industries⁷.

The governance of the extractive industries is required to substantially be improved not only to address the issue of revenue utilization and distribution of benefits, but also to address critical issues of social accountability⁸. It is quite imperative that extractive industries become mindful of the emerging social concerns and priorities of communities, governments, civil society organizations and other stakeholders.

Governance encompasses both the demand and supply sides where multiple actors from multiple sectors play different roles for a proper functioning of the governance equation. The demand-side governance initiatives refer to citizen- or civil society-led activities to exact accountability from power-holders, producers and service providers. In this side of the equation, there are a number of initiatives and approaches ranging from social movements using protest, to communities negotiating and making decisions with the state, investors and service providers whose activities have a direct or indirect bearing on their environment, human rights and cultural and social values⁹. The supply side of the governance equation refers to roles and activities of state and private investors to provide proactive measures to protect the natural environment and rights and interests of local communities.

3 The Concept of Social Accountability

Social accountability is an important extra-state approach that relies on civic engagement where ordinary citizens and civil society organizations actively participate directly and indirectly in exacting accountability¹⁰. Social accountability can be defined as the ability

⁶ United Nations Institute for Training and Research (not dated) 'Governance of Extractive Industries' <http://www.unitar.org/event/governance-extractive-industries> (accessed on 09/06/10)

⁷ WB-IMF (2004) 'Spring Meetings: Civil Society Sessions Meeting on the Extractive Industries Review', Thursday, April 22 <http://www.ifc.org/ifcext/eir.nsf/Content/WBGCivilSocietyMeetingTranscript> (accessed on 20/05/10)

⁸ Ibid

⁹ Affiliated Network for Social Accountability (2010:4) Social Accountability in Africa: Practitioners' Experiences and Lessons

¹⁰ Kiwekete. H.M (not dated) 'Social Accountability (SA8000) The Standard for the Present and the Future'

to require that public officials, private investors, and service providers answer for their policies, actions, and use of funds¹¹. Corporate social accountability for private business operators can be defined as “The continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large.”¹² This definition implies that any individual company has to integrate social (including human rights), environmental and economic concerns into its values and culture so that these values are reflected in that company’s policies, strategies, decision-making, and operations¹³.

Social accountability should promote both responsiveness and accountability of government at various stages throughout the formulation, implementation, monitoring and evaluation of government policies and programs¹⁴. This entails that accountability is not merely a once-off activity but a continual process between duty-bearer (public official) and rights-holders (citizens)¹⁵. When such a system of accountability is successful, it improves the ability of citizens to realize their interests, protect themselves from arbitrary political powers, and to control the way in which public authorities behave in public matters¹⁶.

Social accountability is a concept applicable to both public and private sector operators. However, neither social accountability initiatives nor mechanisms are the same in all contexts and societal affairs. Social accountability initiatives can be as diverse and multifaceted as society itself¹⁷. The active participation and engagement of citizens and civil society groups in policy-making and implementation are however, important common denominators¹⁸.

4. Social Accountability in the Extractive Industries

http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTPCENG/0_contentMDK:20509424~menuPK:1278120~pagePK:148956~piPK:216618~theSitePK:410306.00.html
(accessed on 06/06/10)

¹¹The International Bank for Reconstruction and Development (2005:1) Stocktaking of Social Accountability Initiatives in the Asia and Pacific Region

¹²Prospectors and Developers Association of Sustainable Development and Corporate Social Responsibility (2007:1) Tools, Codes and Standards for the Mineral Exploitation Industry Canada (A Special Publication) (<http://commdev.org/content/document/detail/710/P>) (accessed on 09/06/10)

¹³ Ibid

¹⁴ Caddy, J., T. Peixoto and M. Mcneil (2007) Beyond Public Scrutiny: Stocktaking of Social Accountability in OECD Countries

¹⁵ Affiliated Network for Social Accountability (2010:2) Social Accountability in Africa: Practitioners’ Experiences and Lessons

¹⁶ Political Review Net First For Politics and International relations Book Reviews, ‘Review of: Enforcing the Rule of Law: Social Accountability in the New Latin American Democracies edited by Enrique Peruzzoti, Catalina Smulovitz (2006), Reviewed by Ram, U. (10/04/2008)’ http://www.politicalreviewnet.com/polrev/reviews/CONS/R_1351_0487_66_1007828.asp (accessed on 15/06/10)

¹⁷ Ackerman, J.M. (2005) ‘Human Rights and Social Accountability’, SOCIAL DEVELOPMENT PAPERS Participation and Civic Engagement Paper No. 86 / May 2005

¹⁸ Affiliated Network for Social Accountability (2010:3) Social Accountability in Africa: Practitioners’ Experiences and Lessons

Extractive industries are high impact industries in terms of their economical, social and environmental aspects. Extractive industries are engaged in extracting nonrenewable natural resource, including oil and gas, metals, industrial minerals, coal and gemstones. The extractive industries have specific features which present a major challenge for social accountability and for environmental management¹⁹. In the process of extracting, they may strip bare a piece of land and also affect other pieces of land through dumping of excess earth, as well as produce negative externalities in the form of solid waste, pollution of both air and water²⁰. Such activities of the extractive industries cause physically irreversible impact on topography and as well as quickly destroy the ecosystems on which humans depend. Large scale modern extractive industries have major impacts on social and cultural values of the adjacent communities. Moreover, extractive industries are exploiting publicly owned (i.e. 'social') minerals, which are raising important questions regarding distribution of economic benefits, both in the current period and across generations²¹.

Generally, in almost all parts of the world, indigenous peoples' territories are richly endowed with minerals, metals, oil and gas. However, such an endowment has turned to be a curse to many indigenous peoples as this has attracted and continues to attract huge extractive industry corporations to their territories over which they have little control. The activities of these corporations have detrimental impacts on the environment, human rights and land of the indigenous people. Environmentally, indigenous people are suffering from erosion of biological diversity; pollution of soil, air and water; and destruction of whole ecological systems, among others. Displacement, arbitrary arrests, detentions, and lack of rights to land, territories and resources are the most common and rampant human rights violations²². The expansion of big extractive industries has also destroyed and undermined the livelihoods, traditions and religions of indigenous peoples. Big transnational and national corporations usually enter into indigenous peoples' territories with a promise of development to the local peoples by providing jobs, construction infrastructure and payment of governmental taxes. In many parts of the world, these promises have little or no impact on the lives of the local peoples and hence, they still live in a situation of dire poverty²³.

¹⁹ H. Ali, S. and C. O'Faircheallaigh (2007:6) 'Introduction' in *Greener Management International Issue 52, pp.1-16*

²⁰ Economic Commission for Africa (2007:25) *An Overview of Corporate Governance and Accountability in Southern Africa*

²¹ H. Ali, S. and C. O'Faircheallaigh (2007:6) 'Introduction' in *Greener Management International Issue 52, pp.1-16*

²² Indigenous Peoples' International Centre for Policy Research and Education (2009) 'Concept Paper: International Conference on Indigenous Peoples and Extractive Industries', March 23-35, 2009, The Legend Villas, Metro Manila, Philippines

[Http://www.Tebtebba.Org/Index.Php?option=com_content&view=article&id=46&Itemid=57](http://www.Tebtebba.Org/Index.Php?option=com_content&view=article&id=46&Itemid=57) (accessed on 15/06/10)

²³ Ibid

In the Manila Declaration, the voices of the Indigenous Peoples have been transpired as:

On account of this situation, we have suffered disproportionately from the impact of extractive industries as our territories are home to over sixty percent of the world's most coveted mineral resources. This has resulted in many problems to our peoples, as it has attracted extractive industry corporations to unsustainably exploit our lands, territories and resources without our consent. This exploitation has led to the worst forms of environmental degradation, human rights violations and land dispossession and is contributing to climate change²⁴.

Due to the heavy physical, environmental, social, and cultural destruction the extractive industries are causing, as well as the human rights violations they face enormous challenges in maintaining their “social license to operate”, especially in developing countries. There are pressures from different corners, which among others include appeals from the sustainable development agenda, rising expectations and demands from civil-societies, indigenous communities, and human rights agencies²⁵. In light of these pressures, issues of social accountability for extractive industries can be grouped among others into three major pillars: principles of human rights, of sustainability; and of social license to operate.²⁶

4.1 Principles of human rights

Social accountability, from the view point of human rights, refers to the obligation and acceptance by extractive corporations, like governments, have a responsibility to respect fundamental human rights in their organization and conduct of business. In this respect, key human rights principles would include the right to a clean environment; the right to land, territories and resources; the right to free prior and informed consent; and protection from involuntary resettlement. These have received due recognition within the international human rights law²⁷. There are ample provisions in the international human rights law which clearly stipulate and put substantial obligations on states to protect the

²⁴ The International Indian Treaty Council (2009) ‘The Manila Declaration of the International Conference on Extractive Industries and Indigenous Peoples’, 23-25 March 2009, Legend Villas, Metro Manila, Philippines.
<http://www.treatycouncil.org/PDFs/The%20Manila%20Declaration%20%20Final%20Version.pdf>
(accessed on 09/06/10).

²⁵ Economic Commission for Africa (2007:25) An Overview of Corporate Governance and Accountability in Southern Africa

²⁶ H. Ali, S. and C. O’Faircheallaigh (2007:11) ‘Introduction’ in *Greener Management International Issue 52, pp.1-16*

²⁷ H. Ali, S. and C. O’Faircheallaigh (2007:12) ‘Introduction’ in *Greener Management International Issue 52, pp.1-16*; Tebtebba Foundation Indigenous Peoples’ International Centre for Policy Research and Education (2006) Indigenous Peoples’ Rights, Extractive Industries and Transnational and Other Business Enterprises: A Submission to the Special Representative of the Secretary- General on human rights and transnational corporations and other business enterprises, 29 December 2006
<http://www.google.com.et/#hl=en&&sa=X&ei=4yUXTNTmN5X44gaTt4j3Cw&ved=0CBAQBSgA&q=Indigenous+peoples%27+rights,+extractive+industries+and+transnational+and+other+business+enterprises&spell=1&fp=13f5d39a0c3ac61c> (accessed on 27/05/10)

rights of indigenous peoples in connection with resource exploitation. For example, the UN Human Rights Committee has stated that, in the name of development, a state does not have an unlimited freedom over the territories and resources of indigenous peoples; its freedom to encourage economic development is strictly limited by the obligations it has assumed under international human rights law rather than by a margin of appreciation. On the other hand, the Inter-American Commission on Human Rights stated that state policy and practice concerning resource exploitation for economic development cannot take place in a vacuum that ignores its human rights obligations. The African Commission on Human and Peoples' Rights and other intergovernmental human rights bodies have similar views²⁸.

In the context of extractive industries, which have serious environmental impacts, the right to a clean environment is of central relevance. In fact, environmental impacts of the extractive industries are not limited to pollution of land, air and water. Extractive industries have caused destruction of the whole ecological systems, which have significantly contributed to the climate change²⁹. As a result, environmental right has received increasing attention and recognition, not only for its own sake, but also due to the fact that unless the physical environment is protected, other human rights (the right to economic and social development, to practice culture and ultimately the most fundamental of all human rights, the right to life) may be threatened³⁰. Hence, extractive industries are expected and required to take all the precautionary measures to protect the environment and public health within the framework of laws, regulations and administrative practices of countries in which they operate and as well as international laws;³¹.

Rights to lands, territories and resources are fundamental to local peoples because their economic and social development, physical and cultural integrity, and their livelihoods and sustenance greatly depend on secure, effective and collective property rights. Secure land and resource rights are also essential for the maintenance of their worldviews and spirituality and, in short, to their very survival as viable territorial and distinct cultural communities. There is a profound relationship between indigenous peoples and their lands, territories and resources. Rights over land cannot be disassociated from the

²⁸ Tebtebba Foundation Indigenous Peoples' International Centre for Policy Research and Education (2006) Indigenous Peoples' Rights, Extractive Industries and Transnational and Other Business Enterprises: A Submission to the Special Representative of the Secretary- General on human rights and transnational corporations and other business enterprises, 29 December 2006 (<http://www.google.com.et/#hl=en&&sa=X&ei=4yUXTNTmN5X44gaTt4j3Cw&ved=0CBAQBSgA&q=indigenous-peoples%27+rights,+extractive+industries+and+transnational+and+other+business+enterprises&spell=1&fp=13f5d39a0c3ac61c>) (accessed on 27/05/10)

²⁹ The International Indian Treaty Council (2009) 'The Manila Declaration of the International Conference on Extractive Industries and Indigenous Peoples', 23-25 March 2009, Legend Villas, Metro Manila, Philippines. <http://www.treatycouncil.org/PDFs/The%20Manila%20Declaration%20%20Final%20Version.pdf> (accessed on 09/06/10)

³⁰ H. Ali, S. and C. O'Faircheallaigh (2007:12) 'Introduction' in *Greener Management International Issue 52*, pp.1-16

³¹ Economic Commission for Africa (2007:10) An Overview of Corporate Governance and Accountability in Southern Africa

spiritual issues and hence, rights over land need to include recognition of the spiritual relation indigenous peoples have with their ancestral territories. Moreover, the economic base that land provides to the local people is not sufficient by itself unless it is accompanied by recognition of the indigenous peoples' own political and legal institutions, cultural traditions and social organizations. This shows that failing to recognize one aspect means to fail in all³². Generally, in the absence of secure and enforceable rights to lands, territories and resources, the means of subsistence and cultural integrity of indigenous peoples are permanently threatened. Their land and territories are their resource base and 'food basket', as well as their source of *inter alia*, medicines, construction materials and household and other tools and implements³³. Hence, states should avoid laws and legal systems that arbitrarily declare resources which once belonged to indigenous peoples but become property of the state. If such laws and legal systems exist, they are discriminatory against the indigenous peoples, whose ownership of the resources predates the state, and are thus contrary to international law. Of course, states' power to take resources for public purposes (with compensation) cannot be undermined; however, this should be exercised in a manner that fully respects and protects all the human rights of indigenous peoples³⁴. Indigenous peoples demanded that compensation for land and other resources should encompass not only remuneration for economic losses but also reparations for the social, cultural, environmental, and spiritual losses they endured³⁵.

Contemporary international law clearly recognizes the rights of indigenous peoples to participate in decision making and to give or withhold their consent to activities affecting their lands, territories and resources. Consent of the local communities must not be obtained under any kind of external influence; it must be freely given, obtained prior to implementation of activities and be founded upon an understanding of the full range of issues implicated by the activity or decision in question. The State party, in undertaking environmental impact assessments, should seek the informed consent of concerned indigenous communities prior to authorizing any mining or similar operations which may threaten the environment in areas inhabited by these communities.³⁶ Indigenous peoples demanded that all proposed developments affecting their lands should be subject to a free, prior and informed consent of the local communities as expressed through their own representative institutions. The right to free, prior informed consent involves permanent processes of negotiation between local communities and developers, which does not refer to nominal consultation; it is the right of indigenous peoples that extends to the extent of

³² Tebtebba Foundation Indigenous Peoples' International Centre for Policy Research and Education (2006) Indigenous Peoples' Rights, Extractive Industries and Transnational and Other Business Enterprises A Submission to the Special Representative of the Secretary- General on human rights and transnational corporations and other business enterprises, 29 December 2006

(<http://www.google.com.et/#hl=en&&sa=X&ei=4yUXTNTmN5X44gaTt4j3Cw&ved=0CBAQBSgA&q=Indigenous+peoples%27+rights,+extractive+industries+and+transnational+and+other+business+enterprises&spell=1&fp=13f5d39a0c3ac61c>) (accessed on 27/05/10)

³³ Ibid

³⁴ Ibid

³⁵ CEE Bankwatch Network (not dated) 'Indigenous Peoples' Declaration on Extractive Industries' http://bankwatch.org/documents/decl_wbeir_ip_04_03.pdf (accessed on 12/06/10)

³⁶ Ibid

saying ‘no’ to projects that they consider as injurious to their environment, social and cultural values³⁷.

Expansion or new investment in extractive industries involve displacement of indigenous peoples and thereby expose them to involuntary resettlement. Such practices do have grave and disastrous harm to the basic civil, political, economic, social and cultural rights of large numbers of local peoples, both individual persons and groups. Of course, resettlement may not be avoided so long as there is displacement by the extractive industries; the issue, however, is that it must be carried out in a manner that respects the rights of affected persons. This is not merely an issue of compliance with the law, but also constitutes sound development practice.³⁸ Indigenous peoples have also demanded respect for their rights to their territories, lands and natural resources and that under no circumstances should they be forcibly removed from their lands³⁹.

For indigenous peoples, forcible relocation can be disastrous, severing entirely against their various relationships with their ancestral lands. As observed by the UN Sub-Commission, “where population transfer is the primary cause for an indigenous people's land loss, it constitutes a principal factor in the process of ethnocide;” and, “[f]or indigenous peoples, the loss of ancestral land is tantamount to the loss of cultural life, with all its implications.” Due to the importance attached to indigenous peoples’ cultural, spiritual and economic relationships to land and resources, international law treats relocation as a serious human rights concern. In international instruments, strict standards of scrutiny are employed and indigenous peoples’ free and informed consent must be obtained⁴⁰.

Key performance indicators of extractive companies to promote and ensure social accountability would be compliance with relevant human rights principles and codes of conduct, both in terms of corporate policies, the processes they employ in interacting with peoples and communities affected by their operations, and in terms of the substantive outcomes from their activities and investments⁴¹.

³⁷ Ibid

³⁸ Tebtebba Foundation Indigenous Peoples' International Centre for Policy Research and Education (2006) Indigenous Peoples’ Rights, Extractive Industries and Transnational and Other Business Enterprises: A Submission to the Special Representative of the Secretary- General on human rights and transnational corporations and other business enterprises, 29 December 2006 (<http://www.google.com.et/#hl=en&&sa=X&ei=4yUXTNTmN5X44gaTt4j3Cw&ved=0CBAQBSgA&q=Indigenous+peoples%27+rights,+extractive+industries+and+transnational+and+other+business+enterprises&spell=1&fp=13f5d39a0c3ac61c> (accessed on 27/05/10)

³⁹ CEE Bankwatch Network (not dated) ‘Indigenous Peoples’ Declaration on Extractive Industries’ http://bankwatch.org/documents/decl_wbeir_ip_04_03.pdf (accessed on 12/06/10)

⁴⁰ Ibid

⁴¹ H. Ali, S. and C. O’Faircheallaigh (2007:12) ‘Introduction’ in *Greener Management International Issue 52, pp.1-16*

4.2 Principles of sustainability

Extractive industry corporations need to conduct their activities in a manner that contributes to the broader goal of sustainable development⁴². The environmental damages that occur during the process of resource extraction could be catastrophic since the processes cause irreversible damage and hence, are contrary to any vision of sustainable development⁴³. Indigenous peoples are voicing loudly that they have suffered disproportionately from the impacts of extractive industries since extractive industry corporations have been unsustainably exploiting their lands, territories and resources without their consent⁴⁴. In fact, indigenous peoples reject the myth of ‘sustainable mining’ by arguing that mining has not contributed to ‘sustainable development’ of the local people. They further argue that the living experiences of local people in many parts of the world and particularly in Africa show that exploration and exploitation of natural resources have caused serious social and environmental problems to the local people, and hence, such activities cannot be described as ‘sustainable’ development. By destructing the environment and the ecology on which the local people depend, the extractive industries are creating and exacerbating poverty rather than contributing to poverty alleviation⁴⁵. In light of such big concerns, indigenous peoples declare that urgent actions must be taken by all to stop and reverse the social and ecological injustice arising from the violations of their rights. Extractive industries should no longer pretend in the name of “sustainable mining”; they have to focus on and ensure ‘sustainable development’ which is founded on three pillars that should be given equal weight if such development is to be equitable namely environmental, economic and human rights⁴⁶.

Accepting principles of sustainability extends to the extent of limiting production by extractive industry corporations in order to recognize the limited capacity of the physical and social environments to carry the burdens of destructions caused by the industry. Relevant corporate policies in this regard might include refraining from mining in protected and environmentally or socially sensitive areas and taking action (including constraints on production) to reduce greenhouse emissions and water usage⁴⁷.

⁴² Economic Commission for Africa (2007:10) An Overview of Corporate Governance and Accountability in Southern Africa

⁴³ H. Ali, S. and C. O’Faircheallaigh (2007:6) ‘Introduction’ in *Greener Management International Issue 52*, pp.1-16

⁴⁴ The International Indian Treaty Council (2009) ‘The Manila Declaration of the International Conference on Extractive Industries and Indigenous Peoples’, 23-25 March 2009, Legend Villas, Metro Manila, Philippines.

<http://www.treatycouncil.org/PDFs/The%20Manila%20Declaration%20%20Final%20Version.pdf>

(accessed on 09/06/10)

⁴⁵ CEE Bankwatch Network (not dated) ‘Indigenous Peoples’ Declaration on Extractive Industries’ http://bankwatch.org/documents/decl_wbeir_ip_04_03.pdf (accessed on 12/06/10)

⁴⁶ Ibid

⁴⁷ H. Ali, S. and C. O’Faircheallaigh (2007:13) ‘Introduction’ in *Greener Management International Issue 52*, pp.1-16

H. Ali, S. and C. O’Faircheallaigh have provided a more elaborated set of activities that are expected of the extractive industry companies to minimize the effects of their activities on the environment and the local people⁴⁸:

- *Establish and maintain a system of environmental management appropriate to the enterprise, including the collection and evaluation of adequate information.*
- *Establish measurable objectives and, where appropriate, targets for improved environmental performance, including periodically reviewing the continuing relevance of these objectives.*
- *Regularly monitor and verify progress towards environmental, health and safety objectives or targets.*
- *Provide the public and employees with adequate and timely information on the potential environmental, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance and engaging in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprises and by their implementation.*
- *Assess and address foreseeable environmental health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle.*
- *Prepare an appropriate environmental impact assessment where these proposed activities may have significant environmental, health or safety impacts, and where they may be subject to a decision of a competent authority.*
- *Continually seek to improve corporate environmental performance*

4.3 Social license to operate

Social license to operate is a pragmatic approach to social accountability of extractive industry companies in which they have to accept the reality that they must secure and retain the support of the communities affected by their operations. The driving force in this regard is not an issue of demonstrating a commitment to human rights or environmental sustainability per se as companies are required by law to do so. In securing social license to operate, companies are rather involved in a pragmatic calculation of what is required to win the degree of community support required to avoid delay or disruption to operations. The social license may ostensibly be easier to obtain from vulnerable impoverished communities and lead to subservience rather than true ‘buy-in’. At times when local communities keep quiet, companies should not misinterpret that as an endorsement of the project and hence a ‘social license’ is granted. Communities may keep quiet if they believe that they are in a weaker position, but resentment may build over time and lead to widespread resistance once communities have the social capital to protest and take direct action⁴⁹.

⁴⁸ Economic Commission for Africa (2007:10-11) An Overview of Corporate Governance and Accountability in Southern Africa

⁴⁹ H. Ali, S. and C. O’Faircheallaigh (2007:13-14) ‘Introduction’ in *Greener Management International Issue 52, pp.1-16*

Local communities may resist and protest against intended extractive activities for reasons of environmental, economic, cultural, social and other rights as defined by them. Meeting all the legal requirements and securing a legal license to operate is not a guarantee for a smooth and peaceful operation on the lands and neighborhood of local communities. Hence, companies have to understand environmental, economic, social, cultural and other issues of rights and interests from the view points of the local people, on which ‘social license to operate’ depends. Indigenous peoples do not simply reject development; they do so when they are not well informed or do not get opportunities to discuss and negotiate⁵⁰. Local peoples have the right to receive the information necessary for making informed decisions⁵¹. Thus, companies need to clearly and sufficiently inform and discuss with the local peoples about the pros and cons of any project. Instead of listing and dictating the benefits from extractive projects, companies should give the opportunity to local peoples to identify the priorities of their needs and the degree of benefits they expect. On the basis of consensus, extractive companies need to undertake meaningful community development activities, which are essential functions for maintaining their social license to operate. Failure to deal with these issues often leads to a failure to secure, or the loss of, a social license to operate⁵². In their declaration, indigenous peoples have made it clear that they do not reject development, but they demand respect and dignity in every course of action. Thus, they are empowered to fully participate in all development activities taking place in their jurisdictions, so as to determine their own priorities and needs⁵³.

5. Actors of Social Accountability in the Extractive Industries

Promoting and ensuring social accountability in the extractive industries require concerted efforts of multiple actors that among others include state actors, citizens, civil society organizations, private sector actors, and the media.

5.1 State Actors

It is obvious that ultimate responsibility for the management of a country’s natural resource wealth lies with that country’s elected government. The adoption of policies and practices that require adherence to and enforce standards of accountability and transparency is the principal means of ensuring sound management at all stages of natural resource exploitation – from extraction to the collection and utilization of revenues.⁵⁴

⁵⁰ Ibid

⁵¹ WB-IMF (2004) ‘Spring Meetings: Civil Society Sessions Meeting on the Extractive Industries Review’, Thursday, April 22--2:00pm – 3:30pm, MC-12-700

<http://www.ifc.org/ifcext/eir.nsf/Content/WBGCivilSocietyMeetingTranscript> (Accessed on 20/05/10)

⁵² H. Ali, S. and C. O’Faircheallaigh (2007:13-14) ‘Introduction’ in *Greener Management International Issue 52, pp.1-16*

⁵³ CEE Bankwatch Network (not dated) ‘Indigenous Peoples’ Declaration on Extractive Industries’ http://bankwatch.org/documents/decl_wbeir_ip_04_03.pdf (accessed on 12/06/10)

⁵⁴ Bryan, S. and B. Hofmann (2007:14) Transparency and Accountability In Africa’s Extractive Industries: The Role of The Legislature

In a democratic system of governance, the legislature is the supreme law making organ of a state and hence, provides legal and regulatory frameworks, which provide the framework for sustainable and accountable utilization of natural resources⁵⁵. It also plays a key role of overseeing the executive. Legislative bodies also provide the critical link between citizens and their elected governments and can serve as an agent of citizens to promote accountability and transparency⁵⁶. Moreover, the legislature could play more robust roles in creating viable oversight mechanisms to monitor the collection and use of revenues from extractive industry revenues⁵⁷. Oversight functions of the legislature however, are not expected to be effective without adequate institutional arrangements that can ensure control, accountability and transparency. Knowing such challenges, the legislature establishes (either through Constitution or by an Act of Parliament) public oversight institutions, such as human rights and office of ombudsman, which perform important functions of protecting ordinary citizens against arbitrary use or misuse of power, as well as violations of human rights⁵⁸. Legislatures that are capable of playing these roles are well placed to help mitigate the various economic, environmental, human rights, and social-cultural risks posed by extractive industries⁵⁹.

The following are among the most specific roles legislatures play in promoting accountability and transparency in the extractive industries⁶⁰:

- Establish and build mechanisms of accountability and transparency in public sector institutions, particularly those dealings with business and civil society. Mechanisms include approval and implementation of action against corruption and developing transparency policies, including consultative processes with stakeholders.
- Reduce discretionary powers of the bureaucracy wherever possible, particularly those engaged in issuance of permits/licenses; provide anti-monopoly policies; and develop independent oversight bodies to enhance scrutiny of public institutions.
- Build checks and balances to ensure independent and effective judiciary, vehicles of contestation and associated accountability arrangements.

In spite of such vital roles, the legislatures in many resource-rich countries, African countries in particular, face a host of challenges in fulfilling their mandates. Members of

⁵⁵National Democratic Institute for International Affairs (2008) 'Promoting Transparency and Accountability of Revenue of the Extractive Industries: A Meeting for Legislators of the East African Legislative Assembly', February 27 – 29, 2008.

http://www.ndi.org/files/2317_sea_ealaworkshop_engpdf_02292008.pdf (accessed on 12/06/10)

⁵⁶ Ibid

⁵⁷ Bryan, S. and B. Hofmann (2007) Transparency and Accountability In Africa's Extractive Industries: The Role of The Legislature

⁵⁸ Affiliated Network for Social Accountability (2010:89) Social Accountability in Africa: Practitioners' Experiences and Lessons

⁵⁹ Bryan, S. and B. Hofmann (2007) Transparency and Accountability In Africa's Extractive Industries: The Role of The Legislature

⁶⁰ Schloss, M., A. Stern, and A. Allderdice (2007:9-10) Governance Framework for Extractive Industries in Africa – Mining Guidelines for Governance Work Volume I: Main Report

the Parliament in most African countries lack the skills and necessary information to fulfill their core functions⁶¹. The technical complexity of the extractive industries further aggravated the capacity problem as many of the members of the parliaments have little or no knowledge about the extractive industries⁶². A critical challenge is that legislatures are dominated by powerful executives and hence, regulatory mechanisms and legal frameworks are designed to serve the interests of the executive. In some countries, the problem is much more complicated by the fact that legislatures have personal or business ties to the extractive industry, presenting a conflict of interest in their oversight abilities⁶³.

Due to such and other challenges, domestic civic groups and international advocacy organizations are performing much better than African legislators in their efforts to promote increased transparency and accountability in the extractive industries⁶⁴. In spite of the limitations, it has to be noted that neither domestic nor international advocacy groups can substitute legislatures. Hence, civil society and other actors should focus on capacity building and working in partnership with legislatures so that synergy for promotion of social accountability can be created.

5.2 Citizens

Citizens are at the center of social accountability as they are most affected by the extractive industries. In democratic systems, citizens play important roles in promoting and ensuring social accountability. There are several mechanisms through which citizens play their roles, which include participation in public policy making and investment decisions, participatory budgeting, public expenditure tracking, citizen monitoring of public service delivery, citizen advisory boards, lobbying and advocacy campaigns⁶⁵.

There are roles specific to the extractive industries, which citizens play, especially indigenous peoples. These include⁶⁶:

⁶¹National Democratic Institute for International Affairs (2008) 'Promoting Transparency and Accountability of Revenue of the Extractive Industries: A Meeting for Legislators of the East African Legislative Assembly', February 27 – 29, 2008.

http://www.ndi.org/files/2317_sea_ealaworkshop_engpdf_02292008.pdf (accessed on 12/06/10)

⁶²Bryan, S. and B. Hofmann (2007) Transparency and Accountability In Africa's Extractive Industries: The Role of The Legislature

⁶³ National Democratic Institute for International Affairs (2008) 'Promoting Transparency and Accountability of Revenue of the Extractive Industries: A Meeting for Legislators of the East African Legislative Assembly', February 27 – 29, 2008.

http://www.ndi.org/files/2317_sea_ealaworkshop_engpdf_02292008.pdf (accessed on 12/06/10)

⁶⁴ Bryan, S. and B. Hofmann (2007:11) Transparency and Accountability In Africa's Extractive Industries: The Role of The Legislature

⁶⁵ Kiwekete. H.M (not dated) 'Social Accountability (SA8000) The Standard for the Present and the Future'

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTPCENG/0,,contentMDK:20509424~menuPK:1278120~pagePK:148956~piPK:216618~theSitePK:410306,00.html> (accessed on 06/06/10)

⁶⁶ CEE Bankwatch Network (not dated) 'Indigenous Peoples' Declaration on Extractive Industries'

http://bankwatch.org/documents/decl_wbeir_ip_04_03.pdf (accessed on 12/06/10)

- Negotiate and provide inputs to Indigenous Peoples' Development Plans to be executed by companies to be engaged in resource extraction in their territories.
- Negotiate and enter into binding agreements with extractive companies and governments, which can be invoked in the courts if other means of redress and dispute resolution fail.
- Participate in environmental, social and cultural impact assessments to be carried out prior to the start of projects so that their ways of life are respected throughout the project cycle.

The success of indigenous peoples in effectively carrying out these roles however, greatly depends on the existence and practice of the right to free prior informed consent of peoples.

5.3 Civil society Organizations (CSOs)

CSOs have increasingly demonstrated their capacity and commitment to promote development alongside the market and state. CSOs play important roles in building social consensus necessary for economic reforms and long term development, in promoting effective governance by fostering transparency and accountability of public institutions; and in efforts to fight inequality and exclusion⁶⁷. The capacity and commitment of CSOs to accountability and transparency is increasingly being recognized and respected in practice. Their activities in this regard have transcended the public sector and are demanding companies to introduce sound reporting mechanism not only on their financial status but also on the environment and social corporate investment⁶⁸.

Furthermore, CSOs are seeking opportunities to work □with legislative bodies, and promote legislative participation in extractive industry initiatives. In many countries, they identify and support reform-minded legislators who can influence legislation and promote transparency and accountability by conducting investigatory and oversight activities. They also establish relationships with relevant legislative committees and brief them on developments in the extractive industries and the impacts on citizens. In such a way they reinforce the link between legislators and their constituents⁶⁹.

Such and other roles of the CSOs depend on the legal, regulatory and policy frameworks, and political, socio-cultural and economic factors of a country. There are also institutional factors on the part of CSOs themselves⁷⁰. Therefore, the task of promoting and achieving social accountability via CSOs needs to be located within the above

⁶⁷ http://www.capitalethiopia.com/index.php?option=com_content&view=article&id=12215:ethiopias-bid-to-join-mining-transparency-initiative-assessed-&catid=12:local-news&Itemid=4 (accessed on 06/06/10)

⁶⁸ Good governance in the extractive industry (<http://www.sarwatch.org/research/195-the-research-agenda.html?start=1>) (accessed on 06/06/10)

⁶⁹ Bryan, S. and B. Hofmann (2007:11) Transparency and Accountability In Africa's Extractive Industries: The Role of The Legislature

⁷⁰ http://www.capitalethiopia.com/index.php?option=com_content&view=article&id=12215:ethiopias-bid-to-join-mining-transparency-initiative-assessed-&catid=12:local-news&Itemid=4 (accessed on 06/06/10)

contexts⁷¹. The challenge for CSOs is to find appropriate modes of engaging with the government, as most elements of their social accountability's strategy suggest a confrontational approach to the government and the private sector. They have to devise more collaborative approaches since social accountability can only be strengthened by adhering to non-adversarial relationships with all stakeholders⁷². CSOs and their networks should enhance collaborative strategies and closely work with governments and the private sector, which ultimately foster credible and effective multi-stakeholder partnerships towards promoting social accountability⁷³.

5.4 Private Sector Actors

Private companies should promote social accountability not only by way of mandatory legal obligations but also voluntarily. In recent years, there has been an explosion of voluntary initiatives intended to improve the social and environmental performance of business, which include socially-responsible investment and corporate sustainability reporting⁷⁴.

The private sector can perform more specific roles which include⁷⁵:

- Enhance transparency through public disclosure of information not subject to confidentiality clauses (financial statements, principal transactions, etc.).
- Work with host governments and stakeholders to reduce opacity in contracts to enable greater transparency and where appropriate monitoring arrangements.
- Establish codes of conduct, standards, and similar arrangements with proper control arrangements.
- Work with civil society and governments to build incentives for efficient and effective anti-corruption in all transactions.
- Introduce corporate social responsibility actions to assist in social development in project areas, particularly where government is unable to exercise an effective role as regulator or executing agent.

Industry associations are other important organized private actors. Sectoral and general membership business associations such as industry associations, councils, chamber of commerce or other forms play important roles in creating common standards, visions and strategies for corporate social accountability. Such associations have better access and capacity to introduce and enforce best practices of sustainable development, environmental and human rights protection, industry specific standards for corporate

⁷¹ Ahmad, R. (2008). Governance, Social Accountability and the Civil Society, JOAAG, Vol. 3. No. 1

⁷² Affiliated Network for Social Accountability (2010:36) Social Accountability in Africa: Practitioners' Experiences and Lessons

⁷³ Schloss, M., A. Stern, and A. Allderdice (2007:10) Governance Framework for Extractive Industries in Africa – Mining Guidelines for Governance Work Volume I: Main Report (Updated)

⁷⁴ International Union for Conservation of Nature (not dated) Theme on the Social and Environmental Accountability of the Private Sector (SEAPRISE)

<http://www.iucn.org/about/union/commissions/ceesp/wg/seaprise/#extractive> (20/05/10)

⁷⁵ Schloss, M., A. Stern, and A. Allderdice (2007:10) Governance Framework for Extractive Industries in Africa – Mining Guidelines for Governance Work Volume I: Main Report (Updated)

responsibility, social development packages, etc⁷⁶. Such activities promote responsible corporate business practices and citizenship through which company managers recognize social accountability as an important dimension of corporate strategy but not a liability for corporate success⁷⁷.

5.5 Media

This ‘supply side’ of accountability has not been sufficient on its own to create change in the landscape of social accountability because in actual practice, the government and private companies show little accountability to citizens. There are increasing calls for strengthening the ‘demand side’ of accountability where citizens and civil society actors demand accountability through forms of civic engagement. For example, advocacy and monitoring of government programs and investment projects in the extractive industries⁷⁸. Experts note that dynamism and success to promote social accountability through such engagements depend on the existence of strong and multi-channel media. Strong and professional media is needed because much of the information is available in forms that people, who are often time and resource poor, cannot easily understand, interpret or use. Through informed critique and investigations, an independent and well-informed media can play an important role in advancing greater social accountability from the extractive industry⁷⁹.

Several organizations have managed to utilize the media effectively and achieve results in their social accountability work. Civil society organizations have recognized and made use of the media in their advocacy work and often invest in different forms of media activities. While effective use of the media is vital for effective social accountability work, in many developing countries, they face several capacity constraints in terms of funds, opportunities for advancement, censorship and access to information⁸⁰.

6. Mechanisms of Social Accountability

Social accountability mechanisms refer to a broad range of actions (beyond voting) that citizens, local communities and civil society organizations can use to hold government officials, civil servants, private investors, and other stakeholders whose activities and decisions have a direct and/or an indirect impact on the rights and interests of citizens.⁸¹

⁷⁶De Queiroz, J.S. et al. (2008:25) Partnering With Extractive Industries for the Conservation of Biodiversity in Africa: A Guide for USAID Engagement

⁷⁷ Economic Commission for Africa (2005:8) Workshop on Economic and Corporate Governance and Accountability in Southern Africa, 7 – 9 December 2005 Lusaka, Zambia

⁷⁸ Affiliated Network for Social Accountability (2010:54) Social Accountability in Africa: Practitioners’ Experiences and Lessons

⁷⁹ Affiliated Network for Social Accountability (2010:52) Social Accountability in Africa: Practitioners’ Experiences and Lessons

⁸⁰ Ibid

⁸¹ Kiwekete. H.M (not dated) ‘Social Accountability (SA8000) The Standard for the Present and the Future’

The concept of mechanisms of social accountability helps to develop a framework of how citizens demand and enforce accountability from actors affecting their affairs⁸². Administrative rules and procedures, political forms of checks and balances, financial reporting, and auditing procedures are the first forms of accountability mechanisms⁸³. In its current usage however, social accountability mechanisms have applications in varied contexts. However, the common denominator is that each mechanism has to build citizen voice and create spaces for more pro-active engagement of citizens and civil society with the state and other actors⁸⁴. In broader context, the social accountability mechanisms include:

- Right to information movements, citizen advisory boards and vigilance committees, public interest litigations, public hearings, citizens' charters etc⁸⁵.
- Citizen participation in public policy making, participatory budgeting, public expenditure tracking, citizen monitoring of public service delivery, lobbying and advocacy campaigns⁸⁶.
- Public demonstrations, advocacy campaigns, investigative journalism; social audits, citizen report cards, citizen jury or people's verdict⁸⁷

The International Bank for Reconstruction and Development (World Bank) and others have briefly discussed some of the following mechanisms:⁸⁸:

Social Audits- refers to the process of involving communities in scrutinizing public projects and the amounts actually spent on them. Social audits are also used to plan, manage, and measure non-financial activities of projects and to monitor both the internal and external consequences of their social and commercial operations.

Citizen Report Cards- are surveys of social services that affect the poor and give service recipients an opportunity to grade the agencies that provide the services. Being initiated by the Public Affairs Centre in Bangalore, the mechanism is becoming popular and is being replicated in many parts of the world.

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTPCENG/0,,contentMDK:20509424~menuPK:1278120~pagePK:148956~piPK:216618~theSitePK:410306,00.html> (accessed on 06/06/10)

⁸² Claasen, M. and Carmen Alpín-Lardiés (eds.) (2010) Social Accountability in Africa: Practitioners' Experiences and Lessons

⁸³ Affiliated Network for Social Accountability (2010:4) Social Accountability in Africa: Practitioners' Experiences and Lessons

⁸⁴ Kiwekete. H.M (not dated) 'Social Accountability (SA8000) The Standard for the Present and the Future'

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTPCENG/0,,contentMDK:20509424~menuPK:1278120~pagePK:148956~piPK:216618~theSitePK:410306,00.html> (accessed on 06/06/10)

⁸⁵ Ibid

⁸⁶ Ibid

⁸⁷ Ahmad, R. (2008) Governance, Social Accountability and the Civil Society, JOAAG, Vol. 3. No. 1

⁸⁸ The International Bank for Reconstruction and Development (2005:11-15) Stocktaking of Social Accountability Initiatives in the Asia and Pacific Region

Citizen Jury or People's Verdict- in this approach, residents of a given community are chosen by an oversight panel of NGOs and/or donor organizations to study an issue that will greatly affect that community. They are given information on the topic through different means that include talks, videos, and readings; have discussions with subject matter specialists; and deliberate all facets of the issue. Eventually they render their verdict on the issue to the community, the authorities, and the media.

Citizen Advisory Councils - this mechanism is designed mainly in efforts to make large-scale extractive industries more environmentally and socially accountable. The major conviction of this mechanism is that there is a need for establishing formalized structures to engage local communities and citizens in the oversight of those industries. Via an informed public oversight formal structure, this mechanism aims at improving social accountability through sustainable environmental practice, equitable share of revenue, organizationally entrenched social responsibility, and ethical behavior of extractive industries. It is recommended that all large-scale extractive industries should be required to establish well-funded, independent, and representative Citizen Advisory Councils to create well-informed citizens and provide opportunities for real engagement over the entire lifetime of extractive industry projects⁸⁹.

The following are additional mechanisms, which are believed to have specific relevance to promote social accountability in the extractive industries⁹⁰

- Raise public awareness (through a TV documentary, speakers tours, film festivals, fact sheets, several debates, media attention, reports, and websites) about legal regimes in each country, nature of operation and consequences of the extractive industries.
- Mobilize support from governments (through briefings, visits to affected communities, reports, parliamentary hearings, an international conference, presenting solutions) operating at national, regional and local levels.
- Influence companies and investors through campaigning on cases, visiting shareholder meetings, pressure from the public, presenting solutions, reports, and media attention.
- Support civil society organizations in general and those in the South in particular through providing them a platform for their concerns, assisting them with expertise, contacts and knowledge, implementing joint research and developing joint solutions.

⁸⁹ International Union for Conservation of Nature (not dated) Theme on the Social and Environmental Accountability of the Private Sector (SEAPRISE)
<http://www.iucn.org/about/union/commissions/ceesp/wg/seaprise/#extractive> (20/05/10)

⁹⁰ Friends of the Earth Europe (not dated) Corporate Campaign: Extractive Industries- Blessing or Curse?
<http://www.foeeurope.org/corporates/news/dextractives.html> (accessed on 12/06/10)

Generally, public dialogue forums through which citizens, civil society actors and other stakeholders actively debate on the management of national extractive industries stimulates improved accountability, transparency and oversight by governments. However, in many African countries either public dialogue forums are ineffective or public discussions about the management or the proceeds from the extractive industries are discouraged and even sometimes considered taboo. Efforts exerted by citizens and civil society actors to seek accountability and transparency from the extractive industries has encountered harsh responses from governments since such efforts are against the vested interests of powerful government officials⁹¹.

As a result, some of the mechanisms that have been created by governments in Africa by other actors do not practically function effectively or efficiently to promote accountability. Nevertheless, their mere creation has begun to gradually stimulate transparency in public discourse and increase civil society engagement on issues surrounding extractive industries. Moreover, the fact that MPs and environmentalists have started to voice together with civil society representatives has created opportunities for both to learn about each other's perspectives on the extractive industries⁹².

7. Social Accountability in Ethiopia

7.1 Politico-administrative and Economic Changes in Ethiopia: an Overview

Since its first Constitution in 1931, Ethiopia has been ruled by three different regimes: the Imperial (1931-74), *Derg* (1974-91) and the EPRDF (1991 to date). The Imperial and the *Derg* Governments established highly centralized political and administrative systems. Ever since it assumed power, the EPRDF has been introducing changes in the political, administrative and economic arenas, which greatly differs from those of the Imperial and *Derg* regimes. Politico-administratively, the establishment of self-governing regional and local governments in 1992 marked the end of highly centralized unitary governance structure and system in Ethiopia⁹³. The 1995 Constitution of the Federal Democratic Republic of Ethiopia (FDRE) introduces ethnic federalism and identifies nine ethnically based States or Regional Governments and one city administration (Addis Ababa) where both of them have their own legislature, executive and judiciary⁹⁴. The FDRE Constitution has laid the foundation and set out the goal of promoting democratic governance and economic development through a decentralized federal administration

⁹¹National Democratic Institute for International Affairs (2008) 'Promoting Transparency and Accountability of Revenue of the Extractive Industries: A Meeting for Legislators of the East African Legislative Assembly', February 27 – 29, 2008.

http://www.ndi.org/files/2317_sea_ealaworkshop_engpdf_02292008.pdf (accessed on 12/06/10)

⁹² Ibid

⁹³ Fenta M. (2007) Beyond the Public Realm: Local Governance Network and Service Delivery in the Amhara and Tigray Regions, Ethiopia

⁹⁴ Proclamation No. 1/1995, A Proclamation to Pronounce the Coming into Effect of the Constitution of the Federal Democratic Republic of Ethiopia, Articles 47, 49 and 50

where the Ethiopian people exercise self-rule at different levels and advance their collective socio-economic interests in their respective jurisdictions⁹⁵.

Economic policy reform is one of the most important items on the reform agendas of the post-1991 Government of Ethiopia. In August 1991, the Transitional Government of Ethiopia adopted the New Economic Policy, which initiated the introduction of the stabilization and structural adjustment program. In 1992, the Government introduced a market-based economic policy that aimed at transforming the command economy into a market economy through active and wider participation of the private sector in the development of national economy. The Government has consistently made it clear the importance of the private sector and its commitment to the development of the sector⁹⁶. Towards this end, the Government has issued and implemented a series of economic reform programs⁹⁷ that have substantial implications for economic stabilization and structural adjustment⁹⁸.

Privatization of state-owned enterprises and liberalization of the financial sector for domestic investors, introduced by the economic reforms over the last couple of years, have improved the landscape for the development of the private sector⁹⁹. As a result, the Ethiopian economy is in a state of change and its performance is improving well. For example, since 2003/04, the economy has registered an average of above 11 percent GDP¹⁰⁰ growth. Reports of the International Monetary Fund (IMF) and African Development Bank indicated that Ethiopia was the fastest growing non-oil driven African economy in 2007. Global development projections for 2009 also showed that Ethiopia would be one of the four fastest growing economies in the world¹⁰¹.

In spite of consecutive double digit GDP growth, the economy has not made any major structural transformation. Agriculture is still a dominant sector that accounts an average of 45 percent of the GDP for the period 2001/02-2008/09¹⁰². The composition of the GDP

⁹⁵ African Institute of Management, Development and Governance (2008), Ethiopia- Country Self-Assessment Report , Draft Report Submitted to the Governing Council of the National African Peer Review Mechanism, December 2008

⁹⁶Private Sector Development Hub/Addis Ababa Chamber of Commerce and Sectoral Associations (PSD Hub/AACCSA) (2009a) The Road to Private Sector Development Led Economic Growth: a Strategy Document

⁹⁷Among others include privatization of state-owned enterprises, liberalizing the investment climate, deregulation of the domestic prices, devaluation of foreign exchange, and abolition of all export taxes and subsidies

⁹⁸ PSD Hub/AACCSA (2009b) Review of the Legal and Institutional Framework for Market Competition in Ethiopia

⁹⁹ EthiopiaInvestor (not dated) 'Introducing Corporate Governance in Ethiopia'
(http://www.ethiopiainvestor.com/index.php?option=com_content&task=view&id=1164&Itemid=
(accessed on 14/06/10)

¹⁰⁰ African Institute of Management, Development and Governance (2008), Ethiopia- Country Self-Assessment Report , Draft Report Submitted to the Governing Council of the National African Peer Review Mechanism, December 2008

¹⁰¹ Fikremarkos M. et al. (2009) Review of the Legal and Institutional Framework for Market Competition in Ethiopia

¹⁰² National Bank of Ethiopia (2009) National Bank of Ethiopia Quarterly Bulletin, V. 24, No.4 Fourth Quarter, 2008/09 Fiscal Year Series

over the same period shows the importance of the service sector over time, but still confirms that Ethiopia remains in the very early stage of structural transformation¹⁰³. In the same period, industry accounts for an average of about 13 percent of the GDP¹⁰⁴.

The role and share of the extractive industry in the economy is not significant. Since 1993, the Ethiopian Government has opened the extractive sector for local and foreign private investors. As a result, a considerable amount of investments have been made. Until November 2009, the amount of total private investment was about USD 1.1 billion, of which 95 percent was direct foreign investment engaged in the development of precious and industrial minerals. Currently, a number of junior exploration and world class mining companies are operating in Ethiopia for different mineral commodities. Ministry of Mines and Energy promises that there are wide ranges of future investment opportunities in Ethiopia, from which both investors (local and foreign) and the country can derive mutual benefits¹⁰⁵.

In spite of this, the scale of operation and contribution of the extractive industry to the economy is quite small in Ethiopia. Against the widely prevalent conviction of the country's rich mineral potential, the contribution of the mining sector to the national economy has reached a maximum of six percent so far. This is due to a lack of well-organized and developed large scale extractive industries. So far, the only large scale developed extractive industry is the Lege-dembi gold mine, located in the southern greenstone belt region, which is operated by a private company. This mine is estimated to have a reserve of 82 tons of gold and an average annual production of 3.6 tons of gold. Exploration and development activities for advanced stage primary gold exploration have been carried out in different parts of the country, so far, it has identified close to 100 tons of reserve of gold and other precious metals. Though operating at small scale, there is also an open pit mine of columbo-tantalite at Kenticha in the Adola belt. The mine has been operating since 1990 and started with a pilot plant producing about 20 tons per annum, which is currently producing over 190 tons of tantalite colomboite ore per annum. Soda ash is being mined at Lake Abiyata in the rift valley where the reserve at Abiyata and the surrounding lakes exceeds 460 million tons of sodium carbonate, at a salt concentration ranging from 1.1 to 1.9 percent. The plant currently operates at semi-industrial scale and produces only about 5,000 tons soda ash per annum.¹⁰⁶

Kaolin, quartz and feldspar are also being mined by government enterprise from the Adola belt in southern Ethiopia. The construction industry is growing fast in the country and hence, cement and other factories that are engaged in the extraction and use of natural resources to produce raw materials are also growing fast. Cement factories are

¹⁰³ World Bank (2007) Ethiopia Accelerating Equitable Growth Country Economic Memorandum, Part II: Thematic Chapters

¹⁰⁴ National Bank of Ethiopia (2009) National Bank of Ethiopia Quarterly Bulletin, V. 24, No.4 Fourth Quarter, 2008/09 Fiscal Year Series

¹⁰⁵ Ministry of Mines and Energy, Federal Democratic Republic of Ethiopia (2009) National Report on Mining to the United Nation Commission on Sustainable Development (UNCSD)

http://www.un.org/esa/dsd/dsd_aofw_ni/ni_pdfs/NationalReports/ethiopia/mining.pdf (accessed on 10/06/10)

¹⁰⁶ Ibid

using high quality limestone, clay, gypsum and pumice as raw materials for cement production. There is also extraction and production of large amounts of construction minerals such as sand, gravel, aggregates, pumice, scoria, etc.¹⁰⁷.

In the coming 15 to 20 years, the Mineral Sector envisions to establish a diverse, world-class, competitive and environmentally sound private sector mining industry, based on transparent free market principles, contributing not less than 10 percent of the GDP. When such a vision is realized, it will definitely generate huge amount of revenues. The contributions and impacts of the sector on the socioeconomic development of the country and on poverty eradication in particular depend on the legal and regulatory frameworks and practices of social accountability.¹⁰⁸

7.2 Social Accountability in Ethiopia: An overview

In addition to social accountability, which is broader in its scope, corporate reasonability is also new to Ethiopia, since corporate governance is generally a new phenomenon for the country. Both the legal frameworks and practices of corporate responsibility are very weak¹⁰⁹. Separation of management and ownership of enterprises is a fairly recent development since the economy was dominated by the public sector. Even now, “[...] Most of the Ethiopian business undertakings are different forms of family-based associations where there is no clear separation between ownership and control or management. Due to this situation, the Ethiopian business community is regarded as an ‘insider’ economy where the control of firms is held by limited number of families and their close circle of partners.’¹¹⁰ Corporate governance and oversight is weak not only in those family based business organizations but also in companies where there are elected board of directors.

Since recently however, business and sectoral associations have realized the need for a strong corporate governance framework and code of business ethics¹¹¹. As a result, there are several initiatives and activities towards the improvement of corporate governance. The revision of the Commercial Code is considered one of the most important steps to move forward. Several other important activities that will improve the framework for corporate responsibility in Ethiopia are being undertaken by the Private Sector Development (PSD) Hub of the Addis Ababa Chamber of Commerce (ACCSA), in collaboration with the Ethiopian Government and professional associations¹¹². The most important activities of the PSD Hub include modernizing and computerizing company register, developing a standard for Accounting and Auditing practices, and Competition

¹⁰⁷ Ibid

¹⁰⁸ Ibid

¹⁰⁹ Minga N. (2008) Rethinking Corporate Governance in Ethiopia

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1264697 (accessed on 08/06/10)

¹¹⁰ PSD Hub/AACCSA (2009a:104) The Road to Private Sector development Led Economic Growth: a Strategy Document

¹¹¹ Ibid

¹¹² Ibid

Policy Projects¹¹³. Despite such activities that draw a positive scenario towards a responsible business environment; the focus is on ensuring accountability of corporate managers to shareholders and the government, but less to citizens at large.

Though the concept of social accountability is generally new to Ethiopia, the public sector is better familiar than the private sector. There are some initiatives and practices of social accountability in the context of public sector service delivery. Citizens Report Cards (CRCs) study, conducted by Poverty Action Networks of Ethiopia (PANE) and the Ethiopian Social Accountability Project (ESAP), which constitutes one of the four components of the Protection of Basic Services (PBS¹¹⁴), are important initiatives to mention¹¹⁵.

In 2005, a pilot survey of CRCs was conducted by PANE, which was the first of its kind in Ethiopia. The result was made public in 2006. The study¹¹⁶ aimed at creating awareness among the wider citizens about the performance of public services, and how to hold service providers accountable for results. On top of this, PANE has a strong conviction that such an exercise would bring stakeholders together, create awareness and build their capacity to promote transparent and accountability in service delivery. The study covered four regions of Ethiopia viz. Southern Nations, Nationalities and Peoples (SNNP), Oromia, Tigray, and Dire Dawa City Administration. On the basis of priority lists of services indicated in the Country's Sustainable Development and Poverty Reduction Program (SDPRP), the survey covered water, health, sanitation, education, and agricultural extension services.¹¹⁷

The study has clearly illustrated that if citizens are empowered, they have interest to actively be engaged in the process of performance assessment and in holding service providers accountable. The results of the study has attracted policy makers and implementers, service providers, media and other stakeholders having vested interest in promoting social accountability. At the macro level, the results have been used as inputs for PASDEP formulation while senior public managers have used the findings as a diagnostic tool in the process of monitoring the effectiveness of service delivery across

¹¹³ Ibid

¹¹⁴ PBS is a broad program of the Government of Ethiopia aimed at ensuring that the poor receive essential basic services according to their needs. It is supported by a Multi Donor (African Development Bank, CIDA-Canada, DFID-UK, the European Commission, KfW-Germany, Irish Aid, the Royal Embassy of the Netherlands and the World Bank) Trust Fund. PBS project was established in June 2006 by the Government of Ethiopia to ensure efficient, effective, responsible and accountable service delivery at local levels. The Project consists of for major components viz. protect the delivery of basic services; Deliver basic health services; Improve citizens' understanding of regional and woreda budgets and make service facilities more accountable to the citizens they serve; and The Ethiopian Social Accountability Project

¹¹⁵ GTZ Ethiopia (not dated) 'Protection of Basic Services (PBS) – Ethiopian Social Accountability Project' <http://www.gtz.de/en/weltweit/afrika/aethiopien/23596.htm> (accessed on 10/06/10)

¹¹⁶ The study received financial support from UNDP Ethiopia, while the Public Affairs Foundation, India provided with technical support.

¹¹⁷ Eshetu B. (2006) Enhancing social accountability through community empowerment to facilitate PASDEP/PRSP implementation: The Case of Citizen Report Cards in Ethiopia. PRESENTED AT HDCA 2006 ANNUAL MEETING http://www.capabilityapproach.com/pubs/4_5Bekele.pdf (accessed on 05/06/10)

wide array of areas. Administrators and planners have also gained insights as to how to improve service delivery investment and management. The media found the findings attractive in terms of its impact in promoting social accountability and ultimately reducing poverty. As a result, the findings have been placed on the larger public domain via different media, which is of vital importance to raise public awareness about social accountability. Dissemination of the survey results was carried out through a series of seminars, meetings and presentations at national and international conferences/workshops in which researchers, government officials and civil society organizations participated. This helped not only to raise awareness but also created opportunity for multi-stakeholder partnerships towards social accountability in Ethiopia. The whole exercise of the CRCs study helped PANE to build capacity and confidence to undertake further survey of CRCs¹¹⁸. As a matter of fact, PANE has conducted the second round of the CRCs and is on preparation to officially present the result.

The PBS/ESAP is the second initiative that aims at strengthening the use of social accountability approaches by citizens and civil society organizations as a means to make basic service (include sanitation, agriculture, health, and education) delivery more effective, efficient, transparent, responsive, and accountable. It also aims at engaging citizens and civil society organizations with decentralized public service providers and enhancing transparency of budget processes¹¹⁹. Enabling and energizing the civil society sector citizens as well as the public sector is at the center of ESAP, so as to achieve its objectives of promoting social accountability throughout Ethiopia¹²⁰. Thus, the grant making initiative of the PBS/ESAP, awarded funds to 12 civil society organizations, on a competitive basis for a period of 17-18 months. The 12 civil society organizations, with their partners representing a total of 50 civil society organizations (operating in 80 woredas, towns, cities or sub-cities and hundreds of kebles of Ethiopia), have been involved in the implementation of ESAP. The project covers most of the regional states of Ethiopia that include Oromia, Tigray, SNNP, Amhara, Benishangul-Gumuz, Harari, and the Federal cities of Dire Dawa and Addis Ababa¹²¹.

Citizens are at the centre of social accountability, both as beneficiaries and actors; in light of this, the project has provided sufficient space for participation in which citizens have been involving in the introduction and establishment of instruments or tools of accountability that include: Right Based Approach, Community Score Card (CSC), Citizens Report Card (CRC) and Participatory Budgeting (PB) as well as Focal Group and Interface Discussions and Participatory Planning and Monitoring.¹²² In order to create capacity and further disseminate and consolidate the social accountability concept and tools, citizens and also important actors that include local authorities, service providers, and civil society organizations (not limited to those involved in the

¹¹⁸ Ibid

¹¹⁹ Mai, G., Lulit M. and Workneh D. (2009) Piloting Social Accountability in Ethiopia Analytical Report with Case Studies

¹²⁰ GTZ Ethiopia (not dated) 'Protection of Basic Services (PBS) – Ethiopian Social Accountability Project' <http://www.gtz.de/en/weltweit/afrika/aethiopien/23596.htm> (accessed on 10/06/10)

¹²¹ Mai, G., Lulit M. and Workneh D. (2009) Piloting Social Accountability in Ethiopia Analytical Report with Case Studies

¹²² Ibid

implementation of ESAP) have been participating in dialogues with greater transparency¹²³.

Though social accountability was new for most of stakeholders of the initiative, the project has produced significant practices of social accountability, which serve as a learning initiative. The agenda of social accountability and the mechanism are being replicated and institutionalized by some civil society organizations and their partners, mostly based on existing structures and linked with ongoing programs. Improved relationships between civil society and regional/local governments are other important contributions of the ESAP, which are crucial for the development of democratic culture and healthy civil society-government engagement in all societal affairs¹²⁴.

7.3 Governance of the Extractive Industries in Ethiopia

As discussed above, the types and scale of operations of the extractive industry in Ethiopia is very small, which is partly attributed to the governance problem of the sector. The limited initiatives of opening up of the sector for private investment by the Imperial regime were halted by the *Derg* regime. During the entire period of the *Derg* (1997-1991) private investment in the extractive industry was not allowed. Government institutions, with limited human, financial and technological capacity, were given the authority and responsibility to explore and develop the extractive industries of the country. Public sector monopoly has ended when the Transitional Government of Ethiopia introduced market oriented economic policy and the sector is experiencing a governance system different from the previous regimes¹²⁵.

The power and responsibilities of managing the extractive sector and the benefits thereof fall in the jurisdictions of the Federal and regional governments. Activities such as artisanal and construction minerals mining undertaken by domestic investors are under the regional governments' jurisdiction while the Federal Government has full authority over large scale mining operations¹²⁶. Artisanal mining refers to all non-mechanized mining operations of gold, platinum, precious minerals, metals, slat, clay, and other similar minerals, an essentially natural nature carried out by Ethiopian individuals or group of such persons. Construction minerals mining is limited to mining of sand, gravel, stone (marble, granite, basalt, etc), and clay including non-metallic minerals used for construction purpose¹²⁷. The law has made it clear that all mechanized and large scale

¹²³ GTZ Ethiopia (not dated) 'Protection of Basic Services (PBS) – Ethiopian Social Accountability Project' <http://www.gtz.de/en/weltweit/afrika/aethiopien/23596.htm> (accessed on 10/06/10)

¹²⁴ Mai, G., Lulit M. and Workneh D. (2009) Piloting Social Accountability in Ethiopia Analytical Report with Case Studies

¹²⁵ Ministry of Mines and Energy, Federal Democratic Republic of Ethiopia (2009) National Report on Mining to the United Nation Commission on Sustainable Development (UNCSD) http://www.un.org/esa/dsd/dsd_aofw_ni/ni_pdfs/NationalReports/ethiopia/mining.pdf (accessed on 10/06/10)

¹²⁶ Proclamation No. 52/1993, A Proclamation to Promote the Development of Mineral Resources, Article 46(1)

¹²⁷ Ibid, Article 2(2 &3)

mining operations are under the Federal Government. Despite large-scale mining and all petroleum and gas operations are under the Federal Government's jurisdiction, the Federal and regional governments jointly levy and collect taxes on incomes and as well as royalties from such operations¹²⁸.

The power and responsibility of issuing and regulating licenses and administration of exploration activities are vested in the Ministry of Mines and Energy and bureaus of mines and energy for all mining operations that fall within the jurisdictions of the Federal and regional governments respectively. However, the Ministry of Mines and Energy represents and provides overall strategies for the development of the mining sector in the country. The Ethiopian Geological Survey, an autonomous institution under the Ministry of Mines and Energy, is responsible to undertake basic geological mapping, mineral exploration and other related geological activities, and generate basic geosciences data¹²⁹.

7.4 Legal Regimes for Social Accountability in the Extractive Industries of Ethiopia

Starting from the Transitional period (1991-1995), the Ethiopian Government has issued legal and regulatory frameworks, consistent with the new economic ideology of promoting private sector investment. On top of the FDRE Constitution, the following are important laws, which determine and regulate extractive operations in the country. Laws promulgated to specifically govern the extractive industry include Mining Proclamation No. 52/1993, Mining Income Tax Proclamation No. 53/1993, Council of Ministers Regulation No. 182/1994, and Transaction of Precious Minerals Proclamation No. 651/2009. Though environmental laws are not specific to the extractive sector, they consist of several important provisions that help to regulate and protect environmental impacts of extractive projects. Such laws include Environmental Protection Organs Establishment Proclamation No. 295/2002, Environmental Impact Assessment Proclamation No. 299/2002 and Environmental Pollution Control Proclamation No. 300/2002.

This section is devoted to the review of the above legal and regulatory frameworks with regard to how they intend to promote and ensure issues of social accountability in the extractive industries. As discussed earlier, the sector is expected to grow fast so as to contribute its best to the overall development of the country. In light of this aspiration, it is quite imperative to assess how well informed and comprehensive the legal regimes are in addressing issues of social accountability.

The legal regimes of the extractive industries in Ethiopia are reviewed hereunder in light of the three fundamental pillars (human rights, sustainability and social license to operate) of social accountability for the extractive industries.

¹²⁸ Proclamation No. 1/1995, Article 98(3)

¹²⁹ Ministry of Mines and Energy, Federal Democratic Republic of Ethiopia (2009) National Report on Mining to the United Nation Commission on Sustainable Development (UNCSD) http://www.un.org/esa/dsd/dsd_aofw_ni/ni_pdfs/NationalReports/ethiopia/mining.pdf (accessed on 10/06/10)

7.4.1 Principles of human rights

Conceptual discussions indicated that social accountability from the view points of principles of human rights would include the right to a clean environment; the right to land, territories and resources; the right to free prior and informed consent; and protection from involuntary resettlement.¹³⁰

The FDRE Constitution recognizes a whole spectrum of human rights. The Country has ratified major international instruments that guarantee human rights. Though established recently, it has also created institutions including the Human Rights Commission and the Institution of the Ombudsman, designed to enforce human rights¹³¹.

Article 44(1) of the FDRE Constitution guarantees the right to clean environment, which states “All persons have the right to a clean and healthy environment.” This is an important parent legal provision that protects, if properly enforced, citizens from heavy environmental pollution and destruction caused by the extractive industries. Article 92(1&2) reasserts that the government should work hard to ensure that all Ethiopians live in a clean and healthy environment. No matter what the economic contributions of a project, the Constitution pays due emphasis to the rights of citizens and as well as protection of the natural environment. To this end, the design and implementation of development programs and projects are required to be carried out in a way that does not cause any major damage or destroy the natural environment. Article 3(1&2) of Proclamation No. 300/2002¹³² also states that no person (natural or judicial) shall pollute or cause any other person to pollute the environment. Moreover, the law states that no project, that has a negative environmental impact shall commence implementation without environmental impact assessment and authorization of the same by the Environmental Protection Authority and relevant regional environmental agency¹³³.

The above legal provisions are general, applicable to all sectors of the economy. There are also legal provisions, which specifically address the extractive industry. Every enterprise engaged in the extractive sector is required to conduct extraction/mining operations in such a manner that ensures the health and safety of its agents, employees and other persons, and as well as minimizes the damage or pollution to the

¹³⁰ H. Ali, S. and C. O’Faircheallaigh (2007:12) ‘Introduction’ in *Greener Management International Issue 52, pp.1-16*; Tebtebba Foundation Indigenous Peoples’ International Centre for Policy Research and Education (2006) Indigenous Peoples’ Rights, Extractive Industries and Transnational and Other Business Enterprises: A Submission to the Special Representative of the Secretary- General on human rights and transnational corporations and other business enterprises, 29 December 2006 <http://www.google.com.et/#hl=en&&sa=X&ei=4yUXTNTmN5X44gaTt4j3Cw&ved=0CBAQBSgA&q=Indigenous+peoples%27+rights,+extractive+industries+and+transnational+and+other+business+enterprises&spell=1&fp=13f5d39a0c3ac61c> (accessed on 27/05/10)

¹³¹ African Institute of Management, Development and Governance (2008), Ethiopia- Country Self-Assessment Report , Draft Report Submitted to the Governing Council of the National African Peer Review Mechanism, December 2008

¹³² Proclamation No. 300/2002, Environmental Pollution Control Proclamation

¹³³ Proclamation No. 299/2002, Environmental Impact Assessment, Article 3

environment¹³⁴. Against the strong provision of the Constitution that prohibits any economic activity that may cause damage or destroy the environment, the above legal provision is loose, only demanding that enterprises minimize environmental damage and pollution. The provision opens a Pandora box for subjective judgment of the degree of tolerable environmental impact. Though environmental impact assessment is a requirement to secure large scale mining license¹³⁵, legal provisions specific to the extractive sector seem to focus on rehabilitation instead of protecting the environment before the ecosystem is destabilized. “The holder of a small or large scale mining license shall progressively restore or reclaim the land covered by the license and, if applicable, a lease so that, prior to termination of the license, the area has been completely restored or reclaimed for beneficial future use, unless the Licensing Authority approves otherwise.”¹³⁶ Such excessive dependence on restoration and reclamation encourages an unwarranted intervention into the natural environment while such activities hardly restore the natural ecosystem to its original status.

The Environmental Protection Authority or the relevant regional environmental agency is fully authorized to take administrative or legal measure against any person (natural or judicial) who violates this law. The law states that the Environmental Protection Authority or the relevant regional environmental agency shall assign environmental inspectors who are authorized to inspect and ensure compliance with environmental standards and related requirements¹³⁷. The law authorizes not only environmental inspectors but also any person to lodge a complaint at the Authority or the relevant regional environmental agency against any person allegedly causing actual or potential damage to the environment¹³⁸.

Article 37(2/b) of Regulation No. 182/1994 states that violation of obligations by any mining enterprises relating to health and environment shall be guilty of primary infractions. The sanction for an act that constitutes such infraction may include an immediate revocation of the license to which the infraction is related and a fine not exceeding Birr 5,000¹³⁹. Revocation of the license has a good deal of deterring capacity, the fine however, is so nominal to deter any act or behavior.

Reviews of the literature show that rights to lands, territories and resources are important elements of the human right pillar of social accountability. These rights are fundamental to local peoples because their economic and social development, physical and cultural integrity, and their livelihoods and sustenance greatly depend on secure, effective and collective property rights¹⁴⁰.

¹³⁴ Proclamation No. 52/1993, Article 26(3)

¹³⁵ Council of Ministers Regulation No. 182/1994, Council of Ministers Regulations on Mining Operations, Article 5(2/d)

¹³⁶ Ibid, Article 29(5)

¹³⁷ Proclamation No. 300/2002, Article 7

¹³⁸ Ibid, Article 11

¹³⁹ Ibid

¹⁴⁰ Tebtebba Foundation Indigenous Peoples' International Centre for Policy Research and Education (2006) Indigenous Peoples' Rights, Extractive Industries and Transnational and Other Business

The FDRE Constitution guarantees to every Ethiopian citizen the right to ownership of property. “The right to ownership of rural and urban land, as well as of natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange.”¹⁴¹ In the rural context, the law further elaborates that Ethiopian peasants and pastoralists have constitutional rights to obtain land for grazing and cultivation without payment and protection against eviction from their possession.¹⁴² Individuals and communities have mainly use and associated rights, which undermine citizens’ right to effectively exercise property rights on their land. In fact, the law has made it clear that Government is the guardian that holds, on behalf of the People, land and other natural resources and to deploy them for their common benefits and development.¹⁴³ This further undermines the bargaining power of individual citizens’ and local communities’ as investors principally deal with the Government, which has absolute authority to deploy land and other natural resources. Hence, the law has limitation to promote and ensure social accountability from the view point of rights to land, territories and resources.

Rights to land, territories and resources are fundamental not only for the promotion of economic interests of the local people but also for the maintenance of their worldviews and spirituality and to their very survival as viable territorial and distinct cultural communities. The FDRE Constitution has provided with ample provisions aimed at ensuring such rights. It is Government’s duty to support the growth and enrichment of cultures and traditions that are compatible with fundamental human rights and dignity¹⁴⁴. More specifically, the Government has responsibility to protect and preserve historical and cultural legacies¹⁴⁵. To this end, “Government may exclude any area from mining operations that is related to sites of historical, cultural or religious significance”¹⁴⁶. The law also added that village community, burial ground and land under cultivation fall under prohibited areas for the operation of extractive industries. Nonetheless, the law gives discretion to the licensing Authority to decide otherwise instead of completely banning extractive operations in these sites¹⁴⁷. At the time that prohibition is accepted, the law requires mining operations only to be 100 meters away from such sites¹⁴⁸. Due to heavy operations, such a distance is not enough to avoid negative impacts of extractive industries on physical, social and cultural assets of the local community.

Enterprises: A Submission to the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, 29 December 2006

(<http://www.google.com.et/#hl=en&&sa=X&ei=4yUXTNTmN5X44gaTt4j3Cw&ved=0CBAQBSgA&q=Indigenous+peoples%27+rights,+extractive+industries+and+transnational+and+other+business+enterprises&spell=1&fp=13f5d39a0c3ac61c> (accessed on 27/05/10)

¹⁴¹ Proclamation No. 1/1995, Article 40 (1&3)

¹⁴² Ibid, Article, 40 (4 & 5)

¹⁴³ Ibid, Article 89 (5)

¹⁴⁴ Ibid, Article 91(1)

¹⁴⁵ Ibid, Article 41(9)

¹⁴⁶ Proclamation No. 52/1993, Article 6

¹⁴⁷ Régulation No. 182/1994, Article 11(2)

¹⁴⁸ Ibid, Article 11

Indigenous peoples' rights to participate in decision making and to give or withhold their free consent to activities affecting their lands, territories and resources are important mechanisms to promote and ensure social accountability. Their consents should be secured freely before the implementation of any project in their territories. Government agencies, in undertaking environmental impact assessments, should seek the informed consent of concerned communities prior to authorizing any mining or similar operations which may threaten the environment in areas inhabited by these communities.¹⁴⁹

The FDRE Constitution states that "Nationals have the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community."¹⁵⁰ The law further states that local peoples have the right to full consultation and to the expression of views in the planning and implementation of environmental policies and projects, which affect them directly¹⁵¹. The law requires that before securing license for mining (small and large) operations, registration of each application should be followed by a notice that has to be published on newspapers which have wider circulation.¹⁵² On the basis of this notice, any person can file a written objection at the office of licensing authority within thirty days.¹⁵³ However, the right to free prior informed consent involves permanent processes of negotiation between local communities and developers. The law does not require this; instead, it empowers the applicant to delimit the area for which the application is sought prior to application without the consents of legitimate occupants.¹⁵⁴ Moreover, the legal provisions, lack appropriate mechanisms of informing the local people on whose land and territories the mining project is to be implemented. In the Ethiopian context, neither newspapers have sufficient distribution coverage nor have the rural local people the skill and culture of reading newspaper. Hence, publishing a notice on newspaper does not provide local peoples with sufficient opportunity to be well informed of such plans.

Indigenous peoples have rights on their land, territory and resources to the extent of saying 'no' to projects that they consider as injurious to their environment, social and cultural values¹⁵⁵. In this regard, the law does not give such authority to the local people; it is up to the Licensing Authority to decide on the objection¹⁵⁶. Any decision against the interests of the local people creates potential dispute between the mining companies and the local community over the control and management of natural resources. If such practices persist, local people will emerge as the main resistance group against the advance of mining and other extractive activities.

¹⁴⁹ Ibid

¹⁵⁰ Proclamation No.1/1995, Article 43(2)

¹⁵¹ Ibid, Article 92(3)

¹⁵² Régulation No. 182/1994, Article 6(2)

¹⁵³ Ibid, Article 7(1)

¹⁵⁴ Ibid, Article 25 (1)

¹⁵⁵ CEE Bankwatch Network (not dated) 'Indigenous Peoples' Declaration on Extractive Industries' http://bankwatch.org/documents/decl_wbeir_ip_04_03.pdf (accessed on 12/06/10)

¹⁵⁶ Proclamation No.52/1993, Article 24 (2)

Displacement of indigenous people from their land and territories, due to expansion of extractive industries, constitute grave violation of human rights. It causes disastrous harm to their individual and collective basic civil, political, economic, social, and cultural rights. Of course, it may not be possible to totally avoid displacement and resettlement, since states' power to take land and resources for public purposes cannot be undermined. The issue, hence, is to execute resettlement in a manner that respects the rights of affected persons.¹⁵⁷

Proclamation No. 52/1993, the FDRE Constitution and Regulation No. 182/1994 have provided legal provisions, which address the issue of displacement due to projects. "All persons who have been displaced or whose livelihoods have been adversely affected as a result of State programs have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance"¹⁵⁸. The Mining Proclamation also states that "[...] if the licensee's mining operations require that the other occupant be displaced, the licensee shall attempt to negotiate the compensation payable to such occupant"¹⁵⁹. The licensee should pay compensation to a legitimate occupant for all properties it has destroyed and/or damaged within or outside the licensed area.¹⁶⁰ In any resettlement program, due to displacement caused by extractive and other projects, indigenous peoples' free and informed consent and agreement with the offer must be obtained. Moreover, compensation should encompass not only remuneration for economic losses but also reparations for the social, cultural, environmental, and spiritual losses local communities endure¹⁶¹. In this regard, the Ethiopian legal regime suffers from short of meeting such important principles of social accountability. Neither people are compensated for non-economic losses nor are their consents mandatory before eviction. The law has made it clear that compensation will be made only for properties destroyed and/or damaged by extractive operations. In case of the disagreement, the licensing authority may cause displacement of legitimate occupants against their consent. The law clearly stipulates that "If the occupant refuses to be displaced or to agree on the amount of compensation, the Licensing Authority may cause the expropriation of immovable property if any, and the eviction of such occupant on behalf of the licensee's mining operations, subject to the licensee's payment of compensation determined by the Licensing Authority."¹⁶²

¹⁵⁷ Tebtebba Foundation Indigenous Peoples' International Centre for Policy Research and Education (2006) Indigenous Peoples' Rights, Extractive Industries and Transnational and Other Business Enterprises: A Submission to the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, 29 December 2006

(<http://www.google.com.et/#hl=en&&sa=X&ei=4yUXTNTmN5X44gaTt4j3Cw&ved=0CBAQBSgA&q=Indigenous+peoples%27+rights,+extractive+industries+and+transnational+and+other+business+enterprises&spell=1&fp=13f5d39a0c3ac61c> (accessed on 27/05/10))

¹⁵⁸ Proclamation No.1/1995 Article 44 (2)

¹⁵⁹ Proclamation No.52/1993, Article 24 (2)

¹⁶⁰ Ibid, Article 24 (3).

¹⁶¹ CEE Bankwatch Network (not dated) 'Indigenous Peoples' Declaration on Extractive Industries' http://bankwatch.org/documents/decl_wbeir_ip_04_03.pdf (accessed on 12/06/10)

¹⁶² Proclamation No.52/1993, Article 24 (2)

7.4.2 Principals of Sustainability

Principles of sustainability are at the centre of the extractive industries since the environmental damage they cause could be catastrophic to the extent of irreversible nature, which is against the principle of sustainable development. Indigenous peoples in many parts of the world, particularly in African countries have experienced such effects of the extractive industries¹⁶³. Hence, governments should provide legal protection against any practice of unsustainable resource exploitation that destroys the ecosystem on which the local peoples' livelihoods depend. Development that does not serve the needs of the local people should not be tolerated.

The FDRE Constitution defines that “The basic aim of development activities shall be to enhance the capacity of citizens for development and meet their basic needs”. The Constitution further recognizes the right of the peoples for sustainable development, which states “The Peoples of Ethiopia as a whole, and each Nation, Nationality and People in Ethiopia in particular have the right to improved living standards and to sustainable development”¹⁶⁴

The Ethiopian Government has also provided a Proclamation that requires every project owner who plans to implement a project that has a negative environmental impact to undertake an environmental impact assessment; identify the likely adverse impacts of the project; incorporate the means of their prevention or containment; and submit the report to the Environmental Protection Authority or the relevant regional environmental agency.¹⁶⁵ Large scale extractive operations fall in this category and hence, such projects are required to navigate through environmental impact assessment processes.

The principles of sustainability demand not only understanding, planning and mitigating the impacts but also extend to limiting extraction of the natural resources by extractive industry corporations so that irreversible impacts on the natural and social environments could be minimized. Such limitations should be clearly stated by the laws governing the operations and development of the sector¹⁶⁶. In this regard, the Ethiopian Mining Proclamation does not put any restriction on operations except for mineral water extraction, which states “The mining license of mineral water may specify the amount and rate of production, which shall generally be limited to that which permits the renewal of the water aquifer, and the horizon or depth from which the water may be extracted.”¹⁶⁷ For other extractive operations, instead of putting such limitations, the law guaranteed extractive companies the right for an unlimited exploitation, which is stated as “The license area shall comprise all of the land within its boundaries and all sub-soil thereunder to an indefinite depth within the vertical plans passing through each

¹⁶³ CEE Bankwatch Network (not dated) ‘Indigenous Peoples’ Declaration on Extractive Industries’ http://bankwatch.org/documents/decl_wbeir_ip_04_03.pdf (accessed on 12/06/10)

¹⁶⁴ Proclamation No.1/1995, Article 43(1)

¹⁶⁵ Proclamation No. 299/2009, Article 7(1)

¹⁶⁶ H. Ali, S. and C. O’Faircheallaigh (2007:13) Introduction’ in Greener Management International Issue 52, pp.1-16

¹⁶⁷ Proclamation No. 52/1993, Article 20(2)

boundary.”¹⁶⁸ This is generally against the principle of sustainable development, which may cause irreversible damage on the ecosystem.

7.4.3 Social license to operate

As discussed in the literature review section, social license to operate is a pragmatic approach to social accountability of extractive industry companies. This pillar of social accountability does not depend on the legal and regulatory frameworks promulgated by governments. It depends on the understanding and readiness of extractive corporations to accept and practice social license to operate. The issue is not a matter of adhering or violating human rights of the local people as these are taken care of by the law. In stead, it is a matter of promoting and securing cohesive relationships with the local people for peaceful operation in their localities. It is a process of “selling” the project to the local people and this requires sitting down, discussing and negotiating with the local people in regard to environmental, economic, social, and cultural interests in their own understanding and terms.

As stated above, social license to operate is a pragmatic issue that requires empirical study of the practices of extractive companies so as to discuss scenarios and draw conclusions. Hence, the Ethiopian experience in this regard can not be discussed due to the desk review nature of this research.

Previous discussions of the legal regimes for social accountability in the extractive industry in Ethiopia, from the view points of human rights and principles of sustainability, show that in spite of loopholes, the legal and regulatory frameworks provide reasonably sufficient provisions to promote social accountability of the extractive industries. In addition to the provision of legal and regulatory frameworks, the Ethiopian Government has demonstrated its interest to promote social accountability of the extractive industries through an official application submitted to the Board of Extractive Industries Transparency Initiative (EITI) to join the initiative. The application was submitted in October, 2009 on the basis of which EITI assigned reviewers to assess Ethiopia's pledge to join the initiative¹⁶⁹. However, in February 2010, Ethiopia's candidacy was denied by EITI's Board, which stated that the new civil society law of Ethiopia bars civil society groups from engaging in human rights and governance issues¹⁷⁰. The report stated that these activities are limited only to local charities and societies that receive over 90 percent of their income from domestic sources. This, the Board states, restricts EITI from implementing its set of principles since its course of

¹⁶⁸ Ibid, Article 32

¹⁶⁹ Membership in EITI is based upon an external review of the candidate countries' adherence to the basic standards of the program. In order for a candidate country to gain membership to EITI, it must first meet certain criteria, including the publishing of a national report that discloses all payments and government revenue from oil, gas and mining companies. Government must also make a commitment to formally engage civil society in order to begin the “validation” process. Each country has two years to prove its compliance <http://globalgeopolitics.net/wordpress/2010/03/09/finance-self-policing-of-extractive-industries-a-dismal-failure/> (accessed on 11/06/10)

¹⁷⁰ Global Geopolitics and Political Economy (2010) FINANCE: Self-Policing of Extractive Industries a “Dismal” Failure <http://globalgeopolitics.net/wordpress/2010/03/09/finance-self-policing-of-extractive-industries-a-dismal-failure/> (accessed on 13/06/10)

action requires not only an active involvement of extractive industry companies, but also other partners from wider society, including all categories of CSOs¹⁷¹.

7.5 Actors of social accountability in Ethiopia

Review of the general social accountability practices and the legal regimes for social accountability in the Extractive industries show that government, private sector, citizens and civil society organizations participate directly and indirectly in promoting social accountability in Ethiopia.

State Actors

The power of enacting laws is vested in the House of Peoples' Representatives (HPRs) and accordingly the House has been enacting laws, which govern the utilization and conservation of land and other natural resources.¹⁷² Oversight of the executive is a major function of the HPRs. Studies however; show that, though improving, the House does not effectively carry out this function due to capacity problems and lack of sufficient independence. Most members of the legislature lack knowledge of standard operating procedure on legislative oversight, and duties and responsibilities of the executive¹⁷³. However, a more serious concern is the dominance of the Executive over the Legislature.¹⁷⁴ Critics assert that the Ethiopian Legislature is dominated by a powerful ruling party-Ethiopian Peoples' Revolutionary Front (EPRDF) and hence, has few real powers to effectively check on the executive.¹⁷⁵

In spite of its limited oversight capacity, the House has established the Human Rights Commission and the Institution of Ombudsman, which are key institutions to enforce the observance of human rights¹⁷⁶. The effectiveness of these institutions to promote and ensure social accountability still depends on their independence and capacity, which requires further study.

The Council of Ministers is another high level state actor, which has a power to enact regulations, and to formulate and implement economic, social and development policies and strategies. On the basis of this power, it has provided with the Mining Regulation that consists of several important provisions towards social accountability.¹⁷⁷ Though law making with regard to land and natural resources utilization is the prerogative of the Federal Government, regional States have been given the power to administer land and

¹⁷¹ http://www.capitalethiopia.com/index.php?option=com_content&view=article&id=12215:ethiopias-bid-to-join-mining-transparency-initiative-assessed-&catid=12:local-news&Itemid=4 (accessed on 06/06/10)

¹⁷² Proclamation No. 1/1995, Article 55(2/a)

¹⁷³ Paulos C. (2007) 'What One Hand Giveth, the Other Hand Taketh Away: Ethiopia's post-1991 decentralization reform under neo-patrimonialism'

¹⁷⁴ African Development Bank (2009:5) Federal Democratic Republic of Ethiopia Governance Profile

¹⁷⁵ Magn Nyang, "The Dominant Executive in Ethiopia"

http://www.anyuakmedia.com/com_temp_09_11_25.html (accessed on 08/06/10)

¹⁷⁶ Ibid, Article 55(14)

¹⁷⁷ Ibid, Article 77(1,6 &13)

other natural resources in accordance with Federal laws¹⁷⁸. Hence, they are important actors to promote and enforce social accountability in their jurisdictions.

The Ministry of Mining and Energy, and the Environmental Protection Authority are the two most important Federal institutions engaged in the management of natural resources and protection of the environment respectively. The Ministry of Mining and Energy is specifically responsible for issuing license and inspecting activities of large scale extractive operations so as to ensure that operations are carried out in accordance with the law.¹⁷⁹ It is fully empowered to license and revoke whenever a licensee fails to observe and meet legal requirements. The Ministry is also responsible for determining compensation for properties when the licensee and legitimate occupants fail to agree with the amount.¹⁸⁰ Regional mining and energy bureaus have the responsibility and authority to exercise similar functions with that of the Ministry with regard to artisanal and construction mining.¹⁸¹

The Environmental Protection Authority has been assigned the major responsibility of coordinating environmental protection activities and measures to ensure that the environmental objectives provided under the Constitution are realized. Towards this end, the Authority is empowered to formulate policies, strategies, laws and standards that foster social and economic development in a manner that enhances the welfare of humans and the safety of the environment for sustainable use.¹⁸² The Authority has identified and provided standards for projects that strictly require environmental impact assessment before commencing implementation, among which large scale extractive operation is one. No project of this category could start operation without authorization from the Authority or the relevant regional environmental agency¹⁸³. The environmental impact assessment report of any project is subject to review by the Authority or the relevant regional environmental agency. If experts' opinions and public comments demonstrate that the project has a significant negative impact, the Authority or the relevant regional environmental agency refuses the implementation of the project¹⁸⁴. To avoid any loophole, the law demands investment and trade licensing agencies not to issue licenses and permits for projects that require environmental impact assessment without ensuring that the Authority or the relevant regional environmental agency has approved the project¹⁸⁵. This protects the environment and the local people before they are affected by the project. The law also authorizes the Authority and regional environmental agencies to monitor implementation of authorized projects in order to ensure that they comply with their obligations as stated by the law. To this end, the Authority and relevant regional environmental agency, assign environmental inspectors¹⁸⁶. The Authority or the relevant

¹⁷⁸ Ibid, Article 52(d)

¹⁷⁹ Proclamation No. 52/1993, Article 46(2/d)

¹⁸⁰ Ibid, Article 24(2)

¹⁸¹ Ibid, Article 46

¹⁸² Proclamation No. 295/2002, Articles 5&6

¹⁸³ Proclamation No. 299/2002, Article 3(1)

¹⁸⁴ Ibid, Article 9(2)

¹⁸⁵ Ibid, Article 3(3)

¹⁸⁶ Proclamation No. 300/2009, Article 7

regional environmental agency can take administrative or legal measures against any person who, in violation of the law, causes environmental damage¹⁸⁷. All these provisions stand for and demand social accountability from extractive companies.

Citizens

It has been learned from the review of the literature that citizens are at the center of social accountability, as they are most affected by the extractive industries. If they are given the opportunity to participate in public policy making, investment decision making, environmental impact assessment and the like, they can play important roles, which have significant impact on social accountability. The mining and environmental legal frameworks, which have to do with the issues of social accountability in the extractive industry, have provided certain provisions that create opportunities for citizens to participate in decision making and object any investment that has potential negative impacts to their environment and economic, social, cultural and religious interests. The Environmental Protection Authority and relevant regional environmental agencies are required by law to seek public comments while reviewing projects' environmental impact assessment¹⁸⁸. The law further elaborates as¹⁸⁹:

- *The Authority or the relevant regional environmental agency shall make any environmental impact study report accessible to the public and solicit comments on it.*
- *The Authority or the relevant regional environmental agency shall ensure that the comments made by the public and in particular by the communities likely to be affected by the implementation of a project are incorporated into the environmental impact study report as well as in its evolutions.*

The above provisions however, do not give the power to the community to reject a project, which they believe in that it is totally against their environmental, economic, social, cultural, and religious interests. Such powers are discretionary powers of the Authority or the relevant regional environmental agency. Article 11 of Proclamation No. 300/2009 authorizes any citizen to lodge a complaint at the Authority or the relevant regional environmental agency against any person allegedly causing actual or potential damage to the environment. In this case, the law provides the person who lodged the complaint the opportunity to instate a court case if the Authority or the relevant regional environmental agency fails to give decision within thirty days or when the person is dissatisfied with the decision.

Local peoples have the right to directly negotiate about the amount of compensation with any licensee whose investment in mining operation causes displacement¹⁹⁰. This is an important provision that has substantial impact on social accountability of the extractive industry. Nonetheless, the legal provision does not fully protect citizens from involuntary resettlement since it does not empower the local people, as legitimate occupants of land,

¹⁸⁷ Ibid, Article 3(2)

¹⁸⁸ Proclamation No. 299/2002, Article 9(2)

¹⁸⁹ Ibid, Article 15

¹⁹⁰ Proclamation No. 52/1993, Article 24(2)

territories and resources, to say no for reasons they do not want to be displaced or do not agree with the amount of compensation. It is up to the Authority or the relevant regional environmental agency to decide on the disagreement.

Citizens' participation in extractive operations is not limited to a situation that involves displacement of legitimate occupants. Though local peoples have limited access to required information, any person can file a written objection to the grant of any kind of license for mining operation at the Ministry of Mines and Energy or the relevant regional mining and energy bureau.¹⁹¹ In spite of the limitation of access to information, this creates an avenue for local people to participate in investment decision.

Private sector sectors

Private companies are the principal investors in the extractive industries and the laws, which provide the right to invest, require them to adhere to and ensure social accountability. The involvement of private sector actors in promoting and ensuring social accountability should not be associated only with mandatory legal obligations, but also to voluntary interests. This is because of the fact that adhering to legal requirements is not a guarantee to secure social license to operate¹⁹².

As previously discussed, social accountability is generally new to the private sector. In fact, not only socially accountability but also the standard concept and practice of corporate responsibility are very new to the Ethiopian private sector. As a result, self-initiated and organized effort of the private sector to promote social accountability is negligible. In fact, the private sector is blamed for its excessive inclination towards corruption instead of promoting transparency and accountability. Private business officials hardly differentiate what they call an acceptable marketing scheme and clear-cut corruption¹⁹³. The private sector seems to have resigned corrupt practices as a necessary cost of doing business¹⁹⁴.

The law however, has assigned important roles and responsibilities to investors, which are significant to promote and ensure social accountability in the extractive industry. As discussed earlier, it is the duty and responsibility of each project owner to conduct environmental impact assessment. The project owner in his/her environmental impact assessment report should clearly identify the likely adverse (direct and indirect) impacts of his/her project and as well as incorporate the means of their prevention or

¹⁹¹ Regulation No. 182/1994, Article 7

¹⁹² International Union for Conservation of Nature (not dated) Theme on the Social and Environmental Accountability of the Private Sector (SEAPRISE)
<http://www.iucn.org/about/union/commissions/ceesp/wg/seaprise/#extractive> (20/05/10)

¹⁹³ Kebour G. (Not dated) Dealing with Corruption in Ethiopia
<http://www.devoutreach.com/september06/SpecialReport/tabid/1637/efault.aspx> (accessed 16/06/10)

¹⁹⁴ Hayal A. 'The perception of Corruption and its Unique Features in Ethiopia', The Reporter (Ethiopia) 04 October 2008
http://en.ethiopianreporter.com/index.php?option=com_content&task=view&id=30&Itemid=1 (accessed 08/06/10)

containment.¹⁹⁵ If the intended extractive operation involves displacement, the project owner has to directly negotiate with legitimate occupants to determine the amount of compensation to be paid to the occupants in return to the loss of their properties¹⁹⁶. In terms of contribution to the local development activities, though not mandatory, the law states that the Licensing Authority may require the licensee to cooperate and contribute financially in the construction and maintenance of infrastructure within the areas covered by the license or lease¹⁹⁷. The development of such infrastructure is limited within the areas of the license and lease, hence, it cannot in strict sense be considered as contribution to the local development. Such developments are rather vital to the extractive operations than to the local peoples. Moreover, the local people can benefit little since they have restricted access to the areas covered by the license and lease.

Civil society organizations and the media

The Ethiopian Government believes that civil society organizations are important actors in the socio-economic development endeavors¹⁹⁸. In spite of this, there are several criticisms against the new civil society law enacted by the Ethiopian Government. The new law is considered as having serious impact on civil society organizations engaged in advocacy and human rights. For example, as mentioned earlier, the Board of Extractive Industries Transparency Initiative (EITI) rejected Ethiopia's application to join the initiative mainly due to its strong reservation with the new civil society law¹⁹⁹.

Reviews of principal laws of the extractive industries in Ethiopia revealed that the roles and responsibilities of civil society organizations and the media have not been addressed. Nonetheless, it is difficult to conclude that civil society organizations and the media have no role in promoting social accountability in Ethiopia. Though limited to public sector service delivery, discussions under section 6.2 show different initiatives towards building social accountability systems through donor-civil society-government partnerships. The PBS/ESAP and Citizens Report Cards are interesting initiatives in which citizens are at the centre of promoting and ensuring social accountability. The media is also playing a major role of publicizing the methods and results achieved.

7.6 Mechanisms of Social Accountability in Ethiopia

On top of strong legal and regulatory frameworks, social audits, citizen report card, citizen jury or people's verdict, and citizen advisory councils are the most popular mechanisms of promoting social accountability. In fact, such mechanisms have

¹⁹⁵ Proclamation No. 299/2002, Article 7(1)

¹⁹⁶ Proclamation No. 52/1993, Article 24(2)

¹⁹⁷ Ibid, Article 25(3)

¹⁹⁸ African Institute of Management, Development and Governance (2008), Ethiopia- Country Self-Assessment Report, Draft Report Submitted to the Governing Council of the National African Peer Review Mechanism, December 2008

¹⁹⁹ http://www.capitalethiopia.com/index.php?option=com_content&view=article&id=12215:ethiopias-bid-to-join-mining-transparency-initiative-assessed-&catid=12:local-news&Itemid=4 (accessed on 06/06/10)

meaningful and sustainable impacts only when they have a legal basis. Of course, legally recognized mechanisms are not sufficient to promote social accountability in the extractive industries since the principle of social license to operate does not much depend on legal issues, but on the capacity and commitment of companies to sufficiently engage local people.

Despite the initiatives discussed above, so far, the most predominant mechanisms of enforcing social accountability in the extractive industries in Ethiopia is seeking compliance with the laws through inspections carried out by inspectors assigned by the Ministry of Mining and Energy, and the Environmental Protection Authority. This study however, has not assessed the extent and effectiveness of the legal and regulatory mechanisms to promote and ensure social accountability on the ground. Such assessments require empirical investigation.

8. Conclusions and the way forward

Let alone applications, the concept of social accountability is pretty new to Ethiopia and to the private sector in particular. In fact, the Ethiopian private sector is less familiar not only with social accountability but also with issues of corporate governance in general. There are some initiatives (both by government and private sector associations) towards improving corporate governance. Nonetheless, such initiatives are not sufficient against increasing an ethical business practice and engagement of the private sector in corrupt practices.

Issues and concerns of social accountability constitute important components of human rights. In light of this, the legal regimes for the extractive industry in Ethiopia have provided basic legal and regulatory frameworks for social accountability. Nonetheless, most of the legal and regulatory provisions are not sufficient to fully promote and ensure social accountability. The laws have provided discretionary powers to public agencies to decide on citizens rights. Local peoples' objections to any project to be implemented on their land and territories, or to any proposed displacement by extractive project, or any disagreement with a project owner on the amount of compensation is not binding. This is against the principles of social accountability in the extractive industries.

Effective social accountability depends on the proper functioning of the supply and demand sides of social accountability. Provision of legal and regulatory frameworks by government to govern decisions and actions of implementing government agencies and private sector actors is not enough. There should be demand from citizens in general and the local people in particular where projects are implemented. Citizens however, should be empowered to demand and defend their rights. Citizens' are empowered when they have sufficient information about their legal rights and are allowed to exercise according to the laws. There is a need for rigorous awareness raising efforts about the legal and regulatory frameworks of the extractive industries so that citizens will be able to clearly understand their legal rights and defend against any intrusion. The reviews of the legal regimes for the extractive industries in Ethiopia show that the laws have identified neither sufficient mechanisms nor actors to keep citizens informed. The media and civil society

actors play important roles in creating awareness and keeping citizens informed of their rights. The laws however, are silent in this regard. The laws should be revised to acknowledge and clearly define the roles of such actors.

Important lessons can be drawn from the social accountability initiatives in public service delivery, which include Citizens Reports Cards of PANE and the PBS/ESAP. State, private and civil society actors should join hands to replicate the experience to promote social accountability in the extractive industries. The state, as a legitimate actor, should create an enabling environment for other actors to operate. Civil society actors are at the centre of social accountability agendas in any sector, but their roles depend on the enabling environment and their capacity. In the interest of citizens, confrontation between civil society organizations and the Ethiopian Government should be avoided. The role of the private sector should go beyond participation of individual companies; organized private associations, such as chamber of commerce and sectoral association, should play an active role. Of course, donors' financial support is so crucial to scale up the initiatives.

The current legal and regulatory frameworks for the extractive industries, however, do not spell out organized public oversight structures and forums beyond government. Hence, this would undermine multi-stakeholder forums for social accountability in the extractive industry unless revisions are made.

Finally, as indicated in the introduction, this research is limited to desk reviews; the application of the laws on the ground and effectiveness of enforcement mechanisms when such laws are violated have not been examined. Hence, it is quite imperative to undertake rigorous empirical study so that the practice of social accountability in the extractive industries can be examined.

References

- Ackerman, J.M. (2005) 'Human Rights and Social Accountability', *SOCIAL DEVELOPMENT PAPERS Participation and Civic Engagement Paper No. 86/ May 2005*.
- Affiliated Network for Social Accountability (2010) *Social Accountability in Africa: Practitioners' Experiences and Lessons*.
- African Development Bank and African Development Fund (2009:5) *Federal Democratic Republic of Ethiopia Governance Profile*.
- African Institute of Management, Development and Governance (2008) *Ethiopia- Country Self-Assessment Report, Draft Report Submitted to the Governing Council of the National African Peer Review Mechanism*, December 2008.
- Ahmad, R. (2008) *Governance, Social Accountability and the Civil Society*, JOAAG, Vol. 3, No.1.
- Bryan, S. and B. Hofmann (2007) *Transparency and Accountability in Africa's Extractive Industries: the Role of the Legislature*.
- Caddy, J., T. Peixoto and M. Mcneil (2007) *Beyond Public Scrutiny: Stocktaking of Social Accountability in OECD Countries*.
- Claasen, M. and Carmen Alpín-Lardiés (eds.) (2010) *Social Accountability in Africa: Practitioners' Experiences and Lessons*.
- CEE Bankwatch Network (not dated) 'Indigenous Peoples' Declaration on Extractive Industries' http://bankwatch.org/documents/decl_wbeir_ip_04_03.pdf (accessed on 12/06/10).
- Council of Ministers Regulation No. 182/1994, Council of Ministers Regulations on Mining Operations, *Negarit Gazeta of the Transitional Government of Ethiopia, 53rd Year No.84*
- De Queiroz, J.S. et al. (2008) *Partnering With Extractive Industries for the Conservation of Biodiversity in Africa: A Guide for USAID Engagement*.
- EthiopiaInvestor (not dated) 'Introducing Corporate Governance in Ethiopia' (http://www.ethiopiainvestor.com/index.php?option=com_content&task=view&id=1164&Itemid= (accessed on 14/06/10).
- Economic Commission for Africa (2007) *an Overview of Corporate Governance and Accountability in Southern Africa*.
- Economic Commission for Africa (2005) 'Workshop on Economic and Corporate Governance and Accountability in Southern Africa', 7 – 9 December 2005 Lusaka, Zambia.
- Eshetu B. (2006) *Enhancing social accountability through community empowerment to facilitate PASDEP/PRSP implementation: The Case of Citizen Report Cards in Ethiopia*. PRESENTED AT HDCA 2006 ANNUAL MEETING http://www.capabilityapproach.com/pubs/4_5Bekele.pdf (accessed on 05/06/10)
- Fenta M. (2007) *Beyond the Public Realm: Local Governance Network and Service Delivery in the Amhara and Tigray Regions, Ethiopia*.
- Fikremarkos M. et al. (2009) *Review of the Legal and Institutional Framework for Market Competition in Ethiopia*.
- Friends of the Earth Europe (not dated) Corporate Campaign: Extractive Industries- Blessing or Curse? <http://www.foeeurope.org/corporates/news/dextractives.html> (accessed on 12/06/10)
- Global Geopolitics and Political Economy (2010) 'FINANCE: Self-Policing of Extractive Industries a "Dismal" Failure' <http://globalgeopolitics.net/wordpress/2010/03/09/finance-self-policing-of-extractive-industries-a-dismal-failure/> (accessed on 13/06/10)
- GTZ Ethiopia (not dated) 'Protection of Basic Services (PBS) – Ethiopian Social Accountability Project' <http://www.gtz.de/en/weltweit/afrika/aethiopien/23596.htm> (accessed on 10/06/10)

- Hayal A. 'The perception of Corruption and its Unique Features in Ethiopia', *The Reporter* (Ethiopia), 04 October 2008.
http://en.ethiopianreporter.com/index.php?option=com_content&task=view&id=30&Itemid=1 (accessed on 08/06/10).
- H. Ali, S. and C. O'Faircheallaigh (2007) 'Introduction', in *Greener Management International Issue 52*, pp.1-16.
- Indigenous Peoples' International Centre for Policy Research and Education (2009) 'Concept Paper: International Conference on Indigenous Peoples and Extractive Industries', March 23-35, 2009, the Legend Villas, Metro Manila, Philippines
Http://Www.Tebtebba.Org/Index.Php?option=com_content&view=article&id=46&Itemid=57 (accessed on 08/06/10).
- International Union for Conservation of Nature (not dated) 'Theme on the Social and Environmental Accountability of the Private Sector (SEAPRISE)'
<http://www.iucn.org/about/union/commissions/ceesp/wg/seaprise/#extractive> (20/05/10)
- Kebour G. (Not dated) *Dealing with Corruption in Ethiopia*
<http://www.devoutreach.com/september06/SpecialReport/tabid/1637/efault.aspx>
 (accessed on 16/06/10).
- Kiwetekete. H.M (not dated) 'Social Accountability (SA8000) The Standard for the Present and the Future'
<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTPCENG/0,,contentMDK:20509424~menuPK:1278120~pagePK:148956~piPK:216618~theSitePK:410306,00.html> (accessed on 06/06/10)
- Mai, G., Lulit M. and Workneh D. (2009) *Piloting Social Accountability in Ethiopia Analytical Report with Case Studies*.
- Minga N. (2008) *Rethinking Corporate Governance in Ethiopia*
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1264697 (accessed on 8/06/200).
- Ministry of Mines and Energy, Federal Democratic Republic of Ethiopia (2009) *National Report on Mining to the United Nation Commission on Sustainable Development (UNCSD)*
http://www.un.org/esa/dsd/dsd_aofw_ni/ni_pdfs/NationalReports/ethiopia/mining.pdf
 (accessed on 10/06/10).
- National Bank of Ethiopia (2009) *National Bank of Ethiopia Quarterly Bulletin, V. 24, No.4 Fourth Quarter, 2008/09 Fiscal Year Series*
- National Democratic Institute for International Affairs (2008) 'Promoting Transparency and Accountability of Revenue of the Extractive Industries: A Meeting for Legislators of the East African Legislative Assembly', February 27 – 29, 2008.
http://www.ndi.org/files/2317_sea_ealaworkshop_engpdf_02292008.pdf (accessed on 12/06/10).
- Paulos C. (2007) *What One Hand Giveth, the Other Hand Taketh Away: Ethiopia's post- 1991 decentralization reform under neo-patrimonialism*
- Proclamation No. 52/1993, a Proclamation to Promote the Development of Mineral Resources, *Negarit Gazeta of the Transitional Government of Ethiopia*, 52nd Year No. 42
- Proclamation No. 1/1995, A Proclamation to Pronounce the Coming into Effect of the Constitution of the Federal Democratic Republic of Ethiopia, *Federal Negarit Gazeta of the Federal Democratic Ethiopia*, 1st Year No.1.
- Proclamation No.295/2002, Environmental Protection Organs Establishment Proclamation, *Federal Negarit Gazeta of the Federal Democratic Ethiopia*, 9th Year No.7.
- Proclamation No. 299/2002, Environmental Impact Assessment, *Federal Negarit Gazeta of the Federal Democratic Ethiopia*, 9th Year No.11 .
- Proclamation No. 300/2002, Environmental Pollution Control Proclamation, *Federal Negarit Gazeta of the Federal Democratic Ethiopia*, 9th Year No. 12.

- Political Review Net First For Politics and International Relations Book Reviews, 'Review of: Enforcing the Rule of Law: Social Accountability in the New Latin American Democracies edited by Enrique Peruzzoti, Catalina Smulovitz (2006), Reviewed by Ram, U. (10/04/2008)' http://www.politicalreviewnet.com/polrev/reviews/CONS/R_1351_0487_66_1007828.as (accessed on 15/06/10).
- Private Sector Development Hub/Addis Ababa Chamber of Commerce and Sectoral Associations (PSD Hub/AACCSA) (2009a) *The Road to Private Sector development Led Economic Growth: a Strategy Document*.
- PSD Hub/AACCSA (2009b) *Review of the Legal and Institutional Framework for Market Competition in Ethiopia*.
- Prospectors and Developers Association of Sustainable Development and Corporate Social Responsibility (2007) *Tools, Codes and Standards for the Mineral Exploitation Industry Canada* (A Special Publication). <http://commdev.org/content/document/detail/710/P> (accessed on 09/06/10).
- Schloss, M., A. Stern, and A. Allderdice (2007) *Governance Framework for Extractive Industries in Africa – Mining Guidelines for Governance Work Volume I: Main Report*
- Tebtebba Foundation Indigenous Peoples' International Centre for Policy Research and Education (2006) 'Indigenous Peoples' Rights, Extractive Industries and Transnational and Other Business Enterprises: A Submission to the Special Representative of the Secretary- General on human rights and transnational corporations and other business enterprises', 29 December 2006 http://www.google.com.et/#hl=en&q=Indigenous+Peoples%E2%80%99+Rights%2C+Extractive+Industries+and++Transnational+and+Other+Business+Enterprises%3A+A+Submission+to+the+Special+Representative+of+the+Secretary-General+on+human+rights+and+transnational++corporations+and+other+business+enterprises%2C+29+December+2006+&aq=f&aqi=&aql=&oq=&gs_rfai=&gs_upl=11711%2C5103%2C1%2C0%2C0%2C0%2C&fp=53b9781db9eafa72 (accessed on 27/05/10)
- The International Bank for Reconstruction and Development (2005) *Stocktaking of Social Accountability Initiatives in the Asia and Pacific Region*
- The International Indian Treaty Council (2009) 'The Manila Declaration of the International Conference on Extractive Industries and Indigenous Peoples', 23-25 March 2009, Legend Villas, Metro Manila, Philippines. <http://www.treatycouncil.org/PDFs/The%20Manila%20Declaration%20%20Final%20Version.pdf> (accessed on 09/06/10).
- United Nations Institute for Training and Research (not dated) 'Governance of Extractive Industries' <http://www.unitar.org/event/governance-extractive-industries> (accessed on 09/06/10).
- World Bank (2007) *Ethiopia Accelerating Equitable Growth Country Economic Memorandum, Part II: Thematic Chapters*.
- World Bank- International Monetary Fund (WB-IMF) (2004) 'Spring Meetings: Civil Society Sessions Meeting on the Extractive Industries Review', Thursday, April 22 <http://www.ifc.org/ifcext/eir.nsf/Content/WBGCivilSocietyMeetingTranscript> (accessed on 20/05/10).