

# Conference Report

Potsdam Spring Dialogues 2014

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## Good Natural Resource Governance in Africa. A unique window of opportunity

Sabine Gerhardt

Resource governance has for decades been discussed as one of the major challenges for African development. But some basic conditions have changed during the last years. Since the 1980s, the resource sector has moved from being a buyers' market with low commodity prices to a sellers' market. China, Brazil, India and other emerging countries have entered the arena and have increased competition for Africa's resources. This potentially strengthens Africa's bargaining power. Together with some other relevant changes – in particular national, regional and international initiatives for good governance and transparency – the transformations offer a unique window of opportunity for the continent's development. With that in mind, this year's Potsdam Spring Dialogues, taking place 7 to 8 May 2014, focused on

ways in which African countries could sustainably benefit from their resource-wealth and how regional efforts could support this development.

### Unlocking its potential

African states are increasingly becoming aware of the opportunities presented by natural resources under changing global parameters. In order to unlock this potential, the African Union, back in 2009, adopted an overall framework called the Africa Mining Vision (AMV). The AMV provides guidance for a “transparent, equitable and optimal exploitation of mineral resources”, which can lead to resource-based industrialization with more local processing. One of the persons directly involved in this process has been Antonio M.A. Pedro, Director of the UNECA sub-regional Office for Eastern Africa and one of the keynote speakers at the Potsdam Spring Dialogues 2014. For him, the AMV is “not about mining; it is about development”. As he highlighted, the framework essentially seeks to use Africa's natural resources sector in order to transform the continent's social and economic development path.

### Managing expectations in a long-term business

While a growing number of states are aware of the good prospects their resources could offer, they still have to overcome severe challenges in macro-eco-



Potsdam Spring Dialogues 2014: (from left) Antonio Pedro, Gerd Harms and Marinke van Riet.

nomics, governance, capacity and institution building. But the continent is also impatient. This could turn into a problem as the transformation from an exporters' market of raw materials into a diversified economy through resource-based local industrialisation takes time. In this context, the management of expectations was of great concern for many African ambassadors taking part in the Potsdam discussion. If benefits are not equally felt, they fear, fault lines could emerge that might, in turn, then lead to tensions and conflict between the different stakeholders. This has already happened in some countries: "Happy findings often turn into a nightmare because of rising expectations," Logan Wort, Executive Secretary of the African Tax Administration Forum, pointed out.

In order to avoid shortcomings and tensions and instead capitalise on the positive impacts of resource wealth, several Africa-led initiatives have emerged in the field of resource governance in the course of the in the recent years. The African Legal Support Facility (ALSF), the African Organisation of Supreme Audit Institutions (AFROSAI) and the Tax Administration Forum (ATAF) were presented during the discussion in Potsdam. With different goals, institutional settings and aspirations, one component was crucial for all of them: Capacity building and knowledge transfer as cornerstones to development.

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### Lawyers for a fairer deal

The well-known author and tax specialist Nicholas Shaxson stated, amongst others, that there exists an unequal relationship between the mineral industry and the governments of exporting nations. In recent years, Africans have increasingly come to recognize that they are not getting a fair deal and therefore strive to change business conditions. To support such a development, the African Legal Support Facility (ALSF), hosted by the African Development Bank, has been supporting African governments in the negotiation of complex commercial transactions since 2010. The Facility was established to advise African governments in their dealings with deep-pocketed international investors who, in the past, have often taken the upper hand in such negotiations. Thus, for Myriam Carius, Legal Counsel and representative of ALSF at the Potsdam Spring Dialogues, "the key to empower the host countries is to better negotiate their contracts". ALSF is currently assisting African states on 26 projects, one of them being in Niger. The country has one of the world's largest uranium deposits, a commodity much in demand on the global market. Nevertheless, its extraction in recent decades has scarcely benefited any of Niger's citizens. According to Marinke van Riet, International Director of Publish What You Pay, in 2010 mining in Niger contributed only 5% to the GDP while amounting to 70% of its exports. This should progressively change however, as the longstanding contract with the

French state-owned company Areva, which has been mining uranium in Niger for more than 40 years, expired towards the end of 2013. As a consequence, the Government of Niger is currently in the process of renegotiating licenses in order to improve conditions and secure a larger share of the profits.

The case of Areva is only one of many examples on the potential renegotiation of contracts. Shaxson encouraged state representatives to stick to their agenda despite possible threats by the international companies, stating that "If they say 'tax us too much, and we will go elsewhere', don't believe them". He added: "you have the oil, and it's yours. If they flee, you have the minerals, and others will come." Carius, in turn, highlighted that support for the negotiations will, however, not come on its own: "If countries need help, they have to ask for it,". A principle which was not undisputed in Potsdam, particularly because request lags behind the budget of the facility. Members from the African diplomatic corps, however, seemed to be highly interested in the ALSF and encouraged it to better promote their portfolio to the respective governments. Furthermore, civil society representatives wondered whether opportunities should be secured for non-governmental organisations to ask for assistance in case the state does not do so.

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### Joint audits: a way to share experience and costs

As Carius rightly stated: "The real story begins after the signing of the agreement; its implementation has to be monitored." Thus, the ALSF offers support before, during and after the negotiations. An important role could in this respect also be assigned to national audit institutions, which should secure the transparent and accountable use of public finances.

Public auditing is not an easy task and many African Supreme Audit Institutions still face severe technical and institutional challenges, as Joseph Hirya from the African Organisation of Supreme Audit Institutions (AFROSAI) acknowledged in Potsdam. Securing the required independence, obtaining the necessary budget, enhancing effective working procedures, increasing the knowledge of its employees and training members of parliament for them to understand the audit reports sufficiently are only some of the difficulties. Working together on a regional basis could help to overcome these challenges: "joint audits could be a valuable way to exchange knowledge and to share experience and costs," Hirya suggested. This is where AFROSAI offers its expertise: Created back in 1976, the organisation aims to foster the cooperation among national Supreme Audit Institutions across the continent and thereby enhance the capacities of the various African Supreme Audit Institutions. In 2012, it released a guideline on the audit of extractive industries, which should pave the way for comprehensive audits of extractive industries.

## Manifold challenges for tax administration

Increasing the quality of contracts and audits is one important step, but it has to be accompanied by measures aimed at strengthening the tax system and its administration. The efforts to increase tax revenues in Africa have been substantial. As presented by Logan Wort, resource taxes as a share of African GDP have annually grown by 1% since 1990s. However, they still remain low. Resource taxes are complex and require a good knowledge and understanding of the respective laws. States and their administrations often lack the necessary expertise, which often results in high losses of tax income - as presented earlier in the case of AREVA. To address this challenge, the African Tax Administration Forum (ATAF) strives



Potsdam Spring Dialogues 2014: Myriam Carius and Magnus Ericsson.

to provide a platform to improve the performance of tax administrations, as this will enhance economic growth, increase accountability of the state to its citizens, and mobilise domestic resources more effectively. ATAF is an African program reflecting African needs and strategies, Logan stated. The work and program priorities of the Forum are driven and managed by African countries, with the support of donor agencies, other tax administrations and international organisations.

Transfer pricing is another critical issue for African tax administrations as it leads to a loss of tax revenues from cross-border transactions carried out by multinational enterprises. Transfer pricing happens when branches or subsidiaries of the same multinational enterprise exchange goods or services. They sell the product at a lower price than usually paid by competitors to a subsidiary or branch located in a so-called 'tax haven' or low-tax country. For the company, the respective profit is tax free or at least low-taxed, whereas the producer country loses tax income. As transfer pricing harms developing and

industrialised countries alike, international organisations are working on guidelines to end the misuse; a request also put forward by the G20. Logan underlined the fact that until now "African states, with the exception of South Africa, are not heard at OECD", where negotiations about these guidelines take place. Logan, in turn, criticized and announced that "ATAF will provide an African perspective to OECD - invited or not".

Another issue raised was that of illicit financial flows, usually generated from criminal activities, cross-border smuggling, corruption and bribes. By some estimates, they are approximately twice as high as the official development assistance (ODA) that African countries receive. Logan therefore welcomed the establishment of the High Level Panel on Illicit Financial Flows led by former South African President Thabo Mbeki.

Despite regional and continental initiatives it is also the countries themselves which can make a significant difference in increasing tax revenues. During the Spring Dialogues this was highlighted by Honorable Philip Sang'ka Marmo, Ambassador of the United Republic of Tanzania. He explained how his government has effectively changed its tax administration during the last years and has thereby increased tax revenue as percentage of the national GDP. But he also highlighted some of the challenges the country still faces - reaching from reliable electricity for production, the identification and localisation of taxpayers, up to the process of changing peoples' mindsets and increasing public acceptance of tax collection.

## Increased revenues, and then?

As vital as it is to increase revenues, so is their just distribution. Some of the fundamental questions which need to be answered here were raised by José Correia Nunes, Head of the Unit "Budget Support and Public Finance Management" at the European Commission; How much of the revenue should be consumed, how much to be saved and invested? If consumed, should they be used for current expenditures or future investments? Do we need to invest on domestic capacity to increase absorption (human capital and effective institutions)? How must the sovereign wealth funds, which are increasingly being set up, be managed and how do you mitigate associated risks?

For Shaxson the answer could be simple: As „power follows the money“, he proposed to provide an equal distribution of windfalls to each citizen and pay it off to the individuals themselves, not to their communities. Unsurprisingly, however, many experts doubted whether this approach would indeed solve the problem.

## A question of skill or will?

The question of power was not only raised in this regard. The fact that regional organisations such as ALSF, ATAF and ATAF – each represented in Potsdam – mainly focus on technical issues, provoked some of the participants to ask about the role of political will. „We cannot ignore that the political systems in Africa are an important part of the problem,“ David Robert from GIZ stated accordingly. For him ,and others, technical solutions are going to fail without securing in advance the political will, as well as a strengthening good governance, the rule of law and democracy. “You do not even need to negotiate a contract unless the government knows what to expect from it”, it was said. Moreover, governments often



Potsdam Spring Dialogues 2014: Guided tour through City Palace Potsdam

negotiate“ was the credo that he directed at the politicians. For Pedro, the combination of the rule of law, strong and independent institutions together with a strong leadership, guided by a clear vision of purpose and a consistent policy has made Botswana one of the few best practice examples in good resource governance – even though the case of Botswana and its policy was not undisputed in Potsdam.

speaking with different voices and policy changes happen very frequently. In particular cases, there even exists an “institutional resistance to reform” because the elite profits from the status quo and prevailing states of disorder. For other participants, technical approaches offer a chance in cases where political support and will are still weak and could thus serve as a legitimate starting point. Antonio Pedro emphasizes however, that this does not go far enough. He pledged for a strong rule of law and a reliable tax system which would secure fair contracts not only through case by case negotiations - “regulate, don’t

## Joint responsibility: gaining traction

In sum, it became clear that domestic solutions cannot work in an isolated manner. In order to increase transparency and hamper corruption, global standards are also needed. In 2010, there was a major breakthrough, when the Dodd-Frank Act was adopted by US Congress. It obliges all US-listed gas, oil and mining companies to individually publish the payments made to governments for every project they conduct and every country they work in. The European Union followed with its Accounting and Transparency Directives in June 2013 – equally obliging large companies to publish their payments per country and per project. The directives are now in the transposition phase to be transferred into national law.

Ola Bello, Programme Head “Governance of Africa’s Resource Programme” of the South African Institute of International Affairs, nevertheless attested an “inadequate awareness in Europe as to where cooperation is possible”. In that sense, he also referred to the role of emerging powers on the continent. The once dominant Western extractive companies are losing ground to companies from countries such as China. To contest them, the EU and the OECD should start to provide a stronger leadership - for example, in setting up new operation standards with a better developmental impact, as has been demanded by communities and governments throughout Africa. Professor Raimund Bleischwitz, Institute for Sustainable Resources and University College London, additionally recommended to offer package solutions which could entail power or environmental engineering solutions and to set up a multi-stakeholder forum, with an extended G20 group (plus around ten resource-rich countries). This proposal was in accordance with the recommendation of the Maputo High-level Dialogue, i.e. to achieve high-level coordinated action between public, private, CSOs, and community stakeholders.

## Imprint

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