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Problematising the Persistence of Resource Curse – Propounding New Third Explanation of 'Existentially Fragile States Disorder'

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Abstract

While there is much debate as to the reality of the so-called 'Paradox of Plenty' or 'Resource Curse' or 'Dutch Disease' as a broad characterisation of the absurdity that many resource-blessed countries are developmentally poor, the indicators symptoms and evidence of the resource curse are much researched and are to be found in varying levels of manifestation across many resource-rich regions across Africa, South America, Asia-Pacific, and even in parts of North America. Furthermore, many of the policy prescriptions and responses that help produce good and better developmental outcomes from mineral resources extraction are now well understood and successfully applied in many nations and regions. Yet we find that some of the long-established resource-rich nations which have longed applied many of the policy prescriptions and responses continue to exhibit Resource Curse or poor resource revenue management, of which Venezuela, Democratic Republic of Congo and Nigeria are three pertinent examples.

If a diagnosed malady fails to respond to standard prescriptions and treatment, then it is necessary and prudent to examine whether the observed symptoms have been correctly interpreted or the right malady has been diagnosed or whether the standard treatments are appropriate for the malady that has manifested.

This paper therefore postulates that the persistence of the Resource Curse or poor resource management malady and the apparent limited effectiveness of Resource Curse policy prescriptions across many resource-rich countries, is worth elevating, problematising and investigating. The work goes further to contend that the two typical explanations for the resource curse namely - the Dutch Disease or economic explanation and the political or Rentier-States Disease (state capture by rent-seeking elites), are incomplete and inadequate to completely explain the Resource Curse and therefore fail to provide a complete basis for policy responses and hence the persistence and continuation of resource curse in many countries. Although the problem of the persistence of the resource curse and limited effectiveness of policy responses are global, the work in part focuses closely on the resource curse and responses in Africa and South America to a lesser extent, to revisit the global problem of the persistence of the resource curse.

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1. Introduction

The post-colonial history of many South American and African states, and some Asia-Pacific nations, have been plagued with observations from empirical and non-empirical studies of many countries that suffer from the paradox of plenty or a curse of natural resources. [1] Conversely, there are few cases cited by the academic literature of successful use of natural resources endowments in the African continent for sustainable development.

At the most basic level, a rhetoric that explains the abundance of natural resources as a curse would be considered as describing a paradox.[2] In defining terms, a paradox is a statement that is self-contradictory because it often contains two statements that are both true, but in general, cannot both be true at the same time.[3] This is because there are safe assumptions that mineral riches will produce good or blessings, that resource-rich nations will be fast developing and further, that host peoples, communities and environment will benefit from hosting resource-riches. Indeed, critics to neoclassical economics in the early twentieth century have narrated in economic history a staples thesis of economic growth with observations from resource rich economies.[4]

Quite conversely, reality has shown that the notion of resource wealth and a resource curse have been on the agenda of Africa's development scholarships. Undoubtedly, natural resource wealth is a powerful engine of economic progress and financing for development in Africa. A review carried out by the International Monetary Fund (IMF) in 2012 acknowledged that nearly 50% of exports in Africa were from non-renewable natural

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[1] Resource Curse or Resource Management Curse or Poor Resource Management malady, are all used interchangeably in this work.

[2] Here and henceforth, we use the term 'natural resources' to refer to mining of valuable minerals and non-renewable resources such as petroleum, natural gas and precious solid minerals such as gold and diamonds.

[3] For a definition, see Cambridge Dictionary <http://dictionary.cambridge.org/dictionary/english/paradox> accessed 3 February 2018

[4] Robin Neil, *A History of Canadian Economic Thought* (Taylor and Francis 2003) 130-148

sources.[5] Since then, other countries in the continent have expanded their commodity exports and new players have joined the group of commodity exporter economies.

The question which now poses itself is whether the resource curse is real or illusory. Assuming it is real, is it a simple paradoxical proposition, hypothesis or a theory? We know that a hypothesis is either an explanation put forward as explaining an observed phenomenon, or a prediction backed up with causal and effect analysis which correlates multiple phenomena; while a theory as used in science disciplines means a tested and analysed, well-substantiated, unifying explanation for a set of verified proven factors.

Extensive analysis and identification of good practices have been developed by economic, political and development scholars and practitioners working with government, industry, civil society and international organisations to make good use of natural resource wealth. Nevertheless, no effective explanations have been found to successfully deal with the resource curse problem. There are limits to the utility of these mechanisms as the blatant examples of Venezuela, Nigeria, Angola, Chad and the Democratic Republic of Congo, illustrate. In this paper, we describe the common approaches and policy prescriptions used so far in combating the so-called resource curse. It is beyond the scope of this work, to review economic models or political science hypotheses, but a review of development status from analysis and experiences in selected African nations that have adopted some of these solutions are provided in order to determine the effectiveness of some of the responses to the natural resources curse.

A cursory examination of the existing studies to avoid a curse on natural resources have focused either on pure economic theories, or on political economic theories about state capture behaviours of politicians and entrepreneurs. These explain the proposition of mechanisms to tackle the resource curse based on changes to economic policies and institutional reform. But, in recent years, the consensus around a

[5] Alun Thomas and Juan P Treviño, 'Resource Dependence and Fiscal Effort in Sub-Saharan Africa' IMF Working Paper WP/13/188 < https://www.imf.org/external/pubs/ft/wp/2013/wp13188.pdf > accessed 12 February 2018. Here and henceforth, we use the term 'natural resources' to refer to mining of valuable minerals and non-renewable resource such as petroleum and natural gas, gold and diamonds.

natural resources curse is starting to give way to empirical studies casting doubts on a natural resource curse concept. The upsurge of a new stream of literature suggests the need for novel approaches for responding to the resource curse.

With a new wave of resource-rich countries coming on-stream in Africa, many of the newly emerging resource-rich countries will struggle to find and adopt a holistically effective solution or framework to enable and establish early, the foundation for using mineral resources for good and development. Only a paradigm shift will allow for a change in approach and underlying assumptions. Current international approaches for institutional reform in African economies to combat the resource curse are grounded in exogenous models and presume that it is feasible to replicate good governance best-practices institutional arrangements from other jurisdictions. Early reactions for a swift change have called for African led initiatives for the development of endogenous solutions such as an African Natural Resource Governance Framework.[6]

This paper progresses from the concept of an endogenous African natural resources governance framework and argues that understanding the existential fragile status of post-colonial societies which have delivered an institutional vacuum since independence explains the failure of resource curse remedies applied in most cases of resource rich economies in the continent. In such settings, a focus on exogenous best-practice institutions is doomed to fail by African resource-rich nations' lack of appropriation. Taking the example of Botswana, a focus on a strategy of endogenous governance reform based on state-building of pre-colonial institutional structures might achieve sustainable development outcomes.

The paper is structured such that the next section begins with a review of the resource curse concept and its origins. Section 3 moves on to describe the common responses used in addressing the paradox of plenty or the resource curse and its effectiveness. Section 4 then introduces a framework to develop an endogenous African governance hypothesis.

[6] Tana Secretariat Forum, 'Background Paper on Natural Resource Governance in Africa: Conflict, Politics and Power' (2017) 30 < http://www.tanaforum.org/y-file-store/tana_2017/background_paper_spsa_reports_tana.pdf > accessed 12 February 2018

2. Theorising about mechanisms of the resource curse in natural resources

A paradox of plenty or a natural resource curse has caught the attention of academics and the global society in the last fifty years. The two concepts have been used interchangeably but the paradox of plenty has been put forward by non-experimental literature, while resource curse hypotheses have emerged in political science and economics disciplines.

Both notions portray that countries rich in natural resources have worse developmental outcomes than countries with diminutive natural resources. The term paradox of plenty was well elucidated in the scholarly literature by Karl in the famous work 'The Paradox of Plenty: Oil Booms and Petro-States', which provides a historical account of the rise, making and failure of petro-states. Lately, Leibbrandt and Lynham provided a re-examination of the body of empirical evidence to support the paradox.[7] For their part, political scientists have been the ones to first describe the resource curse phenomenon with discussions around rentier states.[8] Rentier states are described as countries that receive large windfall gains from exports which does not stem from domestic economy production. Nonetheless, the economics literature on resource curse is much wider than in any other discipline. They were the ones to champion the idea through empirical testing of the thesis which provided evidence that geographical or climate variables did not explain the curse.[9]

In economic terms, the resource curse describes a negative correlation between natural resource abundance and slow economic development. The empirical economic narrative or attempt at root cause analysis of the observed resource curse phenomenon started with "the Dutch Disease" explanation model. The model was postulated by economists as the first explanation for slow economic growth based on observations of a Western European oil and gas producer nation's (namely the Netherlands) increase in

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[7] Terry Lynn Karl, *The Paradox of Plenty: Oil Booms and Petro-States* (University of California Press 1997); Andreas Leibbrandt and John Lynham, 'Does the paradox of plenty exist? Experimental evidence on the curse of resource abundance' [2017] J Exp Econ < https://doi.org/10.1007/s10683-017-9539-y > accessed 31 January 2018

[8] See Hossein Mahdavy, 'The Patterns and Problems of economic Development in Rentier States: the Case of Iran' in M A Cook (ed), *Studies in the Economic History of the Middle East from the rise of Islam to the present day* (OUP 1970); Michael L Ross, *Timber Booms and Institutional Breakdown in Southeast Asia* (CUP 2001)190

[9] Jeffrey D Sachs and Andrew M Warner, 'The curse of natural resources' (2001) 45 European Economic Review 827

wages and currency appreciation induced by windfall oil revenues.[10] Netherlands' economy was negatively impacted from about 1959 onwards consequent to the discovery and start of exploitation of new huge gas resources, which led to increases in real exchange rates and wages, and made manufacturing and agriculture sectors less competitive.

Shortly after, a World Bank research publication co-authored by Gelb further amplified this thought by observing mineral intensive economies' slow growth between 1970-90.[11] The publication was apparently the one to coin this economic phenomenon as a curse. In the ensuing years, a considerable body of the economic literature has argued for the evidence of a resource curse. Auty, for instance, has described it as a tendency of political pressure for windfall use of natural resources revenues in developing countries mineral exporter economies, which results in a high level of dependence on the mineral resources sector and the neglect of other competitive sectors of the economy.[12] The econometric model came some years later with Sachs and Warner examining the connection between natural resource abundance and economic growth. They posit that between 1970 and 1990 most mineral intensive economies stagnated in economic growth when compared with resource poor economies.[13]

The Dutch disease hypothesis portrays that when part of oil revenues is spent in non-traded goods it results in the decline of production in non-oil related sectors and, consequently, lower economic development. Some of the commonly observed symptoms and evidence are reduced economic growth, poor economic results and outcomes, contraction of other parts of economy (non-resource sectors), decline of primary and pre-existing sectors such as agriculture, appreciation of currency, resources sector crowding out other key sectors of the economy (manufacturing and

[10] See W Max Corden and J Peter Neary, 'Booming sector and de-industrialisation in a small open economy' (1982) 92 The Economic Journal 825; Sweder van Wijnbergen, 'The "Dutch Disease": a Disease After All?' (1984) 94 The Economic Journal 41

[11] See Alan Gelb and others, 'Oil windfalls – Blessing or curse?' (1988) World Bank <http://documents.worldbank.org/curated/en/536401468771314677/Oil-windfalls-Blessing-or-curse> accessed 15 January 2018

[12] Richard Auty, *Sustaining Development in Mineral Economies: The Resource Curse Thesis* (Routledge 1993) 241; Alan Gelb, *Oil Windfalls: Blessing or Curse?* (Oxford University Press 1988)

[13] Jeffrey D Sachs and Andrew M Warner, 'Natural Resource Abundance and Economic Growth' (1995) NBER Working Paper 5398 22 <http://www.nber.org/papers/w5398.pdf> accessed 5 January 2018

agriculture), currency appreciation and import/export imbalances, which may lead to exports becoming expensive and the creation of import-consumption mentality.

Besides the economics explanation of crowding out of the manufacturing sector as encapsulated in the Dutch Disease causation model, other hypotheses have been postulated to explain the natural resources curse based on political economy. For this school, the resource curse is about resource rents and not economic growth. Concerns with the size of resource rents and the ease with which rents can be appropriated are critical, notably non-renewable extractive resources with high market value when compared to other natural resources. These are called point resources in the sense that the resources are sourced from narrow geographical locations which are the cause of the resource curse as opposed to dispersed resources.[14]

In Figure X below the progressive understanding of the resource curse hypotheses is illustrated according to the evolutionary economics literature.

Rentier States models	**Dutch Disease models**	**Centralised political economy models**	**Decentralised political economy models**
Key studies: **Mahdavy (1970), Hertog (2010)**	Key studies: **Gelb (1988), Auty (1993), Sachs and Warner (1995 and 2001), Matsen and Torvik (2005)**	Key studies: **Robinson and others (2006), Kolstad and Wiig (2009)**	Key studies: **Tornell and Lane (1999), Torvik (2002), Mehlum and others (2006), Kolstad and Wiig (2009)**

Unlike the initial economic hypothesis of the Dutch Disease, this body of literature of political economists suggest that well-functioning institutions of democratic accountability are shown to be decisive for avoiding the resource curse. Kolstad and Wiig in their study of political economic models of the resource curse categorised these

[14] Ivar Kolstad and Arne Wiig, 'It's the rents, stupid! The political economy of the resource curse' (2009) 37 Energy Policy 5317, 5321

propositions as centralised and decentralised models.[15] On the contrary, Williams has taken a more pragmatic view and has categorised the political economy explanations as elements present in the 'Nigerian disease models'.[16] In this paper, we adopt a neutral terminology which is consistent with the political economic school of resource curse since a 'Nigerian disease model' has not been the subject of many empirical studies.

Therefore, according to political economists the centralised model introduces politicians as a variable in resource curse economic models, and argues that the resource boom creates inefficiency in other sectors of the economy and excessive spending by politicians since it increases the probability of them staying in power. Under this theory, Robinson, Torvik and Verdier are more fatalists and argue that only in countries with effective checks and balances between institutions, it is possible to limit politicians' margin of manoeuvre and thus avoid the resource curse.[17]

Meanwhile, the decentralised political economic model moves from politicians and focuses on econometrics of powerful groups outside the power elite which are engaged in rent-seeking activities. These groups are also described in some of the literature as entrepreneurs which due to the government's lack of a fiscal redistribution policy develop a voracity for rent instead of production.[18] Similar to the former economic model, the quality of institutions is also crucial to provide for producing entrepreneurs. When the institutional quality is low it promotes a 'grabber of rents' environment and, as a result, low economic growth.

Dysfunctional conducts such as patronage or rent-seeking for the political economic hypotheses result in state capture by politicians and elites which is allowed because of weak institutions. The understanding is that rent inflows engender inefficiencies and institutional stagnation. Yet, not all rents cause bad performance in countries that are rich in natural resources. For instance, in the early years of petroleum

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[15] Ivar Kolstad and Arne Wiig, 'It's the rents, stupid! The political economy of the resource curse' (2009) 37 Energy Policy 5317

[16] Andrew William, 'Shining a Light on the Resource Curse: An Empirical Analysis of the Relationship Between Natural Resources, Transparency, and Economic Growth' (2011) 39 World Development 490

[17] See James A Robinson, Ragnar Torvik and Thierry Verdier, 'Political foundations of the resource curse' (2006) 79 Journal of Development Economics 447

[18] See Aaron Tornell and Philip R Lane, 'The Voracity Effect' (1999) 89 The American Economic Review 22; Halvor Mehlum, Karl Moene and Ragnar Torvik, 'Institutions and the Resource Curse' (2006) 116 The Economic Journal 1; Ragnar Torvik, 'Natural Resource, rent seeking and welfare' (2002) 67 Journal of Development Economics 455

exploration Norway used resource rents for local content investments, investments in existing sectors to create linkages with the then emerging petroleum sector and in technological developments which have over time, resulted in impressive economic progress. The same can be said of some 'pockets of efficiency' in developing rentier states' public sectors, namely the Gulf rentier monarchies' large scale system of patronage that have built a number of successful state owned enterprises in the oil and gas industry.[19] Furthermore, in recent years, there is a growing number of studies pointing to econometric evidence that the abundance of natural resources is neither curse nor destiny.

Indeed, Sachs and Warner who are the most influential experts on the empirical support for the curse of natural resources have recognised that the hypothesis is not, immune from criticism.[20] In this sense, some scholars have argued that resources do incentivise economic growth if combined with astute management of resource rents and investments in economic innovation.[21] Brooks and Kurtz, for instance, have contended that natural resources rents are endogenous to industrialisation since they allow for investments in human resources, technology and manufacturing.[22] On the other hand, a notion of 'resource drag' as opposed to a curse is gaining momentum to explain the special case of Botswana in Africa. The concept is put forward by Davis, who has provided empirical evidence that resource rich countries' slower growth from 1970 to 1990 which was the basis for Sachs and Warner observations, is better explained as associated with declining mineral production.[23]

This section has explored the economic history and the political-economic causation explanations of the resource curse advanced hypotheses regarding the causes, preconditions, forms and problems of resource rich economies with slow economic development. However, after more than four decades of empirical studies there is no

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[19] See Steffen Hertog, 'Defying the Resource Curse: Explaining Successful State-Owned Enterprises in Rentier States' (2010) 62 World Politics 261

[20] Jeffrey D Sachs and Andrew M Warner, 'The curse of natural resources' (2001) 45 European Economic Review 827, 828

[21] See Daniel Lederman and William F Maloney (eds), *Natural Resource, Neither Curse nor Destiny* (World Bank Publications 2006)

[22] Sarah M Brooks and Marcus J Kurtz, 'Oil and Democracy: Endogenous Natural Resources and the Political "Resource Curse"' (2016) 70 International Organization 279

[23] Graham A Davis, 'The resource drag' (2011) 8 Int Econ Econ Policy 155

unified explanation. The on-going discussions of these hypotheses cast some doubts as to whether there is a theory on the resource curse.

As we bring this section to a close, this leads us to a final question: does a systematic discussion really matter? A reality check of development status of many African nations rich in natural resources wield a fair amount of evidence of the continent's battles to transform riches in lasting benefits. Therefore, examining the solutions and policy prescriptions proposed to the problems would seem more sensible.

3. Policy recommendations for the Resource Curse

There is no generally accepted explanation which would prescribe a standalone solution to promote growth and development in resource rich countries well utilizing resource rents. According to empirical findings, resource rich countries winners that escaped the resource curse include Canada, Australia, Botswana, Chile, Malaysia, Oman, Thailand, Ireland, New Zealand, Norway and United States.[24] Even within the resource curse scholarship, these accounts are not undisputed as some economists and other scholars and commentators question the findings of total immunisation from the resource curse.[25] In contrast, natural resources abundant countries such as Venezuela in South America and African states such as Nigeria, Zambia, Sierra Leone, Angola and the Democratic Republic of Congo, are recurrently pointed as poster losers.[26] The next question to ask is: what has worked well in the former and what has failed in the latter?

Earlier economics explanations for the resource curse pointed to a crowding out logic in other economic sectors. Proposals to resolve this have been for countries to invest in policies that protect non-resource industries. These could be in the form of non-tariff barriers, mostly local content requirements in the natural resources sector leading to deeper forward and backward linkages of the natural resources sector to

[24] Egil Matsen and Ragnar Torvik, 'Optimal Dutch disease' (2005) 78 Journal of Development Economics 494, 511

[25] See E Roed Larsen, 'Are rich countries immune to the resource curse? Evidence from Norway's management of its oil riches' (2005) 30 Resources Policy 75; Michel Beine, Charles S Bos and Serge Coulombe, 'Does the Canadian economy suffer from Dutch disease?' (2012) 34 Resource and energy Economics 468

[26] Egil Matsen and Ragnar Torvik, 'Optimal Dutch disease' (2005) 78 Journal of Development Economics 494, 511; Halvor Mehlum, Karl Moene and Ragnar Torvik, 'Institutions and the Resource Curse' (2006) 116 The Economic Journal 1

other non-resource sectors. That is not however, not a commonly shared recommendation from all Dutch Disease scholarship.[27] On the other hand, political economists' propositions for avoiding the resource curse have evolved over time and largely focused on institutional quality. Initial solutions have implied that the level and quality of democratic institutions affect the benefits from natural resources endowments. Next, arguments have been made for internationally driven initiatives aimed at checking and controlling how host governments institutions utilise resource rents; last, assertions that institutional reform will resolve the curse in resource rich countries.[28] That approach has also led to a number of legal or quasi-legal initiatives to enable good use of resource rents and constrain resource-rent spoliation.

This section examines some of the key policy prescriptions and responses constructed on these hypotheses to resolve the resource curse. The study of responses of political economists founded on the political regime type will be left out of the analysis as it is not within the scope of this paper to explore the concepts around democratic leadership. This is justified in part for the reason that the policy conclusions of this school of thought would suggest *in extremis* that natural resources should be left in the ground or managed by external powers.[29] In this examination, we assume that a democratic regime is a well-established understanding supported by the wider international community in which micro manageable solutions to respond to the resource curse are suggested.

The following mechanisms in response to the resource curse will be discussed: economic propositions, international and multilateral agencies initiatives, international civil society engagement, international best practices, signal state models, local content legislation and policies, and legal and correlative approaches.

3.1 Economic Responses

[27] For instance, Sachs and Warner embrace open trade for national growth. Jeffrey D Sachs and Andrew M Warner, 'Natural Resource Abundance and Economic Growth' (1995) NBER Working Paper 5398 22 <http://www.nber.org/papers/w5398.pdf> accessed 5 January 2018

[28] See Paul Stevens and Evelyn Dietsche, 'Resource curse: An analysis of cause, experiences and possible ways forward' (2008) 36 Energy Policy 56, 57

[29] Paul Stevens and Evelyn Dietsche, 'Resource curse: An analysis of cause, experiences and possible ways forward' (2008) 36 Energy Policy 56, 57

A number of economic responses have been made based on the Dutch Disease school of thought. In broader terms, they are aimed at managing price volatility exposure through hedging in commodity future markets, government stockpiles, price controls for consumers, price setting in contracts with foreign companies and international cartels such as the Organization of the Petroleum Exporting Countries (OPEC). More specifically, examples of national economic responses have been policies to diversify the economy, establishing reserve accumulations by central banks, reducing net private capital inflows during booms and creating Sovereign Wealth Funds.

3.2 International and multilateral agencies initiatives

With the advent of political economic explanations for the resource curse, international development institutions and cooperation for development programs have moved from a policy of fair trade to the notion of building development governance capacity.

International organisations and cooperation programmes have been supporting nation and state institutions building, and strengthening since governmental and political institutions are considered to be the primary determinants of economic growth. They act as gate-keepers to make access to markets and finance conditional on a State's compliance and non-state actors' compliance with certain norms. Furthermore, they function as collectors and disseminators of information.

These responses include assistance in establishing good governance frameworks, integrating standards and best practices on resource management and transparency, or acting as outside monitors and providing support for institutional building. This was the rationale for the complex World Bank and International Finance Corporation led model for developing petroleum resources in Chad.

3.3 International civil society responses

In response to the challenges from crisis linked to extractive resources, international civil society, environmental and human rights activists have advocated for the increased visibility of the subject in the public and international domain. These are made up of advocacy initiatives by international civil society and non-governmental organisations (NGOs) focusing on transparency, environmental protection and environmental justice to build State institutions and thus utilise resource-rents to trigger growth and sustainable development.

Under these responses, Governments, multi-nationals and civil society have cooperated to establish codes and standards principally to enhance accountability, transparency, influencing and quasi-oversight. Some of the examples of international best practices to be discussed are the Kimberly Process Certification System (KPCS), the Extractive Industries Transparency Initiative (EITI), Equator Principles, Natural Resources Charter and the Santiago Principles for Sovereign Wealth Funds.

3.3.1 Kimberly Process Certification System (KPCS)

As for the KPCS, it is an international certification scheme process backed by the United Nations that was born out of the efforts from Global Witness and Partnership Africa Canada, and a few other NGOs. Established in 2003, the process is open to all countries willing to implement its requirements through national legislation, and with the participation of the diamond industry and civil society as observers. The KPCS has about 54 participants and account for over 90% of the global production of rough diamonds.[30] It aims to separate and certify 'good' diamonds and make difficult the sale and transmission of 'blood' diamonds. The latter are also known as 'conflict' diamonds, which sales were alleged to finance rebel groups and wars in Africa.

After fifteen years, the KPCS has claimed that the process has contributed to the end of civil wars in many African countries such as Angola, Sierra Leone and Liberia.[31] However, despite the KPCS certification, conflict diamonds are not prevented from entering the international market and financing civil wars in Africa. For instance, the Democratic Republic of Congo and the Central African Republic have joined the scheme at its inception, and yet conflict diamonds sourced from these countries are reaching the market.

One of the problems encountered is the proliferation of fake certificates which undermines the certification system credibility.[32] Besides, the narrow definition of

[30] See KPCS website <www.kiemberleyprocess.com> accessed 5 February 2018

[31] Kimberley Process Communique (Brisbane Plenary, 10-14 December 2017) para 1 <www.kiemberleyprocess.com> accessed 7 February 2018

[32] See Warnings issued < https://www.kimberleyprocess.com/en/enforcement> accessed 7 February 2018

conflict diamonds is another concern which prompted Global Witness, in 2012, to leave the KPCS amid claims that the process failed to avoid conflict diamonds from Ivory Coast, Venezuela and Zimbabwe to enter the market.[33] Moreover, the process consensus-based decision-making mechanisms and the dependency on domestic law are other objections to the KPCS.[34]

3.3.2 Extractive Industries Transparency Initiative

The EITI is a global voluntary standard which encourages disclosure of payments and receipts in the governance of oil, gas and mining revenues. The standard is based on 12 cornerstone principles which are implemented nationally and are subject to an international validation process. As an implementation tool, the initiative relies on a multi-stakeholder group to oversee the EITI process.

Empirical evidence from political economists argued for a correlation between lack of transparency and the increase of resource revenues.[35] The EITI is built on the prerogative that lack of transparency and absence of accountability are explanations for the resource curse.

So far worldwide over 50 countries have joined the EITI of which about 24 African countries have joined the EITI.[36] Take, for example, Nigeria which is one of the countries with a meaningful progress implementation status and in spite of some improvements recorded in transparency indicators, reality is that the African nation's economic development is not commensurate to its natural resources wealth. For this reason, some sceptics to the transparency solution contend that transparency is not *per se* sufficient to combat the resource curse.[37]

3.3.3 Equator Principles

[33] 'Group leaves Kimberley Process' (2012) 64 Mining Engineering 13

[34] See Andrew H Winetroub, 'A Diamond Scheme is Forever Lost: The Kimberley Process's Deteriorating Tripartite Structure and its Consequences for the Scheme's Survival (2013) 20 Indiana Journal of Global Legal Studies 1425; J Andrew Grant, 'Consensus dynamics and global governance frameworks: insights from the Kimberley Process on conflict diamonds' (2013) 19 Canadian Foreign Policy Journal 323

[35] Andrew Williams, 'Shining a Light on the Resource Curse: An Empirical Analysis of the Relationship Between Natural Resources, Transparency, And Economic Growth' (2011) World Development, Elsevier,39(4)

[36] EITI countries < https://eiti.org/countries > accessed 12 February 2018

[37] See Ivar Kolstad and Arne Wiig, 'Is Transparency the Key to Reducing Corruption in Resource-Rich Countries?' (2009) 37 521

As a response to NGOs' pressure, the Equator Principles (EPs) were launched in 2003 by financial institutions as a voluntary code of conduct for the banking industry that establishes a framework to address environmental and social risks in project finance based on existing policy adopted by international and multilateral funding institutions.

Initially, the EPs founding banks were from developed economies.[38] Currently, over 90 financial institutions in 37 countries have officially adopted the EPs for projects and transactions in all industry sectors and to four financial products, notably project finance advisory services, project finance, project-related corporate loans and bridge loans.[39] It contains a total of 10 principles and few African banks have adhered to the initiative.[40] The EPs are said to offer the opportunity to reduce the difference between business interests and the common good in a sustainable project finance framework.[41]

Soon after the EPs'establishment, the NGOs confidence turned into frustration due to the lack of accountability requirements and transparency from financial institutions.[42] Fifteen years have passed, and the EPs have undergone improvements and deepening in order to answer to some criticisms. The code is now in its third generation and have introduced changes in its scope, reporting, support implementation and new priorities such as climate change.[43]

3.4 International best practices

Best practices have been established for the valuation of resources, negotiation of agreements, auction of resource rights, management, utilization and investments in the extractives industries sector. Two significant initiatives in this area have been the Natural Resources Charter and the Santiago Principles.

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[38] See Niamh O'Sullivan and Brendan O'Dwyer, 'Stakeholder perspectives on a financial sector legitimization process' (2009) 22 Accounting, Auditing & Accountability Journal 553

[39] 'Equator Principles' (2013) < http://equator-principles.com/ > accessed 7 February 2018

[40] The few exceptions include Standard Bank, FirstRand, NedBank, Mauritius Commercial Bank, Fidelity Bank from Nigeria, Ecobank Transnational, BMCE Bank, Arab African International Bank and Access Bank. Equator principles, 'EP Association Members & Reporting' < http://equator-principles.com/members-reporting/ > accessed 7 February 2018

[41] Manuel Worsdorfer, 'Equator Principles: Bridging the Gap between Economics and Ethics?' (2015) 120 205

[42] Niamh O'Sullivan and Brendan O'Dwyer, 'Stakeholder perspectives on a financial sector legitimization process' (2009) 22 Accounting, Auditing & Accountability Journal 553, 570

[43] See 'The Equator Principles (2013) < http://equator-principles.com/wp-content/uploads/2017/03/equator_principles_III.pdf > accessed 7 February 2018

3.4.1 Natural Resources Charter

The Natural Resources Charter offers a best practice in the area of good governance and resource management. The Charter was launched in 2010 and was developed by practitioners and academics.[44] It contains a set of 12 principles for countries with non-renewable resource wealth with tools and templates that successful countries have used. The first ten precepts focus on what way countries may manage their natural resources, while the two last precepts are intended for extractive companies and the international community.[45]

One of the instruments developed by the Charter has been a benchmarking framework to measure a country's oil and gas governance against international best practices. The first application of this instrument was in Nigeria where a 'Nigerian Natural Resource Charter was created between 2011 and 2012, and lessons were drawn to assist other countries benefit from their resource wealth.[46] Since then however, Nigerian growth and human development outcomes and metrics have not improved significantly.

3.4.2 Santiago Principles

Another area where generally accepted principles and practices were established concerns Sovereign Wealth Funds (SWFs) which are widely projected as a key mechanism for resource-rich nations. The Santiago Principles, drafted in 2008 is an exercise led by the International Monetary Fund, which provides a 'best practice' framework for SWFs. The principles focus on providing precepts for a legal framework, policy objectives and coordination, institutional and governance structure, and an

[44] Natural Resource Governance Institute, 'Natural Resource Charter' < https://resourcegovernance.org/approach/natural-resource-charter> accessed 7 February 2018

[45] See 'Natural Resource Charter' (2nd edn, Natural Resource Governance Institute 2014) < https://resourcegovernance.org/sites/default/files/documents/nrcj1193_natural_resource_charter_19.6.14.pdf> accessed 7 February 2018

[46] Oxford Policy Management, 'Bringing the Natural Resource Charter to life: Lessons from Nigeria' <http://www.opml.co.uk/sites/default/files/03%20Bringing%20the%20Natural%20Resoure%20Charter%20to%20life%20-%20OPM%20Briefing%20Note%20August%20....pdf> accessed 7 February 2018

investment and risk management framework.[47] There are several models of SWFs, with Norway being the most cited good example of natural resources sovereign fund.[48]

SWFs have multiple and varied applications. Some of the rationale used and objectives of SWFs include intergenerational transfer ('parking') of wealth, stabilisation of the economy from fluctuations in commodity prices, temporarily holding revenues for good investment opportunities, increasing political accountability of politicians and enhancing portfolio diversification.[49] Nevertheless, as the case of Chad illustrates, complex revenue management regulatory framework fails to deal, or even tackle, any of the root issues that likely led to resource-rent spoliation.[50]

3.5 Signal State models

These are approaches derived from a base model deriving from unique national approaches which has been replicated in some other jurisdictions. There are different types of models and some have been exported by countries through international cooperation programmes.

3.5.1 Norwegian model

The most cited case of good management of petroleum resources that comes to mind is the Norwegian example. The Oil for Development (OfD) Programme, managed by the Norwegian Agency for Development Cooperation, offers strategic developmental assistance to emerging resource-rich countries through internationalisation of the Norwegian good governance framework.

The OfD core pillar is sharing the Norwegian experience based on ownership by the state, quality institutions, enhanced technical knowledge and regulatory system, and society oversight over petroleum resources.[51] The majority of countries in the OfD

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[47] See International Forum of Sovereign Wealth Funds, 'Santiago Principles' < http://www.ifswf.org/santiago-principles-landing/santiago-principles> accessed 9 of February 2018

[48] Norwegian Government Pension Fund <https://www.nbim.no/en/the-fund/> accessed 9 of February 2018

[49] Samuel e Wills, Lemma W Senbet and Witness Simbanegavi, 'Sovereign Wealth Funds and Natural Resource Management in Africa' (2016) 25 Journal of African Economies ii3

[50] Nikola Kojucharov, 'Poverty, Petroleum & Policy Intervention: Lessons from the Chad-Cameroon Pipeline' (2007) 34 Review of African Political Economy 477, 486

[51] NORAD, 'Oil for Development Programme'< https://www.norad.no/en/front/thematic-areas/oil-for-development/oil-for-development-programme/ > accessed 11 February 2018

programme are from Africa with which thematic periodic programs have been signed with Norwegian implementing institutions.[52] For instance, industry newcomers such as Kenya, Mozambique and Uganda are part of the program. Surprisingly and startlingly, Angola which is recurrently described as a country suffering from the resource curse had been receiving Norwegian assistance since 2007.[53]

3.5.2 China-Africa oil for infrastructure model

Another known model in the continent is the China-Africa infrastructure for resources ties. China is becoming the world's major growth market for energy.[54] And, China's policy engagement with resource-rich countries in Africa is aimed at ensuring energy security. The model was not first developed by Chinese diplomacy, though what makes the Chinese approach unique is that it combines access to natural resources with aid packages to construction contracts for Chinese companies.[55] Since the first Ministerial Conference of the Forum on China-Africa Cooperation in 2000 many countries in Africa have benefited from resource-backed infrastructure loans.

The recent signals by the Chinese presidency with the 'One Belt and One Road Initiative', which aims to invest in infrastructures along the old silk road routes also in Africa, further reaffirms China's commitment to the infrastructure model. The contributions from this model to attaining sustainable development goals have not been keenly studied. In fact, one of the criticisms levelled at this model is the lack of transparency of Chinese business dealings in Africa. Other criticisms include, the development of 'white-elephant' projects, poor quality projects, the long-term sustainability of the projects and the long-term export of Chinese labour into the resource-rich nations. Perhaps the most difficult objection which should be the focus of considerable analysis in the future is the equalisation of the value of the exchange that is to say, the correlation of the value of projects provided by China in comparison to the

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[52] African countries included in the program are Angola, Ghana, Kenya, Mozambique, South Sudan, Sudan, Tanzania and Uganda. See NORAD, 'Oil for Development Programme'< https://www.norad.no/en/front/thematic-areas/oil-for-development/where-we-are/ > accessed 11 of February 2018

[53] The Oil for Development programme in Angola < https://www.norad.no/en/front/thematic-areas/oil-for-development/where-we-are/angola/ > accessed 11 of February 2018

[54] BP, 'BP Statistical Review of World Energy June 2017' (2017) 2

[55] See Deborah Brautigam, *The Dragon's Gift: The Real Story of China in Africa* (OUP 2009) 145

value of petroleum or natural resources exchanged by the resource-rich nation. Related to that is the fundamentals of underlying commercial value of the 'barter' project and transaction - do the entire transaction and the negotiations leading thereto, represent a balanced fair-deal for both China and the resource-rich nation?

3.5.3 External checks model: the Chad experience

As part of development cooperation, international organisations have used the external checks approach as a tool against the resource curse. The Chad-Cameroon Pipeline Project (CCPP) represents the best example of a foreign check model in the extractive industries.

As a landlocked country, Chad required a direct route for petroleum exports. With assistance from the World Bank (WB) and the International Finance Corporation (IFC) the oil consortium and the Governments of Chad and Cameroon agreed to build a pipeline from Doba Oilfields in Chad to the coastal town of Kribi in Cameroon, to evacuate and export petroleum. As an integral part of the loan package, the WB and the IFC included a pioneering comprehensive revenue management program which aimed to prepare Chad with a strong legal framework for managing its oil revenues.[56] The project was designed to provide a constitutional, legislative and contractual framework for good outcomes from petroleum production and avoid negative outcomes. Moreover, an International Advisory Group was established to complement monitoring structures and advise both Governments, the WB and IFC. An external escrow system was established to hold some of the revenue from resource-rent and channel them to the designated purposes.

The first oil was achieved in July 2003,[57] but after over fourteen years of operationalisation of the project, Chad's status as least developed country continued unchanged. Many negative outcomes have occurred during execution. Some argue that the Chad model was a complete failure while others opine that it was a first good

[56] IFC, 'The International Finance Corporation (IFC) Played a Leading Role in Facilitating the Oil Pipeline between Chad and Cameroon' <http://www.ifc.org/wps/wcm/connect/6f271e00487e8e09844ced51e3a7223f/ChadCamProjectOverview.pdf?MOD=AJPERES> accessed 12 February 2018

[57] IFC, 'Chad-Cameroon Pipeline Project' <http://www.ifc.org/wps/wcm/connect/region__ext_content/regions/sub-saharan+africa/investments/chadcameroon> accessed 12 February 2018

attempt at a comprehensive resource management model for new resource-rich nations. The choice of policies and implementation mechanisms by the WB and IFC are pointed by some as the reason for the failure of this model proposed in tackling the resource curse.[58] Moreover, other views hold that the perception of foreign policy imposition in Chad has been the major source of the project failure which questioned the country's sovereignty over its natural resources.[59]

3.6 Direct distribution of resource models

Mechanisms of direct distribution of resource (DDR) revenues have been considered individually by states based on social distribution policies. They aimed at directly benefiting nationals of a resource-rich country or members of a resource-community. Different from DDRs are benefit sharing instruments (BSAs) in mining projects with aboriginal communities for extractive resources projects. BSAs are not often cited as a DDR mechanism but they share some common traits since some of these instruments include revenue management and distribution. One reason for it being that there is no uniform designation for BSAs. In Australia and Canada, where they are more common, BSAs are used to describe agreements from a consultation process in relation to a resource extraction project with Aboriginal groups.[60] Further, BSAs contents are generally project specific and could include provisions on Aboriginal peoples' rights, royalty payments, employment and training opportunities and environmental and cultural protection.[61] For instance, in Nigeria and Ghana there are instruments which can be assimilated to BSAs excluding that they only focus on communities' rights regarding employment, training and socio-environmental protection. Conversely, the

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[58] See Scott Pegg, 'Can Policy Intervention Beat the Resource Curse? Evidence from the Chad-Cameroon Pipeline Project' (2006) 105 African Affairs 1; International Advisory Group, 'Chad-Cameroon Petroleum Development and Pipeline Project: Final Report' < http://web.worldbank.org/archive/website01210/WEB/IMAGES/IAG_CHAD.PDF > accessed 12 of February 2018;

[59] Nikola Kojucharov, 'Poverty, Petroleum & Policy Intervention: Lessons from the Chad-Cameroon Pipeline' (2007) 34 Review of African Political Economy 477

[60] Woodward & Company report, 'Benefit Sharing Agreements in British Columbia: a guide for First Nations, Businesses, and Government' (prepared by Woodward & Company for the Ecosystem-Based Management Working Group) I-2 <https://www.for.gov.bc.ca/tasb/slrp/lrmp/nanaimo/cencoast/ebmwg_docs/hw03b_benefit_sharing_final_report.pdf> accessed 16 February 2018

[61] Jason Prno, Ben Bradshaw and Dianne Lapierre, 'Impact and Benefit Agreements: Are they working?' (CIM Conference and Exhibition, Vancouver, May 2010)

Australian BSAs based on the Aboriginal Benefit Reserve status entitles Aboriginal people to receive payments from mining royalties in Aboriginal lands.[62] The latter form of BSA is analogous to a DDR model.

Other successful examples of DDRs mechanisms are mostly present in developed economies. But some countries have tried direct distribution of revenue, while certain other state such as many Middle Eastern resource-rich states have complex systems for direct distribution of revenue and resources to their citizens. In Africa, some states have attempted to design some programs using resource revenues to finance public programs outside the budget with the purpose of expanding social safety nets.[63] Fuel subsidies in most African countries are one of the most cited examples of social policy in oil and gas exporting economies in the continent.

Lastly, the case of Alaska which issues cheques to its citizens annually as a direct sharing of natural resources revenue, is the only well studied DDR which has been attempted in other jurisdictions but abandoned of which Mongolia is the signal example.[64] Having a good institutional base and oversight is one of the reasons pointed for Alaska's success. For this reason, there is general scepticism whether DDR could improve accountability and provide for stronger institutions in developing countries. A research produced by the IMF called for caution and establishing a fiscal framework prior to adopting a direct redistribution model.[65]

3.7 Local content legislation and policies

Local content (LC) is perhaps the most common and prevalent mechanism in the mining sector used to combat the resource curse. LC can take many forms and adopt different

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[62] Carolyn Fischer, 'International Experience with Benefit-sharing Instruments for Extractive Resources' (Resources for the Future, 2007) 22 < http://www.environmentportal.in/files/RFF-Rpt-BenefitSharing.pdf > accessed 2 February 2017.

[63] Social programs in developing economies such as *Misiones* programs in Venezuela, Bolsa Família in Brazil or fuel subsidies in the Middle East and African oil-rich countries. See also Sanjeev Gupta, Alex Segura-Ubiergo, and Enrique Flores, 'Direct Distribution of Resource Revenues: Worth Considering?' (2014) International Monetary Fund Staff Discussion Note SDN/14/05 <https://www.imf.org/external/pubs/ft/sdn/2014/sdn1405.pdf > accessed 11 of February 2018

[64] For instance, the Mongolian Human Development Fund for all citizens which was heavily criticised by the IMF and World Bank.

[65] Sanjeev Gupta, Alex Segura-Ubiergo, and Enrique Flores, 'Direct Distribution of Resource Revenues: Worth Considering?' (2014) International Monetary Fund Staff Discussion Note SDN/14/05, 20 <https://www.imf.org/external/pubs/ft/sdn/2014/sdn1405.pdf > accessed 11 of February 2018

terminologies. Depending on the context, alternative denominations may include domestic content, content protection or indigenisation policies.[66]

According to the WTO, LC is a 'requirement that the investor purchase a certain amount of local materials for incorporation in the investor's product'.[67] Under main WTO Agreements, the principle of national treatment requires members to treat imported and locally produced goods equally. Therefore, *prima facie*, using LC as a response to the resource curse by imposing restrictions on business procurement policy would be in violation of a WTO founding principle.

Yet, this interpretation is much disputed by developing and developed countries alike. For this reason, the WTO allows for a formal system of exemption through a Generalised System of Preferences based on rules of origin and a preferential tariff system for least developed countries. Despite these efforts, the balance of an international open trade system has been called into question by the rise of right-wing nationalistic views in developed economies.[68]

Besides, LC in the context of extractive industries are not only trade related. Indeed, there are variety of reasons to establish LC policies and legislation. For instance, other drivers of LC requirements include policies such as curbing unemployment, increasing local participation in the industry, technology and expertise transfer, domestication of the extractive support industry, creating forward and backward linkages between the resources sector and other sectors of the economy. Each country's local content definition reflects the scope of measure and the policies adopted.[69] But, a common feature present is the market creation objective.

The LC legislation and policies in the North Sea are promoted as a success story.[70] Norway's early local content policy has been presented by many as a signal reason for the country's success in fighting the resource curse.[71] Recently, new entrants to the

[66] The use of 'nisation' suffixes are common. Nigeria and Angola, the two major oil and gas producers in Africa, are well known for their local content policies towards the 'Nigerianisation' and 'Angolanisation' of their oil and gas industries.

[67] WTO, 'Glossary Term' (2018) <https://www.wto.org/english/thewto_e/glossary_e/glossary_e.htm> accessed 29 January 2018

[68] Some of the Trump Administration 'America First' policy measures are seen by other states as a threat to open trade and they have filed WTO complaints against the United States.

[69] OECD, 'Local Content Policies in Minerals-Exporting Countries Part 1' (2017) 7

[70] Marie-Claire Aoun and Carole Mathieu, 'Local Content Strategies in the Oil and Gas Sector: How to Maximise benefits to Host Communities' (2016) Institut Français des Relations Internationales 6

[71] Yelena Kalyuzhnova and others, *Local Content Policies in Resource-rich Countries* (Euro-Asian Studies 2016) 46

group of African natural resources exporting economies have been strongly pushing for LC legislation in order to capture more economic rent and increase local participation. The phenomenon has been seen in Kenya and Tanzania with the enactment of LC legislation and public discussions in other jurisdictions.[72]

Formal LC regulatory frameworks have been enacted in Africa's major oil and gas producers, notably Nigeria and Angola but not in the early years of production. Later on, specific institutions such as the Nigerian Content Development and Monitoring Board and the National Directorate for Fostering Angolanisation, were created in Nigeria and Angola to oversee LC policies.[73] However, in an environment of low oil prices, the restrictive measures of some of Angola's LC policies are being called into question by international companies, while in Nigeria LC policies have not produced substantial impact for economic development and the laws are facing scrutiny from the WTO.[74]

One of the possible reasons for the limited effectiveness or failure of LC is that it only deals with one aspect of the resource curse which is market creation. The objectives are most times unclear or too ambitious and the entire LC programme is badly designed causing problems in its implementation. Periodic reviews are needed in order to improve LC effectiveness. The Nigerian Oil and Gas Industry Content Development Act enacted in 2010 is claimed to have introduced significant change in the national petroleum industry. Nevertheless, the narrow focus of LC policies can perpetuate patronage mechanisms by politicians and constitute another means of capture of rents by elites.

3.8 Legal and correlative approaches

Some of the legal approaches under this category have been discussed in the previous sections. Other examples that have not been mentioned include emerging soft-law on Corporate Social Responsibility which seeks to link business practices and human rights,

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[72] See Kenya's Local Content Bill (2016) and Tanzania's the Petroleum (Local Content) Regulations (2017); In Uganda, Mozambique and Liberia LC laws have been submitted to parliament.

[73] Nigerian Content Development and Monitoring Board <http://ncdmb.gov.ng/> accessed 16 February 2018; Direcção Nacional de Fomento da Angolanização < http://www.minpet.gov.ao/VerPrestadorServico.aspx?id=484 > accessed 16 February 2018

[74] Jesse Salah Ovadia, 'Local content policies and Petro-development in Sub-Saharan Africa: A comparative analysis' (2016) 49 Resources Policy 20, 24

akin to using the United States Alien Torts Claims Act to hold corporations liable for complicity with human rights abuses by host governments.[75]

Moreover, there is postulation for the emergence of a right of democratic governance.[76] The case for making corruption a violation of human rights which is under discussion in academic literature.[77] The progress in making corruption and resource spoliation a focus of international criminal law has progressed with early agreements, such as the Inter-American Convention against Corruption (1996), the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997), the Criminal Law Convention on Corruption (1999) and the Civil Law Convention on Corruption (1999) adopted within the Council of Europe. The use of the US's Foreign Corrupt Practices Act (FCPA) and the UK's Bribery Act, is leading to extensive extra-territorial reach and effect.

Tenuously, through correlative laws a number of individuals and cases linked to wars and conflicts in resource-rich regions and countries were brought before the International Criminal Court (ICC) and tribunals. Charles Taylor's case in the ICC for using diamonds to sponsor the war in Sierra Leone is a well-known example. Or, the Ogoni case before the African Commission on Human and Peoples' Rights where the African Commission concluded that the Nigerian Government had allowed private actors and companies to affect the well-being of the Ogonis (2001-2002).[78]

3.9 Absence of complete national or international legal frameworks

Crucially there is no one example of a complete and affective national or international framework addressing the causation. International law and practices have

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[75] Christopher Bronk Ramsey, 'Bayesian Analysis Of Radiocarbon Dates' (2009) 51(1) The University Of Arizona < https://journals.uair.arizona.edu/index.php/radiocarbon/article/view/3494 > accessed 16 February 2018

[76] Richard A Barnes, 'Democratic Governance and International Law', (Gregory H Fox and Brad R. Roth ed, 2000) 8(1) IJGLS < https://www.repository.law.indiana.edu/ijgls/vol8/iss1/15 > accessed 16 February 2018

[77] Linus Akor,'The Transparency International and Nigeria's Corruption Perception Index: Implications For Sustainable Transformation (2014) 3(5) GJISS < https://www.longdom.org/articles/the-transparency-international-and-nigerias-corruption-perception-index-implications-for-sustainable-transformation.pdf > accessed 16 February 2018

[78] Ogoni people vs. Nigeria Government affirmed ESC rights - defined by the United Nation's International Covenant on Economic, Social, and, Cultural Rights. The Commission required Nigeria to undertake a "comprehensive clean-up of lands and rivers damaged by oil operations." It was also asked to take steps to ensure that the social and environmental impact of future oil development on its territory does not harm local communities.

no comprehensive response to the resource curse. There are a range of existing national laws and regulatory mechanisms that deal with aspects of the problem. Elements of existing national laws and international treaties are used as related but they are basic legal tools to address the effects. This includes a range of emerging civil and criminal law remedies to address the effects, drawing on related laws and regulations. Civil measures claims based on the United States Alien Tort Claims Act, Common Law Foreign Direct Liability, Shareholders Actions, Transparency and Access to Information, or Human Rights Violations and Environmental Protection Remedies have been invoked in the past. As regards criminal measures, instruments such as the United States Foreign Corrupt Practices Act of 1977, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the United Kingdom Bribery Act (2010), the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and accounting regulations are some of the correlative instruments that have been tried.

Nevertheless, there are some challenges with some of the legal and correlative measures to the resource curse. For instance, in civil action there are some problems with *locus standi*, such as who is the pursuing party and who is to be sued, and cross jurisdiction obstacles. Furthermore, the costs are extremely high and there are issues with available remedies. In some jurisdictions, criminal remedies are very basic and are of low priority which make it difficult to have effective enforcement.

4. Existentially Fragile States causation model as new explanation for the Resource Curse – African and South American case-study

There are limits to the utility of the policy prescriptions and mechanisms in response to the resource curse. Chad for example sought early help, advice and assistance from multilateral institutions which provided an external checks model with legislation and policies based on international best practices. Yet as we have seen earlier in this work, the carefully designed approach has proved to be a failure.

4.1 Legacy of colonial arrangements produced inherently fragile states

Tracing the development and evolution of most African States, we can identify the pivotal 1884-1885 Berlin Conference at which the European powers carved up Africa arbitrarily and without reference to geography, culture, history and without any African participation or representation. That led to various wars against and numerous agreements with pre-colonial African States, almost all of which were breached and discountenanced by the European states.[79] The boundaries of pre-colonial African states were arbitrarily re-drawn, and colonial States and governments were set up across Africa, with the paramount purpose of serving economic structures of colonial powers. The dispute between Cameroun and Nigeria over the Bakassi Peninsular which ended up before the International Court of Justice well illustrated the chaotic legacy of Colonialism in Africa.[80]

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[79] See for example, the dispute between Cameroun and Nigeria over the Bakassi Peninsula which is discussed in the footnote immediately below.

[80] For a fuller discussion of the dispute, underlying issues and full examination of the implications of the International Court of Justice, see Egede and Igiehon (ed), The Bakassi Dispute and the International Court of Justice – Continuing Challenges, published by Routledge 2018, see particularly pages 1 and 138.

We can argue that the situation is in part, a legacy of both the imperialist European colonial division of African states and kingdoms and the neo-colonial regimes in Africa. The European colonial powers like Portugal, Germany, France and Britain, deployed economic, political and strategic calculations in the 19th century, in their quest to divide up Africa and access its resources. In doing so, there was arguably near complete disregard for the pre-colonial states, cultural and power structures. The pre-colonial scramble and division of Africa and colonial era administration largely therefore established the foundation for future conflict across post-colonial Africa. The foundation for dysfunction and conflict in Africa was perhaps inadvertently prepared through practices such as the divide-and-rule system of administration; and the partitioning of African States and her peoples without regard for pre-colonial arrangements; and lack of regard for the damage caused and the destructive impact on the peoples' language, institutions, socio-political life, cultural connections and ancestral lineage. The European colonial powers divided people and groups into territories controlled by the colonial powers and in many cases without any regard for history, culture and homogeneity. Thus was the foundation set for much of the dysfunction and conflicts across Africa today. A wider issue across Africa is that the European division of Africa was largely done without reference to the history and culture of the peoples. Furthermore, the division of Africa by the colonial powers was done by those powers without reference to and in many cases in disregard and dishonour of the agreements they had entered into with the African kings and rulers. For example in the maritime boundary dispute between Cameroun and Nigeria over the Bakassi Peninsula, at issue was controversy as to the two contending agreements - 1884 Anglo-Efik Treaty and the 1913 Anglo-German Treaty.[80] The issue of principle of sanctity of treaties pacta sunt servanda and the apparent disrespect of the European powers of the treaties they negotiated and entered into with pre-colonial African rulers and states. The legal status of agreements reached between European powers and the pre-colonial African states and crowns. That issue remains controversial for International Law and was unfortunately not settled by the International Court of Justice's Bakassi decision. On the contrary the ICJ Decision further ignored and undermined the status of pre-colonial treaties entered into between European Colonial States and pre-colonial Africa States. The ICJ decision would appear to have followed the practice of the European colonial powers who largely ignored and acted mala fides and in violent disregard to the agreements they had freely negotiated and concluded with the African pre-colonial states and crowns.

Then followed the colonial era which was succeeded by the Second World War, the end of the war was followed by a global push for independence which started with India in 1948 and the first in Africa was Ghana in 1957. After independence, the next phase was the independence era during which many African countries gained political freedom from the colonial powers. However, the early independence years resulted in many of the newly independent African states becoming proxies in the cold war between West Nations and Communist USSR. There also ensued numerous internal conflicts between the uneasy amalgamation of pre-colonial African peoples, states and kingdoms, re-packaged into the Colonial States. There conflicts and civil wars for example, Nigeria and Democratic Republic of Congo. Those and the early demise of many of the first post-colonial governments meant that many of the post-colonial States were unable or denied the early opportunity for nation building and to remedy the unsustainable legacies of colonialism.

4.2 Many post-colonial states have been unable to overcome the inherent weaknesses which are largely the legacy of pre-colonial partition and colonial era

Pre-colonial scramble for Africa followed by colonial division of Africa, colonial arrangements which bore little resemblance to pre-colonial African states, kingdoms, governments, structures, and boundaries produced post-colonial states which are existentially fragile. The situation could have been corrected if post-colonial states had been able to overcome the existentially fragile weaknesses that resulted from colonialism. Unfortunately, many of the post-colonial governments and elites have been unable or uninterested in eliminating the existential weaknesses and building strong post-colonial states. Therefore, many of the post-colonial states in African and few in South America and Asia, remain existentially fragile.

4.3 Existentially fragile states causation model

Colonial apparatuses weakened the pre-colonial states, structures and societies in order to enable exploitation by the colonial administrations. Colonialism left an inherently unstable and unsustainable conglomeration of people, nations and governments. Post-colonial governments and elites had the opportunity to remedy the inherent fragility of the post-colonial state by building and deepening their state structures but except for a few exceptions such as Botswana, most of the post-colonial governments have been unable to engage in nation building or the post-colonial elites have been uninterested in nation building and thus the states remain existentially fragile. The existentially fragilility of these states, is then further aggravated by the discovery of abundant natural resources and windfall funds. The discovery and influx of abundant resources riches produces the unintended consequence of exacerbating the latent fissures pre-existing in the new resource-rich state.

4.3.1 Fragile States 'built on sand'

Extrapolating the analogy of Jesus's parable of houses (in this discourse, two countries) built on sand and rock, the foundation of first house built was built on sand and the foundation of the second was hard rock.

> *One man built his house on the rock. Rain fell, the floods came, and strong winds blew and beat on that house, but it did not fall, because it had been founded on the rock. Another man built his house on sand. Rain fell, the floods came, and strong winds blew and beat against that house, and it fell, and great was the fall of it, for it was built on sand.*[81]

Using the analogy above, we can argue that the foundations of most post-colonial states are 'sandy' and not hard rock hence they are innately weak and unstable. Thus, the arrival of mineral-riches which should ordinarily be great benefits and blessings, instead become hard knocks that further weaken such states. An innately weak state blessed with an 'unexpected arrival' of resource-riches could easily become staple for internal conflicts, crucially state capture by rent-seeking elites, poor human rights protection, environmental degradation, and grave harm to the resource bearing regions.

[81] See Matthew Chapter 7 from verse 24-27 New King James Version (NKJ)

Appreciating this notion means the primary focus should be on renewed deliberation on building deep and sustainable State foundations that can underpin the reception and utilisation of in-flowing mineral riches to bring about swift development and national transformation. In states with pre-existing weak 'sandy' foundations, it becomes reasonable to predict that the discovery and development of natural resources will lead to the Resource Curse, unless transformative endogenous frameworks are carefully designed and implemented to ensure good and sustained use of resources revenue and rents to transform the fortunes of the nation. For states with pre-existing strong 'rocky' foundations, it is reasonable to predict that discovery and exploitation of natural resources will provide good developmental outcomes i.e. resource blessings and not the resource curse.

4.3.2 Plethora of poor state institutions are illustrative of poor State foundations and thus existentially fragile states

The quality of institutions has been much examined as a distinguishing factor of failing states and resource cursed nations. Cabrales and Hauk concluded that the quality of institutions is decisive in determining whether natural resources will produce a blessing or a curse.[82] Sarmidi et all, for their part concluded from their extensive research that "empirical results reveal that there is a threshold effect in the natural resources–economic growth relationship. We find that the impact of natural resources is meaningful to economic growth only after a certain threshold point of institutional quality has been attained. … nations that have low institutional quality depend heavily on natural resources while countries with high quality institutions are relatively less dependent on natural resources to generate growth."[83]

Scott Beaullier[84] in his work examining the exceptional success of Botswana considered the role of poor foundational institutions left behind by colonialism.

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[82] Cabrales and Hauk, 'The Quality of Political Institutions and the Curse of Natural resources' (2010) The Economic Journal 121, 58–88. <https://www.ucl.ac.uk/~uctpcab/research/NRCurse.pdf>accessed 20 October 2018

[83] See also Tamat Sarmidi, Siong Hook Law & Yaghoob Jafari, 'Resource Curse: New Evidence on the Role of Institutions' (2014) International Economic Journal 28:1, 191-206 <https://www.tandfonline.com/doi/abs/10.1080/10168737.2013.787110> accessed 20 October 2018

[84] Scott Beaulier, 'Explaining Botswana's Success: The Critical Role of Post-Colonial Policy' Mercatus Center George Mason University, Working Paper 41, pages 1-3 <https://www.mercatus.org/system/files/Explaining_Botswanas_Success.pdf> accessed 20 October 2018

After 225 years, economists are once again exploring why some nations are rich while others are poor. While most economists agree that private property, the rule of law, and free markets are crucial for economic development, there is a lot of disagreement over what other factors determine the wealth and poverty of nations. For example, Jeffrey Sachs (2001) and Sachs and Warner (1997, 1995) argue that climate, geography, proximity to the coast, and distance from the equator are significant determinants of economic growth. Jared Diamond (1997) also thinks climatic and geographic differences played an important role in economic development, but according to Diamond, climate and geography mattered thousands—if not millions—of years ago. By contrast, North (1981), North and Thomas (1973), and Rosenberg and Birdzell (1986) insist that a particular set of institutions—namely the western institutions of polycentric governance, the rule of law, and a rich respect for private property—have led to the west growing rich.

More recently, the work of Daron Acemoglu, Simon Johnson, and James Robinson (2001) has attempted to merge the geographical and institutional arguments. Acemoglu, Johnson, and Robinson (henceforth, AJR) argue that geography and demography matter because they affect the quality of institutions: <u>during colonialism, low quality institutions were established in regions</u> with high population densities and low life expectancies. By contrast, regions with low population densities and high life expectancies established better institutions. <u>Thus, sub-Saharan Africa was left with bad institutions because colonists in Africa faced low life expectancies and tried to colonize areas with large populations. The incentive for colonists was to expropriate rents as quickly as possible rather than think of the long run.</u>

Institutional quality and building have long been recognised as vital if minerals resources are to produce good and development and not lead to resource curse. That was in part for example, the rationale behind the Chad model which was discussed earlier which focused on building and strengthening complex measures and institutions that were designed to guarantee that the Chad petroleum project will lead to good developmental outcomes and not the resource curse. Yet the complex efforts failed. It is therefore apparent that a plethora and excess of poor institutional quality across many parts of a state or nation becomes for many post-colonial states, better conceived as 'poor national quality' and not just 'poor institutional quality' and thus is demonstrative of existentially fragile states.

There has been extensive research and consensus on the criticality of institutional quality as determinants of whether natural resources will lead to resource curse or resource blessings. But there would appear to be precious little recognition or research on the impact of 'whole-state quality' as distinct from quality of component state institutions. We hope that the propounding in this work, of the concept of Existentially Fragile States disease as a new causation model for explaining resource curse, will lead to much new research on the subject.

4.3.3 Preponderance of failed exogenous best practices and standard policy responses to the Resource Curse could be attributable to Existentially Fragile States

Comparing outcomes in resource-rich Venezuela, Chile, Mexico and Nigeria, with resource-rich Norway, we find that implementation of many of the standard policy prescriptions to the Resource Curse discussed earlier such as Local Content, Transparency Initiatives, and Sovereign Wealth Fund for example, have been spectacularly successful in Norway but in the mentioned South American and sub-Saharan African states, they have been failing. The poor rate of success from standard policy responses to the Resource Curse is better understood from the prism of Existentially Fragile States. The more existentially fragile a resource-rich state is, the higher the likelihood of failure of standard policy prescriptions. In many ways, the standard policy prescriptions are in reality exogenous policy responses. The responses appear to be externally designed and therefore difficult to produce transformative development in the local jurisdiction." We can consider universal policy responses to be exogenous insofar as such responses are adopted as standard global responses without much deeper thought to deeply design the solutions to take account of the existential fragility of the subject state. The predictive rate of success or failure of standard resource use policy prescriptions and responses will be directly linear to the level of state quality. The more fragile a state is, the more likely that the standard resource curse policy responses will fail.

4.4 Characterizing fragile states

There are many ways of assessing the stability, maturity or fragility of states. One way of doing so is reference to the Fund for Peace which since 2005 have produced annual Fragile States Index[85] which is an annual examination and ranking of states based on their perceived levels of fragility, stability or sustainability. It ranks all nations who are members of the United Nations to the extent of available information. Twelve indicators are used in the assessment: Security Apparatus; Factionalized Elites; Group Grievance; Economic Decline and Property; Uneven Economic Development; Human Flight and Brain Drain; State Legitimacy; Public Services; Human Rights and Rule of Law; Demographic Pressures; Refugees and Internally Displaced Persons; External Intervention. The indicators are used to place countries in one of five possible levels: sustainable, stable, warning, alert and no information.

The OECD Organisation for Economic Cooperation and Development undertakes an annual assessment of those states considered fragile and publishes its assessments as *States of Fragility*.[86] Millennium Challenge Corporation undertakes annual assessments and publishes its *Government Effectiveness Indicators Scorecards.*[87] The United Nations Development Programme publishes *Human Development Index*.[88] The World Bank and

[85] Fragile States Index, <https://fragilestatesindex.org/> accessed 20 October 2018

[86] OECD States of Fragility< http://www.oecd.org/dac/states-of-fragility-2018-9789264302075-en.htm> accessed 20 October 2018

[87] MCC < https://www.mcc.gov/who-we-fund/indicator/government-effectiveness-indicator> accessed 20 October 2018

[88] UNIDO < http://hdr.undp.org/en/content/human-development-index-hdi> accessed 20 october 2018

Natural Resources Institute publishes the *Worldwide Governance Indicators* (WGI)[89] reports which aggregates individual governance indicators for over 200 countries and territories across six areas of governance: *Voice and Accountability; Political Stability and Absence of Violence; Government Effectiveness; Regulatory Quality; Rule of Law; Control of Corruption*.

5. The development of endogenous governance systems: the Botswana Model

Clearly therefore, there are limits to the utility of the standard policy mechanisms and prescriptions responding to the resource curse. Chad sought early help, advice and assistance from multilateral institutions which provided an external checks model with legislation and policies based on international best practices. Nigeria and the Democratic Republic of Congo have joined international civil society initiatives such as the EITI and KPCS. Nigeria and Angola have tried from early days of resource extraction to pursue local content and only relatively lately, have adopted formal LC legislation and strong regulation. Moreover, civil and criminal claims have been brought against individuals and companies in international fora and foreign courts centred on legal and correlative approaches. At the end, all have failed to provide a clearly effective and repeatable roadmap that newly resources-rich countries pursue to bring about rapid transformation into developed economies. In the review of the standard policy prescriptions and mechanisms, one common feature that stands out is their exogenous nature.

It could be argued that under international law as a direct manifestation of the doctrine of sovereignty, there are no direct means of compelling a state to utilize state resources for the common good of the peoples of the state. Codes are claimed to be voluntary schemes and depend on national governments for implementation and enforcement. Indeed, the acts of the State even if contrary to the interest of the peoples of the state, are yet the acts of a sovereign within international law. Therefore, even if they are proposed by foreign actors, they are only implemented with the connivance of resource

[89] Worldwide Governance Indicator (WGI) – World Bank Group <http://info.worldbank.org/governance/wgi/> accessed 20 October 2018

rich countries. But there are questions as to the will, capacity and capability of many states to implement and enforce, the voluntary schemes or national legislation on management of natural resources.

The emergence of a new stream of thought calling for 'African solutions for African problems' is yet a manifestation that despite the doctrine of sovereignty there is a desire for African ownership in driving development policies in the continent. The adoption of an Africa Mining Vision (AMV) by the African Union in February 2009 echoes the continent's own response to the resource curse. Among the constraining factors identified in the AMV, weak governance is identified as the enabler for resource rents to be captured for short-term consumption.[90] While governance reforms have been pitched as the solution to the resource curse, many modern African constitutions have embraced the notion of good governance as a national principle.[91] However, there is no consensus on what the concept entails. For the World Bank, the definition includes the form of political regime, the exercise of political power to manage a nation's economic and social resources, and the capacity of governments to execute government functions.[92] Moreover, institutions and governance have been used interchangeably despite the former definition being clearer.[93] Not surprisingly, in recent decades bilateral donors and multilateral institutions have been keen on supporting development programs for institutional reform in resource-rich countries in Africa. Based on hypotheses from political economist scholars of the resource curse, programs for building stronger institutions are to provide for a framework where politicians and elites are less able to capture resource rents.

Which types of institutions and how they should be structured are based on governance best practices examples from countries considered resource curse immune of which a majority of these are not in Africa. The advantage of a best-practice standard approach is that by individualising a set of institutional practices it allows for

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90 AU, 'Africa Mining Vision' (2009) 14 < http://www.africaminingvision.org/amv_resources/AMV/Africa_Mining_Vision_English.pdf > accessed 16 February 2018

91 For a review of African constitutions which include good governance as a principle, see John Hatchard, *Combating Corruption: Legal Approaches to Supporting Good Governance and Integrity in Africa* (Edward Elgar 2014) 20

92 World Bank, *Governance and development* (The World Bank 1992) 58

93 Paul Stevens and Evelyn Dietsche, 'Resource curse: An analysis of cause, experiences and possible ways forward' (2008) 36 Energy Policy 56, 59

benchmarking and cross-national comparison to determine the state of natural resources governance between African countries and other regions. Yet the assumptions underlying the aspects driving institutional reforms are exogenous to the African continent. The colonial heritage from an arbitrary division of countries' borders among Europeans powers during the Berlin Conference of 1885 have led to the partitioning of several social institutions and existential fragile states in post-colonial Africa. This state of fragile social institutions in Africa has permitted the hijacking of natural resources rents by politicians and its elites without accountability.

Accountability of public officials is key to good governance and is said to integrate answerability in the management of public affairs, enforcement of sanctions on who has violated public duties and receptiveness to the opinions of citizens.[94] Governance improvements are always accompanied by improvements to accountability with programs of judicial reform in resource rich countries in Africa. The problem with these reform programmes is that they target formal legal institutions inherited from colonial legacy which does not acknowledge the social institutional fragile status of most African countries. This point is made in Rodrik's argument for a 'second-best mindset' for building good governance through development cooperation policy.[95] In his proposition, determining institutional reform best-practice models in developing economies should be performed by listing functions instead of dictating structures to be adopted.

Focusing on the end uses of institutional development for good governance will provide opportunity for the emergence of a number of different institutional forms tailored to each African country cultural and social institutions which could be used as responses to the curse. This is not a new concept in modern state-building theories of the justice system. According to the United Nations roadmap for nation-building in post-conflict societies, a strong judiciary system should have due regard to the legacy of indigenous practices.[96]

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[94] World Bank,' State-Society Synergy for Accountability: Lessons for the World Bank' (The World Bank 2004) 7

[95] Dani Rodrik, 'Second-Best Institutions' (2008) 98 American Economic Review: Papers & Proceedings 100

[96] UNSC, 'The rule of law and transitional justice in conflict and post-conflict societies Report of the Secretary General' S/2004/616 (23 August 2004) 34-37< https://www.un.org/ruleoflaw/blog/document/the-rule-of-law-and-transitional-justice-in-conflict-and-post-conflict-societies-report-of-the-secretary-general/ > accessed 31 January 2018

Indeed, Botswana which is often cited as 'Africa's miracle' has continued and maintained pre-colonial traditional social institutions for political accountability in its modern government.[97] The African nation which has abundant diamonds is considered to have benefited from a national context of good governance to avoid the resource curse.[98] The pre-colonial institutional governance structures in Botswana were left largely intact during British colonialization and have allowed for political accountability to flourish based on customary institutions during the nation's post-colonial period.[99] Even more crucially, the post-colonial elites and government led by Khama, did not just adopt and continue the colonial governmental systems but rather undertook a careful re-building of the framework of the country in a manner that was deeply linked to the pre-colonial tribal systems. Thus the post-colonial Botswana governments carefully, strategically and overtime, developed a peculiarly endogenous governance mechanism which has served as the main plank for the success of the nation.[100] This is a signal example of how post-colonial elites have been able to build their nation and thus remove the fragility of the governmental structures inherited from European colonialists.

Yet the national success and economic achievement of Botswana is not without criticisms. Allegations of human rights abuses and neopatrimonialism practices are also part of empirical observations about the nation's post-colonial history.[101]

Overall though, the positive outcomes of Botswana's endogenous governance framework outweigh negative ones. These considerations suggest that efforts to incorporate indigenous social approaches for political accountability may provide a new

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[97] The *kgotla* institution in Botswana is a system of chieftaincy where chief and communities discuss issues of common concern and demand for accountability is pointed as one of the reasons for Botswana success. See Amelia Cook and Jeremy Sarkin, 'Is Botswana the Miracle of Africa? Democracy, the Rule of Law, and Human Rights Versus Economic Development' (2010) 19 Transnational Law & Contemporary Problems 453, 463

[98] Atsushi Iimi, 'Did Botswana Escape from the Resource Curse' (2006) IMF Working Paper WP/06/138, 24 < https://www.imf.org/external/pubs/ft/wp/2006/wp06138.pdf > accessed 31 January 2018

[99] See Christian von Soest, 'Stagnation of a "Miracle": Botswana's Governance Record Revisited' (2009) GIGA Working Paper WP 99/2009, 17< https://www.giga-hamburg.de/en/system/files/publications/wp99_soest.pdf > accessed 31 January 2018

[100] See Scott Beaulier, 'Explaining Botswana's Success: The Critical Role Of Post-Colonial Policy'(2004) Mercatus Center George Mason University Reseach Paper < **https://www.mercatus.org/publications/government-spending/explaining-botswanas-success-critical-role-post-colonial-policy > accessed 31 January 2018**

[101] See Amelia Cook and Jeremy Sarkin, 'Is Botswana the Miracle of Africa? Democracy, the Rule of Law, and Human Rights Versus Economic Development' (2010) 19 Transnational Law & Contemporary Problems 453, 481; Christian von Soest, 'Stagnation of a "Miracle": Botswana's Governance Record Revisited' (2009) GIGA Working Paper WP 99/2009, 24 <https://www.gigahamburg.de/en/system/files/publications/wp99_soest.pdf > accessed 31 January 2018

paradigm in the fight against the resource curse and state fragility in general. Appropriate institutional reform strategies in African resource-rich economies require state-building of pre-colonial institutional structures to raise the existentially fragile states to quality institutions-states and thus provide a strong foundation that will enable each state to progress to good endogenous governance frameworks for good use of resource-riches to produce enduring good and development.

6. Existentially Fragile States Causation Model: Implications and changing role for scholars, practitioners, policy, country-leaders, statesmen and law-makers

Firstly, considering the propounded existentially fragile states causation model, it is suggested that policy-makers and scholars should contemplate the relative maturity or fragility of the foundational elements of the state when designing frameworks and prescriptions for good extraction of mineral resources. If a resource-rich state is assessed as stable and mature in its foundation, quality and development, then the frameworks and resource use policy prescriptions would be expected to work without more. However, for states judged as fragile or unstable, efforts at establishing workable frameworks for good resource utilisation that are based on standard prescriptions would not work. In such states, every programme should be considered workable only to the extent that the project or porgramme can by itself contribute in a specific way to building the foundational pillars of the state. The focus in such cases, are best pursued as whole-case whole-state endogenously designed frameworks rather than pursuing a set of individual prescriptions.

Secondly, in formulating solutions and systems, scholars and policymakers should be sceptical about the likelihood of success of the proposed solutions. Therefore, solutions and systems should be robustly designed in six ways: hard-wiring to root or traditional governance or societal structures and pillars; design-effectiveness; implementation effectiveness; operational effectiveness; progressive or stepwise programme and; long-term continuance improvement and sustainability cycles.

Thirdly, counsel and law-writers should consider that their roles should go beyond law-writers to becoming collaborators in nation-building. They would have to precipitate and ask policy and law-makers philosophical and existentially purposeful questions such as *'will this work, how will this work?* They will need to go beyond merely transcribing the intent of policy-makers and law-makers to searching for truly workable solutions that will underpin sectoral and nation-building.

Fourthly, the mere copy and replication of resource policy prescription, solutions and systems working well in another jurisdiction should be avoided. Instead the principles and elements should be used to develop endogenous solutions and systems which take account of the country's history, maturity or fragility.

Fifthly, every project or sectoral programme should have to be considered as another element in the overall nation-building process. Every effort and programme should be directed as 'building blocks' to advance wholistic nation-building imperative as well as, considered as more 'pillars' in the whole-nation-building programme. Also, specialists and commentators should serve to raise and pursue public interest subjects, which may be outside the close attention, agenda or capacity of the government.

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