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REVEALING DEVELOPMENT OBJECTIVES IN THE EXTRACTIVE INDUSTRIES GOVERNANCE OF ETHIOPIA: AN ASSESSMENT OF POLICY AND LAW

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Abstract

Extractive Industry's operation can boost a nation's economy and positively contribute to the welfare of a nation. Contrary to this, they can become sources of corruption, political unrest, civil war, and many more difficulties coined in the terms of the sector as 'resource curse.' One major consensus in the sector is that to benefit from the resource gain and the operation of the sector, the primary importance must be laid on identifying how the sector is governed. In this regard, laws and policies designed to govern the extractive sector take paramount importance. Ethiopia's Extractive resource sector is at its infant stage compared to the available and potential natural resources, which can fuel the development of the sector. Recently, a visible improvement is being made, especially in the mining sector while the petroleum sector is starting to showcase its potential. This Article argues that the past and present Ethiopian National Development Plans have coined an economic and social development objective that emphasizes the role the extractive sector will play. However, this is not in denial of the variation in the degree of emphasis the plans provide from time to time. The paper also argues the major policy and legal frameworks governing the extractive sector, starting from the FDRE constitution, which serves as a supreme document in governance norm-setting, have incorporated the same economic and social development objective and it is the responsibility of the parties responsible for the governance to identify, capitalize and develop these objectives into reality.

Key Words: *Extractive Industries, Extractive Industries Governance, Development, Economic development, social development*

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I. INTRODUCTION

Extractive Industries (EIs) are operations that harvest resources such as metals, minerals, aggregates, and other items from the earth.¹ Any process that involves the extraction of raw materials from the earth to be used by consumers like oil and gas drilling, mining, and quarrying fall within the extractive industry scope.² The United Nations defines EIs as "[t]hose industries which are engaged in finding, developing, producing, and selling non-renewable resources such as crude oil, natural gas, and hard minerals and their products."³ The Cambridge English Dictionary expands the definition to encompass the people who engage in the industry.⁴

Economic and social activities of the current century have become dependent on the extraction of resources from the earth.⁵ Through this process, Extractive industries also contribute to a nation's overall economic development.⁶ The role of extractive companies have in the economic areas of developing countries have entailed them the name called "major players."⁷ In some countries, the reliance on the industry is very high that it becomes impossible to imagine the nation's economic existence in its absence.⁸ Investment in the EIs has the potential to transform a developing nations to their desired economic development.⁹

Ethiopia is a country located in East Africa with a population estimated to be more than 120 million. It has a 2.5% annual population growth rate. It covers 1,104.3 square kilometres. The nation's poverty headcount ratio covers 26.7% of the total population. With an annual 7.6% GDP growth in 2016, the industry contributed 22% of the GDP which counts for 73 billion dollars. The country has a net inflow of FDI amounting to 3,989 million dollars.¹⁰ The extractive industry in Ethiopia is characterized to be at its infant stage compared to its counterparts in the vast majority of the African continent both in terms of volume of production or level of contribution to a nation's overall development.¹¹

¹ Extractive Industry, Business Dictionary.com. Web Finance. Inc. [http://www. Business dictionary.com/definition/ extractive industry.html](http://www.Businessdictionary.com/definition/extractive-industry.html)<accessed 21 June 2021>

² *Id.* note that the common distinction made among metallic and non-metallic minerals as well as mineral fuels are all the subject matters of extractive industry discourse.

³ UN, (2017) United Nations Handbook on Extractive Industries Taxation 5, New York.

⁴ Extractive Industry. Cambridge University Press. <https://dictionary.cambridge.org/dictionary/english/extractive-industry> <accessed: June 21, 2021>

⁵ Volker Lehmann, *Natural Resources, the Extractive Industry Transparency Initiative, and Global Governance*, P 2, *BACKGROUND PAPER, COMMISSION ON GLOBAL SECURITY, JUSTICE AND GOVERNANCE* (2015)

⁶ WISE, HOLLY & SOKOL SHYTYLLA, *THE ROLE OF THE EXTRACTIVE SECTOR IN EXPANDING OF ECONOMIC OPPORTUNITY*, CSR REPORT NO.18. (Cambridge.MA: Kennedy School of Government, Harvard University) (2007)

⁷ *Id.*

⁸ Roe Alan; Dodd, Samantha: *Dependence on Extractive Industries in Lower-income Countries: The statistical Tendencies*, WIDER WORKING PAPER, NO. 2017/98, ISBN 978-92-9256-322-6 (2017) at 9.

⁹ Bellmann, Christophe, *Trade and Investment Frameworks in Extractive Industries: Challenges and Options. E15 Expert Group on Trade and Investment in Extractive Industries — POLICY OPTIONS PAPER* (2016). See also E15 Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum. 4.

¹⁰ <https://data.worldbank.org/country/ethiopia><accessed July 3, 2021>

¹¹ Can Ethiopia's Resource wealth contribute to its growth and transformation (2015)? The World Bank Group, <https://www.worldbank.org/en/news/feature/2015/01/26/ethiopia-extractives-mining-strategic-assessment-mineral-sector> <accessed 20 June 2021>, Economy of Ethiopia; <https://www.britannica.com/place/Ethiopia/Economy>< accessed on 20 June 2021>

The purpose of this article to examine the existing governance framework of extractive industries in Ethiopia to identify whether sufficient emphasis is given to the roles the sector expected to play in the overall economic development of the country. By Governance, the reference is being made to all the policy and legal instruments in place to set the rights and duties of all stakeholders in the EIs as well as the regulation of the resources by which these industries operate. Any anticipation of development from a certain industry calls for the existence of a proper governance structure in. So far, there is no enough of literature that examines how the national development policy and legislative instruments have incorporated the role of extractive industries as engines of development in Ethiopia. The author believes that the practical benefits aimed to be secured from natural resources can be materialized only if a sufficient framework is availed in the governance structure of the sector to link the overall national development plan of a nation to the specific sector expected to bring about development in the first place.

The paper follows a doctrinal analysis of existing policy and legal instruments tuned towards development objectives. In doing so, a critical analysis will be given to identify the places given to EIs as one arm of bringing about national development in the system of governance. The paper elucidates how governance structures of EIs in Ethiopia have understood and incorporated the notion of development and how the EI is placed in connection to a means of development.

The paper is organized into five sections including the introductory part. The second part tries to identify the developmental objectives that are enshrined in the FDRE Constitution and Policies on the extractive sector i.e., the mineral and petroleum development Policies. The third part evaluates the legislative framework on the extractive sectors from a development perspective will be presented. The fourth part investigates and examines different national plans of Ethiopia and the degree of incorporation of the roles extractive industries are expected to play in the economic and social development of the nation. Finally, a concluding remark regarding the major points identified in the paper will be provided in the fifth part.

II. DEVELOPMENTAL OBJECTIVES UNDER THE FDRE CONSTITUTION AND EIS POLICIES

A. Constitutional Development Objectives

The constitution, as the supreme law of the land serves as a grand norm provides all the major objectives of the laws and the regulatory frameworks to be followed.¹² Accordingly, any law, customary practice, or decision of a state organ or public official which goes against the terms of the constitution is of no effect.¹³ This is the reason why the evaluation of the governance structure of the extractive sector and its roles in development necessarily calls for the assessment of the document that serves as the de jure bases of any other policy or law which in turn serves as the base for any practical guidance in the operation of the sector.

In the case at hand, the core objectives behind the policy and law which aim to regulate the extractive sector are in a way derived from the constitutional objectives and the principles

¹² CONSTITUTION, Proclamation No 1/1995, FED. NEGARIT GAZETA, 1st Year No.1, 1995 (here after FDRE Constitution), Art. 9.

¹³ *Id.*, at, Art. 9 (1).

embedded therewith. It is with this spirit that the following section identifies the conceptions of development as enshrined under the FDRE constitution.

The preamble to the constitution has an explicit development objective shaped in terms of advancement of the economic and social development of the nations, nationalities, and peoples of Ethiopia.¹⁴ Although an explicit definition of what constitutes an economic development and what falls under the social development is to be found nowhere in the constitution, it is sufficient at this stage to note that development is one of the founding principles and the reason for the promulgation of the constitution.

The constitution labels itself as an instrument that binds citizens in a mutual commitment to the fulfilment of the development objectives and principles set forth.¹⁵ The preamble further states the ambition of the nation, nationalities and peoples of Ethiopia to create and live as one economic community.¹⁶

To have a better understanding of the economic and social development stated in the preamble, one must examine chapter ten of the constitution which states the national policy principles and objectives. Social objectives qualified under the availability of resources are to constitute the provision of access to public health, education, clean water, housing, food, and social security, which are the basic needs of all human beings.¹⁷ For instance, Article 89 (1) of the FDRE Constitution mandates the government to formulate policies that ensure Ethiopians benefit from the legacy of the nation's material resources. Indirect connection to the extractive industry, it is further stated that the government has to utilize natural resources and deploy them for the common benefit of the people and their development.¹⁸ From this, we can conclude that whenever the term development is enshrined, it is the understanding of the constitution that both economic and social development is being referred to.

Further, the constitution has framed development from a human rights approach. Article 43 of the constitution titled the 'right to development' provides the right to an improved living standard and sustainable development as a right of all Ethiopians. Apart from the right to participate in national development programs, citizens are with the right to be consulted concerning policies or projects affecting their communities.¹⁹ This provision also mandates a state to ensure that all international agreements and relations Ethiopia make protect and ensure the right of the nation to sustainable development as a primary obligation.²⁰ As all international agreements ratified by Ethiopia are considered to be an integral part of law of the land,²¹ it is expected that any global governance structure of the extractive sector to which Ethiopia is part of or plans to be part of is expected to consider the sustainable development objective. The provision closes by stipulating

¹⁴ FDRE Constitution, Preamble, para. 2.

¹⁵ *Id.*, at para 8.

¹⁶ *Id.*, para 6.

¹⁷ *Id.*, at Art. 90.

¹⁸ *Id.*, at Art. 89 (5).

¹⁹ *Id.*, at Art. 43 (2).

²⁰ *Id.*, at Art. 43 (3).

²¹ *Id.*, at Art. 9 (4).

the basic aim of development activities as the enhancement of citizen's capacity for development and the meeting of basic needs.²²

Both the federal and the regional governments are endowed with the power of formulating and implementing policies, strategies, and plans in respect of overall economic, social, and developmental policies.²³ The House of People's Representatives, the highest law-making organ of the federal government, has the power to approve general policies and strategies of economic, social, and development²⁴ while, the power to formulate and implement the same is given to the council of ministers.²⁵ Accordingly, when these government organs carry out any of their function, the economic and social objectives which will be realized by the fulfilment of the right to development must be taken into consideration.

B. Policy Level Development Objectives

1. Mineral Resource Development Policy

The mining sector of Ethiopia has been operating in the absence of sufficient policy for many years. Although the extractive sector was in operation since time immemorial, the sector was not directed by a pre-framed policy instrument. A draft policy framework on mineral resource development named 'Mineral Resource Development Policy' was in place in the year 2020 and consultation with stakeholders on the draft started to be held.²⁶

The introduction to the policy recognizes how minerals are said to be vital for development in meeting industrial demand as well as contributing to the national economy through foreign exchange earnings.²⁷ In this regard, minerals are treated as core components of the economic development of the country. The introduction also states how the various development plans of the country have given due recognition for the role the mining sector plays in the overall development of the country.²⁸ The development of the sector is claimed to expedite industrial development, agricultural transformation, and sustainable development.²⁹

The background to the policy has presented an empirical data on the mining sector's contribution to economic development in terms of GDP, total export revenue, and foreign currency earning.³⁰ the policy dares to link the underdevelopment of the mining sector as the cause and sign of the underdevelopment of the nation.³¹ Put in other words, if proper development of the extractive sector is in place, it is the stand of the policy instrument that development of the nation would be inevitable.

²² FDRE Constitution, Article 43 (4).

²³ *Id.*, at Art. 51(2) and 52(2) c.

²⁴ *Id.*, at Art. 55 (10).

²⁵ *Id.*, at Art. 77(6).

²⁶ Draft Mineral Resources Development Policy, *Ministry of Mines and Petroleum* (hereafter Mineral Policy), AUGUST 2020 ETHIOPIA, Section 10.

²⁷ *Id.*, at pp. 1.

²⁸ *Id.*

²⁹ *Id.*, at Section 1, pp. 2.

³⁰ *Id.*, at Section 2, pp. 3.

³¹ Mineral Policy, Section 2 (3), pp. 5.

The policy states as the country have not yet get enough benefits from its mineral wealth which has negatively contributed to its social and economic development.³² This recognition of the failure of the industry is playing its part in the development of the country is a steppingstone in striving towards a governance structure that is built based on achieving development. The link between the governance of extractive industries and development emanates from such policy standings. Further, the vision of the mineral sector development policy stipulates three core issues that have a direct implication for development objectives; industrial development, equitable and sustainable social transformation, and sustainable development.³³ It is further strengthened that the goals of the policy that structural transformation and contribution to the national economy are the major goals the policy strives to fulfil.³⁴

The policy is cognizant of the negative rhetoric made on mineral investment in terms of the resource curse in the developing world, states the need to undo such view if the plan of securing proper economic and social return is to be realized.³⁵ The attempt of combating such negative rhetoric and its impacts ensures the gains from the sector in forms of employment, government revenues and the sectors indispensable role to the economic growth of the country.³⁶ Fostering and speeding up the economic growth plan and structural transformation of the country is claimed in the policy to be the key role behind the development of the mineral sector.³⁷ No additional phrase is required to further substantiate how the policy has made development both in terms of economic and social dimensions its prior objective.

To further strengthen the implementation of the policy, instruments are listed to be developed, of which two are with direct development connotation i.e., the proper identification of the role of the mineral sector in the development process of the country and promotion and ensuring the development of a mineral sector that is in tune with notions of sustainable development.³⁸ The strategy, which the policy outlined as a new narrative to be followed in the mining sector, the linkage between mining and development is stipulated to be the way forward for any future governance structure of extractive industry. The primary role of the mineral sector development is stated to be fostering economic development and sustainable social development through transformative rather than extractive capabilities.³⁹ The extractive nature of extractive industries is viewed by the policy as a necessary evil to accomplish the development of the nation. Transformation through extraction is visualized where the emphasis is on the transformation capabilities. The policy also states that the sector should be governed in a manner that ensures its input provider role, being at the same time a catalyst for development.⁴⁰ Additionally, the policy outlined the notion of development through mineral operations for various economic sectors

³² *Id.*, Section 2 (3).

³³ *Id.*, at Section 3 (1), pp. 6.

³⁴ *Id.*, at Section 3 (2), pp. 6.

³⁵ *Id.*, at Section 3 (4), pp. 10.

³⁶ *Id.*

³⁷ *Id.*, at Section 3 (2) (1), pp. 7.

³⁸ *Id.*, at Section 3 (4), pp. 9.

³⁹ *Id.*

⁴⁰ Mineral Policy, Section 3 (4) (3), pp. 11.

including local industrialization⁴¹, as an agricultural input⁴², construction⁴³, jewellery⁴⁴ and artisanal mining⁴⁵.

The social development aspect of development emphasizes on the concerns of communities and localities where the resource are located and operation is to be undertaken, local growth and progress are enshrined as major objectives.⁴⁶ Although the vast coverage of the policy tends to translate development in its 'economic' paradigm, it is possible to infer that such is done with the view that economic progress is an essential ingredient for the fulfilment of social development; however, it does not neglect the social development as a major component. Moreover, section 3.2.2. of the policy entitled mineral sector development for sustainable social change to pinpoint core concerns of communities directly affected by the operation of the mineral industry and provides solutions ranging from the establishment of trust funds, utilization of revenue from operation to handle negative externalities of the operation on communities and corporate social responsibility schemes as part of the social development achievement.

2. *Petroleum Resource Development Policy*

While the mining sector of the country has been operating in the absence of a policy for years, the petroleum sectors were left without any policy for so long time until the draft surfaces adopted 2020.⁴⁷ The introductory statement to the draft Ethiopian petroleum resource development policy starts with a confession as to the failure of the sector in making any contribution to the nation's economic growth.⁴⁸ Unlike the mining sector whereby the national development plans of the nation made at different eras take recognition of, the petroleum sector has not been dealt independently regarding its role in the overall development of the nation.⁴⁹ This fact is the reason that leads us to refer the mining sector as the major current extractive industry operator while the petroleum sector as the potential extractive industry operator.

The large foreign exchange required for the importation of petroleum has negatively played an underdevelopment role in the socio-economic development of the country.⁵⁰ This has been stated as the core reason for the need for a policy that serves as a guiding document and benefits the citizens at large.⁵¹ Hence, it would be safe to conclude that development is the rationale behind the issuance of this policy. Although the general objective of the policy uses the generic term of registering a positive impact from the sector⁵², the specific objectives help in clarifying what this anticipated positive impact refers to by citing economic transformation, employment creation, and

⁴¹ *Id.*, at Section 4 (3), pp. 13.

⁴² *Id.*, at Section 4 (4), pp. 14.

⁴³ *Id.*, at Section 4 (5), pp. 16.

⁴⁴ *Id.* at Section 4 (6), pp. 18.

⁴⁵ *Id.*, at Section 4 (7), pp. 19.

⁴⁶ *Id.*, at Section 4 (8) (2), pp. 22.

⁴⁷ Draft Ethiopian Petroleum Resource Development Policy, *Ministry of mines and Petroleum*, (hereafter Petroleum Policy) AUGUST 2020, ETHIOPIA, Section 1 (1).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Petroleum Policy, Section 1 (3), pp. 2.

the growth of the economic sector.⁵³ The key focus areas of the policy are spelled to constitute six issues.⁵⁴ Of these six, the section dealing with reforming laws, policies, and institutions related to the sector development objective is stated in the following terms:

*'Thus, to use this petroleum resource development policy to exploit the petroleum resource and answer the immediate economic questions and for the overall economic development achievements of the country.'*⁵⁵

The second key focus area is directly linked with development as it questions the sector's contribution to the structural transformation of the country's economy.⁵⁶ The creation of job opportunities and sustainable development of the country are stated as major policy objectives.⁵⁷ By emphasizing the need to improve revenue gained from the sector, the fifth key focus area contemplates about sustainable social and economic benefits.⁵⁸ The social benefit is said to incorporate the various non-economic attributes the development of the sector is expected to bring about, such as transfer of knowledge and skill to Ethiopians, education, and training to be availed to the domestic workforce and the creation of new business operations.⁵⁹

The policies plan for the content of the legal framework that governs the sector is said to incorporate the maintaining of sustainable socio-economic benefits of the country as a matter of priority.⁶⁰ It is the expectation of the policy that the governance structure must manage the general public expectation, the expectation of the local people living nearby the operation site, and the people at large.⁶¹ What the policy termed as the expectation from various stakeholders would be nothing more than the socio-economic development. Operators are expected to engage in community development activities as stipulated under policy section 2.4 titled 'environmental and social safeguard development activities.' The strategy contemplated thereunder talks about the duty of allocation of the annual budget for community development activities.⁶²

The policy further devotes a section to ease the doing business of related to petroleum operations. An indication as to the role of legal frameworks in facilitating the businesses of petroleum operation is evident from this part of the policy.⁶³ This section's fiscal framework lays down the aim of promoting sustainable development of the sector to transform the nation's economy.⁶⁴

⁵³ *Id.*, at Section 1 (3), pp. 2.

⁵⁴ *Id.*, at Section 1 (7), pp. 4.

⁵⁵ *Id.*

⁵⁶ *Id.*, at Section 1 (7) (2), pp. 4.

⁵⁷ *Id.*

⁵⁸ *Id.*, at Section 1 (7) (5), pp. 5.

⁵⁹ *Id.*

⁶⁰ *Id.*, Section 2 (1), pp. 5.

⁶¹ *Id.*, at Section 2 (1) (e).

⁶² Regarding this, Section 4 (3) of the Policy stipulates that national participation and utilization policy of local products, service and manpower are necessary, which are the spirit of the community development.

⁶³ Petroleum Policy, Section 2.

⁶⁴ Petroleum Policy, Section 2 (5).

One of the core governance frameworks identified by the policy concerning petroleum operation is the failure of current frameworks to differentiate between the various stages and levels of operation and the lack of harmonized administration and governance of these operations.⁶⁵ To solve such problems, the policy has classified operations into three specific categories; the upstream, the midstream and the downstream operation.⁶⁶ Of this three, the downstream petroleum operation policy statement is more of tuned to developmental objectives. The main reason for this is, being the last stage of operation, it deals with the end product to which both domestic markets and export market opportunities are available. Hence, the policy clearly sets the need to manage the foreign exchange to be generated from the export of the final product and the sustainable socio-economic growth achievements.⁶⁷

The policy further envisages the macro-economic benefits of petroleum operations.⁶⁸ Moreover, in consideration of the resource curse, it dictates the revenue collection and management policy to aim at expanding the economic base of the country by the use of petroleum revenues as a solution to cure such curses.⁶⁹ The strategy to implement such is, among others, linking this revenue with the country's national development plans, establishing a strong system for the benefit of all citizens and the local community from the revenues, maximization of government revenues, creation of national wealth and reliable economy.⁷⁰ This is an economic growth plan enshrined in a policy which has developmental goals as its prior driving force.

III. LEGISLATIVE FRAMEWORKS OF EXTRACTIVE INDUSTRY GOVERNANCE ON 'DEVELOPMENT' OBJECTIVES

The Mining Operation Proclamation's developmental objective starts with the way the law is named.⁷¹ The name 'a proclamation to promote sustainable development of mineral resources by itself is an indicative of the sustainable development element present in all development endeavours as enshrined in the constitution and policy instruments. Although direct reference in the title explains the mechanism as to how mineral resources should be developed, it is equally correct to claim the term also refers to the sustainable economic and social development that the development of the extractive sector is expected to realize by utilizing primary products developed sustainably.

The preamble of the proclamation reiterates the same idea and mandates the government to conserve mineral resources to realize the socio-economic progress of all Ethiopians.⁷² Once again, the notion of development is shaped to incorporate both economic progress and social progress. This trend is replicated in other parts of the law showing how the term 'development' is understood

⁶⁵ *Id.*, Section 42.

⁶⁶ Section 7 of the Petroleum Policy defines the three specific categories as follows; Upstream Petroleum Operation, Midstream Petroleum Operation and Downstream Petroleum Operations.

⁶⁷ Petroleum policy, Section 3 (3), pp. 11.

⁶⁸ *Id.*, at Section 4, pp. 11.

⁶⁹ *Id.*, at Section 4 (2), pp. 12.

⁷⁰ *Id.*

⁷¹ *Mining Operation Proclamation*, Proclamation No. 678/2010 FED. NEGARIT GAZETA, 16th year, No. 45, Addis Ababa, 4 August, 2010 [here after Petroleum Proclamation].

⁷² Petroleum Proclamation, Preamble, Para. 2.

by the legislative framework to have the two sub-elements. The preamble also justifies the necessity of law on mining operations to the objective of achieving among others, the socio-economic progress of all Ethiopians.⁷³ Here, it can be inferred that the driving force behind the existence of the governance structure itself is fulfilling the development objective. In this sense, development objectives dictate the need for legislation and as such, the legislative frameworks realize the desired development.

The definition provided for what should be considered as a mineral in the legislation is another indicative factor as to how the extractive sector is pro-development. Article 2(19) of the Mining Operation Proclamation defines a mineral as 'any mineral substance of economic value.' Accordingly, if a substance falls short of having an economic value, it is outside the ambit of the extractive sector governance. Hence, economic value to be secured from the substances is a defining element of resources to become a mineral.

The proclamation has five core objectives⁷⁴ and two of such objectives are in direct reference to the fulfilment of the development objective. Promotion of the socio-economic growth of the country⁷⁵ and the promotion of employment and advancement of the socio-economic welfare of all Ethiopians⁷⁶ are the two development objectives. In a tone that replicates the constitutional provisions assigning the government as custodian of natural resources of the country with a duty to deploy them for benefit of the public at large, the law compels the government to hold mineral resources on people's behalf and deploy them for the benefit and development of all Ethiopians.⁷⁷ The benefit is the end gain or result of development, and when people have social and economic progress, the result is to manifest itself in a form of benefit.

The law also envisages the government involvement in mining operations.⁷⁸ The justification for the involvement of the government as a mine operator is another indication of the development objective embedded in the law. The type of operation the government must engage in is qualified to be those that are 'vital for the overall economic growth.'⁷⁹ It is only after a proper evaluation of the potential contribution of the engagement to development that the government engages as an active actor in the extractive sector.

Other manifestations of economic and social progress of the country can be inferred from the preference made by the law for the domestic labour force and local materials for a mining operation.⁸⁰ Under the general obligations of the licensee, industry operators are legally obligated to give priority to the domestic workforce. Although conditions as to the availability of qualified manpower and material are a limitation to the effective implementation of the provision, the development of the domestic economy through the priority given to the use of the local workforce and the raw material is another objective behind the adoption of such law.

⁷³ *Id.*, at Para. 4.

⁷⁴ *Id.*, at Art. 4.

⁷⁵ *Id.*, at Art. 4 (2).

⁷⁶ *Id.*, at Art. 4 (3).

⁷⁷ *Id.*, at Art. 5.

⁷⁸ *Id.*, at Art. 8.

⁷⁹ *Id.*

⁸⁰ Petroleum Proclamation, Art. 34 (1) (h and i).

In line with such a development objective, the law that governs the transaction of minerals is also cognizant of the need to create a proper governance structure to enhance the contribution of the extractive sector to the national economy.⁸¹ In elaborating the objective of the law, Article 4 (1) of the Proclamation stipulates that the creation of effective transaction scheme for minerals to ensure proper contribution to the development of the country is expressed both in terms of socio and economic aspects.

One of the duties laid on the institution to control mining operations is ensuring if the mining operations are carried out by the industries taking into account the benefits of the community where the operation is taking place.⁸² The social development aspect of development is touched hereupon wherein community development is an aspect of the extractive industry governance by which a fund is set by the law to spend the money collected on community development plans.

The Petroleum Operation Proclamation is with clear developmental objectives. The preamble to the legislation which is framed by the spirit of socialism states the firm stand that the exploitation of the resource has to contribute to the economic growth and welfare of all Ethiopians.⁸³ The justification for a governance framework was motivated among others, by the need to fulfill this developmental objective.⁸⁴ The two aspects of development, both economic and social can be inferred from the wording's economic growth and welfare of the general public. A contractor who is licensed to operate in accordance to the proclamation can be required by the government to supply crude oil to the domestic market.⁸⁵ Such obligation is imposed on the operator to ensure the supply of energy to run the domestic industries utilizing domestic natural resources, and therefore, development is the essence behind such provision.

IV. NATIONAL DEVELOPMENTAL PLANS AND THE EXTRACTIVE INDUSTRY

Ethiopia has been adopting and implementing various national development strategies and plans in the past.⁸⁶ Depending on the political ideology the government in power follows, the national plans have taken different paths and areas of emphasis on various sectors of the economy. Hence, this section will examine how the extractive sector is placed in national development plans and how the plans have stipulated the roles to be played by the same.

⁸¹ *Transaction of Minerals Ratification Proclamation*, Proclamation No. 1144/2019, FED. NEGARIT GAZETA, 25th Year, No. 86, Addis Ababa, 15 August 2019, Preamble.

⁸² Petroleum Proclamation, Article 52 (4) (j).

⁸³ Proclamation to Regulate *Petroleum Operations*, Proclamation No. 295/1986, FED. NEGARIT GAZETA, 45th Year, Year No. 6, Addis Ababa, Preamble.

⁸⁴ *Id.*

⁸⁵ *Id.*, at, Art. 20 (1).

⁸⁶ Ethiopia was exploring and exploiting its extractive sector as early as the Axumite civilization as records show. Yet until the time of Emperor Minilik II, there was no document to be considered as a development Plan. During this era, various letters were issued to local governors and foreigners working in the extractive sector served as a policy and legal basis of the sectors governance. A well-established national development plan dealing with the extractive sector as an independent industry contributing to the nation's development starts from the time of the plans discussed in this article. See DAVID W PHILLIPSON, FOUNDATIONS OF AN AFRICAN CIVILIZATION: AKSUM & THE NORTHERN HORN 1000BC- AD 1300 (James Curry & Addis Ababa University Press 2012) 159-180, PAULOS NGONGO, 'ATSE MENELIK BEWUCHI HAGER YETESATSAFUACHEW DEBDABEWOCH' ATSE MENELIK'S CORRESPONDENCES WITH FOREIGN COUNTRIES (Aster Nega Publisher, 2010).

A. Sustainable Development and Poverty Reduction Program (SDPRP) and Plan for Accelerated and Sustainable Development to End Poverty (PASDEP)

Before the Growth and Transformation Plan which is expected to be the highly anticipated national development plan with the aim to transform Ethiopia into a middle-income country within 10 years of its implementation, there were various national plans which have been put in place. However, these past plans have given less attention to the extractive sectors and their roles in the nation's development. If we take a look at the Sustainable Development and Poverty Reduction Program (SDPRP) of 2002, the mining sector is not even mentioned as the core area of economic activity and growth generator.⁸⁷ Nevertheless, this is not to deny the small coverage the program provides for the mining sector.

The program has indicated the preference it gives for poverty reduction than economic growth.⁸⁸ Although it clearly states the inextricable link between the two, as a matter of priority, preference was given to poverty reduction.⁸⁹ According to the program, the fundamental development objectives of the FDRE is to build a free-market economic system in the country, which will enable the rapid development of the economy and extricate the country from food aid dependence and that makes poor people the main beneficiaries from economic growth.⁹⁰ It is then proper to view the program as it inclined more towards social progress than economic progress. This may justify the low emphasis provided to the extractive sectors, whose primary aim in most scenarios is the raising of revenue through foreign currency earning, thereby playing the role of primary, an economic growth agent.

The program has recognized the role the mining sector plays in domestic resource-based industrial development, export diversification, and employment opportunities⁹¹ for number of artisanal miners engaged in gold, salt, and other mining activity up to 300,000.⁹² This is a sizable portion of employer contribution for a nation where unemployment is one of the core reasons that results in underdevelopment.

After a brief overview of the resources developed so far, the program went on to state the contribution of these resources to cover 5.9 % of the total export value of the nation for the 2000/2001 European calendar.⁹³ It is worth noting that the resources mentioned covering such portion of the nation's export are only gold and tantalum. The program also notes how the local industries are utilizing construction and industrial minerals for their operations.⁹⁴ The program further states the need to develop our geological data to effectively utilize the sector.⁹⁵ It finalizes its discussion on mineral resource development with the following statement:

⁸⁷ Ethiopia's Sustainable Development and Poverty Reduction program (hereafter SDPRP), 2002, Addis Ababa.

⁸⁸ *Id.*, at Executive Summary, pp. 1.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*, at Section 8 (8), pp. 116.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ SDPRP, Section 8 (8), pp. 116.

⁹⁵ *Id.*

"Thus, building the geological database on mineral occurrence, building regulatory capacity as well as attracting private sector investment will have considerable contribution towards realizing the potential of the mining sector."⁹⁶

Although the program has not provided a sizable portion of its discussion by treating the mining sector as its pillar for development, there are indications in the structuring of the program as to the way SDPRP plans to utilize mineral resources. The section on the mining sector is discussed in the program entitled the private sector and export development.⁹⁷ Accordingly, mineral resource potential is set as an export product planned to earn foreign currency to be used for poverty reduction by the active participation of the private sectors. From the closing statements discussed above, it can be inferred that the need to build regulatory capacity is a reference to work needed to be done in the governance structure of the extractive sector. The governance framework of the sector is set by the program as a major task needed to realize the potential of the sector and thereby contributes to poverty reduction.

In addition to the SDPRP, another national plan related to economic development called Plan for Accelerated and Sustainable Development to End Poverty (PASDEP). When we evaluate the progress and achievements under DPRP, PASDEP has relatively put better emphasis on the mining sector. It has made mining part of the sector's policies and strategies design as well as part and parcel of the development plan.⁹⁸

PASDEP recognizes the mining sector as one which has been underexploited.⁹⁹ By questioning the data presented in SDPRP regarding the contribution of the mining sector to the export market and foreign currency earning on the ground that the data only covers gold and tantalum while others are also exported, it establishes the need to have reliable data.¹⁰⁰ Nonetheless, the role of the sector in the creation of jobs, diversification of the export base, and industrial development is stated in a similar tone to SDPRP.¹⁰¹

PASDEP lists down the role minerals and the extractive sector have played in the development process of the nation at the time when the plan was effective. The major results stated in the plan were;¹⁰²

1. Gold from a single open pit mine and silver from a refined process earned more than 40.7 million USD in 2003/04;
2. The privatization of the Lege Dembi gold mine earned USD 172 million, the largest secured from any act of privatization at the time for the government;

⁹⁶ *Id.*, at pp. 1.

⁹⁷ *Id.*, at Section 8, pp. 107.

⁹⁸ Ethiopia, Building on Progress; A Plan for Accelerated and Sustainable Development to End Poverty (here after PASDEP) 2005(6)-2009(10), 2006, Ministry of Finance and Economic Development (MOFED). On the sectoral policy, strategy and program of PASDEP, mining is given a separate section unlike the case of SDPRP.

⁹⁹ SDPRP, section 7 (7), pp. 146.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² SDPRP, pp. 147.

3. Production of construction and industrial minerals are reducing imports of same, making raw materials for local industries available and thereby saving foreign currency. A very good case example is the production of raw materials for fertilizers; and
4. The plan states the limited job created by large-scale operations but expands the employment created by the artisanal and small-scale mine operators to 500,000.

Compared to its predecessor, the PASDEP is somehow wide in its dealing with the extractive sector as it clearly stipulates about objectives, strategies, and targets in the mining sector. The targets include; the tenfold growth of the investment in the sector, the transition of illegal mining activities to legal, the securing of 110.5 million Ethiopian birrs from mineral license and royalty, and the enactment of legal and institutional reforms to create a conducive environment for local and foreign investors.¹⁰³ All these targets are set in numerical terms for the PASDEP period.¹⁰⁴

These are a clear indication of the place the plan has given to the mining sector to contribute its fair share to the development of the nation. The objectives and strategies stipulated as instruments for achieving this target include; the designing of policy and legal frameworks which create an enabling environment for the proper functioning of the sector.¹⁰⁵ This by far is a clear indication of whether a nationwide development plan has taken recognition of the need to reform the governance structure of the extractive sector to enable the sector play its role in the overall development of the nation.

B. Growth and Transformation Plan I and II (GTP I and GTP II)

The first Growth and Transformation Plan (2010/11- 2014/15) was adopted to carry forward the important strategic directions pursued by the PASDEP.¹⁰⁶ With the shift made from poverty reduction to poverty eradication through broad-based, accelerated, and sustained economic growth¹⁰⁷, GTP I start by assessing the accomplishments of PASDEP. In its mining resource part, PASDEP is found to be successful as all the major plans were achieved. In terms of the economic gain, annual investment, revenue from the sector in general and export of gold, tantalum, and gemstones and gain from royalty collection have increased from the year the plan was set to operate.¹⁰⁸ The geological survey and the identification of areas with potential mineral resources was also done as per the targets set by the plan.¹⁰⁹ Under GTP I regarding the mining sector, the government's main focus was the creation of a favourable environment for private investors for mineral operations.¹¹⁰ This being said, the document is the most complete one as to the place it gives to the extractive sector's role to the overall economic development of the nation and its role

¹⁰³ *Id.*, at pp. 148.

¹⁰⁴ *Id.*, at pp. 149. For instance, revenue earning from the sector is targeted to increase from 20 million birr in the base year 2004/5 to 45 million in the year 2009/10.

¹⁰⁵ *Id.*, at pp. 104.

¹⁰⁶ The Introductory part Ethiopia's Growth and Transformation Plan I (hereafter GTP I) 2010/11-2014/15, 2010.

¹⁰⁷ *Id.*

¹⁰⁸ GTP I, Section 1 (2) (3), pp. 13.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*, at Section 5 (4) (1), pp. 64.

as a catalyst of growth for all sectors including agriculture, urban development, construction, energy, and other economic sectors.¹¹¹

This is said to be achieved through the development of policies, laws, and regulations which can establish institutions enabling the economic contribution of the sector.¹¹² During the implementation of the plan, the governance structure of the extractive sector is set to follow development objectives expressed in earning foreign currency.¹¹³ It is worthy to note that the overarching objectives of GTP I in general are a combination of economic growth objectives with social progress combined.¹¹⁴ Hence the understanding of the inseparability of economic growth with social growth in the discussion of development is further fermented under GTP I.

GTP, I targets the investment expansion of petroleum and minerals, emphasizes the increase in revenue of the operation at various stages, and sets mining taxes revenues separately from royalty and licensing gains.¹¹⁵ A separate set of targets is set for artisanal mining.¹¹⁶

Of the various implementation strategies set to achieve the set objectives one is related to the improvement of the governing structures of the sector.¹¹⁷ Further such the expansion of the sector's investment is expected to be guided by a comprehensive regulatory and policy framework that ensures both transparency and accountability.¹¹⁸

The plan also mentions the mining proclamation currently at work as a means undertook to curb illegal mining activities and support artisanal miners.¹¹⁹ This is also indicative of the fact that the national development plan not only considers the extractive sector as a key partner for development it also takes in to account the role governance structure of the sector has in implementation of the developmental objectives.

When the second Growth and Transformation Plan (GTP II) assess the performance of GTP I, it emphasizes the improved coverage of geological survey and the revenue generated from mining operation put in the amount of 2.62 billion USD.¹²⁰ None of the governance structure improvements aimed at GTP I and its execution were discussed. Achievements were also discussed in the case of artisanal miners as to micro and small mining enterprises and the support the government has provided to enhance their capacity and work.¹²¹

GTP II employs a similar strategic direction as its predecessor plan employed.¹²² Further to that, certain core areas of direction are set which GTP I has not stipulated. This includes, the

¹¹¹ *Id.*, pp. 65.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*, at Section 2 (2) pp. 12.

¹¹⁵ *Id.*, at Section 5 (4) (3), pp. 65 - 66.

¹¹⁶ *Id.*

¹¹⁷ *Id.*, at Section 5 (4) (4), pp. 67.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Ethiopia's Growth and Transformation Plan II (GTP II) 2015/16-2019/20, National Planning Commission, 2016, pp. 34.

¹²¹ GTP II, pp. 34.

¹²² *Id.*, at Section 4 (3), pp. 150.

emphasis provided for institutional capacity development wherein the ministry responsible to govern the sector is envisaged as part of the plan¹²³, the notion of value addition in connection to mineral exports¹²⁴, and the vast coverage provided for petroleum operation and the strategies laid therein to ensure the functionality of the sector.¹²⁵ All three additions in the plan are linked with the developmental objective planned to be secured from the proper functioning of the sector.

Among the seven objectives GTP II has for the mining sector, the sector's expected contribution to development shines in objectives such as enhancement of the implementation capacity of the sector by improving policy, legal frameworks, regulatory and working systems, the increase in export revenues through promoting mining-value creation activities; saving foreign currency by producing minerals inputs for import-substituting manufacturing development, mainly to speed up the sector's transformation.¹²⁶ Here it is seen that the improvement made on the governance structure is key in the implementation of the developmental objective expected to be secured from the operation of the sector.

For the plan period of GTP II, all the three main targets set for the mining sector are directly linked to economic growth aspects of development; increasing the production of industrial raw materials, boosting export earnings, and improving revenue collection.¹²⁷ Detailed numerical data are set for all three targets. The implementation strategy set for such a target to be fulfilled is indicative of the relevance of the governance structure of the sector. In the capacity-building program strategy, the need to improve laws is mentioned.¹²⁸ In the investment expansion strategy, a plan to issue exploration and production licenses to 121 companies of which 20 are big international companies is envisaged.¹²⁹ The governance structure of the sector is at the forefront of overseeing the implementation and monitoring of such a process.

This being said, the plan's emphasis on the role of the sector in development is not comparable to the attention of the plan provided to the role the governance structure will play in the achievement of such developmental objective. It is through implications and inference one can locate the intention of the plan as to how the governance regime of the extractive sector is set to play its part in paving the way for the objectives the sector is expected to play under GTPII.

C. Home Grown Economic Reform Program/ 10-year Prospective Prosperity Plan

In the past few years, Ethiopia has gone through a lot of change. EPRDF, the party which has been leading the country for nearly three decades was forced to undertake a reform by the pressure it was put under in various public protests across various states and places of the country. The reform did not only bring about a reform in the party structure. It brought into the scene new leadership which in the open field started to recognize the failure of the government in bringing

¹²³ *Id.*, at Section 4 (3), pp. 150.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*, at pp.151.

¹²⁸ *Id.*

¹²⁹ *Id.*, at pp. 152.

about desired development of the country and criticize the old ways including the national development plans put in place by the past regime. Accordingly one of the few major tasks the reform government put in place was a new ten-year Prospective Prosperity Plan which is to serve start from the period of the end of GTP II.¹³⁰ This national development plan is said to be set by the notions of the homegrown economic reform program.¹³¹ This part of the article will try to identify how the extractive sector is set in this plan as one arm of development and whether the plan takes into account the link between the governance structure of the sector and development.

The homegrown reform agenda recognizes the economic growth and significant poverty reduction along with improvements in human capital and expansion of basic services achieved as a result of the past national development plans.¹³² Yet it states the failure of the plans to bring about the structural transformation of the economy as productivity growth is constrained by structural and institutional bottlenecks and constraints specific to key productive sectors.¹³³ Among these key productive sectors, the agenda identifies the mining sector.¹³⁴ This is in the continuum of GTP I & GTP II which duly recognizes the mining sector as one of the major productive sectors essential for the overall development of the nation.

In the mining sector, the reform agenda confesses the failure to tap the vast and diverse mineral resources of the nation.¹³⁵ It specifically links such failure as missing out on the potential of generating a much-needed foreign exchange.¹³⁶ The following are listed among the variety of constraints for such¹³⁷

1. Institutional and technical barriers against large scale miners
2. Absence of a legal framework to manage miner's relationships with local communities
3. Informality and pricing issues related to gold mining

Apart from the recognition provided for large scale mining which the prior development plans seem to neglect as the high emphasis was rendered on artisanal mining, the reform agenda is in tune with the development and governance structure link as all the constraints directly or indirectly relate with the way the sector is being governed, legal and institutional framework being instruments of governance.

¹³⁰ Muluken Yewondwoseen, *The Ten-Year Development Plan Break Down, 2020*, CAPITAL. With respect to this, the plan to raise the mining export share to 11.3 % from its current 6.9 percent is mentioned by the deputy commissioner of planning development commission, available at <https://www.capitalethiopia.com/capital/the-ten-year-development-plan-breakdown>.

¹³¹ Tomomi Tokouri, How Prime Minister Abiy Envisions new Ethiopia: *Moving towards People's Reconciliation and Sustainable Economic Development*, MITSUI & CO. GLOBAL STRATEGIC STUDIES INSTITUTE MONTHLY REPORT, 2019, pp. 6.

¹³² Ethiopia's Home-Grown Reform Agenda; *Unlocking Ethiopia's Potential* (2019), Office of the Prime Ministry, Slide 4.

¹³³ *Id.*, at Slide 10 - 13.

¹³⁴ *Id.*, at Slide 13.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

As a solution to the overall developmental challenge, the reform agenda plans to undertake macroeconomic reforms, structural reforms, and sectoral reforms. The sectoral reform specific to the mining sector includes the following five key tasks;¹³⁸

1. Formalize and support artisanal and small-scale mining
2. Review gold pricing to reduce the incentive for contraband trade
3. Address political and legal issues with local communities and incentivize miners to engage and invest in local communities
4. Address technical and institutional barriers against large scale mining projects
5. Develop policies and institutional capacity to create a sustainable and inclusive mining sector with strengthened geological information and a diversified product base with an industrial input focus.

The reform agenda as a general statement of vision falls short of stating the specific methodologies of bringing about these reforms. Yet the core instrument that is essential to materialize these reforms are appropriate changes and reforms that are to be made to the governing structure of the sector including policies, laws, and regulations. This is further cemented by the ten-year prospective prosperity plan¹³⁹ and its discussion of the mining sector.

The perspective development plans strategic pillars of quality economic growth focus areas in the productive sector are agriculture, manufacturing, and mining.¹⁴⁰ It is encouraging to see mining lined with agriculture, which has been the backbone of the economy ever since modern economic development conceptions are in place in Ethiopia. Manufacturing is the desired transformation direction of the economy from the current agriculture-dependent approach. Hence seeing mining labelled as a productive sector focus area tells a lot as to the place the national development plan has rendered to the extractive sector.

In the part the plan narrates potential Ethiopia has to fulfil its economic development endeavour, natural resources are considered to play a pivot role as specific mention is made to endowments of a gemstone, ornamentals, energy, metals, metallic minerals, gold, coal, iron ore, potash, tantalum, marble, and petroleum.¹⁴¹ It is a plan-based approach that considers minerals to have the potential of driving the development of the nation. The desire to make Ethiopia a beacon of prosperity is to be achieved in the mining sector by increasing the investment in the area and making these resources foreign exchange and domestic revenue earners, job creators, and ensuring the participation of manufacturing industries that add value.¹⁴²

The objectives of the plan for the mining sector are manifestations of achieving the aforementioned goals which among others can only be achieved through the existence of a strong

¹³⁸ Home Grown Reform Agenda (2019), Slide 28.

¹³⁹ Ethiopia 2030: The pathway to Prosperity; Ten Year Perspective Development Plan (2021-2031).

¹⁴⁰ *Id.*, at Section 3 (1), Slide 12.

¹⁴¹ *Id.*, at Section 6, Slide 18.

¹⁴² *Id.*, Section 7 (1), Slide 25.

governance framework tuned towards fulfilling the set objectives. Here is a full list of the objectives as narrated in the plan.¹⁴³

1. Add value for the improved contribution of the subsector
2. Increase inter-sectoral linkage to raise raw material inputs to other sectors
3. Make mining a competent sector and induce structural change
4. Increase human resources and technological capabilities through research and training
5. Raise foreign exchange revenue from mining through increased exploration and production
6. Improve traditional mining production and marketing system
7. Improve the country's geological information

There is silence by the plan as to the role the governance structure will play in fulfilling the set objectives. As explained above the only way to accomplish such a broad objective is to employ a proper governance structure geared towards the accomplishment of the sector. It is perplexing to see the plan neglect to mention the role the governance structure should play in bringing about desired development objective.

V. CONCLUSION

Development qualified as "sustainable development" is an issue for which the supreme law of the land, the FDRE Constitution provides sufficient coverage and attention. Framed both in terms of the general principle and in terms of natural resources, which are the bases for the operation of Extractive Industries, the state owns resources as custodian on behalf of the whole public with the duty to deploy same for the development of the nation, expressed both in economic and social terms. It can be concluded that the development concept of the constitution is sustainable development constituting economic and social dimensions.

The mineral sector development policy has clear development objectives shaped both in terms of economic and social development. Development is the basic pillar of the policy paving the way wide open for any governance structure which is expected to base itself on the policy to follow suit and make the developmental agenda the core agenda of the governance structure. Although so far, no economic or social development has been secured from the petroleum resources potential Ethiopia has, the policy is so ambitious to change this track record by helping the sector play its expected role in the advancement of the economy of the nation. If the directions set in the policy instrument are further incorporated in other governance structures, it is essential to locate the role such a governance structure is to play for the furtherance of the socio-economic growth of the whole population by the gains from the operation of the sector. The policy has clear development objectives associated with extractive sector operation. It was also possible to identify the development objective among the various major legal frameworks which purport to govern the extractive sector and serve as the implementing tools of the designed policies.

¹⁴³ *Id.*

Evaluated national development plans in Ethiopia, past and present are recognizant of the role the extractive sector will play in the poverty eradication and development efforts of the nation. It is inferred from the plans and programs, which the policies and legal frameworks meant to govern the sector are also considered basic strategies of the development plans in the achievement of the anticipated roles of the extractive sector in development.

Accordingly, the policy and legal framework that will enable the development-oriented interpretation and implementation of the extractive industries' governance is well in place. It is the responsibility of the implementing organ to ensure these identified economic and social developmental objectives are materialized to their fullest through the proper application of their principles and rules to the industries in the governance of the sector.

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