

Natural Resource Governance in Unrecognized Settings: What Are Emerging Political, Legal and Fiscal Issues Affecting “Somaliland”?

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How to cite this paper: Hussein, M.R. (2023) Natural Resource Governance in Unrecognized Settings: What Are Emerging Political, Legal and Fiscal Issues Affecting “Somaliland”? *Natural Resources*, 14, 93-101.
<https://doi.org/10.4236/nr.2023.147007>

Received: May 31, 2023

Accepted: July 22, 2023

Published: July 25, 2023

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Abstract

Somaliland declared independence after the fall of the Central Government of Somalia in 1991. Early peace settlements and state-building efforts led to transitional government and early democratic contestations including presidential elections in a hybrid state framework. This emerging democracy in a conflict-torn region is challenged by weak accountability and power imbalances between the three government branches. Over the past few years, the current ruling party started to engage with foreign companies to carry out exploration activities in onshore blocks utilizing existing information on the distribution of natural resources of oil, and gas and to lesser extent mining. Following an informal auction of selling licenses for resource exploration among various companies, Genel Energy amongst others; Somaliland has no competent institutions in managing revenues for long-term development due to two distinctive factors: 1) absence of strong legal and political frameworks specific to governance of extractive industry; 2) weak fiscal regimes across spectrum of extractive companies, the state and investors.

Keywords

Somaliland, Natural Resources, Extractive Industries, Oil, Gas and Minerals, Accountability, Fiscal Regime, Investment

1. Introduction

Following the rise of democratic contestations in Somaliland in the early 2000s, the country's stability vastly improved providing ruling elites with opportunities to establish foreign relations with powers in the region and beyond.

With continuous delays in elections, Somaliland is facing elite capture preparing contestation context for the same group of political figures both in the

ruling and opposition sides. As a result of weakening accountability mechanisms, the current ruling party, which has been in power for the last twelve years, continues to engage foreign companies and provides licenses to operate without public awareness. In August 2012, further to landslide victory of Kulmiye Party in presidential elections in 2010, Genel Energy was awarded to deliver exploration assignments of onshore blocks SL-10-B and SL-13 in Togdheer in an effort to extract two billion barrels of oil¹.

In Somaliland, the extractive industry is less familiar in the eyes of the wider public. Taking into account the extractive process of oil, gas and minerals from issuance of license to operate to turning of extractives into long-term investments, absence of critical mass of citizen understanding and weak governing frameworks can lead to mismanagement, corruption and management of extractive projects for the benefit of specific elites. With a brief background in the rise, peace and political settlements and the early elections, Somaliland has critical factors associated with 1) political setup and legal frameworks; 2) fiscal nature of early steps to extractive industries.

2. Factors Shaping Domestic Resource Governance

It is widely believed that natural resource wealth can lead to substantial development if managed well. In Somalia, despite the circles of conflicts both within the Central Government of Somalia and inter-clan clashes in the early 1990s, there are evident sources that point out conditions leading to poor management and utilization of natural resources in Somaliland.

Basically, there are no agreed definitions of “natural resources” in the contemporary and past literature but it is notable that natural resources of oil, gas and minerals lead to potential economic growth and sustainable development. According to an overview snapshot of [1] underlines that natural resources under the overall umbrella of “extractive industries” specifically oil, gas and minerals are beneficial to developing countries resulting in economic development and addressing potential challenges limiting institutional setup. Practitioners in the extractive industries acknowledge the positive contribution of natural resources, yet believe in the risks and challenges associated with the sector have tremendous evidence across many developing countries in Africa and Asia.

[2] Somaliland is one of the growing democracies in the Horn of Africa emerging from clan-based reconciliation process after the fall of Siyad Barre regime in 1991. [2] The country went through a series of state-building processes starting with peace settlements and power-sharing among main clans followed by transition government led by Mohamed H. I. Egal and the rise of democratic processes incorporating clan systems into formal modern state structures in 2001. Although modern scholars have different views on the integration of Somaliland’s Beel System into democratic and government frameworks, there are references to resource-based conflicts in these early years. Despite the early ef-

¹<https://genelenergy.com/operations/pre-production/somaliland/>

forts of the clan leaders, [2] argue that resources mainly earned types of tax resulted in internal frictions among main clans in the Somali National Movement (SNM) in 1993s. The emergence of clan-based systems into modern state frameworks and resource-based conflicts are common in the rise of Somaliland government and these have implications for resource extraction, particularly oil, gas and minerals.

This paper provides crucial analysis and evidence on the factors leading to poor governance of natural resources of oil, gas and minerals in the discovery stage. In this paper, the author will pay attention to the Natural Resource Governance Institute's (NRGI) Resource Charter which outlines a full spectrum of decision chains and conditions expected to be carried out in each stage. The paper argues that countries, with a particular focus on Somaliland, with unfavorable political and legal conditions, as well as a sound fiscal regime, are less likely to be able to use their natural resources to achieve sustainable development and investment opportunities.

3. Political and Legal Frameworks

There is no doubt, the [3] grants enormous power to the executive branch of state. According to the Somaliland Constitution itself, for instance, Article 105 (1) highlights that the president appoints the Chairman and Judges of the Supreme Court [3]. The constitution also gives approval powers of these positions to the House of Parliament, but the presence of the House of Elders which was meant to represent traditional and cultural elders use absolute power to invalidate the decisions from the Lower House (also known as House of Representatives). [2] Point out that transition from the "Beel System" into "modern democratic system" did not eliminate the House of Elders during constitutional drafting period which led to unnecessary hybridity in the governance and democratic landscape.

The presence of House of Elders "Guurti" and the power accumulation in the executive structure is the base for the failures arising from the utilization of natural resources in Somaliland. Exploration and geological assessments need a competent institution with clear understanding of processes and skills required to run discovery interventions with joint expertise of technical staff from the country and international entities. Putting in place policy and legal frameworks for the extraction and utilization of oil, gas and minerals was not in the medium-term and long-term strategic plans of the nation. Acknowledging the risks associated with volatility and "resource curse", the Ministry of Energy and Minerals drafted so-called Upstream Petroleum Policy to govern discovery and revenue generation and management²-in 2014, the government started to prepare a relevant Bill for further approval from the cabinet and the House of Parliament. While the draft policy has strong reflection in terms of constitutional provisions and authority to manage resources, it does not align with standard frameworks

²<https://moem.govsomaliland.org/site/downloadfile/file/MjAyMC8wOC8yMDIwLTA4LTA4LTA4LTQ0LTA4LTMwMjgtMTU5NzEzNTQ0OC5wZGY%3D/view/1>

on management of fiscal regimes.

Some recognized African countries are relatively strong in terms of setting strong policy and legal structures including Botswana. According to the Country Governance Profile of the African Development Bank [4], Botswana has rigid internal accountability frameworks putting the constitution at the center followed by clear checks and balances between the executive, judiciary and legislative government branches. A strong constitutional framework is potential for the realization of vertical and horizontal accountability across main branches of state and between core public institutions governing natural resources. Further, researchers argue that Botswana remains one of the Sub-Saharan African countries with strong policy instruments putting a lot of emphasis on accountability and transparency in the extractive industry including entering deals with oil companies³. This means, a lot of attention is paid to preliminary and extraction phases including auctions and contractual processes with extractive companies but most importantly revenue management to turn resources into long-term development. Generally, **Table 1** summarizes some of the legal instruments and overview of their conditions supporting the above argument.

Turning legal and policy frameworks on paper into practice is a challenge in Somaliland. On another aspect, Somaliland is known for its “implementation gap” in terms of executing presidential, parliamentary elections despite Constitutional provisions. For instance, Article 88 (1) states that the term limit for the president and vice president is five years. [5] There are violations against the constitution because parliamentary and local government elections delayed more than five years. [6] Also argues that accountability and check and balance

Table 1. Some of current legislative and policy frameworks in the extractive sector in Somaliland.

Name of Policy/Legal Framework	Brief Description
Somaliland Constitution (2001)	Provides provision and chapters protection rights of citizens to information, and ensures clear check and balance to prevent abuse of power.
Somaliland Mining Act in 2008 (Draft)	Looks comprehensive but lacks special provision of protection rights to small-scale artisanal mining communities and linkage to long-term global development agendas such as SDGs and climate action.
Somaliland Upstream Policy 2014	Very small policy document lacking extensive inputs running from deciding on extracting underground wealth to long-term development including FDI
Exploration and Extraction of Natural Resources of Oil Act in 2021	With an official gazette in 2021, the Act was passed late questioning the fiscal grounds for Genel operations since 2012.

³<https://resourcegovernance.org/sites/default/files/documents/rgi-from-legal-reform-to-implementation-sub-saharan-africa.pdf>

among the main state structures were overshadowed by the interference of traditional elders “also known as Guurti” in political disputes that need judicial action. Therefore, governance fragility and weak accountability mechanisms are not able to meet standard transparency and answerability measures in the extractive sector compared to recognized contexts in Africa.

Natural Resource Governance practitioners have consensus on the importance of geological information in the pre-discovery process putting a lot of emphasis on the division of labour in terms of institutional arrangements to collect reliable information about extractives. Again, the draft policy on upstream petroleum does not make strong reference to means, roles and processes to follow to collect geological data, its interpretation and availability to the public⁴. The Natural Resource Governance Institute believes that concentration of geological information in International Oil Companies (IOCs) may lead to contractual benefits favoring negotiation governments. For example, Timor failed to utilize revenues from natural resources as asymmetric information between the negotiating teams from the government and the international investors led to unequal agreements⁵. In this regard, Somaliland does not have government or dedicated bodies that have an advanced understanding of contracting terms, fiscal procedures appropriate taking into account unstable economic conditions, market situation and technical expertise required to invest property.

Somaliland is not familiar with international deals centered on economic growth and does not make these agreements accessible to the public. African Arguments, one of the most popular news websites, underline that Somaliland citizens are not welcoming a big deal that the political elites in the office entered with Dubai Port (DP) World to manage Berbera Port in 2016⁶—this is mainly linked to bribery and transparency matters which resulted in political dispute between the Lower House and the ruling party. Despite the costly deal, the same political elites from KULMIYE party are sitting in the driving seat of Somaliland government. Over these years, there are no clear accountability, upward and downward, mechanisms putting corrupt officials at the center of public watch. Multi-million and billion concessions with extractive companies will cause further contractual non-disclosure, corruption, and secrecy of terms and conditions of the deal which might have economic, social and environmental implications.

There are numerous factors affecting Somaliland’s struggle to extract natural resources of oil, gas and petroleum but it is crucial to mention that the self-declared country is going through political and conflict experiences. In December 2022, after the assassination of high-profile political figure from the opposition, demonstrations and heavy conflict erupted in Las Anod in early 2023. Dhulbahante clan, active rivalry in the current conflict, has always been against the secessionist agenda of Isaaq-dominated Somaliland increasing pressure from the

⁴<https://africacenter.org/wp-content/uploads/2016/02/Building-Democratic-Accountability-in-Areas-of-Limited-Statehood-Siegle.pdf>

⁵https://resourcegovernance.org/sites/default/files/NRCJ1193_natural_resource_charter_19.6.14.pdf

⁶<https://africanarguments.org/2018/05/how-an-unrecognised-states-port-deal-could-shift-dynamics-across-the-horn-berbera-port-dpworld-somaliland/>

international community to de-escalate the conflict and prepare a roadmap to delayed presidential elections⁷. Hence, the current political, military and economic conditions are not favoring interests in extracting natural resources and will probably lead to false promises, and announcements of incentives to the public to vote for the ruling party. Many countries, specifically Bolivia is an excellent example of political elites remaining in power for a long period of time using oil and gas rents to clientelist activities in some parts of the country.

Political and legal factors are not only linked to mismanagement of extractives, but there are also technical weaknesses related to revenue management on top of existing economic ramifications.

4. Fiscal Regime—What Are the Gaps?

Somaliland is one of the poorest unrecognized countries with the least economic status. According to the World Bank, the country's Gross Development Product (GDP) accounts for \$1.4 billion and leading bottom three; Malawi, the Democratic Republic of Congo (DRC) and Burundi⁸. No doubt, like any other Somali territory, Somaliland relies heavily on remittances and foreign aid which both account for nearly 50%.

Despite the low economic growth and poverty across the population in the cities, Pillar 1 of Somaliland Vision 2030 ensures Somaliland to become “a Nation Whose Citizens Enjoy Sustained Economic Growth and Reduced Poverty Levels.”⁹—There is growing evidence that Somaliland is not prepared for long-term economic boost due to challenges associated with low revenue generation, poor implementation of Public Financial Management (PFM) reforms and to larger extent lack of dedicated tax collection systems. Natural resource rents need distinctive and competent institutions running fiscal management at different stages. Government needs to design and establish comprehensive risk regimes focusing, specifically, on 1) revenue flow providing the least rents whenever there is a production and 2) framework for profit share between the extracting company and the state to understand savings from extractives. In simple terms, a country's fiscal regime needs to capture value of production-based revenue and at the same time work within a distinctive saving pot keeping rents from the share which gives clear picture to the state to easily flow profit projections across set timeframes.

In a post-conflict and fragile unrecognized country, fiscal management operates in an environment without legal and policy frameworks running financial institutions, national reserves and flow of cash and economic units in markets¹⁰. The absence of fiscal instruments and driving political and legal frameworks is

⁷<https://www.aljazeera.com/features/2023/5/10/conflict-in-disputed-las-anod-dims-somalilands-diplomatic-dreams>

⁸<https://www.worldbank.org/en/news/press-release/2014/01/29/new-world-bank-gdp-and-poverty-estimates-for-somaliland>

⁹<file:///C:/Users/Mohamed%20Rashid/Downloads/2023-04-04-05-41-19-4940-1680586879.pdf>

¹⁰<https://soradi.org/wp-content/uploads/2018/08/Paper-Seven-The-Role-of-Remittance-in-the-Economic-Development-of-Somaliland.pdf>

already a sign of poor economic and fiscal management and there is already a risk as rents from extractives can be pooled for vested interests instead of leading to investment. Tanzania is a practical example, of not only a poor tax system, but also incompetency in adjusting tax to attract investors. In 2019, the government revised legal instruments affecting management of fiscal regimes from the mining sector¹¹. The Tanzanian government suffered investment issues due to increase in the rate of tax for foreign-owned companies, particularly those interested in investing in large-scale gold projects. Despite the challenges in drafting the right laws in this sector, Tanzania, unlike Somaliland, put a lot of effort in designing specific fiscal instruments to maximize rents and revenues generated from the extractives.

In the absence of fiscal regime dedicated to this sector, in general, Somaliland does not have an investment strategy to prepare itself for an economic boom and huge revenues from the extractive industry. In 2021, Somaliland parliament passed the Investment Act Law Number (99/2021) with an aim to increase investment opportunities for the country¹². However, investment options related to the extractive sector were not taken into account but most interestingly, the Act lacks driving instruments of policies, procedures and plans to attract and promote the sector. Moreover, in the absence of references, mining sector is somewhat in the hands of local clan leaders and families in the Eastern and Western regions. The government has little or no information about the value chain, production and management of artisanal gold mining in Sanaag and Awdal regions. This is, mainly, low government legitimacy in the eastern regions with clan leaders shouldering security and informal governance [7]. This is a good indication that Somaliland is not prepared aside from interest in digging oil wells in Togdheer and Sanaag regions which were already suffering from poor road networks, lack of public services including schools, medical centers, and generally employment opportunities.

Somaliland believes in the involvement of private sector as investors for projects while private companies monopolized the economy and operate in a weak regulatory framework balancing interests and benefits to the public. In the trade sector, famous business elites dominate Somaliland economy regulating livestock, food, and construction leaving no space for small business community¹³. Natural resources of oil, gas and minerals require distinctive and unique process to capitalize on high-value rent to turn into investment projects that contribute to socioeconomic aspects of local populations. In Somaliland, the Tender Board is responsible for all procurement processes including pre-qualification, selection and contractual conditions. In an unrecognized country overshadowed by corrupt officials and competing private sector which lacks constant oversight, rents from the extractive sector could be mismanaged despite the shocking award notice of Inyatsi, a company owned by Eswatini Government in

¹¹<https://resourcegovernance.org/blog/magufuli-seeks-right-balance-tanzania-mining-fiscal>

¹²https://pdf.usaid.gov/pdf_docs/PA00ZIKT.pdf

¹³<https://www.ijsr.net/archive/v6i9/ART20176619.pdf>

Southern Africa. Inyatsi is a big company widely known for its poor management and corruption in relation to huge infrastructure projects, mostly in South African countries including Zambia, Namibia and its origin, Eswatini. Following Hargeisa fire which collapsed hundreds of millions worth of businesses and properties in the center of city in early 2022, the government took initial steps to mobilize resources to reconstruct government-owned facilities in the market bidding Inyatsi in the midst of strong public reaction against its selection. Surprisingly, the President of Somaliland H. E. Muse Bihi in an annual speech to the two houses of parliament defended the selection process and the company's status to rebuild the assigned facilities¹⁴. Hence, no doubt that the current administration will benefit the current administration will benefit the public revenue through patronage in the circles of government and vested interests affecting investment projects for the benefit of a few.

5. Conclusions

Somaliland is currently facing prolonged conflicts with separatist armed groups proclaiming representation of Sool, Sanaag and Cayn (SSC) regions and favoring an independent state under the Federal Government framework. delayed presidential elections are fueling political turmoil between fueling political turmoil between the ruling party, major opposition parties and new political associations licensed to run for a round of representative elections to become one of the top political associations qualifying for official political parties before presidential polls. The illegitimate extension of president's term to two years put the country at risk politically, and economically.

Taking into account cracks in the legal frameworks, mainly the national constitution, undermining the check and balance between the state structure and country's track record of poor macroeconomic management, fiscal arrangements and investment strategies; Somaliland is not competent to engage in exploratory and extraction of natural resources of oil, gas and minerals. Instead, as highlighted in the International Crises Group's recent statement¹⁵, Somaliland's most immediate action is to hold presidential elections to address legitimacy crises. According to these conditions, there is no room for the ruling elites and clan leaders to focus on the extraction of resources misinforming local populations and strengthening the current elite's political campaigns to win the election despite severe crises over the past five years.

Acknowledgements

In the efforts invested in this paper, I would like to recognize and appreciate the positive contributions of practitioners and experts in the extractive industries with the purpose of ensuring poor countries make most out of endowed resources underneath.

¹⁴<https://www.youtube.com/watch?v=FOUPP9NoXfg>

¹⁵<https://www.crisisgroup.org/africa/horn-africa/somaliland/time-somaliland-and-dhulbahante-talk>

Conflicts of Interest

The author is not driven by conflict of interest in the publication of this paper.

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