Engagement Neutrality Abnegation
National School of Administration of Tunis
Better skills for better governance

REPUBLIC OF TUNISIA
PRESIDENCY OF THE GOVERNMENT

Governance of extractive industry in Tunisia

By

Meher Béjaoui

General administration

Under the supervision of

Pr. Hassen Soukni

2020

Favourable opinion for submission of the report of

Mr. Meher Béjaoui

ENA does not intend to give any approval or disapproval to the opinions expressed in the report. Opinions should be considered as solely belonging to their authors.

To my mother Souad.

To my family.

To my friends Mohamed Mokrani and Rayen Nsiri, for being there.

To those who are true and honest.

Never test the depth of water with both feet.

Acknowledgments

This publication would not have been possible without the strenuous efforts of many people, starting with my honorable supervisor

Pr. Hassen Soukni,

to whom I am deeply grateful for the valuable guidance and insights,

during the editing of this report, and throughout the 30 months at ENA.

Special thanks to everyone who helped me during research,

and particularly Mr. Wissem Heni from NRGI;

Mr. Aymen Chaaben and Mr. Moez Hrizi for their valuable contributions and assistance, and their support since the beginning;

and Mrs. Manel Ben Achour from I Watch.

Thanks must also be extended to the National School of Administration for enabling this valuable learning experience.

Finally, I appreciate the dedicated work of the honorable members of the jury, and I am grateful

for their time and conscientiousness.

Contents

Introduction 1

Chapter 1: Legal framework 5

Section 1. Tunisia's Constitution of 2014 5

Section 2. Mining code 7

Section 3. Hydrocarbons code 16

Chapter 2: Institutional and organizational frameworks 28

Section 1. Parliament 28

Section 2. Ministerial bodies 32

Section 3. State owned enterprises 34

Section 4. International and Civil society 49

Chapter 3: Key figures around natural resources 55

Section 1. Mining sector 55

Section 2. Hydrocarbons sector 59

Chapter 4: Challenges, opportunities and sustainable development 65

Section 1. Decision chain 65

Section 2. Global challenges and opportunities of oil, gas and mining 68

Section 3. Foundations for resource governance 69

Section 4. Discovery and getting a good deal 76

Section 5. Managing revenues 83

Section 6. Investing for sustainable development 86

Section 7. Natural resource charter benchmarking 88

Conclusion 91

Abbreviations

ANPE	Agence Nationale de Protection de l'Environnement
ARP	Assemblée des Représentants du Peuple
ATCP	Association Tunisienne des Contrôleurs Publics
BVMT	Bourse des Valeurs Mobilières de Tunis
CCH	Consultative Committee on Hydrocarbons
CCM	Consultative Committee on Mines
CEO	Chief Executive Officer
CPG	Compagnie des Phosphates de Gafsa
CSO	Civil Society Organizations
CSR	Corporate social responsibility
CTTEM	Coalition Tunisienne pour la Transparence de l'Énergie et des Mines
EIA	Environmental Impact Assessment
EITI	Extractive Industries Transparency Initiative
ETAP	Entreprise Tunisienne d'Activités Pétrolières
GCT	Groupe Chimique Tunisien
GDH	General Directorate of Hydrocarbons
GDM	General Directorate of Mines
GDP	Gross Domestic Product
IMF	International Monetary Fund
INLUCC	Instance Nationale de Lutte Contre la Corruption
INS	Institut National de la Statistique
JORT	Official Gazette of the Republic of Tunisia
kt	Kilotonne
LPG	Liquefied Petroleum Gas
MENA	Middle East and North Africa
MSG	Multi-stakeholder Group
MTD	Million Tunisian Dinars

NE	National Enterprise
NOC	National Oil Company
NRGI	Natural Resource Governance Institute
OECD	Organisation for Economic Co-operation and Development
OGP	Open Government Partnership
ONM	Office National des Mines
RGI	Resource Governance Index
SOE	State-Owned Enterprise
SNDP	Société Nationale de Distribution des Pétroles
STIR	Société Tunisienne des Industries de Raffinage
USD	United States Dollar
WGI	Worldwide Governance Indicator

Introduction

Natural resources can be transformative for developing countries. Oil, gas and minerals can generate vast amounts of national income. If managed prudently, natural resource wealth can have a significant impact on the sustainable development efforts of a country. In addition to the capital flows, natural resources may have many other direct and indirect benefits for the economy.

But the benefits are far from automatic. In fact, in many cases natural resource wealth has not generated long-term development. According to McKinsey Global Institute (2013), "contrary to expectations, a significant feature of natural resource development is that over half of the economies it has driven are not catching up".

Cameron, P. and Stanley, M. (2017), argue that even among economies that have experienced long-term and above average economic growth, natural resources have not always enhanced prosperity in terms of growth in productivity and resilience for example.

That is because there are many real challenges to resource-based development. Furthermore, the sector has aroused far more controversies than others, and the increase in economic activities and investments triggered high expectations but resulted in disappointments.

As such, scholars use the term "resource curse" to describe this situation. It is a paradox, where countries with abundant natural resources, particularly non-renewable resources, tend to have less economic growth and worse development outcomes than countries with fewer natural resources.

This suggests that the discovery and production of oil, gas and minerals is not at all a blessing or even a source of opportunities to drive economic and social growth, which led Collier, P. (2007) to describe abundance of natural resources in some countries as a trap.

In reality, many of these deposits are located in places with pre-existing governance constraints and development challenges. For these reasons, article 136 of the Tunisian Constitution proclaims that "a portion of revenues coming from the exploitation of natural resources may be allocated to the promotion of regional development throughout the national territory".

There are economic challenges with managing volatile revenues, adding to the technical complexities of managing these large-scale projects, and real risks of environmental and social disruptions and impacts. The reversal in commodity prices after the early 2000s boom, highlighted the extractives industry's vulnerability to volatility and unpredictability.

These resources, if well taxed, can generate big cash flows to the national budget. It can help the country spend more on its biggest development needs and can help the government drive forward a strategic plan for economic management.

A major problem in Tunisia is that the size of these revenue flows can be disruptive to the overall economy, and that their volatility can create problems that mean that public expenditure is actually less effective. We will be looking at these challenges in particular, and some of the strategies the government can put in place to try and minimize the risks.

According to article 13 of the constitution, "natural resources belong to the people of Tunisia. The state exercises sovereignty over them in the name of the people. Investment contracts related to these resources shall be presented to the competent committee in the Assembly of the Representatives of the People. The agreements concluded shall be submitted to the Assembly for approval".

Mismanagement of natural resources and the resulting wealth, can lead to social and economic inequalities, the financing of bad practices and tensions. The two main options for this wealth are spending or saving.

Therefore, it is essential to manage these valuable collective assets using principles of good governance in a sustainable way, to ensure the rights of future generations. Besides, developing an adequate strategy can help avoid unsustainable practices and ensure greater equity.

In this report, we will present the fundamentals of how the oil and mining industries work in Tunisia, and the national implications of those industries. We will dive into the legal frameworks governing the extractive industries, the legislation, regulations, and contracts that set the terms of relationships between the government, private entities and companies.

Afterwards, we will examine natural resource governance through the lens of a decision chain. The decision chain is a way of looking at everything that happens from the moment that natural resources are in the ground, undiscovered and undeveloped, all the way through to when it is developed and converted into money. Some of that money is collected by the state, that tries to manage it effectively and convert natural resource revenues into a vehicle for sustainable long-term development.

Decision chain has four basic parts. It begins with the discovery process and the decision about whether to extract a resource or not, the second stage relates to taxation and the frameworks that govern the relationship between companies and the state. The third stage relates to the management of natural resource revenues and in particular, the goal of avoiding volatility. And then finally, the chain looks at investing in sustainable development, and how to convert the revenues and the resources into a longer-term path. This decision chain is embodied and is featured in the Natural Resource Charter, elaborated by Natural Resource Governance Institute.

From there, having talked about some of the benefits that can accrue from the natural resource sector, we will talk about some of the most important challenges and opportunities, environmental damage or social disruptions in communities near a mining or oil project.

According to the World Bank Group, good governance is essential to achieve most of the benefits of extractive resource development. Governance concerns procedures, such as decision making and communication and capacity building measures like, sector organization and resources. The quality of government is crucial for making good decisions in the extractives sector.

Effective governance of the oil, gas and mining sectors is quite a challenge. The resource governance index assesses the quality of natural resource governance. It shows that Tunisia has a score 46 for the mining sector, placing it in 48th position (out of 89); and a composite score of 56 for the oil and gas sector, placing it in 26th position.

These results indicate that resource extraction can help society, but the eventual benefits are still weak. When assessing the governance of the mining sector with regard to value realization (licensing, taxation, local impact and state-owned enterprises), Tunisia has a poor score of 40. As for revenue management, the country scored 30. The index last component measures the enabling environment, which covers the rule of law, regulatory quality and open data among other aspects, and Tunisia has a satisfactory score of 67 for this component.

To be noted that the differences between oil and gas, on the one hand, and mining, on the other, are significant. Both sectors can play a key role in the strategic development plans. However, effective management needs consideration of both the specific and common characteristics in the design of sectorial policies and regulations.

Throughout the report, we will look at all of these matters through a variety of perspectives. However, the focus would be on factors that emanate from public sector, or can be shaped by public actors.

The key question addressed by the report is: how can we improve the governance of the extractive industry in Tunisia?

This would be done as follows:

- Chapter 1 would address the legal framework governing the extractive industry in Tunisia. An analysis of the different legal texts, and the specific details would help contextualize and put into perspective the status quo.
- Chapter 2 addresses the institutional and organizational frameworks of the sector. It would present the main entities that shape the public interventions and strategies. It would also try to analyse and build on the governance of the sector from this perspective.
- Chapter 3 gives a broad but important idea about the current health of the sector, and showcases the importance of natural resources and the need for a better governance, with a focus on sustainable development.
- Chapter 4 deals with the challenges and opportunities in line with the sustainable development of the sector and the country. It uses different approaches and tools to enhance the structures and regulations, and the governance of the whole sector along the decision chain.

Chapter 1: Legal framework

The Tunisian legal regime governing the sectors of mines and hydrocarbons is regulated by several texts. The mining and hydrocarbons codes did not entirely repeal the application of earlier texts to existing titles at the time of entry into force. In this chapter, special attention is paid to current regulations and titles. The constitutional provisions pertaining to the extractive industry shall be presented first, followed by a review and analyses of the mining code and the hydrocarbons code.

Section 1. Tunisia's Constitution of 2014

The Tunisian constitution is essentially the country's most important document. Before delving into the current constitutional frame of the subject, it is worth noting that the constitution of 1959, promulgated by law 59-57 dated 1 June 1959, referred to a notion centred around preserving natural resources. The preamble states that "the republican regime constitutes the best guarantee for … the use of the nation's riches for the benefit of the people".

The Tunisian constitution promulgated on 27 January 2014 by the constituent national assembly, gave special attention to natural resources, especially given the general economic and social contexts that lead to the 2011 revolution.

The preamble is a bearing witness that the constitution emerged from the people, and it is an evidence of its origin, extent and purposes. According to the preamble, the constitution was drafted "being aware of the necessity of contributing to the preservation of a healthy environment that guarantees the sustainability of our natural resources".

With the same spirit, the constituent members specified in article 12 that "The state shall seek to exploit natural resources in the most efficient way". That is to achieve sustainable social and economic development, as well as, a balance between regions.

The latter idea falls under the provisions of the seventh title concerning local government. In fact, article 136 of the Tunisian constitution proclaims that "a portion of revenues coming from the exploitation of natural resources may be allocated to the promotion of regional development throughout the national territory". The article finds its roots and motives in the unfortunate reality that the scarce wealth-generating natural deposits are located in places

with pre-existing governance constraints and major development challenges. They are mostly abundant in the interior regions of the country.

Furthermore, the constitution instated certain aspects of governance applicable to extractive industries. Article 15 sets the foundation for the rules and principles to be used in running public administration, and managing public interest. Notions such as transparency, integrity, efficiency and accountability are the cornerstones of a modern public management.

The crafters of the constitution dedicated article 13 specifically for natural resources. According to its outline, "natural resources belong to the people of Tunisia. The state exercises sovereignty over them in the name of the people. Investment contracts related to these resources shall be presented to the competent committee in the Assembly of the Representatives of the People. The agreements concluded shall be submitted to the Assembly for approval.".

This article shows the commitment of regulators to set forth a more open and transparent platform for managing these resources, and dealing with their different intricacies. Due to the prior settings before the revolution where in many cases, the agreements in this sector were shrouded in secrecy, the concerns regarding that, were addressed by requiring parliamentary oversight.

During the preparation of the constitutional text, the aforementioned concepts were incorporated at different phases of the work. Only the core of article 15 was included since the first submitted draft. Most notably, article 13 was added at the last stages along with the third paragraph of article 136, at a later time after presenting the third and final draft on 1 June 2013.

Systemic issues related to the control over, and access to profits from natural resources are perceived as essential to social stability and economic development. Natural resource provisions in post revolution constitution go beyond "the preservation of a healthy environment". There is a sense of rethinking authority over natural resources, that is central to rebuilding the social contract between different authorities and their citizens, as well as within.

The constitution vests ownership authority in the people. Besides, it stipulates that whoever owns a piece of land does not necessarily own the natural resources lying underneath it. Thus, negating the absolute ownership theory.

It states that the legislative and executive branches share the authorities to manage these natural resources, to collect and distribute revenues emanating from them. However, it does

not allocate authority over natural resources to local entities through decentralization or shared management funds.

The constitution provides that investment contracts and agreements are to be reviewed by the legislature and its competent committee. Other details necessary for implementing related provisions, such as royalties for example, are already defined by different pieces of legislation. But the constitution does not set straightforward benefit-sharing procedures, and article 136 just provisions an optional allocation of revenues to local authorities.

Furthermore, the different articles do not distinguish between natural resource types or address them differently. Yet, certain elements in article 13 suggest that the used expression covers mainly the extractives industry resources, but not exclusively in the scope of the entire constitutional text.

The constitutionalizing of the mentioned notions pertaining to extractive industries, demonstrates their importance and high priority for the future of the country. It seeks to address underlying concerns, and lay the foundation for an enduring governance of the sector.

Therefore, it is essential to manage these valuable collective assets using principles of good governance in a sustainable way for the common good, to ensure the rights of future generations. Besides, developing an adequate strategy can help avoid unsustainable practices and ensure greater equity.

Section 2. Mining code

The Mining code was promulgated by law 2003-30 dated 28 April 2003. It replaced and abrogated prior legal texts, namely the decree of 1 January 1953 on mines, and article 20 of the law 66-65 dated 4 July 1996 related to the personnel statutes of the mining companies. The law itself contains 8 articles, mostly focusing on transitional and final provisions. The code consists of 125 articles spread on 8 titles.

According to the deliberations of the Chamber of Deputies[1], the main new contributions of the new code, in comparison to the older legislations are as follow:

[1] Fourth regular session 2002-2003, Tenth parliamentary term 1999-2004, 23rd session, 10 April 2003.

- Classification of mineral deposits
  - Establishment of a sixth group that includes rocks with a composition overwhelmed by a single mineral, and suitable for industrial applications in order to encourage the search for construction materials,
  - Deletion of all provisions related to hydrocarbons due to the promulgation of the hydrocarbons code.
- Mining titles and operations
  - Institution of a title known as a "prospecting license" to enable those in the mining sector to carry out studies and geological works of strategic dimensions without bounding commitment,
  - Fixing the number of renewals for "exploration permits" to two consecutive periods of three years each. In case of a mineral deposit discovery that might result in obtaining an exploitation concession, the license holder has the right to an exceptional renewal in order to evaluate the mineral deposit,
  - Rehabilitate and return the areas to their original state when the validity period of the exploration permit expires,
  - Granting exploitation concessions for a period consistent with the importance of exploitable reserves (while they were previously granted for ninety-nine years). It can be extended several times, depending on the additional confirmed reserves.
- Incentives
  - The government shall pay social costs of employers for a period of five years from the date of entry into activity,
  - Exemption from paying value added tax for operations performed in Tunisia,
  - Exemption from paying customs fees, and other required taxes and fees when importing goods and equipment intended for use in the mining activity,
  - Registration with a standard fee for all contracts and procurements related to the mining activity of the license holder,
  - Facilitating procedures of employing foreign workforce,
  - Granting alien workers, the ability to choose a foreign social security system,

A brief overview and analysis of some notions and articles in the code, would help shed light on a pillar of the legal framework of the extractive industry in Tunisia. The ideas were grouped as they were presented in the titles' layout of the code.

1. General terms and definitions

The first title presents the purpose of the code as giving "the legal framework of prospecting, exploration and exploitation activities" for the mineral substances considered mines. Then, the second article goes to define several main notions, such as mineral substances, mines, mining titles and granting authority.

Afterwards, there is a classification of deposits of natural mineral substances into quarries or mines. An exhaustive list sets which deposits are considered "mines", and lays them in 6 distinct groups. All other deposits are, therefore, considered "quarries". The relevant ministerial authorities reserve the right to adjust certain elements within the list, by setting minimal quantitative limits of mineral substances belonging to the sixth group. The remaining substances are conclusively fixed by article 5.

Law 89-20 dated 22 February 1989 regulating the exploitation of quarries,[2] applies to deposits of mineral substances not covered by specifications of article 5. It deals with all aspects related to quarries and their exploitation.

This separation is due to the technical and financial specificities of the mining operations, as well as the economic value and different aspects governing the mineral substances in comparison to the substances found in quarries.

Articles 7 and 8 provide that mines are real estate considered as natural resources belonging to the public domain of the state, yet not subject to property law relative to registrable property. However, the mineral extracts are considered movable property.

As for the mining titles, they can be granted to physical or moral persons by the relevant minister responsible for mines. In particular, "exploration permits and exploitation concessions are granted for all mineral substances of the same group".[3] Moreover, these titles "can be granted to different applicants for the same area, for different groups of mineral substances" as per article 5.

---

[2] As amended and completed by law 98-95 dated 23 November 1998 and law 2000-97 dated 20 November 2000.

[3] Article 9 of the mining code.

These last instructions appear to be overwhelming and confusing, but tend to encourage commercial economic activities and efficient management of mining operations. They do require close technical cooperation between different parties, and a better control to safeguard rights.

2. Prospecting license

Obtaining a prospecting license is a preliminary step required to conduct initial investigations, in preparation for a potential exploration permit. A license is granted for one year, renewed once for the same period.

Prospecting activities consist in determining some important characteristics of the target deposit, such as its size, location and shape. The license does not allow for any mining or drilling operations.

One or more prospecting licenses can be issued to several applicants for the same area, and for any group of mineral substances. However, a license cannot be attributed for a group with an existent exploration permit or exploitation concession. The legislators put a provision to avoid conflicts of interest by protecting the prevailing rights of title holders over those of prospection licensees.

3. Exploration permits

The code sets terms and instructions for submissions of applications.[4] The specifics are defined by an order of the minister responsible for mines dated 1 March 2004 related to determining the modalities of filing for mining titles. The text is applicable for all types of mining titles.

Besides, the code indicates general instructions and rules concerning the exploration area, and the constituting contiguous elementary perimeters. The relevant details are completed by ministerial decree 2003-1725 dated 11 August 2003 fixing the geographical coordinates and the reference numbers of the summits of the elementary perimeters constituting the mining titles.

[4] From article 20 to article 28 of the mining code.

The application review process assesses the applicant's technical and financial capacities, and the proposed working plan. In fact, the permit is granted by ministerial order upon approval of the mining consultative committee.[5]

To be noted that there are no predetermined rules or conditions when evaluating the technical and financial capabilities of the applicant. A legal document cannot hold such details, as to allow for a dynamic economic structure, involving different investors. Objectivity is guaranteed through internal mechanisms like the consultative committee.

An exploration permit enshrines in its holder, the exclusive right to conduct explorative activities in the area, and the privilege to obtain an exploitation concession during the validity period of the permit.

The permit is granted for an initial period of 3 years, renewable successively twice, with a maximum period of 3 years each time. An exceptional renewal period can be accorded in case of a deposit discovery that requires further actions. Certain terms and conditions apply as per article 32.

4. Exploitation concessions

The exploitation concession is limited in its surface area and group of mineral substances, to the terms of the exploration permit it was based upon. Certain conditions apply before granting the said concession.[6]

A proper application must be addressed to the competent authorities, two months prior to the end of the validity period of the relevant exploration permit. An exploitation concession is granted for a period consistent with the quantity of exploitable reserves, and can be extended as necessary.[7]

In accordance with article 45 and with respect to a memorandum of obligations, the applicant must adhere to several main development, exploitation and exploration conditions, along with environmental protection and rehabilitation provisions. The memorandum of obligations is defined by virtue of decree 2004-1026 dated 26 April 2004 approving the standard specifications relating to the production and the amounts of research work

[5] See institutional framework for further details.

[6] Article 44 of the mining code.

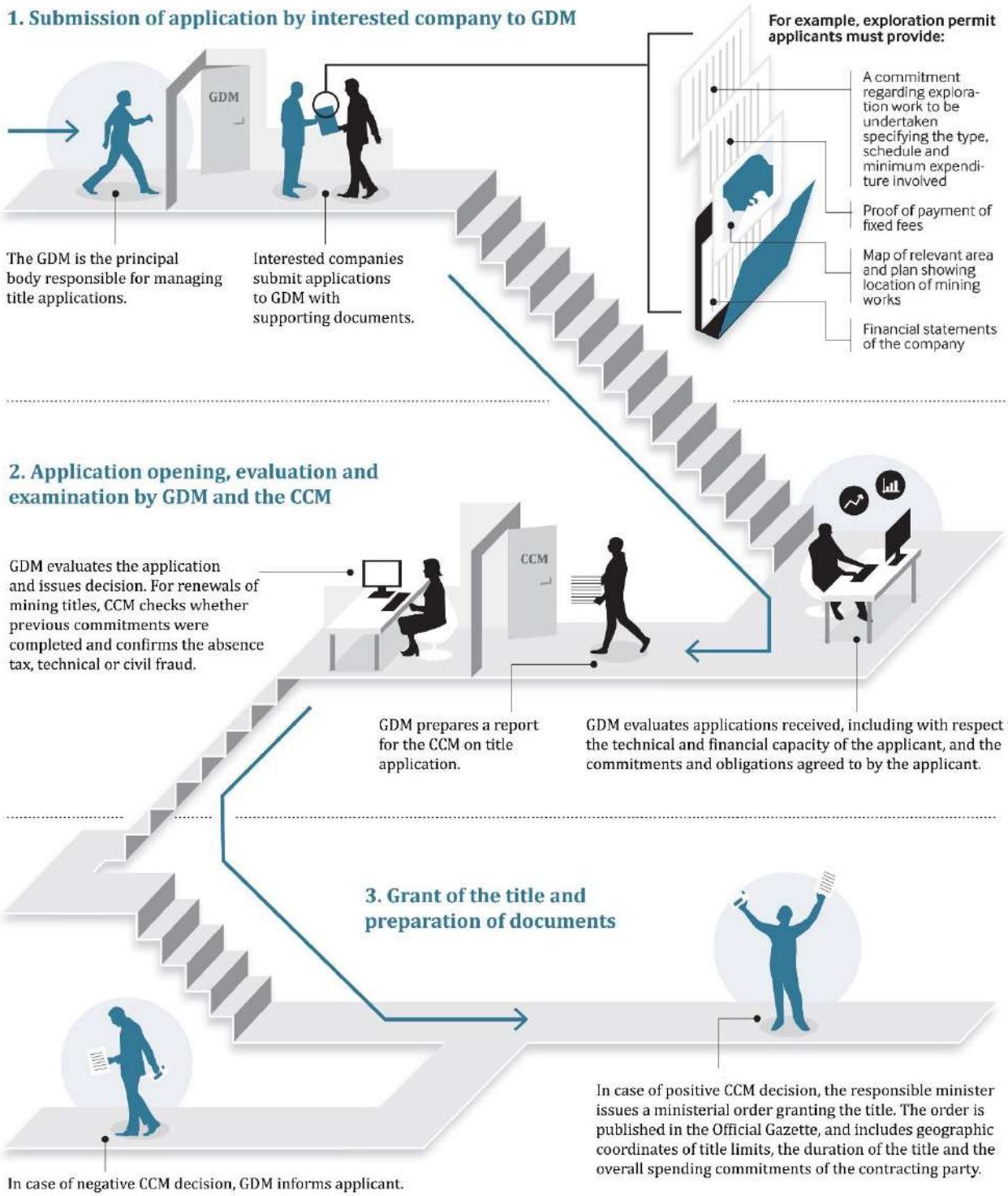
[7] Article 52 of the mining code.

and minimum equipment to be carried out by the holder of a concession for the exploitation of mineral substances classified as “mines”.

From a governance and practical perspectives, it is quite delicate that the code allows the possibility of having several exploitation concessions for different groups of deposits of mineral substances in the same perimeter. This issue was addressed reasonably in articles 58 and 59 of the code.

Figure 1 gives a holistic summary of the contracting process in Tunisia.

Figure 1. *Mining contracting process in Tunisia (modified, NRGI, 2016)*



5. Common obligations of title holders and associated rights

To be noted that all mining titles, except for the prospecting licenses, are transferrable, respecting certain rules and conditions[8]. Also, they can all be cancelled in definite cases.[9]

The code requires the respect of other regulations during the exercise of mining operations. Permit and concession title holders are obliged to conduct their activities in accordance with applicable legislation and procedures, notably with respect to technology, health and safety, rehabilitation and protection of the environment, and especially conservation and use of water.

Periodically, title holders are asked to provide activity, financial, commercial and technical reports to the supervising authority.

The code regulates the use and occupation of lands and property. It tries to set a reconciliatory framework in case of differences between the title holder and the landowner. Yet, the legislation with regard to this point, seems to forgo the right of people to manage their own properties and lands as they deem fit. It focuses on compensation and courts' judgements.[10] Economic considerations were perhaps prevalent during the drafting of these provisions.

Throughout the code, the ministry responsible for mines tries to play an important role to safeguard the rights of different parties, and to ensure the efficient conduct of operations, for the most beneficial outcomes.

6. Fiscal, customs and foreign commerce and exchange regimes

The fiscal regime is quite comprehensive and thorough. The code enumerates the different duties, fees and taxes, that title holders[11] and all contractors and subcontractors[12] are subject to, as provided by the law in force at the time of levy. This only applies to the extent of their exploration and exploitation related activities.

[8] Articles 38, 61 and 62 of the mining code.

[9] Articles 17, 43 and 64 of the mining code.

[10] Articles 79 to 81 of the mining code.

[11] Article 96 of the mining code for the list concerning the title holder exclusively.

[12] Article 95 of the mining code for the list regarding all the mentioned entities.

The provisions refer to a number of other legislations, such as the joint finance and mining ministerial order of 16 December 2003 fixing the due duty in virtue of requests for institution and renewal of mining titles and the personal and corporate income tax code.

This framework aims at preserving the government's rights, and those of the people as it will be provided for later in article 10 of the Tunisian constitution of 2014. Furthermore, the law provides advantages to encourage and promote the mining activity. In fact, title holders and collaborating contractors and subcontractors are authorized to import certain equipment and vehicles, exempt from customs duties and all fees and taxes including value added tax, with the exception of service-related royalties.[13]

Then, the code addresses terms applicable to foreign personnel, and foreign exchange and commerce regime.

7. Administrative control and sanctions

The code bestows control and supervising authorities on the competent ministerial agents and administrative services. Its scope covers the compliance and respect of technical regulations, and ensuring personnel security and that of installations, inhabitants and buildings.[14]

They have wide access and necessary human and legal resources to conduct their missions and achieve the aspired objectives.

Upon identifying infractions, select authorized agents do note them in minutes, as indicated in the terms of the code of penal procedures. The code proceeds to specify several infractions and their corresponding sentences.

8. Conclusion

The mining code constitutes a good effort to regulate and govern an important and dynamic sector. Different mining operations are influenced by a multitude of internal and external factors that cannot be addressed entirely by legislation. Yet, the code tries to cover all elements sufficiently. Some aspects might need revision and adjustments,

[13] Article 104 of the mining code.

[14] Article 113 of the mining code.

especially in light of the new constitution and its spirit. Others can be improved, namely incentives[15] and fiscal regime.

Section 3. Hydrocarbons code

The hydrocarbons code was promulgated by law 99-93 dated 17 August 1999. It was amended and completed by law 2002-23 dated 14 February 2002; law 2004-61 dated 27 July 2004; law 2008-15 dated 18 February 2008, and law 2017-41 dated 30 May 2017.

The code replaced and abrogated earlier legal texts[16], namely law 58-36 dated 15 March 1958; decree-law 85-9 dated 14 September 1985 ratified by law 85-93 dated 22 November 1985 relating to the institution of special provisions for the exploration and production of liquid and gaseous hydrocarbons; law 87-9 dated 6 March 1987 modifying the aforementioned decree-law; and law 90-56 dated 18 June 1990 relating to the encouragement of the exploration and the production of liquid and gaseous hydrocarbons.

The law contains 6 articles, mostly focusing on transitional and final provisions. The code consists of 139 articles spread on 10 titles.

The objective of the hydrocarbons code was to review the previous legal framework regulating the activities of exploration and exploitation, characterized by the multiplicity of its sources. This is to put an end to the dispersion, ambiguity and inconsistency that marked some of the previous texts.

According to the deliberations of the Chamber of Deputies[17], the main new adjustments and contributions of the new code, in comparison to the older legislations are as follows:

- Possibility of granting a concession for electricity production.
- Protection of the environment: compulsory measures to prevent and reduce harm and damage, plus preparation of an impact study before any work.
- Create a financial reserve balance, in order to prepare for when the exploitation takes end.

[15] The current incentives were inspired from the old investment law 93-120 dated 27 December 1993. They should be revised in accordance with the new investment law 2016-71 dated 30 September 2016.

[16] Not entirely. Promulgation law 99-93 specified exemptions and transitional provisions for previously existing titles.

[17] Regular session 1998-1999, Nineth parliamentary term 1994-1999, 45th session, 29 July 1999.

- Expanding the scope of application of the special tariffs related to customs services, to include imports of equipment and materials for appreciation, development and exploitation activities (previously for prospection only).

A brief overview of some notions and articles in the code, would help shed light on a pillar of the legal framework of the extractive industry in Tunisia. The ideas were grouped as they were presented in the titles' layout of the code.

1. Definitions and general provisions

Article 1 of the first title presents the purpose and the scope of the code as "setting the legal framework applicable to the preliminary prospecting, prospecting, exploration and exploitation activities of hydrocarbons".

The second article goes to define several notions, such as hydrocarbons, granting authority, contractor, title holder and affiliated companies.

The code enumerates the different hydrocarbons titles[18], which are more than those of the mining code due to the complexity and specifications of the sector.

The entities allowed to conduct prospecting, exploration and exploitation activities are defined, as to guarantee the best conditions and national interests.

2. Prospecting activity

Prospecting activities are specified and detailed in the first and second paragraphs of article 2. They are categorized into two sets that correspond to the two types of prospecting titles.

a. Prospecting authorization

This title is granted by virtue of a ministerial decision for a maximum of one year. It can be given to many petitioners for the same zone and for an area already covered by a pre-existing prospecting or exploration permits.

Obtaining a prospecting authorization (or license) allows for carrying preliminary prospecting activities. These include any work intended for detection of hydrocarbons, by use of geological techniques other than seismic surveying or drilling.

[18] They are according to article 6 of the hydrocarbons code: prospecting authorization, prospecting permit, exploration permit and exploitation concession.

Upon expiry date, title holder must deliver a copy of all studies and collected information to the granting authority. This is a prerequisite for acquiring a prospecting or exploration permit, or obtaining interests in existing valid permits or concessions.

b. Prospecting permit

Such permit is granted by a ministerial order for two years, upon a conform opinion from the hydrocarbons consultative committee. It can be extended for a total period not exceeding 12 months. A prospecting permit cannot be granted for an area already covered by any another permit or concession.

Obtaining a prospecting permit allows for carrying prospecting activities. These include any work intended for detection of hydrocarbons, by use of geophysical and geological techniques other than drilling (except those not exceeding 300 meters deep, destined to geological and seismic coring).

Upon expiry date, title holder must deliver a copy of all studies, collected information and seismic data to the granting authority. This is a prerequisite for acquiring any other permit, or obtaining interests in existing valid permits or concessions.

A holder of a prospecting permit has the exclusive right and priority to transform his permit into an exploration permit, upon fulfilment of set obligations in the signed particular convention between the holder and the granting authority. To exercise this right, a formal request must be addressed to the authority 2 months prior to the expiry date of the permit. If no decision was made by the granting authority within this timeframe, the prosecuting permit is automatically extended until further notice, for a maximum period of 6 months.

3. Exploration of hydrocarbons

The code specifies several issues in relation with exploration permits. It presents details concerning the filing and the processing of the application, mainly the administrative modalities, the subject area and its perimeters, and the selection criteria.

Furthermore, the code states that the exploration permit is granted for an initial period of 5 years maximum, renewable with certain applicable conditions. The permit gives an exclusive right to the title holder to conduct exploration activities as stated within paragraph 3 of article 2 inside the approved perimeters. Besides, the holder is the solely capable entity to obtain exploitation concession for the same area.

The code establishes the different scenarios and details concerning the renewal of an exploration permit. Table 1 below shows a synopsis of the entire cycle with the different possibilities.

To be noted that all renewals result in a surface reduction of the initial total area. This procedure does guarantee an optimal and beneficent deal when handling national interests, in a way that it incites investors to work efficiently without restricting or obstructing other potential projects.

All renewals are contingent on preventing harm or damage to the environment. This shows a tendency towards sustainable development and the respect of the environment.

Exploration and prospecting permits are considered indivisible movable properties. They can be transferred subject to certain conditions[19].

An entire section deals with the particular convention[20], and lays out its purpose and outlining scope (terms, conditions and modalities). The convention pertains to all titles, and designates the concerned signatories depending on its nature.

The particular convention is adopted by a law. Before the 2017 amendment, it was adopted by decree. The older mechanism ensured a relative rapidity of procedures. However, the new adoption method is coherent with the provisions of article 13 of the constitution.

The adoption of a particular convention is a practice used by many countries to strengthen the negotiating stance of the government regarding investors (preferably limited to contract-specific elements that are left open to negotiation); and ensure coherence of various hydrocarbons projects in the country, thus facilitating oversight.

Also, the code sets the litigation process, and the frame for a particular convention to be used as a model (approved by decree).

[19] Article 34 of the hydrocarbons code.

[20] Articles 19 to 22 of the hydrocarbons code.

Table 1. *Exploration permit summary*

Initial period			**1st renewal period**[21]			**2nd renewal period**			**3rd renewal period**[22] (in case of discovery of a hydrocarbons field)		
Original period	1st extension[23]	2nd extension[24]	1st renewal	1st extension	2nd extension	2nd renewal	1st extension	2nd extension	3rd renewal	1st extension	2nd extension
5 years	2 years	1 year	4 years	2 years	1 year	4 years	2 years	1 year	4 years	2 years	1 year
Maximum period of 29 years											

[21] Article 23 of the hydrocarbons code.

[22] Article 28 of the hydrocarbons code.

[23] Article 30.1.b of the hydrocarbons code.

[24] Article 30.2 of the hydrocarbons code.

4. Hydrocarbons exploitation

An exploitation concession is granted for a holder of a valid exploration permit, who discovers a commercially exploitable hydrocarbons field. With certain agreed upon conditions, the Tunisian state can grant an abandoned or foreclosed concession to a technically and financially capable company. Such a privilege can also be given for a discovery not covered by any hydrocarbons titles.

The code sets numerous terms for awarding an exploitation concession. Most notably, a successful production test must be completed.

In case the discovery is not commercially exploitable on a stand-alone basis, the granting authority may authorize the joint operation with other discoveries located in one or many of the holder's permits. For the same reasons, a joint operation comprising several hydrocarbons discoveries located in permits owned by different holders, is possible.[25] These alternatives can be beneficial to the national interests. However, they can be quite complex and can create unwanted issues and problems between the holders among themselves or with regard to the granting authority.

Then, detailed and intricate provisions concerning the application for and processing of an exploitation concession are presented. These include a development plan containing several technical documents and studies, that ensure the best conditions throughout the project's life cycle.

After that, the code posits that the exploitation concession is granted by ministerial order for a maximum duration of 30 years, upon an approving notification from the relevant consultative committee.

The section concerning various provisions provides that extracted and consumable resources are considered movable properties. The same goes for the concessions. However, the latter are indivisible, and can be transferred subject to certain conditions[26]. The national enterprise[27] [28]holds a special place and plays a pivotal role in this matter.

[25] Article 42 of the hydrocarbons code.

[26] Article 55 of the hydrocarbons code.

[27] As defined in article 2.k of the hydrocarbons code.

[28] ETAP. See institutional framework for further details.

On the other hand, hydrocarbons fields are considered real estate, not subject to property law relative to registrable property.

At the expiry of the concession, the current holder is entitled to pre-emptively continue the exploitation, with the same terms and conditions.

An entire chapter is dedicated to gaseous hydrocarbons. This is due to the technical specificities surrounding the extraction of this kind of hydrocarbons, that affects the normal proceedings of the operations. The special provisions deal with the use of the gases, the sale to the national enterprise, and the local market sales.

Another chapter addresses the transportation of hydrocarbons by pipelines. The articles stress the different legislations that should be respected with regard to this activity, and the rights and obligations of involved entities.

5. Common obligations of title holders and attached rights

There are common obligations applicable to all holders of any type of hydrocarbons titles. These are centred around health, safety and protection of the environment and other natural resources (water, forests, etc.).

In fact, holders are required to carry out an environmental impact study prior to works during any phase of exploration or exploitation. Preventive, protective and corrective measures are essential, and should be planned and put to affect.

The code demands proper communication and coordination with the competent relevant authorities. These efforts ensure the good and smooth progress of operations under the best circumstances.

On another level, a holder is required to provide quarterly reports and an annual report concerning the activities and the expenditures incurred, to the granting authority.

At last, legislators compel holders of expired titles to undergo restorations of the sites, as to prevent any short- or long-term damage to the surrounding environment, resources or people. An abandonment plan is to be put in place for this purpose.

As a side remark, the relevant section in the code[29] should have been included in a separate or different title, as not to induce the reader into error. That would guarantee a better readability and utility of the legal document.

[29] Title 4. Chapter 2 of the hydrocarbons code.

The rights mentioned[30] within the code focus on land use and occupation. The articles regulate the permissible activities regarding private lands, the relations between title holders and land owners, and the legalities of procedures.

6. Special regime of the national enterprise participation

Every applicant for a hydrocarbons permit must include in his application, an option for the national enterprise (N.E.) to participate in all exploitation concessions.[31]

There are two different regimes within context, namely the participation regime (partnership or joint-venture contract), and the production sharing contract. The main differences are summarized in table 2.

Table 2. *National enterprise participation*

Participation regime		**Production sharing contract**
Mandatory participation of N.E. in all permits, by a percentage share defined in the particular convention	**Granting method**	Contract between N.E. and an investor (exclusive contractor, one or a group of companies), pre-approved by the granting authority
Title holder(s), partner(s) of the N.E., solely responsible for risks and expenditures[32] [33]	**Commitments**	The contractor finances at his own risk all of the activities on behalf of the N.E.
Activable option to participate by a discretionary percentage share, not	**Exploitation concession**	N.E acts as the title holder. In case of production, the contractor receives a defined percentage of extracted resources to cover their

[30] Title 5 of the hydrocarbons code.

[31] Article 91 of the hydrocarbons code.

[32] The N.E. can choose to contribute to the budgets of prospecting and exploration activities, upon approval of the granting authority. Article 92 of the hydrocarbons code.

[33] Except for specific (Article 96.2. of the hydrocarbons code) unamortised expenses at the date of notification of participation of the N.E. These are paid back by the latter entity. Article 96.1 of the hydrocarbons code.

exceeding a set maximum in the convention[34]		expenditures (cost oil). In addition, the contractor receives a share of the remaining production, as a reward (profit oil)

7. Fiscal regulation

First, the code lays out the fiscal regime pertaining to the holder. The different common law taxes, duties and levies are enumerated; followed by those specific to hydrocarbons. The latter are applicable to the different types of titles. However, most of the provisions practically focus on the exploitation concessions.

Then, several articles address the issue of determining the profits subject to taxes, and the relevant measures.

In addition, other provisions deal specifically with the fiscal regime regarding production sharing contracts. The articles exhibit the rights and obligations of both involved parties.

Subsequently, different sections present imports and exports special regime, constitution of the allowance for the restoration of exploitation sites, provisions applicable to expatriates, and litigations.

Moreover, an entire chapter is dedicated to the exchange and foreign trade regulations. It defines the residency status of title holders and contractors, and their rights and obligations with regard to this matter.

8. Administrative control and sanctions

The code bestows control and supervising authorities on the competent agents and administrative services. In relation with prospecting, exploration and exploitation activities, the scope of the control covers the compliance and respect of technical regulations, and ensuring personnel security and that of installations, inhabitants and buildings.

They have wide access and necessary human and legal resources to conduct their missions, enforce particular measures, and achieve the aspired objectives.

[34] Within a deadline of 6 months since the application for a concession title, or since any other agreed upon date. Article 94.2 of the hydrocarbons code.

Upon identifying infractions, select authorized agents note them in minutes, as indicated in the terms of the code of penal procedures. Courts are empowered to look into infractions. The code proceeds to specify several infractions and their corresponding sentences.

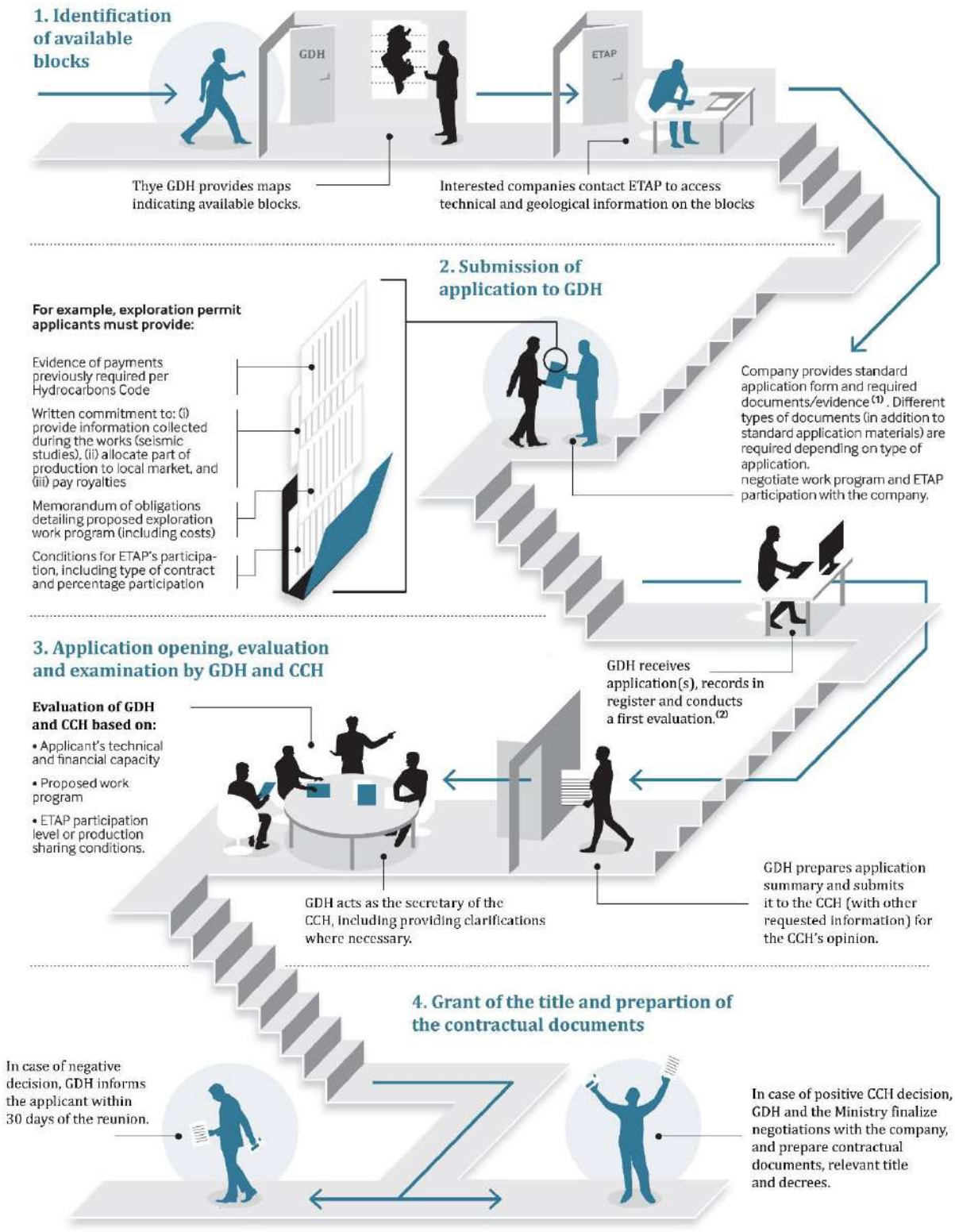
9. Conclusion

The legal framework governing hydrocarbons comprises several implementing texts. These include the following:

- Decree 2000-946 dated 2 May 2000, fixing the geographical coordinates and the reference numbers of the summits of the elementary perimeters constituting the hydrocarbons titles.
- Decree 2000-1322 dated 13 June 2000, fixing the methods of calculation and use of "R" related to the determination of the rates of the royalty proportional to the production of hydrocarbons and of the tax on profits.
- Decree 2001-1842 dated 1 August 2001, approving the standard particular convention related to exploration and exploitation of hydrocarbon deposits.
- Ministerial order dated 15 February 2001 fixing the modalities of filing for hydrocarbons titles.

An indicative Figure 2 presents a brief summary of the hydrocarbons contracting process in Tunisia, as laid out in this chapter.

Figure 2. *Hydrocarbons contracting process in Tunisia (modified, NRGI, 2016)*



(1) For example, bylaws, financial statements and annual report of activities.

(2) Evaluation generally includes verification of deadlines, required documents and applicant's technical/financial capacity. Capacity evaluation is particularly for when more than one offer is received for a block, apparently occuring very infrequently.

* * * * *

In this chapter, the legal frameworks governing oil and gas and mining sectors were presented. The rules, rights and obligations of different stakeholders are set out in a legal document system. Documents include the constitution, laws, policies, regulations and contracts.

Tunisia adopts a system of allocation of titles called “first come first served”, which relies on the priority of requests. However, the general legal frameworks are quite complex.

Legal documents which cover abstract concepts, such as constitutions, are usually harder to modify. More specific documents, such as laws and contracts, can be easier to amend. Laws and regulations should have more authority than a contract. Nonetheless, contracts may also be written down to directly circumvent the laws and regulations.

It is important to avoid reliance on complex contracts that would limit the development of sector strategies whenever needed. This is because of stabilization clauses included in the contracts, and set by the codes in their transitional provisions. They indicate that future legislation passed after the date of signature of a contract, has no effect regarding the implementation of the relevant project.

Chapter 2: Institutional and organizational frameworks

The legal framework is only as effective as the ability to enforce it effectively. A good governance of the sector goes through a better governance of the involved stakeholders. In this chapter, the institutional and organizational framework of the extractives sector in Tunisia is presented. The role of the Parliament in light of article 13 is presented first, followed by the competent ministry in charge, with a specific focus on the consultative committees. The state-owned enterprises play an important sectorial role, and focus on building necessary capacities for the benefit of the government. Therefore, they will be extensively presented. Finally, the main international initiatives and civil society are introduced, as they are crucial to the whole governance platform.

Section 1. Parliament

By adopting a new constitution in 2014, Tunisia became one of the countries to provide for parliamentary approval of investment contracts and agreements in Article 13, in order to ensure more transparency and responsibility. A competent permanent committee is tasked with reviewing relevant proposals and subjects. It is the committee on industry, energy, natural resources, infrastructure and the environment. Currently, it is composed of 20 members.

It is important to note that Parliament can use the traditional legislative and oversight powers to address concerns regarding governance. This may include legislating to increase the transparency and examination of the entire process, or using investigative and regulatory powers where applicable.

Contract approval can promote openness and stakeholders' engagement by having public hearings and relaying the deputies' findings and analyses to the people. Besides, parliamentary approval can serve as a motive for government to seek better contractual terms.

In Tunisia, parliamentary review and approval come at the end of the process, when contractual terms have been set. Moreover, the approval requires a simple confirmation or

rejection vote on the whole agreement, with minor impact on changing the terms of the contract.

The country's intricate hydrocarbons and mining contracting processes are exhibitive of the difficulties that Parliament may face in fulfilling its role under article 13. In fact, when considering parliamentary approval, the challenges of conducting adequate review while not being an expert in the subject, not being involved in the negotiation process, and depending on information provided by others, are quite relevant. Another challenge is the exercise of article 13 in a way that reduces any possible negative outcomes, like causing deviation from current laws, or curtailing efficient investments.

1. Global experiences

Despite the different experiences, reviewing the challenges of other countries regarding parliamentary approval of contracts can be useful to Tunisia's present challenges.

Per Figure 3, parliamentary[35] approval of contracts is an uncommon old practice that has been embraced in widely different contexts. According to NRGI (2016), some countries have initiated the practice following major political changes, such as post-colonial independence in the case of Kuwait or following democratic transitions in the case of Mongolia.

Figure 3. *Parliamentary approval of contracts in select countries[36] (NRGI, 2016)*

[35] "Parliament" is used as a generic term for the legislative body in different countries.

[36] Of the countries studied, the following did not have parliamentary approval: Australia, Brazil, Cambodia, Canada, Chad, Chile, East Timor, Indonesia, Iraq, Kazakhstan, Malaysia, Mexico, Mozambique, Niger, Nigeria, Norway, Peru, South Africa, Tanzania, Uganda, Ukraine and the United States.

For example, in Azerbaijan, Parliament has the power to ratify or veto international agreements, including extractive industry contracts. Upon approval, they become Azeri law[37]. In Liberia, Parliament has the power to approve investment contracts after negotiation and signature[38]. However, while a country may have such measure on paper, it may not be regularly applied in practice.

Various factors have led to the adoption of parliamentary approval of contracts, including investor assurance as to the validity of their contracts, and parliaments enacting checks and balances to counter the dominance of the executive branch. Main takeaways from practices of parliamentary approval of contracts in some countries, are as follows:

- Encouraging public debate and transparency: through hearings, media coverage, etc.
- Leverage in negotiations: getting better contractual terms that would pass Parliament.
- Overly politicized process.[39]
- Parliamentary oversight doesn't necessarily result in transparency.[40]

Beyond contract approvals, parliaments can contribute to the extractives sector using their standard powers. For instance, law-making is a way to shape the sectorial environment in a country. Parliaments can regulate and protect the national interests.

Furthermore, parliaments can exercise an oversight authority, by receiving reports on different involved governmental entities. According to NRGI (2016), Norwegian Parliament receives reports from the auditor general. The latter audits all ministries, and reports to the Parliament every three to five years, on how well the Ministry of Petroleum and Energy is

[37] Check https://permanent.access.gpo.gov/lps3997/9902subs.htm ;

and https://www2.deloitte.com/az/en/pages/tax/articles/azerbaijan-oil-and-gas-taxation-guide.html (last visited 11 May 2020).

[38] Liberia's Constitution of 1986, Article 34 (f).

[39] According to Zorigt Dashdorj, former Minister of Mineral Resources and Energy of Mongolia: "Parliamentary approvals proved to be politically extremely difficult. The Parliament managed to hear and make decisions on government equity in only four such projects during the last nine years since the approval of the law. All of them proved to polarize the politics, encourage populist politicians, and radicalize public opinion on mining and economic development in general".

[40] For example, according to NRGI (2016), in Bolivia "the requirement of parliamentary approval gives the Bolivian assembly considerable power. However, the hearings about contracts are not public, and nor are the contracts published in the law approving them."

achieving its targets, working within its budget, using its budget effectively, and on its general performance.

Similarly, oversight powers manifest through parliamentary investigations and inquiries.

2. Tunisian Assembly of the Representatives of the People

Parliament plays a role in granting and renewing mining and hydrocarbons permits and concessions, even those under previous legal texts. The existing contracting processes described in Chapter 1 have direct impacts for implementing article 13 of the constitution. These include likely challenges and opportunities for Tunisia, to use the provisions to address some shortcomings of the current system.

The system's complexity is suggestive of the challenges that Parliament can face in the fulfilment of its duties. As is the case, Parliament intervenes at or near the end of the contracting process. This means that contractual decisions should already have been made, including the executive branch's green light to the contract.

An added challenge for the legislators, is understanding the highly technical and legal aspects of the whole processes. They need to have a sufficient understanding of the system and the underlying legal requirements while not being experts or specialists. At the moment, the competent committee in the ARP, holds hearings for external renowned experts, professors and civil society activists whenever needed.

A broader solution for this lack of expertise in highly important detailed subjects might be to vest the nascent Centre of Resources and Parliamentary Consultations with this task, as it is staffed with experts having various profiles, and its mission is to assist deputies by undertaking studies for them. This would be close to the German experience.

Another practice that may constitute a serious challenge, is the use of legislative approval by law resulting in deviation from other applicable legal requirements.[41] For instance, legislative approval has been used to justify exceptional renewals of concessions or permits[42], creating risky precedents. The legal rationale in such situations, is based on the

[41] In fact, the coherence of the conceptual legal framework in general is very important. It helps in implementing a consistent sectorial strategy, simplifying negotiations, effectively enforcing rules, and in monitoring and oversight.

[42] For example, law 2019-59 approving appendix 3 revision to the agreement and its annexes for the hydrocarbons exploration permit known as “Borj El Khadra”; and the withstanding law draft 2020-16

premise that, for the purposes of one project, a renewal enacted by law may deviate from an existing law because it constitutes an amendment to that law (mining or hydrocarbons codes).

An important observation emanates from the aforementioned "Borj El Khadra" exploration permit. Its relevant law was adopted on 9 July 2019, whereas the draft was submitted to the committee in mid-2017. It is understandable that some projects require special attention and thorough research. However, parliamentary approval of contracts can become an impediment to investments, due to time delays that may be involved.

In order to foster ARP role and involvement in the extractives sector, parliamentary work should focus on certain axes:

- Improve transparency and promote access to information.[43] This can be achieved through publication of contracts and agreements for example.
- Balance thorough review of contracts before approval, with the necessity for efficiency and rapidity as not to hinder investment.
- Build clear and concise platform and requirements for interacting with the government and different stakeholders (a set of documents to be submitted in a certain format for example), and establish appropriate guidelines. These may include manuals of operational procedures.

All in all, parliament plays a key role in implementing article 13 of the constitution and all applicable laws and principles. It safeguards the national interests in the extractives sector by increasing benefits and reducing and overcoming challenges.

Section 2. Ministerial bodies

Currently, the ministry responsible for mines and hydrocarbons is called Ministry of energy, mines and energy transition. Its name and mere existence change from a government to another, as it is sometimes fused under the Ministry of industry.

Furthermore, the general directorate of energy mentioned in some articles of the hydrocarbons code and its application texts, does no longer exist within the organizational

approving appendix 5 revision to the agreement and its annexes for the hydrocarbons exploration permit known as "Zarat".

[43] Especially in light of article 15 and article 32 of the constitution, and law 2016-22 dated 24 March 2016 relative to access to information.

chart of the ministry. Decree 2016-858 dated 15 June 2016 organizing the Ministry of energy and mines, dissolved this general directorate, and created three others. The general directorate in charge of receiving and evaluating applications, and granting hydrocarbons titles is called general directorate of hydrocarbons (GDH). The other relevant general directorate within the ministry is that of mines (GDM).

The aforesaid decree and decree 2016-294 dated 9 March 2016 creating Ministry of energy and mines, present the organisational structure of the ministry and its missions and activities.

Moreover, mining and hydrocarbons codes specify distinctive consultative committees. They are presented hereafter.

1. Consultative committee on mines

The consultative committee on mines (CCM) was created by virtue of article 12 of the mining code. Its composition and operating procedures were fixed by decree 2003-1726 dated 11 August 2003 fixing composition and functioning of the CCM.

The CCM is a committee chaired by a judge. It is composed of the director general of mines (or a substituting representative), and of representatives from GDH, the presidency of the government, the Ministries of national defence and environment. It comprises representatives from state owned enterprises (CPG and ONM), along with a university professor representing the Faculty of Sciences of Tunis. The secretariat of the committee is assured by the GDM.

Under the provisions of the mining code, the CCM must approve issuances, renewals and transfers of different mining titles. Besides, CCM examines other issues whenever needed and required by the minister responsible for mines.

2. Consultative committee on hydrocarbons

The consultative committee on hydrocarbons (CCH) was created by virtue of article 8 of the hydrocarbons code. Its composition and operating procedures were fixed by decree 2000-713 dated 5 April 2000 fixing composition and functioning of the CCH, as amended by decree 2013-1514 dated 6 May 2013.

The CCH is an inter-ministerial committee chaired by the minister responsible for energy (or his substitute), and composed of representatives from the presidency of the government, the Ministries of interior, national defence, finance, state property and land affairs, industry

(from the general directorate of mines in particular), and a representative of the Central Bank of Tunisia. The secretariat of the committee is assured by the GDH.

Under the provisions of the hydrocarbons code, the CCH must approve granting, renewals, extensions, transfers, abandonments or annulments of the different hydrocarbon permits and concessions. In reality, CCH examines other issues whenever needed and required by the minister responsible for hydrocarbons.

When reviewing submitted matters and documents, committee members experience similar difficulties as those encountered by parliamentarians. Likewise, they are generally not hydrocarbons specialists (except the chair and the representative of the GDM), are not involved throughout the process, and depend on information and agenda provided by GDH.

The CCH might serve as a valuable check on the procedures. The diversity of governmental representatives can give a meaningful and wide perspective to different points and dossiers addressed. Therefore, they could ask insightful questions, and shed lights on darker spots. However, they remain dependent on information and analyses provided by the GDH. Besides, they do not seem to have inducing or prompting capacity, to work without a request from the minister.

If a positive CCH decision is taken, the CCH does not engage in the negotiation, elaboration or approval process of the contractual documents. Production sharing contracts and partnership contracts are approved exclusively by the relevant Ministry, and are not subject to the opinion or the approval of the CCH. At this point, the GDH and ETAP carry out the work, and members of the CCH do not have access to the documents even after their signature.

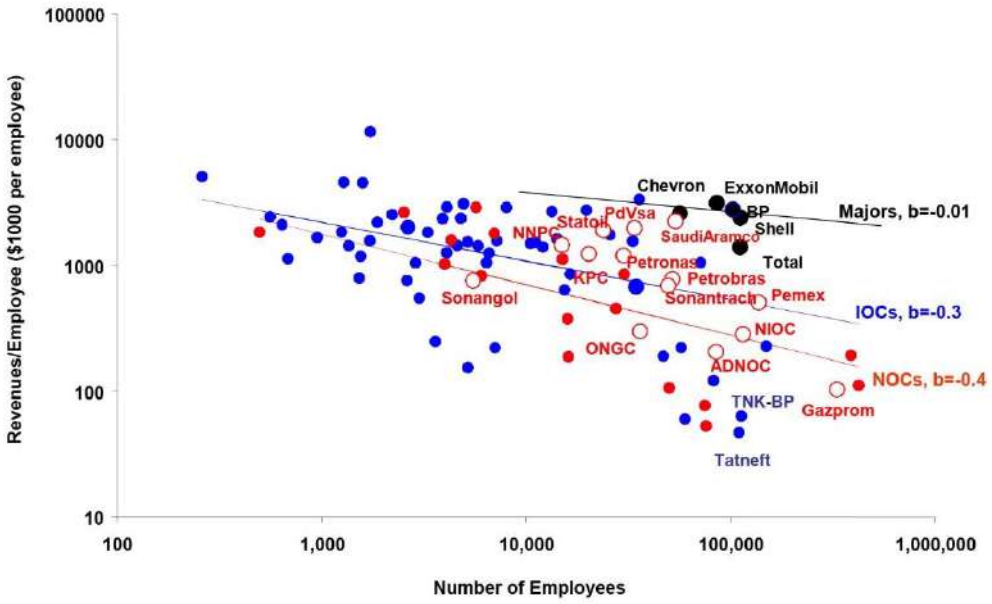
Section 3. State owned enterprises

State-owned petroleum or mining enterprises (SOEs) often play a pivotal role in sector governance. Additionally, SOEs can generate significant revenues for the state, enable a government to react and regulate the sector promptly, help improve annex businesses and develop technical and intellectual skills.

They can also be a source of inefficient project development and suboptimal revenue collection. Per figure 4, on average in the oil sector, SOEs earn only about half as much per employee as private companies.

Furthermore, governments rely on SOEs to provide a variety of services, from infrastructure development to social services, which fall beyond their main business and would usually be associated with other public entities, although this may be part of the societal responsibility of the enterprise. In fact, their missions can include a combination of contradictory goals.

Figure 4. *Revenue per employee versus Number of employees (2004)*[44]



However, generally, SOEs tend to operate with limited oversight and accountability, especially considering their institutional status and the need for some autonomy and flexibility[45].

According to Andrew Bauer reporting for EITI (2018), among OECD countries, oil, gas and mining enterprises had the highest rates of corruption and irregular practices among SOEs from 2015 to 2018.

Top performers in governance terms such as Statoil (Norway) and Pemex (Mexico) share a number of practices that enhance SOE accountability: legal requirements to publish

[44] SOEs in red, major oil companies in black and international oil companies in blue. (Nadejda, V., 2007).

[45] State-Owned Companies, https://resourcegovernance.org/resource-governance-index/report/state-owned-companies (last visited 15 May 2020)

reports, disclosure[46] of production and revenues audits and data, compliance with international accounting standards, and the inclusion of SOE financial information in the state budget.[45]

An important observation worth noting concerning the top performers, is their mixed capital ownership (a percentage is held by private shareholders). Some of them are even listed on international stock exchanges, which enhance transparency and accountability by requiring publication of financial statements and relevant documents. On the other hand, SOEs which are fully owned by the state tend to score averagely on governance grounds.

According to Heller, P. (2019), a major contributor to the governance challenges around SOEs in the extractives sector, is a lack of transparency and rigorous benchmarking.

The 2017 Resource Governance Index showed that only a few of the 74 oil and mining SOEs researched exhibited a good (9 SOEs) or satisfactory (17 SOEs) score on transparency and governance practices.

For the Tunisian SOEs playing a pivotal role in the extractive industry[47], ETAP scored 66 in 17th position among assessed SOEs, whereas CPG got a low score of 35 for the 55th position.

1. Gafsa Phosphates Company

The Compagnie des Phosphates de Gafsa (CPG), created in 1897, is a SOE in the form of an anonymous company (S.A.), placed under the authority of the Ministry responsible for mines. Its share capital is estimated at 268 MTD, and the Tunisian state owns 99.92% of it.

In Tunisia, the phosphate industry is mainly held by CPG for phosphate extraction and enrichment phases, and by the Tunisian Chemical Group (GCT) for the transformation and enhancement of most of the production (into phosphoric acid and mineral fertilizers).

The activities of the CPG consist mainly of:

- Geological prospecting,
- Exploitation of phosphate reserves,

[46] See annex 1 for overview of recommended SOE disclosures from "Guide to Extractive Sector State-Owned Enterprise Disclosures" (NRGI, 2018). The guide draws on the examples of well-governed SOEs and serves as a starting point for developing company-specific reporting systems.

[47] The focus throughout the report as well as in this section, is on upstream related entities and activities.

- Enrichment of extracted ore to obtain a marketable quality,
- Marketing of the produced phosphate.

In 2010, Tunisia was the 5th largest producer of phosphate with 4.2% of global production. Since then, the country lost its production share in favour of other producers to rank 12th in 2019, with a market share of 1.25%. Likewise, share of exports of phosphates and derivatives from total national exports fell from 11.24% in 2010, to around 4.6% in 2019, due to the reduced production and loss of global markets.

The current difficulties experienced by CPG are not solely inherent to the national context. In fact, they are intensified by fierce competition on the global market, following the emergence of new big actors such as Saudi Arabia, and activity developments and extensions in other close competitors like Morocco.

On the whole, CPG plays a centrepiece role, and manages a crucial and delicate part of the socioeconomic components of its regional and national contexts. The status quo requires a strengthening of the enterprise's accountability and compliance with practices of good governance.

a. Current governance system of CPG

CPG has undergone several structural and organizational changes throughout its history. Some of them were bound to cause dysfunctions especially as they were carried under social pressures and a centralized executive management system.

- Transparency

The company displays an obvious lack of transparency. For instance, comprehensive financial information and contracts are not disclosed on the company's website[48], and very general activity information is published. Furthermore, these statistical data are scarcely divulged and updated, and the last existing annual report is of 2015. Besides, financial statements, expenditures and budgets are kept secret despite their importance to the public.

- Control and audit

GDM plays a certain oversight role over CPG. It has an inspection capacity on some pre-set activities, and oversees execution of investment and production programs and plans.

[48] In May 2020, Ministry of finance published a report about SOEs, that provided better insights about key financial information of CPG and other SOEs.

On another level, the Court of Audit can control the veracity of the accounts and the management of CPG. It notes the irregularities observed during its examinations and drafts a detailed report. In its 28th report, the Court of Audit issued a review on the Reconversion and Development Fund for Mining Centres (FRDCM), affiliated to CPG, raising several shortcomings in terms of management and governance.

Besides, CPG is subject to the reporting of a state controller, and year-round control missions from horizontal control entities and authorities.

In terms of internal audit, CPG has an internal audit directorate attached to the Chairman and general director. The structure prepares a biannual report transmitted to the Board of Directors and the relevant ministerial authority.

As for external financial audit, CPG is subjected to review by two Statutory Auditors. Their work on the accounts of the company allows for accountability to the government.

In general, audits should enable company executives to identify areas for improvement. They allow the government to examine the company performance, and its management of public revenues. An audit can create incentives for efficiency, because the company management knows that the activities and performances are going to be scrutinized.

- Administrative structure

CPG adopts a classic organizational chart, with a Chairman assuring the functions of a CEO as well, who is at the head of a Board of Directors made up of 12 other members. The appointment of the CEOs is made without declared criteria, and their remuneration is not disclosed. Furthermore, the board members are essentially representatives of governmental and public entities, and are sometimes appointed with no regard to their experiences or skills in the sector.

To be noted that CPG does not have a governance unit within its organizational chart.

As for the human resources, the number of employees is estimated at 6098 in 2018, registering a 3.5% decline compared to 2017, due to retirements. However, the total remuneration in 2018 is around 236.6 MTD with a 2.2% increase from the previous year. That can be explained by promotions and global salary increases.

These figures constitute a strain and a burden on the financial health of the company. Besides, the situation causes a managerial challenge, especially with the decrease of the rate

of supervision[49], and the pressures that lead to the forced recruitment of mostly unqualified workers.

- Corporate affiliates

CPG participates in the capital of many enterprises and the amount of these participations reached 175.2 million dinars in 2015. The subsidiaries provide services such as transport of phosphates and environmental development. However, terms and relationships between the entities are not clear, and the responsibilities are not defined or specified in accessible documents.

The purposes for the creation of these subsidiaries seem to be a response to social and political pressures. The results and utility of these entities are quite questionable and should be revised.

b. Improving the system

Based on the previous observations and facts, certain measures must be taken in order to avoid a more dire situation, in which CPG becomes an inefficient manager of national resources and drains on public funds.

These recommendations (table 3) to improve the governance of CPG, are inspired by the report on reforming national oil companies by NRGI (2014). They are developed and explained within the specific context of the company.

[49] The rate of supervision (taux d'encadrement) was around 15.4% in 2010, and was around 9.1% in 2015.

Table 3. *Recommendations for the governance of CPG*

	Recommendations[50]	**Measures**
Defining a financing and commercial mandate	Carefully define commercial and non-commercial roles	- Adopt contract programs and performance improvement contracts[51] between CPG and its subsidiaries on the one hand, and the state on the other hand, and evaluate the performance accordingly[52]. - Opt for social solidarity economy and corporate social responsibility as governing principles to rationalize the roles of CPG.
	Develop a workable revenue retention model	- Slowly divest from risky non-commercial and all low yielding activities. - Improve governance of subsidiaries. - Create risk management and governance units. - Diversify the portfolio of participations - Seek strategic partnerships to incorporate a vertical integration of activities[53], and grasp control of the entire main activity and supply chain.

[50] As they appeared on the said report.

[51] Pilot tests were launched with 4 SOEs, and the report published by the Ministry of finances in May 2020, outlined the different findings. The experience is expected to be generalised.

[52] Analysing SOE performance is complicated by its multiple missions. A good starting step is to determine whether the SOE has achieved the government's defined goals. International benchmarks can help. Public officials should measure their SOEs' output to that of private companies to determine whether the country gets good value for money from their SOEs.

[53] Review and re-evaluate the structure and relationship dynamics between CPG and GCT (Groupe chimique Tunisien).

	Procure external financing by listing some shares on public stock exchanges[54] or issuing external debt where appropriate	- Conduct an initial public offering of a small portion of the capital in the BVMT, or attract strategic global investors while keeping staggering majority in both cases. - Avoid further indebtedness, except for investment purposes.
Limiting political interference in technical decisions[55]	Define clear structures and roles for state shareholders	- Limit the number of different representatives of the government to promote coherent and balanced management. - Appoint certain representatives to specific tasks by default (Ministry of finance to risk management for example).
	Empower professional, independent boards[56]	- Make appointments according to well-defined, meritocratic processes, and emphasize technical expertise. - Reduce the number of members for efficiency, or include one or two external qualified independent members. - Reserve seats to high-level managers from within the company (to provide better internal perspectives).

[54] It can be a source of cash infusion and force corporate governance improvements. This has been associated with major success of companies including Norway's Statoil and Columbia's Ecopetrol.

[55] Without undermining the role of the board of directors, consider appointing the CEO for a renewable fixed term (for example, 6 years, extensible upon performance review) exceeding one governmental and legislative term mandate (5 years), in order to give more leeway to the CEO and avoid political favouritism.

[56] Decree 2020-314 dated 19 May 2020 fixing modalities of appointment, evaluation and exemption of administrators representing public shareholders and independent shareholders, tried to address these issues and adopt corresponding measures.

		- Include local governments and the main labour union in the upper management of the company.
	Invest in staff integrity and capacity	- Adopt strong employee accountability provisions, and a code of conduct. - Promote merit-based promotions. - Encourage learning and trading throughout the company. - Distribute and manage employees dynamically. - Strategically and pre-emptively retrain existing employees to avoid overhead expenses or delays.
Ensuring transparency and oversight	Maximize public reporting of key data	- Periodically and consistently[57] disclose revenues, costs, revenue flows, production, plans, results and quasi-fiscal activities. - Share different contracts and mining titles where appropriate.
	Secure and publish independent financial audits	- Commission audits by skilled independent professionals, and make results available to citizens regularly.
	Choose an effective level of legislative oversight	- Ensure responsibility of CPG and its officials to answer to the legislature.

[57] « Open Data » platform launched by the Ministry of Industry isn't regularly updated, or appropriately maintained. To avoid hype induced efforts and reactions to governance initiatives, certain measures can be taken. These include the creation of a centralised national unit that collects and publishes the data, and that has an unlimited access authority and clearances. Another measure can be the amendment of regulatory and applicable legal texts (preferably laws for higher authority) of each structure to instruct the periodic and consistent automatic publication of data (Law 2016-22 relative to access to information doesn't seem to have the necessary provisions to be enforceable and applicable, and might contain loopholes and weaknesses).

		- Conduct periodic hearings and inspections by the parliamentarians. - Consider the possibility to appoint the government proposed CEO after a confirmation hearing by the ARP.[58]

Conducting the recommended measures would require radical legal and institutional reforms. A rigorous and straightforward analysis of the strengths and weaknesses of the company, within the company and by the state, is critical to the creation of a tailored and realistic reform agenda.

However, the focus should be on the mid and long-term viability of the company, while addressing the different socioeconomic challenges and navigating through those obstacles in accordance with the principles of good governance.

2. Tunisian Enterprise of Petroleum Activities

The Entreprise Tunisienne d'Activités Pétrolières (ETAP) was created by law 72-22 dated 10 March 1972, in order to actively and directly participate in all operations related to hydrocarbons. It is a public enterprise having a non-administrative nature. It is placed under the supervision of the Ministry responsible for hydrocarbons.

ETAP has commercial, operational, regulatory[59], administrative and development mandates. The main missions of ETAP revolve around management of the exploration and production of hydrocarbons on behalf of the Tunisian State. The main activities of the company are:

- Renewal of national hydrocarbons reserves;
- Promotion of hydrocarbons exploration in Tunisia;
- Managing exploitation concessions, in which ETAP is a partner, and promoting the development of marginal deposits;

[58] Such a measure is used in the United States for several executive appointees among others (Judicial, cabinet, etc.). It allows for a proper evaluation and vetting of the candidate for a very important position. As the Tunisian democracy matures, this measure should be generalised for top SOEs positions and constitutional court candidates.

[59] The regulatory mandate is shared with other entities mentioned in this report.

- Carrying out technical and economic studies of projects relating to petroleum and oil-related activities;
- Conducting services in the fields of seismic processing and simulations of deposits;
- Development of international activities (exploration and production);
- Training and human resources development in the sector.

Although Tunisia is not considered to be a major oil producer, oil revenues have always been an important and continuing source of wealth for the nation. In 2018, ETAP revenues reached 1646 MTD compared to 1226 MTD in 2017 (25.5% increase). This variation comes essentially from the marketing of hydrocarbons, with an increase of 263 MTD on crude oil, 152 MTD on natural gas and 5 MTD on LPG. Concordantly, the result for the 2018 financial year increased by 186 MTD (from 111 MTD in 2017 to 297 MTD in 2018)[60].

a. Current system of ETAP

In general, oil companies operate in a highly competitive international environment which challenges their profitability and competitiveness objectives. Therefore, the priorities for ETAP would be to optimize the management of the country's natural wealth in order to maximize generated income and make profits through its various activities.

Good governance of the petroleum sector and ETAP, inevitably requires effective management and control bodies, good reporting and information policy, good auditing practices and an obligation of accountability.

- Transparency

Regular publication of information and improved reporting are undoubtedly the prerequisites for good governance.

Although the process for granting permits is established by law, little information is actually available on the terms and conditions for the granting of permits by the competent authorities. In addition, ETAP publishes information relating to the identity of the holders of the titles and the participation rate without further details on, among other things, the conditions for awarding contracts, the follow-up to negotiations, the value of investments or environmental impact studies.

[60] Annual report, ETAP, 2018.

In addition, following pressure from civil society, the ministry responsible for hydrocarbons published the list of all exploitation concessions and their statuses[61], as well as the volume of their productions[62]. However, this information can be complemented by presenting figures on the cost of investments and on the revenues benefiting private companies and the State, for each permit.

As for the disclosure of financial information[63], ETAP does indeed publish its financial activities as part of the annual report, that contains an analysis of the evolution of different products and expenses. It also includes the balance sheet and the income statement. The general audit report providing the opinion of the statutory auditors on the regularity and fair presentation of the accounts is also provided.

Relevant financial information that should also be published include the generated revenues from the affiliates, detailed investment expenses and transfers with the government.

As for details about the technical activities, ETAP publishes information about exploration, production and development.

- Control and audit

ETAP has several structures to ensure the activities of control and audit. In fact, the company has a Hydrocarbons Procurement Commission, made up of representatives of the ministry in charge of hydrocarbons and representatives of the government. The commission assists the commercial directorate by examining and approving hydrocarbon procurements on the international market, in accordance with public procurement regulations.

In addition, a governance cell was created in accordance with the directives of the decree 2016-1158 dated 12 August 2016. It is attached to the CEO, reports to the presidency of the government and the central cell at the level of the competent ministry. Its main roles are achieving governance and anticorruption objectives, and reporting to relevant bodies about

[61] Concessions d'exploitation d'hydrocarbures En Tunisie, http://catalog.industrie.gov.tn/dataset/concessions-d-exploitation-d-hydrocarbures-en-tunisie (last visited 22 April 2020)

[62] In a monthly report called "Conjoncture énergétique", published by the National Observatory of Energy and Mines.

[63] Prime minister's circular 17, dated 18 May 2020 mandating the publication of financial statements, statutory auditors reports and performance reports in public establishments and enterprises. The circular sets the publication modalities and different instructions concerning the procedures. The circular is good effort towards transparency and accountability in SOEs.

corruption issues. Its main tasks are to help adopt a transparent system and to establish good governance practices. The unit has met several times since its creation.

Besides, there exists an operations committee that plays the role of a board of directors in the management of each concession. It is made up of representatives from ETAP and representatives of partners and operators. It meets biannually, just after the meetings of the technical committee in order to draft and approve the technical and managerial resolutions taken by said committee, while ensuring the regularity and effectiveness of its resolutions.

As is the case for CPG, ETAP is subject to supervisory control and audits from GDH, court of audits, the reporting of a state controller, and year-round control missions from horizontal ministerial control entities and authorities.

In terms of internal audit, ETAP has an internal audit directorate attached to the CEO. The structure prepares a biannual report transmitted to the Board of Directors and the relevant ministerial authority.

Moreover, a concession audit is conducted by a sub-directorate within the management control directorate at ETAP. It is responsible for auditing the accounts of concessions in which ETAP is a partner. The auditing right is given by the binding contract between the joint holders to the operator. The audit of concessions concerns expenditures relative to exploration, development or investment and operating. The audit practices involve verifying the veracity, accuracy and justifications of the expenses, based on accounting documents and on technical reports. Reports on concession audit are not made public.

As for external financial audit, ETAP is subjected to review by a Statutory Auditor. His work on the accounts of the company allows for accountability to the government.

- Administrative structure

In 2018, the total workforce of ETAP was 802 employees, against 812 employees in 2017, and 700 in 2016. This decrease in the workforce is due to retirement. In 2018, the distribution of the workforce by category knew a slight change compared to that of the previous year. Executives composed 69% (68% in 2017) of total employees, supervisors were 16% (17% in 2017), and workers 15%.

ETAP is administered by a board of directors chaired by a President ensuring the function of CEO as well. It is currently composed of 8 members, mostly representing governmental or public entities, with just one non-governmental expert member. The board doesn’t contain

representatives from local entities. However, such a measure is justified considering there is not just one particular local entity (municipality, governorate, etc.) englobing all the activities of ETAP.

The attributions of the board are mainly following-up and approval of tactical operations, approval of budgets and credits, and examination of the monthly dashboard. Annually, the board approves the company's accounts, allocates the achieved results and examines the recommendations of the independent external auditor. The Board is called upon not to limit its roles to control and approval, but to become more involved in decision-making and setting the general orientations and strategic plans of ETAP.

- Affiliates

ETAP has interests in hydrocarbons titles and elsewhere. As mentioned in chapter 1, any applicant for a hydrocarbons exploration permit in Tunisia must include an option for ETAP to participate in any exploitation concession. Furthermore, ETAP has a participations portfolio in other sectors, such as the banking sector. The annual report provides information on the subsidiaries, the share rate and the participation value. As for concessions, the same information is also published in JORT, as part of the publication of the Decree approving the relevant particular convention, and the decree establishing and granting the permit. Annex 2 provides details about ETAP's participations portfolio for the year 2018.

b. Improving the system

Based on the previous observations and details, certain measures can be taken in order to improve the situation even further. These reflections can serve as a basis for reforms of the petroleum sector as well.

As most recommendations presented for CPG are applicable to ETAP on different levels, hereafter a focus on some other specifics.

- Rethink the model

ETAP is placed under the supervision of the executive branch and operates in a constrained legal and institutional framework, which is sometimes unsuitable for the nature of the activities and the investment requirements. This can affect the negotiating stance of ETAP via-à-vis its partners in the private sector. Besides, as a shareholder, the government is exercising much control, and interferes with the work of the board of directors. Therefore, it becomes imperative to give more leeway for better dynamic management.

Furthermore, an evolution of prerogatives of ETAP should be done gradually. It would involve a creation of competitive advantage by specializing in certain fields of petroleum activities, and committing to developing the necessary skills[64]. To succeed in this transformation, ETAP is essentially required to ensure the balance between its commercial strategy and its strategy of specialization and skills development.

It is imperative to be able to master the hydrocarbons sector as part of a long-term strategy that would ensure regularity and stability of income,[65] and consequently sustainable development whilst encouraging investment. An almost invisible national energy council[66] was created in 1999 to develop and promote such a long-term strategy. The council should have an active role in developing the sector.

- Openness and accountability

A transparent information system is one of the pillars of a company's commercial and institutional success. As part of strengthening public accountability, ETAP should adopt a coherent and comprehensive communication strategy that would make it possible to assess

---

[64] Per Heller, P. (2014) in Reforming National Oil Companies: Nine Recommendations:

"In countries with successful histories of NOC management, the government and the NOC have determined exactly what is contained in the NOC's commercial mandate, and the company has carefully articulated business strategies to pursue that mandate.

Part of this challenge involves deciding whether to take on a major operating role. Where a NOC does aspire to play a major technical role in executing projects, it is critical to choose a strategic focus and build capabilities over time.

The managers of Petrobras, for example, made a core strategic decision when they recognized that the company could develop a long-term comparative advantage in developing Deepwater operating capabilities. Petrobras invested heavily in building this capacity as a core feature of its commercial development, at a time when foreign oil companies were excluded from the Brazilian upstream.

In Malaysia, Petronas managers made a decision to develop the company's capabilities abroad, focusing particularly on markets that were seen as risky by other companies."

[65] An alternative might be to merge ETAP with STIR and SNDP into one big integrated SOE from upstream to downstream (more like Royal Dutch Shell). This would allow for a stronger holistic macro approach to the sector. Also, it can reduce overhead costs and improve efficiency. The complexity of the structure needn't be an obstacle as the companies would keep most of their organization. The processes would adapt and be funnelled into a cooperative platform and structure. The strategic orientations would be homogenous and more ground based.

[66] Decree 99-2113 dated 27 September 1999, creating a national Energy council, and fixing its composition and modalities of functioning.

the efficiency of natural resources management. Apart from the disclosure of information, press briefings can be held regularly, particularly to present and discuss the annual report and matters of public interest. Also, publication of the lacking financial information mentioned before should be possible.

- Management of human resources

ETAP suffers from departures of qualified personnel, occupying key positions and holding the knowledge database of the company. It is recommended that a comprehensive human resources management strategy be developed based on job stability and staff performance.

In this context, there is a need to develop a strategy for knowledge sharing between experimented retiring executives and mostly inexperienced new recruits. It is also important to note that ETAP has already set up a recruitment and training program for young managers in the field of exploration and production in order to partially remedy the numerous departures of seniors.

In addition, the current remuneration grade is out of step with the incentives offered by the private labour market. ETAP operates in a very competitive sector and the employees trained within, would interest foreign oil companies operating in Tunisia and elsewhere. It is therefore imperative to provide an incentive system based on regular skills assessments, and retention of employees.

On another level, ETAP does not have a code of ethics enabling it to define the core and shared values within the company, or a code of conduct to be adopted by all employees. These standards should be available, as they foster a unique positive culture and help improve the general workflow and behaviours.

Section 4. International and Civil society

In post-revolutionary Tunisia, a lack of dialogue and consensus among stakeholders has significantly slowed reform. A multi-stakeholder approach therefore builds trust through communication, and encourages joint action.

1. Civil society

Ongoing social tensions around Tunisian natural resources underscore the pressing need to increase trust in the government and to reform the extractive sector of the country. An engaged civil society was crucial to advancing the establishment of open governance in

Tunisia. In addition, in a constrained setting, civil society organizations (CSOs) have a vital role to play in recognizing and promoting the population interests and priorities. However, they need to be able to coordinate among themselves, speak and relay the concerns effectively with a strong voice. Furthermore, an informed, active CSOs with a variety of stakeholders are important for positive and lasting change.

Therefore, CSOs need to be able to promptly generate or push proposals for change, engage in constructive discourse and hold the government accountable. The keys to successful CSOs are providing clear, reliable and timely information.

In fact, some enabling measures include capacity-building workshops on technical issues, providing advocacy and awareness-raising tools and funds for civil society actors, and tutoring in project management to CSOs.

CTTEM, a coalition of CSOs, has actively promoted public disclosure of contracts, and practical measures towards membership in the EITI. Two Tunisia Open Government Partnership Action Plans included entry to the international initiative, forcing the government to formally commit to the adoption of the EITI through the formation of a multi-stakeholder group. The Government then called on actors from civil society to nominate their members to the group[67]. The elections represented a landmark gain for CSOs, whose consistent mobilization has contributed significantly to a number of important reforms in accountability and governance in the extractive sector.

Eminent CSOs actively advocating governance in the extractives sector, include iWatch, CTTEM and ATCP.

2. International initiatives

There are a lot of international organizations and initiatives aimed at improving the governance of the extractives industry and mitigate the negative impacts of natural resources. A number of the initiatives are multilateral or are managed by multilateral institutions. The most prominent ones for Tunisia are NRGI and EITI, presented afterwards.

[67] An election was held by Tunisian Anti-Corruption Authority (INLUCC) for this purpose on 26 May 2018, and resulted in choosing the 5 representatives of civil society.

Furthermore, the World Bank has launched an extractive industry sourcebook[68] and has dedicated great attention to natural resource problems in its technical assistance. The International Monetary Fund has published a guide on transparency in resource revenue. The International Financial Corporation addressed extractives in its environmental and social sustainability performance standards, which apply to all the projects it finances. Tunisia can benefit from these initiatives, and implement the relevant findings to the national context.

A variety of other voluntary programs are important as they pertain to and include membership of oil and mining companies. They include corporate social responsibility[69] standards and reporting standards.

There are transparency efforts and requirements specific to other countries and regions, that can directly benefit Tunisia. Companies based in the European Union, Norway or Canada, or are listed on their stock exchanges, are legally required to report on the payments (taxes, fees, etc.) made to foreign governments each year. This payment data can give Tunisians insights on revenues received by the government from another external source, which would enhance transparency and accountability especially in case of non-conformity of disclosed financial data.

a. Extractive Industries Transparency Initiative

For years, Tunisia's extractives sector was regarded with scepticism. Data on assets, rights allocation, resources revenues and their management were especially limited.

Thus, openness is a necessity and not a choice. Tunisia is encouraged to further enhance its commitment to transparency in the extractive industry by joining the Extractive Industries Transparency Initiative. EITI is a voluntary international standard designed to promote open and accountable natural resource management by strengthening extractive enterprise governance systems and improving the access of citizens to adequate and accurate data.

The EITI serves as an enabling tool for diverse stakeholders to foster accountability and better management of resources. The EITI standard requires the disclosure of

[68] Adapted from report by Cameron, P. and Stanley, M., (2017), "Oil, gas, and mining. A sourcebook for understanding the extractive industries". Previously, an online free interactive tool was available at http://www.eisourcebook.org

[69] Tunisia adopted law 2018-35 dated 11 June 2018 relative to corporate social responsibility. ETAP adopts this concept and addresses it in its annual report. CPG briefly mentions a broader aspect of CSR.

information along the value chain of the extractive industry from the point of extraction, how revenue makes its way through the government, and how it benefits the public. Annex 3 shows the data disclosed under the EITI, and how the standard works and achieves impact.

In addition, EITI standard requires reporting on beneficial ownership of companies that hold exploration and exploitation titles, which would make corruption more difficult.

The Tunisian government has formally committed[70] to joining EITI and has called on CSOs to elect their representatives in the Multi-stakeholder Group (MSG) of EITI. These are standard practices in implementing countries, which bring together government, industry, and civil society.

However, the progress made to join the EITI is slow. The completion progress of commitment 1 of the second OGP action plan was estimated at 33% in the self-assessment report. In fact, only the election of CSOs representatives to the MSG was done. The self-assessment reported a substantial level of completion despite missing and delaying 4 of the committed five points in the plan.

The commitment was carried to the third OGP action plan. The results of that engagement do not seem promising either. Selection of companies and government representatives to the MSG is successfully completed. The MSG held its third meeting in January 2020.

Nevertheless, progress on other points of the commitment is slow. The MSG discussed the required action plan in their meetings, but no drafts are made yet. Furthermore, CSOs members of the MSG had a prior training under that capacity. And another training was held to all members of the MSG. But the capacity building instructed by the OGP plan, would require more training sessions.

The submission of a request to join EITI would probably stagger beyond the set deadline in the action plan. Since the declaration of interest by Tunisia, the main reasons for the delays were the lack of inducive will, political instability, and the frequent changes of governments and relevant minister.

[70] First commitment of the Open Government Partnership second national action plan 2016-2018 was joining EITI. The predefined milestones were not entirely reached. The action plan 2018-2020 contains commitment 6 to enhancing transparency in the extractive industries sector by joining EITI, and is due August 2020 and execution by October 2020.

b. Natural resource governance institute

Natural resource governance institute (NRGI) is an independent non-profit organisation. It provides policy advisory and advocacy thanks to infield experiences and insights developed through research. NRGI operates in a multitude of priority countries (Tunisia among them), based on country demands and needs, focusing on key aspects of the natural resource decision chain.

NRGI uses customized approaches and tools, including the Resource Governance Index, the Natural Resource Charter, the Natural Resource Charter Benchmarking Framework and the National Oil Company Database.

NRGI has empowered Tunisia's civil society to play a critical role in policy reform through technical and financial aid. NRGI supported the founding of CTTEM, the Tunisian Coalition for Transparency in Energy and Mines, which translates grassroots demands into advocacy campaigns at the national level.

NRGI has collaborated with the Tunisian Anti-Corruption Authority to create a forum where all stakeholders can participate and establish common reform agendas. NRGI's advocacy activities have helped the authorities and the ministry responsible for mining and energy commit to working towards the reform of extractive industries, including adherence to the Tunisia EITI.

Concurrently, NRGI has delivered technical support and capacity building to build trust and cooperation among the various stakeholders involved in the natural resource sector, including parliamentarians, journalists and government officials.

NRGI has pursued various lines of work on the level of contract disclosure to bolster transparency and accountability in Tunisia. Tunisian CSOs, backed by NRGI, had pressed for contract transparency clauses in the 2014 constitution, eventually unsuccessfully.

Henceforth, NRGI conducted workshops with 16 CSOs on extractive contracts, possible advantages and transparency constraints, importance of access-to-information laws, and foreign experiences. The training helped develop discourse and advocacy positions of CSOs.

Tunisian authorities have, in turn, worked to improve their knowledge. Lawmakers and their staff were acutely interested in international experiences, particularly on issues such as privacy provisions and disclosure of confidential information. NRGI was contacted by the ministry responsible for energy and mines to hold a conversation about publishing of

contracts. Representatives from related government departments, ETAP, parliamentarians and CSOs took part in a roundtable discussion in March 2016 with NRGI's support. Afterwards in April 2016, INLUCC joined the call for contract disclosure. Later in June, NRGI released a report detailing steps about disclosure of oil, gas and mining contracts.

After years of multi-stakeholder work and lobbying, and concurrent with the release of the report, the government published 50 of the country's oil contracts and announced second-level contract disclosures thereafter.

These releases were significant in the broader campaign for transparency of the extractives sector. Of many measurable changes, it was the most noticeable, but the process took time and collaboration. These results can be viewed, at least partly, as a response to the work of CSOs funded and trained by NRGI among others.

As for the future of NRGI in Tunisia and its national strategy, Tunisia office is expected to become a regional office for North African workers. The program places great emphasis on building relationships and trust between government and CSOs in order to promote sustainable reforms. This model was deployed successfully by NRGI in Tunisia. Thus, Tunisia would be a hub and a launchpad to spread adapted versions of the lessons learned across the region, and strengthen engagement of civil society, the media and public entities.

* * * * *

There are a lot of stakeholders involved at different phases throughout the extractives sector. In this chapter, some of the most important ones were presented. Analysing the roles of each one, and studying the various relationships and dynamics, are very important towards an effective governance system.

Chapter 3: Key figures around natural resources

Comprehending the need for a better governance of the extractives sector requires an overview on the state of natural resources in the ground, and the different related aspects.

In this chapter, the key facts and figures around oil, gas and mining are presented. In each section, data about permits and concessions is laid, followed by details regarding production and exports.

Section 1. Mining sector

The mining sector in Tunisia is largely dominated by the phosphates industry. The other mining activities attract less public attention due to their relatively small social and environmental impacts, and their importance in terms of production.

As of 2019, there were 108 exploration permits all across the country, at different phases. Most of these permits pertain to the sixth group (37 for silica sand and 9 for others). The rest concern the fourth group of minerals (24 for salt, and 17 for gypsum), third group (12 permits), and the fifth group (9 for phosphates). SOEs hold some of these permits. ONM and CPG have a direct or indirect participation in 9 permits.

Furthermore, there are 62 valid concessions. Most of these titles concern gypsum (23), followed by salt (18), lead and zinc (6), iron ore (5), phosphates (4), and others (6). It is noticeable that phosphates concessions are all held by CPG, and those of iron ore by the SOE Djebel Djerissa company.

Figure 5. *Gypsum indicators in Tunisia (2007 to 2015)*[71]

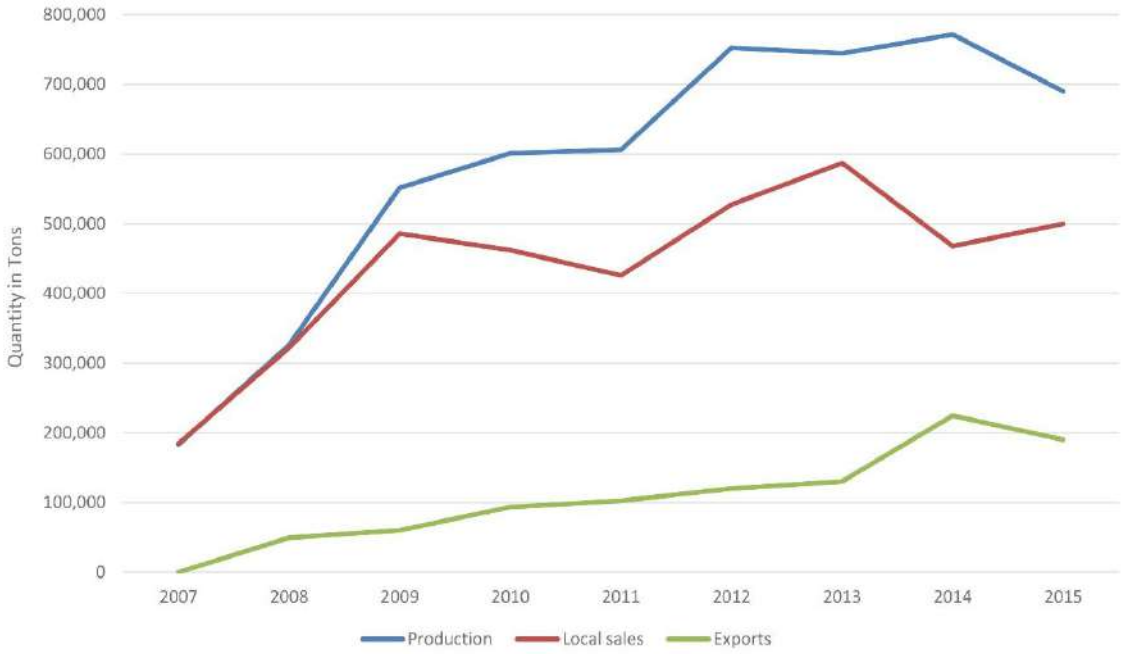
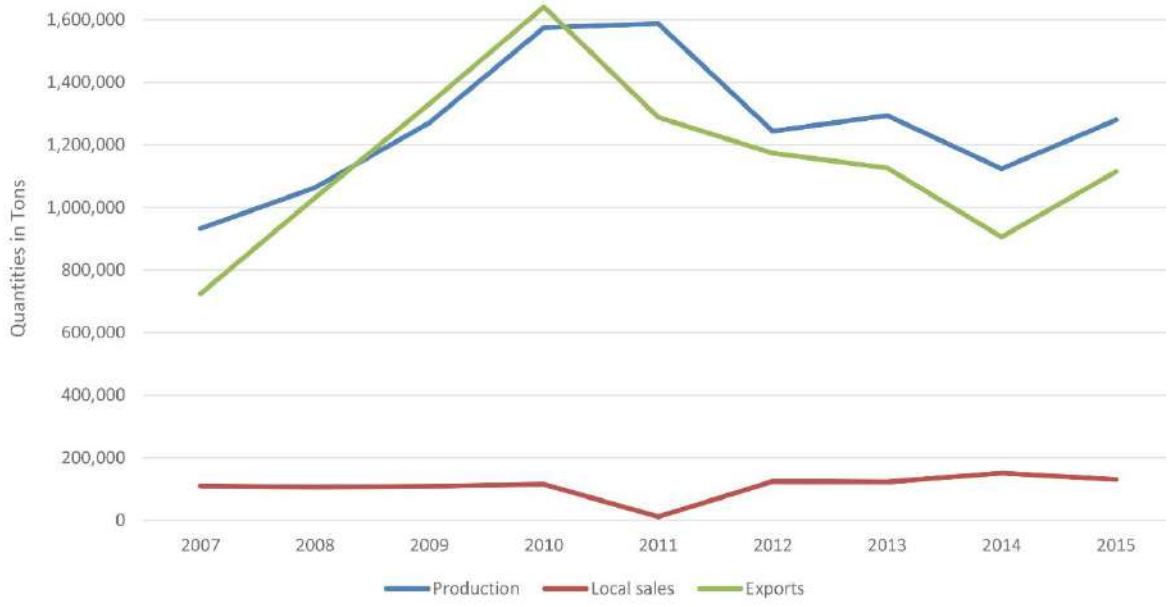


Figure 5 above shows the quantities of gypsum produced, sold locally and exported of gypsum. There is a promising increasing trend in production of this material. However, the quantities exported amount to a fifth of total production, which is relatively low.

Figure 6. *Salt indicators in Tunisia (2007 to 2015)*

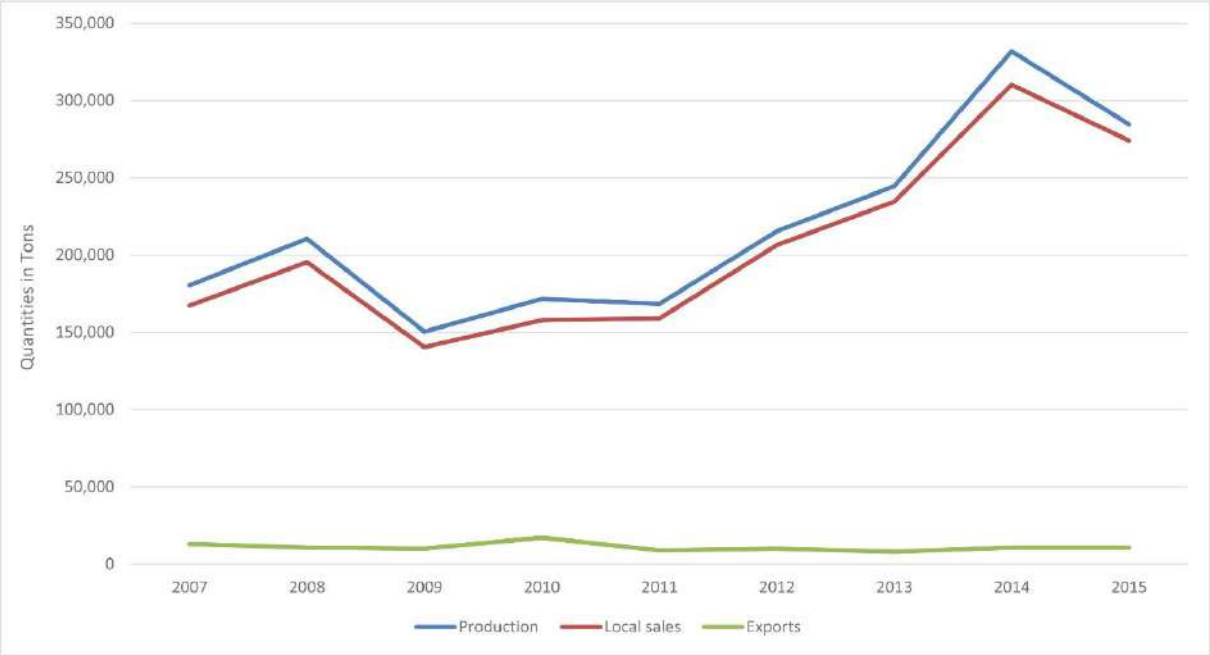


[71] Data from retrieved from http://data.industrie.gov.tn/ as all data for the figures in this chapter.

Figure 6 presents key indicators for Salt exploitation in Tunisia. There is an upward trend in production and exports. It is noticeable that local sales are almost stable, and most of the produced quantities are exported. The excess in exported quantities compared to production in some years, can be explained by the deferred production operations in the Salt industry.

In theory, this is a good economic situation that allows for inflow of foreign currency as a result of increased exports. Yet, a closer examination of the contractual terms with the concessionaires is necessary to ensure that maximum value is guaranteed.

Figure 7. *Iron ore indicators in Tunisia (2007 to 2015)*



Iron constitutes a very important commodity for industrial development. It is less abundant than salt and gypsum, and Tunisia wasn't a big producer of this valuable mineral.

The figure 7 above shows the evolution of the produced quantities, which is mostly destined to cover local demand. The higher demand might get the low-grade ores to be economically exploitable, so there can be an increase in production over the next years.

Figure 8. *Phosphate production (1900 to 2019)*

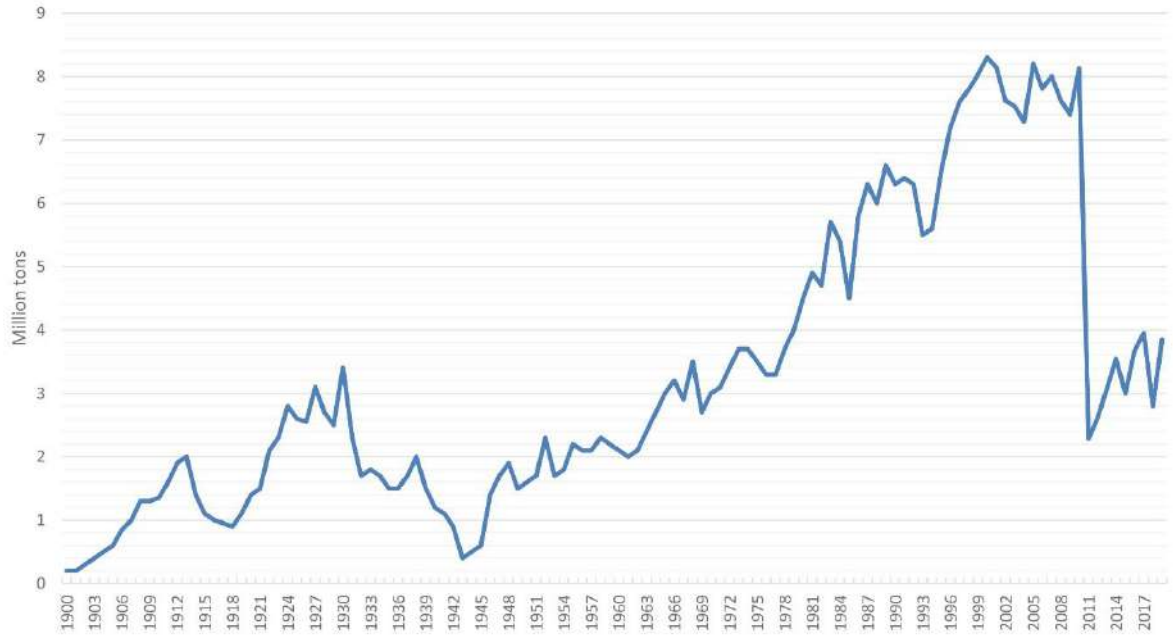


Figure 8 shows the evolution of the production of phosphates. The material is a very important natural resource to Tunisia and to the regions surrounding the extraction sites. However, the industry took a major hit since 2011, dropping production to the rates of 1970s.

Tunisia is in a way dependent on phosphates as a source of dynamic economic factor. The observed decrease looks unlikely to rebound, especially with the present tensions, and various socioeconomic challenges.

Figure 9. *Annual exports of phosphates derivatives (1980 to 2018)*

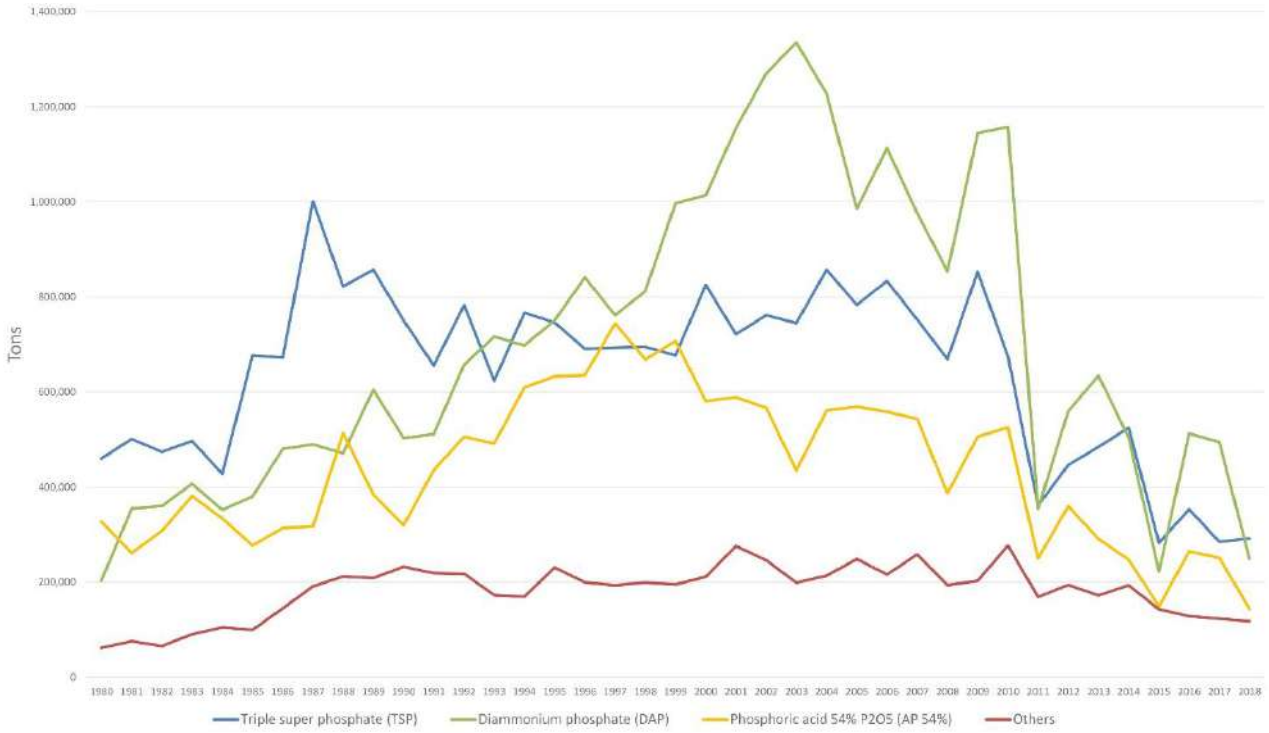


Figure 9 presents the major exports of phosphates derivatives. These are produced by GCT. Diammonium phosphate (DAP) is the world's most widely used phosphorus fertilizer, and the most exported product. The other materials are also demanded and used in agriculture. The exported quantities dropped following the decrease in production of the primary material since 2011.

Section 2. Hydrocarbons sector

By the end of 2019, there were 8 prospecting permits, 7 of which were instituted after 2017. And, there are 17 valid exploration permits, with only two held entirely by ETAP.

Figure 10. *Number of permits and discoveries (from 1970 to 2019)*

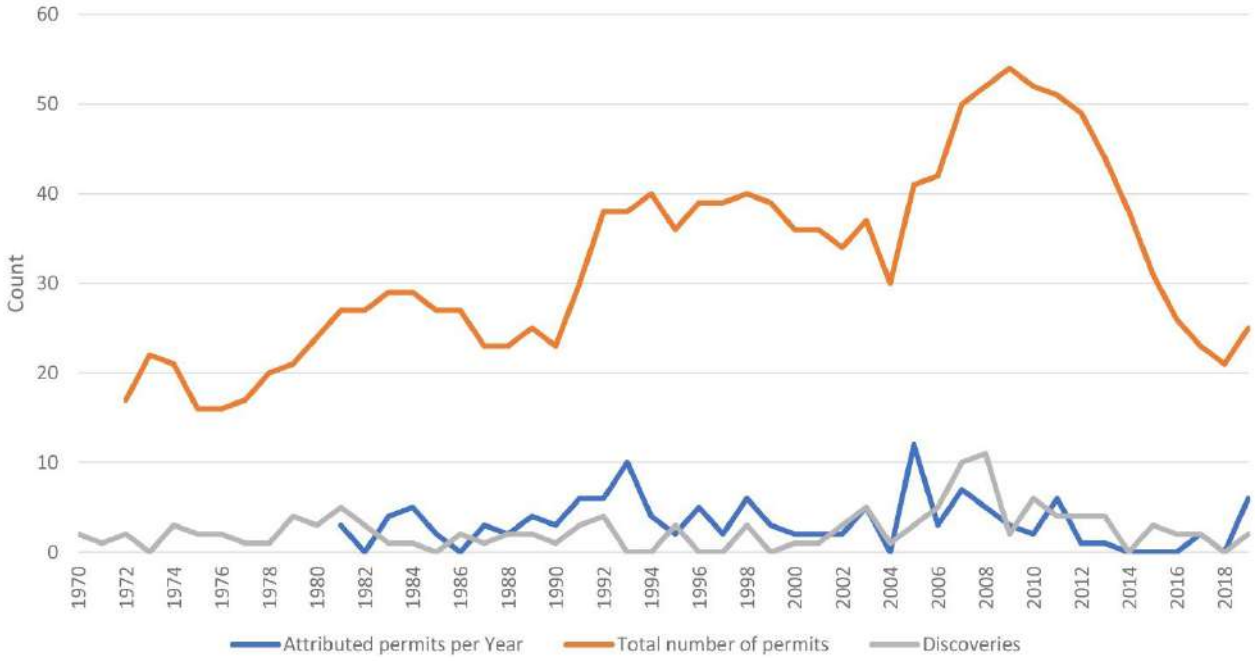


Figure 10 shows the annual evolution of the numbers of attributed permits, total permits and discoveries. The total number of permits follows an increasing trend overall, despite the decrease caused by the 2011 revolution. Very few permits were attributed per year since 2011 due to the international and national contexts.

A noticeable increase was registered starting in 2004, that might be partially explained by the entry into effect of the new hydrocarbons code.

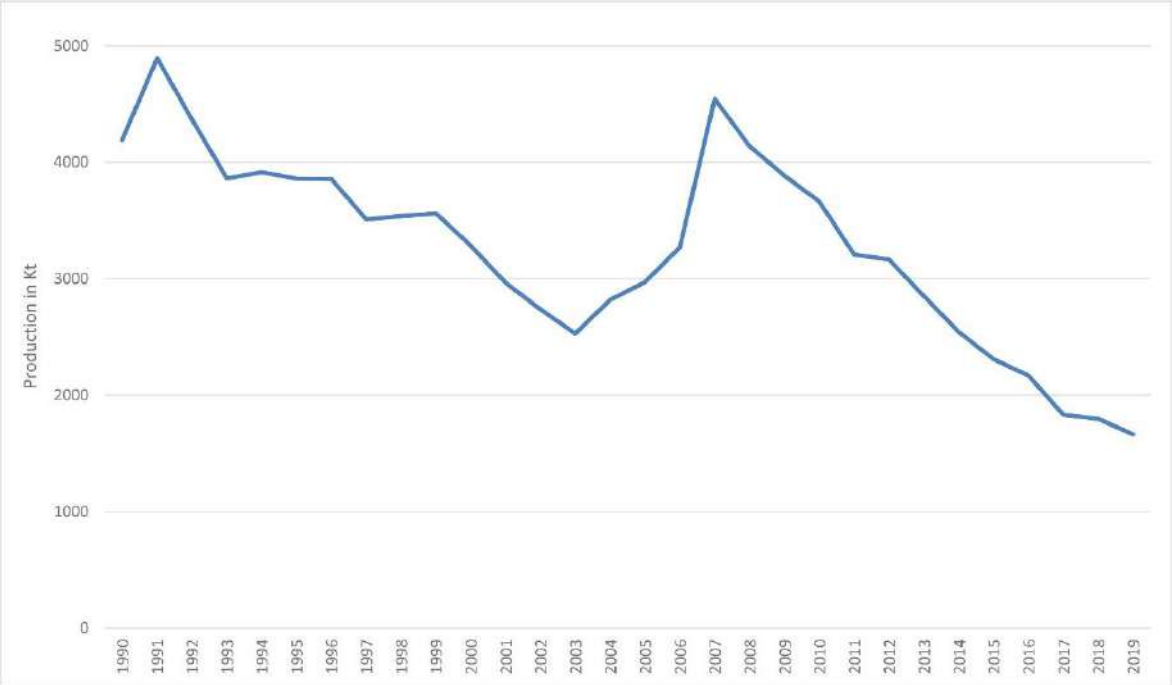
As for exploitation concessions, there are 56 concessions in 2019, with 7 of them suspended for various reasons. Out of the 49 valid concessions currently in production (41), in development (3) or being evaluated (5), ETAP has participations in approximately 78% of them. The state participates in around 6%, whereas 16% are entirely held by other parties.

Figure 11. *Investments and operating companies (1985 to 2018)*

The figure 11 above presents the evolution of sector investments (in MDT and M$), and the number of operating companies. The financial impact of the hydrocarbons code is quite visible starting from 2001, with an increase that peaked around 2008, accompanied by the increase in the number of companies operating in the sector. The subsequent decline of investments can be attributed to the financial crisis in 2008 among other international factors. The slight recovery of investments in Tunisian Dinars after 2011 is due to the devaluation of the national currency.

Furthermore, the number of operating companies decreased sharply after the revolution because of the political and social instabilities.

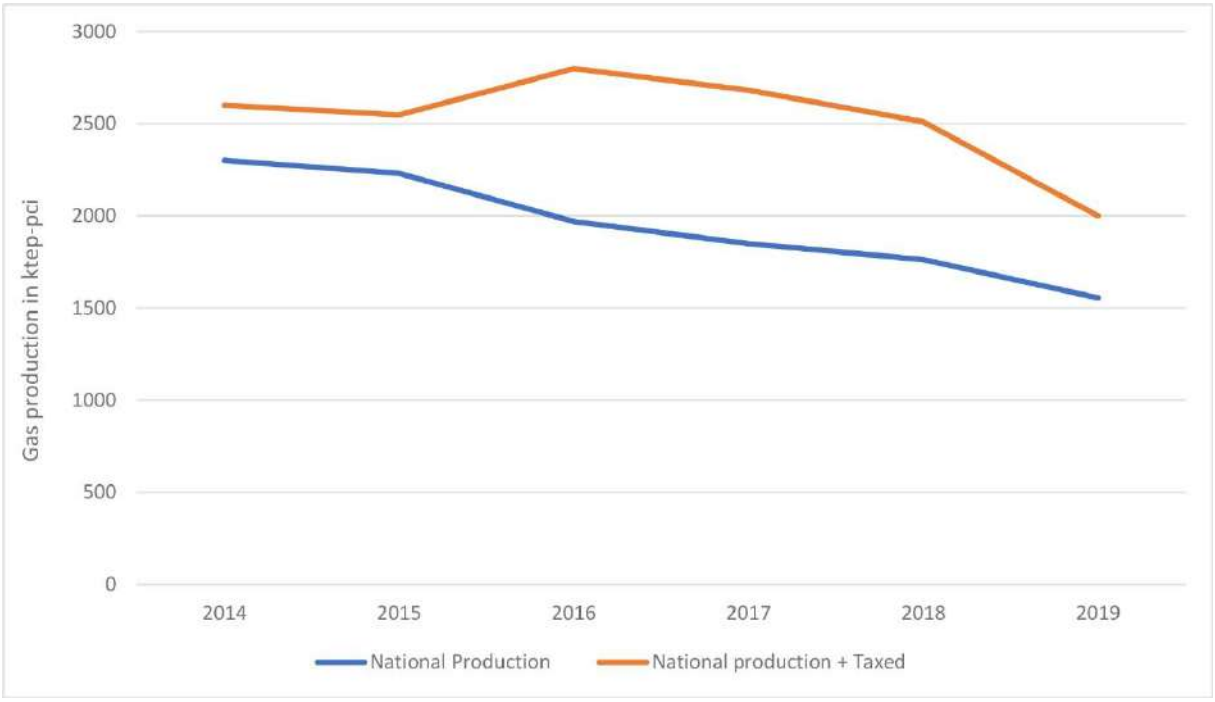
Figure 12. *National Oil production (1990 to 2019)*



The yearly national oil production, shown in figure 12, has been in a steady decrease overall. In fact, the decline in conventional geologic reserves, and the suspension and closure of some production sites are causing the downward trend.

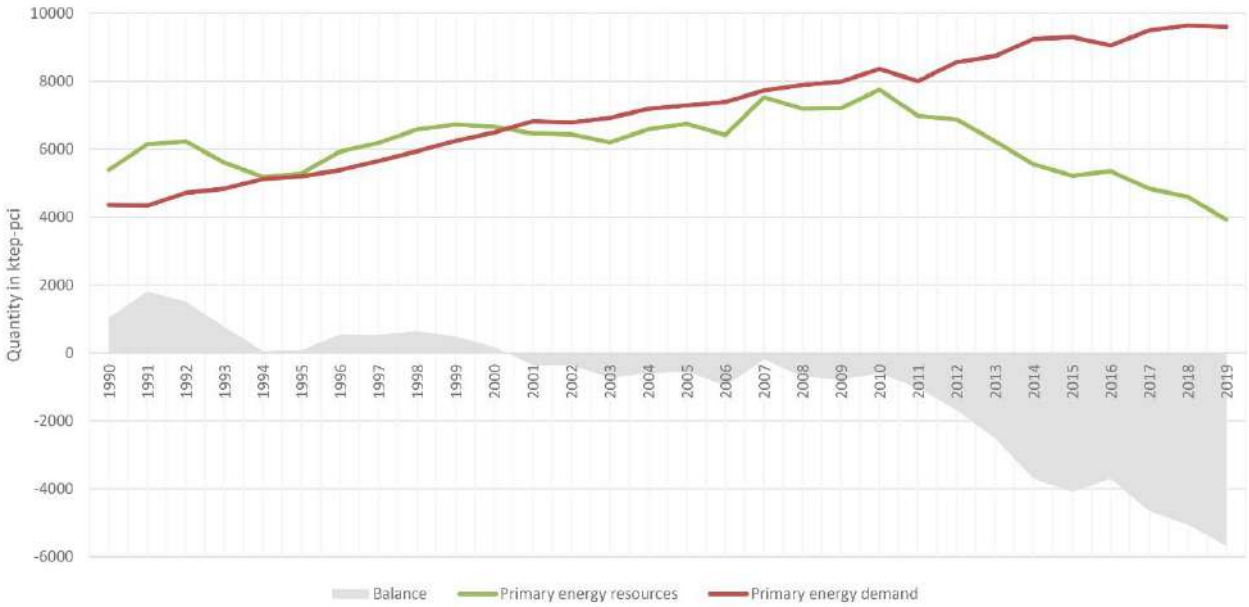
To be noted that the decline in production is in line with the decrease in the number of operating companies and investments in USD. However, the production is dropping at a higher rate than those of the other variables. This might be an encouraging observation, to the extent that investments can be somewhat maintained despite the depletion of reserves, conditioned on the right adjustments to applicable regulations. The production of LPG is quite low with 96 kt in 2019, from 122 kt in 2018.

Figure 13. *Natural gas resources (2014 to 2019)*



The natural gas resources are also declining in a regular rate. Figure 13 above shows the national production from the different sites before the entry into production of Nawara field. It also presents the quantity received from the Algerian gas transported across the country.

Figure 14. *Primary resources balance (1990 to 2019)*



The situation reflecting the decline in production, is amplified by the global energy resources balance presented in figure 14. The chart shows the variations in supply and demand. The two variables were changing at a close rate prior to 2011, after which the supply took a hit, whereas the demand is increasing at an almost constant rate.

The positive balance in early 1990s should have been exploited, and used to prepare for the depletion of resources.[72]

It is clear that the energy deficit is aggravating and the situation is becoming more alarming. The governance of natural resource can help improve the state of these different indicators.

* * * * *

In this chapter, the main activity indicators were presented. The global situation of the supply and demand side of the extractives sector, gives an idea on the importance of governance efforts. It puts into perspective the economic significance of reviewing legal and institutional frameworks, and links them with the other challenges faced by the sector.

By analysing the different parameters, a major event that shapes the current state of affairs, is the revolution of 2011. The political and social stability of the country in general, and around production sites is of great importance and should be addressed with high priority.

The following chapter would present some solutions to the variability and depletion of natural resources and incurred revenues.

[72] See chapter 4 for further details.

Chapter 4: Challenges, opportunities and sustainable development

Non-renewable natural resources create a multitude of opportunities and challenges for the country. These resources should provide prosperity for citizens, and ensure sustainable development. For Tunisia to benefit from its resources, the institutional and organizational actors presented before, must make decisions and take actions in accordance with the legal framework. The decisions require consideration of the complex environment, and a balance between several interests and options.

In this chapter, a summary of the process of converting natural resources into sustainable development is presented. Then, important challenges and foundations for governance are advanced. Finally, in light of the insights from previous chapters, the entire decision chain from exploration and discovery to spending the revenues is put together.

Section 1. Decision chain

The extractive industry decision chain is the set of decisions faced by the government.[73] It illustrates the process of transforming natural resources into better long-term sustainable development,[74] from exploration and discovery to revenues spending.

Decision chain has four basic parts. It begins with the discovery process and the decision about whether to extract a resource or not. The second stage relates to taxation and the frameworks that govern the relationship between companies and the state. Then, it deals with the management of natural resource revenues and in particular, the goal of avoiding volatility. And then finally, the chain looks at investing in sustainable development, and how to convert the revenues and the resources into a longer-term prosperity.

---

[73] Paul Collier (2007) in "The bottom billion: why the poorest countries are failing and what can be done about it", advanced this notion and considered that international standards are the best hope of helping reformers to put things right, and that the results would be huge.

[74] As opposed to the notion of "Value chain" used by industrials in the sector, and that perceives natural resources as commodities, transformed into more valuable tradable goods. However, the term "Value chain" can be used interchangeably with "Decision chain" in the jargon and terminology of the World Bank.

The Natural Resource Charter (produced by NRGI) offers 12 precepts along the decision chain at the national level. It provides good practices for optimizing the decision-making processes and decisions in order to promote better development.

As per figure 15, the precepts of the charter are separated into domestic foundation for resource governance, the chain of economic decisions needed to better manage resources, and the international foundations of good governance.

The charter emphasizes that a chain of decisions is only as solid as its weakest link. If there are strong structures in place to plan extraction or to administer downstream revenue, but weak revenue collection structures, the country would be constrained in its capacity to capture real profit from the entire process. The chain is therefore to be seen as a holistic framework.

Figure 15. *Natural resource charter decision chain*

Precept 1 posits that resource management should secure the greatest benefit for citizens through an inclusive and comprehensive national strategy, and clear legal and institutional frameworks. The precept can be perceived as a high-level summary of the rest of the charter. Going through the decision chain suggests that the "decision to extract" is quite regulated in theory. But due to the limited resources, there isn't much scrutiny at this level, or when "getting a good deal". The rationale is that Tunisia is a small producer that needs sector investors, to develop and extract its natural resources. Thus, whoever complies with the administrative and legal procedures can extract and get a deal, that isn't necessarily a good

one as was the case for some oil concessions. “Managing the revenues” and “investing for sustainable development” are unfortunately influenced by circumstantial factors. These are subject to socioeconomic and political tensions, and shifting balances.

Precept 2 about accountability and transparency requires that decision makers be held accountable to an informed public. This starts with wide and easy access to information along the entire chain of decisions.

According to precept 3, the government should encourage efficient exploration and production operations, and allocate rights transparently. It should establish comprehensive legal and regulatory frameworks in advance, and enforce them properly. The allocations and developments in the sector should be in line with the national objectives.

Per precept 4, taxation policies and contractual terms should enable the government to take the full potential of its resources, in a manner consistent with attracting necessary investments, and should be robust in changing conditions.

Precept 5 sets that the government should seek local economic opportunities, and consider and reduce environmental and social costs of resource-related projects.

As for the SOEs, precept 6 states they should be accountable, with well-defined directives and an orientation towards positive commercial outputs.

Regarding revenue distribution, precept 7 stipulates that the government should invest revenues sustainably to achieve optimal and equitable outcomes, for current and future generations.

Natural resources revenues are volatile due to a multitude of national and international, economic and political factors, that affect the stability of the income. Thus, the government should smooth expenditure to account for the variability of the revenues as indicated by precept 8.

The purpose of precept 9 is to address the efficiency of public spending. In fact, resource revenues are an opportunity for government to improve its budget execution capacity, and create an investment friendly environment.

A balanced role of public entities in the economy is crucial. The purpose of precept 10 is to ascertain if government is facilitating private sector participation and investment, in order to diversify the economy and make it more resilient and durable.

In line with precept 11 companies should commit to the highest environmental and social standards, and to carry out their projects in a sustainable way.

Lastly, precept 12 indicates that the government and international organizations should cooperate, and promote a common framework of standards to support sustainable development.

Annex 4 shows the 12 precepts and the primary key policy questions covered by each precept.

Some countries use the charter to assess their decision-making processes, and learn where they can develop their governance. In fact, the above charter would be used later for that purpose. A Natural Resource Charter Benchmarking Framework is designed to provide stakeholders with a concrete way of assessing resource management in a country against global best practices. The completion of the benchmarking tool can help the government develop an appropriate action plan for improving resource governance.

Section 2. Global challenges and opportunities of oil, gas and mining

Generally, it is beneficial to have abundant natural resources as major inputs to the economy. They can be vital commodities constituting important exports (specially to resource poor countries), that allow the country to trade and import other goods and services. Yet, having a lot of natural resources also shapes the nature and structure of the economy. Paradoxically, this can lead to tremendous problems. And there are distinctive challenges associated with the extractives sector.

In fact, natural resources are finite and depleting, and that can be even more pronounced for a country that doesn't have large quantities like Tunisia. Therefore, the government should have sectorial and national broad strategies, that look ahead of time. Thinking strategically means that revenues should be spent wisely and smoothly, as not to end up with depleted resources and no savings.

Another important challenge is natural resources turning into a curse for the country or a particular region. It's a paradox seen in many resource rich countries, that are despite their riches, doing poorly. The "Dutch disease" is a reason associated with the resource curse. It stipulates that the wealth generated from natural resources and the resulting consumption, pull resources away from other internationally traded goods that would be competitive (manufacturing or agriculture for example). A contextualised impact in Tunisia, has been

the reliance on the mining phosphate sector, that drew resources from other promising endeavours, and prevented the country from investing its resources in productive areas.

Another dimension of the extractives sector is the potential inequalities of income and social exclusion. When a group of people live in an area endowed with natural resources, they suffer from inequalities and injustices, more often than not. In Tunisia, Gafsa and other southern regions (where natural resources are mostly congregated) have been subjects to this challenge.

Furthermore, the extractives sector is tied to environmental challenges. It can cause deforestation, different kinds of pollution and devastation of ecological systems. A particular environmental problem has been climate change and the raise of global temperature. More responsible and sustainable actions should be undertaken by the operating companies and the government regarding these concerns.

All in all, these different aspects make the extractives sector at the heart of the sustainable development challenge. There needs to be a holistic approach to the sector, which takes into account the economic development, along with the environmental sustainability and social inclusion.

Section 3. Foundations for resource governance

Precepts 1 and 2 of the natural resource charter decision chain are relative to notions that constitute the foundations of natural resource governance.

1. Natural resources, politics and policy making

Looking at natural resources from a political and policy making lenses, suggest that there are risks to governance efforts.

In fact, when the lines between the public and private sectors are blurred within an economy, governance is compromised. This can happen when public officials participate in one way or another, in the extractives sector. This involvement into the private sector causes conflicts of interest. It can be remedied by use of beneficial ownership transparency.[75]

[75] Per OECD and the Inter-American Development Bank (2019), "beneficial owners are always natural persons who ultimately own or control a legal entity or arrangement, such as a company, a trust or a foundation", even though the property's title holds another name. See "A Beneficial Ownership Implementation Toolkit" (OECD, IDB, 2019) for further information.

Though not inherently disallowed or within the outreach of public authorities, leaders of labour unions or employers' organizations who have a personal interest in the extractives sector, can affect politics and create probable conflicts of interests. That is because of the lobbying or pressure efforts and power of those groups on public officials.

According to Gillies, A. (2019), there are several political attributes that determine the vulnerability to the resource curse. They include strong accountability institutions and a broad political base. These can affect policy decisions along the decision chain. In fact, when political leaders have short terms and do not strategize for the future, policy making becomes inefficient. It is important to prevent political incentives and dynamics from hindering the system. A key solution would be the promotion of transparency.

On another level, corruption is a risk associated with the politics of natural resources. It occurs all across the decision chain. Nonetheless, the allocation of titles attracts a lot of the corruption cases in many countries, when companies seek to win favours with government officials. Besides, corruption cases can occur in subcontracting, where the SOEs procure needed goods and services. This puts in perspective an added utility for the integration of SOEs' activities. These public entities can also be influenced by politics and spend erroneously on business affiliated with certain leaders.[76]

2. Broader governance framework

Concretely, governance is a multidimensional notion, that mainly encompasses processes and institutions by which authority in a country is exercised. These include the mechanisms by which governments are appointed, controlled and replaced; the ability of the government to develop and execute good policies effectively; and respect for the institutions regulating economic and social relations between citizens and the state.

The dimensions can be unbundled into measurable indicators that are: voice and accountability; political stability and absence of violence; government effectiveness; regulatory quality; rule of law and control of corruption.[77]

Natural resource governance is much more than just a sectoral challenge. These indicators shed light on the whole chain of decision-making, in a broader sense.

---

[76] The State Minister in charge of public service, governance and anticorruption issued Note 4 dated 1 June 2020, relative to financial charges of SOEs, limits this risk.

[77] More information can be found on https://info.worldbank.org/governance/wgi/Home/Documents

By using the interactive tool of Worldwide Governance Indicators, developed by Kaufmann, D. and Kraay, A. (1999), the figure 16 below was generated for four key years.

Figure 16. *Worldwide governance indicators for Tunisia*

Analysing the figure shows that just two of the indicators improved after the revolution of 2011, whereas three of them worsened notably. For reference, annex 5 presents a comparison of WGIs between Tunisia, and other important countries, regional and economic groups.

An important observation is that Tunisia scores close or below MENA and upper middle-income countries overall. It scores the lowest for indicators reflecting the economic dimension, and on political stability. However, it scores higher and closer to OECD countries on voice and accountability, and on control of corruption.

This reflects the areas that should be the focus for further improvement of the governance framework in general, and for natural resources in particular.

3. Accountability and transparency

Precept 2 of the natural resource charter outlines the importance that decision makers are accountable to an informed public.

Transparency is the timely disclosure of relevant and reliable information, to all relevant stakeholders, in a comprehensible and readable format. Public entities should have a proactive attitude towards publication of information, and avoid a reactive or defensive mindset.[78]

Transparency must also be in an enabling and proper environment that guarantees disclosure leads to accountability, and limits impunity. This would require collaboration and engagement of CSOs and other stakeholders.

In particular, for each natural resource project, the government should disclose the beneficiaries and owners of deals, the contractual terms, and the related and incurred costs and liabilities.

It is always beneficial to share information, except for when proprietary and intellectual property data is implicated, or when expensive technical or geological data gathered by the private company is included. In fact, transparency practices should not pose a competitive challenge to private sector. The government can still publish a summarised or redacted version of such sensitive information, in a way that ensures accountability and public awareness of ongoing operations and deals. The national access to information authority (INAI) can be assure this role.

4. Resource governance index

The Resource Governance Index (RGI) is an international index dedicated to the measurement of the quality of governance of natural resources. This tool allows for a systematic comparable assessment across 81 countries. There RGI enhances awareness of

[78] It is noted that media appearances of public officials tend to counter this directive. Therefore, a structured and systemic platform and process for disclosing any type of information should be set beforehand. A special attention should be paid to transparency in times of crises.

the government about challenges in the extractives sector, and promotes and evidence-based policy making and public engagement.

NRGI calculated a composite score built on assessments of three index components. The first component is value realization, addressing the issues of allocating rights, exploration, production, local impact, revenue collection and SOEs. Secondly, revenue management covers national budgeting and subnational resource revenue sharing for Tunisia (as there is no sovereign wealth fund). The third component assesses the enabling environment in the country. Scores are on a scale of zero to 100 at each level of the index

Annex 6 shows the entire RGI with its index components and subcomponents. And annex 7 presents the RGI Tunisia profile for oil and gas, and mining sectors.

Table 4. *Comparisons of RGI for oil and gas (2017)*

Country	Tunisia	Norway	Ghana
• Composite score	**56**	**86**	**67**
• Rank (of 89)	**26th**	**1st**	**13th**
Value realization	**60**	**77**	**65**
• Licensing	48	49	49
• Taxation	80	86	80
• Local impact	46	92	58
• SOEs	66	80	75
Revenue management	**40**	**84**	**65**
• National budgeting	40	77	36
• Subnational resource revenue sharing	0	0	0
• Sovereign wealth funds	0	90	93
Enabling environment	**67**	**97**	**70**
• Voice and accountability	82	99	90
• Government effectiveness	67	99	60
• Regulatory quality	59	95	76
• Rule of law	79	99	83

• Control of corruption	80	99	79
• Political stability and absence of violence	34	98	78
• Open data	67	92	27

Table 4 shows a comparison of RGI scores for Tunisia, Norway and Ghana. Norway was chosen as the role model in natural resource governance, and an exemplary experience. Ghana is the leading ranking African country by RGI score.

The data shows that Norway is rightly the country with the best governance framework. It leads by a margin in all components and subcomponents scores, but for one (Sovereign wealth funds). By comparison, Tunisia is suffering in particular in its revenue management. Both Tunisia and Ghana lack explicit fiscal rules that control revenues and spending. That can be an explanatory factor for their economic situations far from prosperous.

Tunisia performs relatively well in value realization, but still ranks behind Ghana in this aspect. A notable observation concerns licensing subcomponent where the three countries score equally. However, a closer analysis shows that Tunisia is behind on contract disclosure rules, post-licensing round practice and reserves disclosure.

Also, the local impact subcomponent suggests the need for more efforts on disclosing environmental mitigation plans and setting relevant rules.

As for the enabling environment, it is clear that Tunisia is under the repercussions of the 2011 revolution, as testified by the poor score on political stability and absence of violence that drags the whole component behind Ghana and Norway.

The regulatory quality score for Tunisia is also below expectations. The subcomponent reflects perceptions of the ability of the government to formulate and implement sound policies and regulations. Thus, the legislature and the government should improve their technical capacities, and their abstract understanding of the sector.

Table 5. *Comparisons of RGI for mining (2017)*

Country	Tunisia	Chile	Botswana
• Composite score	**46**	**81**	**61**
• Rank (of 89)	**48th**	**2nd**	**18th**
Value realization	**40**	**74**	**40**
• Licensing	43	51	18
• Taxation	59	68	48
• Local impact	25	86	67
• SOEs	35	90	29
Revenue management	**30**	**81**	**62**
• National budgeting	30	70	58
• Subnational resource revenue sharing	0	0	0
• Sovereign wealth funds	0	92	65

Table 5 presents a comparison of RGI scores for mining, between Tunisia, Chile and Botswana. Chile was chosen as the leader in mining governance, and Botswana for being the ranking African country. To be noted that the component of enabling environment was omitted for being a repetitive data.

The first observation is between the performance of the Tunisian mining sector, and the oil and gas sector. The former scores worse and lower in every measurement. The difference is driven by lower scores in policy areas, especially in taxation, local impact and SOEs governance.

Concurrently, these subcomponents are the same that make a difference between Tunisian mining sector and that of the other two countries. The local impact is by far the black dot of the entire governance framework, lagging behind the performance of the likes of Afghanistan (scored 65) and penultimate Myanmar (for mining, with a score of 54). A tremendous wide spread effort towards environmental reforms imposes itself.

Section 4. Discovery and getting a good deal

As the regulation of the sector is rooted in various regulations around the legal and institutional frameworks, it is required to control these industries in line with the country's broader strategy for governance, starting from the basics.

1. Challenges around extraction

The first operational step in the decision chain is discovering natural resources. The success of this phase is crucial and can be difficult in some cases. The discovery process depends upon heavy investments throughout, and that does hinder initiation and fructification of projects. A key solution to the problem is providing public geological information. Tunisia relies on some SOEs[79] to make such preliminary studies available for investors. However, aid and foreign international money can be used for prospection, widening the range and scope of the operation.

The extracted commodities are as worthy as the total generated revenues. In a country like Tunisia, there isn't the necessary skills or funds to manage the extraction efficiently. Therefore, there is a need for international companies to operate and manage an important part of the sector. These companies must go through a taxation process, that generates partly income to the government. Due to the structure of the sector and the activities, the design of the taxation system needs to be specific to each of the natural resources, which is already the case for Tunisia.

However, designing a good tax system is challenging due to the asymmetry of information between the governmental entity and the private company or investor. The latter usually has more information and insights about the resources underneath. Thus, they ought to have better understanding of the whole situation and a leverage in negotiations.

Tunisia addressed this issue by requiring private companies to share the gathered geological and technical data via frequent reports.[80]

In order to circumvent asymmetry of data, other countries opt for structured competition when awarding extraction rights. The transparent process of an auction forces companies

[79] CPG for its account. ETAP and the National Office of Mines (ONM) carry geological prospections and studies, and create databases of their respective relevant natural resources, for public use.

[80] Article 76 of the mining code, and article 63 of the hydrocarbons code.

with the same level of knowledge to compete with each other. This would allow for a fair appraisal of the value of natural resources.[81]

Collier, P. (2007), Cameron, P. and Stanley, M. (2017) prefer and advise the adoption of the auction bidding process. However, they note that it is the best option when investor interest is high. Unfortunately, it is not the case for Tunisia. The government needs to attract investors and create a favourable environment to promote extraction of natural resources. As things stand, competitive bidding for the national reserves wouldn't be a viable option or alternative to the current awarding system. It could, however, be tested if ETAP estimates that a certain block is very promising, and can still attract bids from international investors.

Another sensitive aspect related to the extraction of natural resources, is the local situation and community around the extraction sites. The locals have certain rights regarding the project. But the national group has the absolute rights in relation to the resources, as being the constitutional owners of all and any natural resources. There should be a reasonable balance between these rights, and special attention ought to be paid to the environmental sustainability of the locality.

The new constitution addressed this aspect. However, the modalities of execution that seek to improve the local community aren't advanced yet. In this regard, the corporate social responsibility can help by pushing companies to build capacity of local authorities.[82]

[81] However, the auction requires a great deal of preparation on the governmental side. The details and scope of the bid, and the selection criteria must be carefully defined. A major practical challenge to the interests of the country when using auctions, is attracting speculators. Speculations would create a stagnated sectorial environment. The hydrocarbons code included provisions that would limit this risk. Article 44.2 gives investors a specific timeframe to develop a commercially beneficial discovery. Nonetheless, some flexibility should be allowed to account for exceptional and justified hurdles, that do not constitute a speculative behaviour. Strong technical capabilities and concise regulations are needed to ensure that.

[82] For a more sustainable outcome of the CSR, the focus of the companies should not be diverted towards creation of projects and management of governmental and public sector activities. Law 2018-35 dated 11 June 2018 relative to CSR outlines very broad intervention areas. It doesn't allow for a durable economic partitioning, and focuses on the immediate public reaction.

2. License allocation

Allocation of rights is a very important phase in the process of developing extractives sectors. It is the cornerstone that sets terms for further development. The government has an interest in vesting a lot of effort and focus on this moment.

On the other side, during prospection and exploration, private companies take a risk by investing with very little chance of return. This is worsened by the fact that extractives industries are capital intensive. Therefore, certain principles should apply to the process to guarantee the best outcomes.

The first are predictability and clarity. Companies need to be prepared in advance, and know exactly what they are going to face without surprises, either by reviewing the standard convention or applicable regulations. The government should also prospect and study the different impacts from the projects. These principles are connected to the principle of security investors' rights. A commitment by both parties over the long term is crucial. The private companies should respect the agreed upon terms, whereas the government must have a consistent and coherent attitude throughout the process.[83]

Another principle is non-discrimination between companies and investors. Besides, ideally there should be no discrimination between SOEs and private entities, or between foreign and domestic actors. However, due to the economic situation and the need to encourage local manufacturers and businesses, provisions that advance these national interests are comprehensible.[84]

Lastly, disclosure of contract-related information is essential. Different stakeholders need to know allocated rights from the start, in order to have a more impactful contribution to the governance of the sector.

---

[83] The politicization of the extractives sector, and the populist calls and demands regarding natural resources by different actors, is very harmful to the development of the sector. The calls for nationalization or expropriation of lawfully obtained foreign and private assets, creates an unstable platform and a tense environment between the government and private investors. It weakens the national negotiation stance, and lowers trust in public institutions.

[84] In the mining (article 104) and hydrocarbons codes (article 116.2), customs and imports systems favour local products that have an appropriate quality and comparable pricing. Furthermore, employment of Tunisian nationals is promoted in both codes (articles 75 and 94 of the mining code, and article 62.2 of the hydrocarbons code), by supporting or holding some charges on the government.

Strong institutions need to be in place from the beginning of the process to make sure that allocation of titles is effective and transparent.

3. Government effectiveness

Laws and regulations may look good on paper, but their enforcement can be uneven or absent altogether. This can result in bad deals from the start or projects not delivering expected financial returns, because of inability to effectively audit or control throughout the decision chain. It can also result in economic or environmental damage. And this is aggravated by low levels of capacity within government.

The government should prioritize the resources to ensure consistent monitoring and enforcement. Besides, it should build administrative capacity, and credible and effective institutions

As mentioned before, an important step to enhance implementation is limiting the variation from one project and contract to another. This can be achieved by creating clear and uniform standards.

Another challenge to an effective government in the sector is the remote locations of many extractive industry projects.

4. Fiscal regime

A fundamental objective of a fiscal regime design is to maximize returns from natural resources to the government. However, the best regime is not necessarily the one with the highest tax rates or the upfront payments. Taxation should balance between the need to attract investors, and the fair amount to truly benefit from the depleting resources.

As such, maximising value and fiscal design should be in line with the progress of the overall project and investments, and the national budgetary constraints and requirements. The design must consider the relative risk capacities of investors, and seek to provide a reasonable compensation.

Certain aspects of the extractive sector make designing a fiscal regime challenging. One of which is the uncertainty associated with determining the real reserves, prices, technological advances, national policies and social and environmental impacts. Besides, the perspectives regarding uncertainty differ between the government and the private entities.

An important concept in fiscal regime design is progressivity, which means that the government share of tax revenues rises as profits rise. It is an instrument conferring

robustness to the regime. Progressivity reduces the need for government to renegotiate fiscal terms during times of high profitability.

Thus, designing a relatively simple and applicable[85] fiscal regime that is robust to changing economic conditions and national dynamics can bring stronger returns over time.

There are certain features of the extractive sector that can make effective implementation challenging. Negotiated specific terms for a project require administrators to learn and apply unique rules.[86] Because of this, there can be a loss in potential revenues added to the application of multiple fiscal rules from prior legal texts.[87]

Fiscal tools can be grouped into three categories: fixed fees,[88] per-unit charges,[89] and shares of profits[90]. There are specific challenges associated with each different tool.

Fixed fees do not require measurement of production, avoiding many challenges of the other tools. Nonetheless, calculation of fixed fees isn't always straightforward.

Per-unit charges require the measurement of prices and production on a continual basis. And it is a challenging task, that entails adequate administrative and technical capacity, and verification of declared production by companies.

Shares of measured profits include income taxes and cash-flow charges. Most administrative challenges fall under this category, because of the relative difficulty of calculating incomes and costs accurately.

---

[85] The administrability of the fiscal regime is also influenced by available resources for the collecting and relevant authorities. Yet, there seems to be a serious understaffing at the ministry responsible for hydrocarbons. The situation harms the fiscal revenues of the state, and prevents a better adaptation of the fiscal regime to various conditions.

[86] Understandably, there needs to be leeway, security for the investors and stabilization clauses, as mentioned before. But the added complexity to the oil and gas sector, by having multiple hydrocarbons titles subjected to prior legal texts, is creating an over burden.

[87] According to ATCP, as of 2018, only 16 concessions are subject to the Hydrocarbons code and its fiscal rules. 23 concessions are regulated by decree-law 85-9, and 15 others by the beylical texts (decree of 1 January 1953 and law 58-36 dated 15 March 1958).

Out of the 10 most productive oil concessions in 2019, only "Cherouq" is subject to the Hydrocarbons code. In fact, the two most productive ones ("El borma" and "Ashtart") are regulated by the beylical system.

[88] Articles 101.1.1 and 101.1.2 of the hydrocarbons code, and article 96 of the mining code.

[89] Article 101.2.1 of the hydrocarbons code, and article 96 of the mining code.

[90] Articles 101.3 and 114.1 of the hydrocarbons code, and article 96 of the mining code.

According to tax practitioners, a particular administrative challenge corresponds to "transfer pricing".[91] Abusive transfer pricing occurs whenever a group of related companies trade within themselves in order to minimize overall tax burden. Tunisian rules do not enforce a so-called "arms-length principle" that addresses the issue, and requires transactions should be valued at market pricing, as if they had been carried out between unrelated parties, each acting in his own best interest. However, the regulations[92] enforce a measure in line with the said principle, that allows competent authorities to add the taxable difference.[93]

Another important practice advanced by tax law experts, is "ring-fencing".[94] Where projects are ring-fenced, profits and losses are calculated individually per project. The practice can shield revenues from profitable projects from being diminished by losses or costs of other less profitable projects. Tunisia does adopt and incorporate ring-fencing in articles 106 and 107.1 of the hydrocarbons code. Therefore, tax authorities must carefully control transactions between projects owned by the same entity.

Finally, implementing and administering extractive sector fiscal regime are difficult. When designing or improving the regime, the focus should be on reasonable simplicity, reducing the extent of fiscal stabilization and use of incentives, building capacities, and following best practices.

5. Local impacts

Extractives sector can change the economy, environment and the communities significantly. Different stakeholders play a role in predicting and managing the various aspects associated with the projects.

a. Environmental impacts

In Tunisia, mining usually has very strenuous localized impacts. Wider environmental change comes from situations where waste from operations is discharged off the premises of the site, especially in waterways, or in the air. The impacts are highly complex and can

[91] Woodroffe, N. et al. (2017).

[92] Articles 29 and 30 of law 2018-56 dated 27 December 2018 relative to the Finance Law of 2019. The articles amend some provisions of the "corporate income tax code".

[93] https://taxsummaries.pwc.com/tunisia/corporate/group-taxation (last visited 4 June 2020).

[94] Bauer, A., (2014).

occur over time. Local impacts of the mining industry are graver than those of the oil and gas sector.

Hence, an environmental impact assessment[95] is important to summarize the different impacts, and consider them in light of potential benefits from extracted natural resources. Yet, a project-based EIA is too locally focused, and neglects broader cumulative impacts.[96]

Several policy options are available to address environmental challenges. Generally, there are international standards, industry standards, corporate policies and government regulations.

Government regulations dictate most of the conduct sector wide. Legal texts can be persuasive or incentivizing instruments. For example, they include the requirement to develop an environmental impact assessment or a closure plan, or a rehabilitation bond.

Besides, people can be drivers of change, by advocating for proper environmental actions and interventions.

b. Social impacts

Social impacts are the consequences of a project as experienced by individuals or a group of people. These impacts can be positive or negative, and can be direct or indirect.

A negative impact on a community at first, might turn out to be an opportunity. For example, inward migration of job seekers can cause tensions and economic hardships. However, if the community adapts to the situation, it can later create economic opportunities.

Managing such impacts should be the concerted effort of different stakeholders, especially when assessment of social impacts isn't conducted beforehand.

Furthermore, a study of the potential for conflicts and tensions is an important topic when considering the social impacts of extractive projects.

To be noted that each potential social impact will vary in gravity, and would depend on several aspects such as the political and regulatory environments, the extracted commodity, waste management, the duration of the project, and the innate characteristics of surrounding communities.

---

[95] Required per article 59.2 of the hydrocarbons code, and article 71 of the mining code.

[96] The legislation and the competent ANPE do not require or take into account the accumulated pollution in a given area or region.

On the other hand, companies and the government have an interest in addressing each social impact, as its gravity if left unattended, would pose a risk to the development of the project.

To mitigate these risks, companies ought to establish a corporate structure of policies and procedures, and engage with the community. Community engagement should be at the centre of social impact management, and last throughout the life of a project.

Section 5. Managing revenues

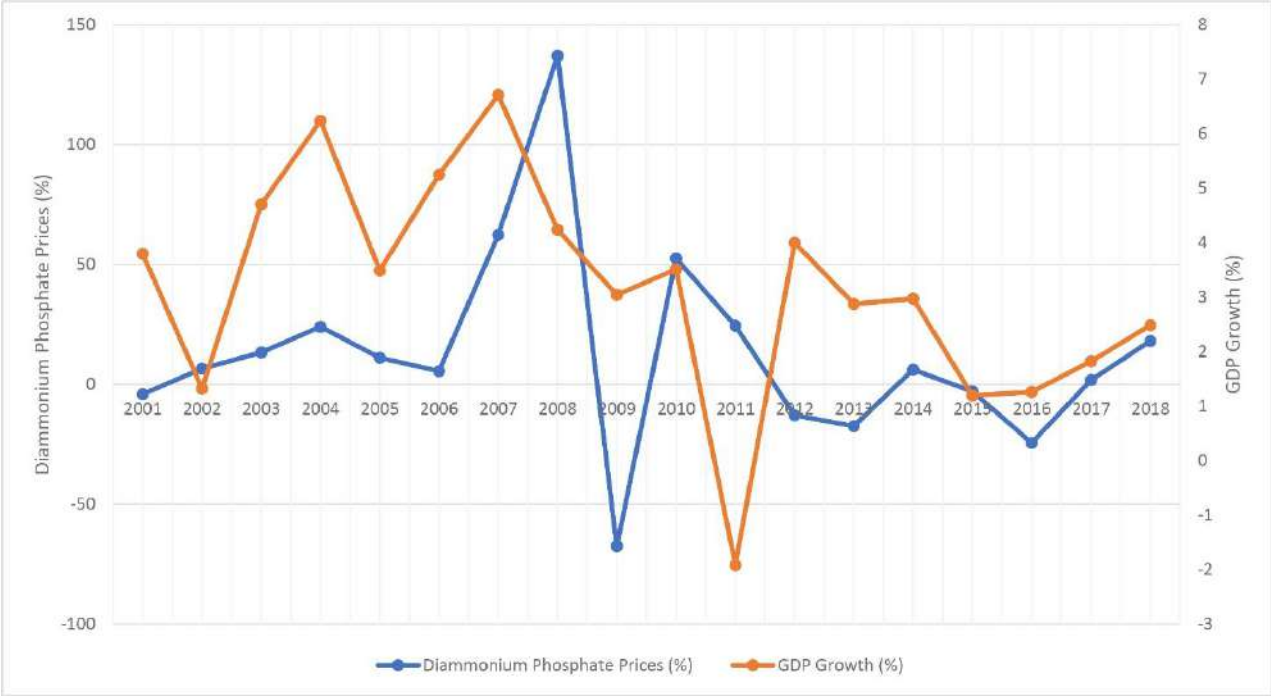
Extractive resource revenues constitute an important source of revenue. Even though Tunisia is not a dependent country[97] on these incomes, the overall economic situation and the inherent importance of the sector, makes managing these resources crucial.

The revenues are the main product and opportunity from resource extraction. However, converting those revenues into sustainable productive assets is difficult.

A key feature of these revenues is their volatility, tied to changing commodity prices and volume of production. Generally, public spending varied around the revenues, because the government borrows on the basis of the spiking natural resources revenues. However, the high prices are always temporary, and some of the revenues should be saved in order to smooth spending. When the commodity price decreases, the government would be able to keep spending at a sustainable level. Nonetheless, wisely saving parts of the revenues for later use, is quite challenging due to social and political factors, mainly the public surge and urge to spend in the present as much as possible.

[97] IMF defines fiscally dependent countries as those resource-exporting countries where resource-related revenue amounted to at least 20 percent of total revenue (2012). For Tunisia, revenues amount to 9% in 2018 (INS).

Figure 17. *Annual changes in GDP and diammonium phosphate in Tunisia*[98]



The figure 17 above illustrates this phenomenon. Diammonium phosphate is a derived product from phosphate rocks extracted by CPG, and transformed by CGT. The percentage change of its prices in US dollars varies a lot. The GDP growth (which also reflects expenditures) does tend to follow the same trend. As noted by Collier, P. (2007), public spending can be increased rapidly during the soaring prices phase, but it is very difficult to reduce during the subsequent crash. Even though a lot of factors shape GDP growth (especially with the revolution for Tunisia), the trend and the idea are sound.

Another time-related aspect of natural resources revenue is its unsustainability. The income is only flowing, as long as the resources exist. Nevertheless, it should be noted that the revenues can be affected in this regard, by depletion of the reserves of natural resources or by their obsolescence. In fact, technological and societal changes can reduce the need for a certain commodity. Nowadays, there is an international effort to reduce exploitation of oil and gas. For Tunisia, a technological advance or innovation can decrease global need for phosphates and its derivatives.

[98] Data from the World Bank and IMF.

Therefore, the issue of sustainability of these revenues should be considered when budgeting and strategizing. Also, there is a need to find a balance between the current expenditures and the rights of future generations.

In the midterm, the country faces the effects of revenue volatility, and in the long term, it faces the impacts of revenue unsustainability.

A sensible solution to the aforementioned challenges of natural resource revenues, is saving or investing them. Even though the current Tunisian conjuncture is characterized by huge deficits and indebtedness, putting aside some of the revenues from natural resources is advisable. However, such a step should be conducted along a package of structural and legal reforms of the sector, and the economy. Some measures can still be incremental, but on the whole, the complexity and gravity of the situation requires bold decisions.

Turning some parts of the revenues into savings and investments should have been undertaken since the beginning. But it is always safer and better to start whenever possible, even if late.[99]

When pursuing such a pathway, the government should pay special attention to the type of investments and savings made. Due the current economic situation, a mix of a few high yielding assets abroad and domestic investments is perhaps the best alternative.[100]

Furthermore, other points should be addressed to ensure optimal management of natural resources revenues. The government must build strong and effective public financial management systems, and avoid recurrent off-budget expenditures.

---

[99] For reference: The Norwegian wealth fund called "The Government Pension Fund Global" was established in 1990 to ensure a long-term perspective in the management of government petroleum revenues. The Norwegian Ministry of Finance made the first capital transfer to the fund in 1996. At the end of 2019, the fund's market value (1.074 Trillion USD) corresponds to more than two and a half of Norway's GDP. The sovereign wealth fund has a long investment horizon, and one of its objectives is to be managed so that Norway's petroleum wealth benefits future generations as well. In 2015, revenue from the fund exceeded revenue from oil.

See https://www.norskpetroleum.no/en/economy/management-of-revenues/ (last visited 5 June 2020)

[100] Following the Norwegian Wealth Fund model (or that of the Gulf countries) might not be appropriate, considering the urgent need to invest locally and the double positive global impact that this would have on the economy.

Section 6. Investing for sustainable development

There are values that are captured during exploration and production of natural resources, and other values that can be projected to the rest of the economy.

The notion of "local content" is widespread in countries endowed with natural resources.[101] It refers to how natural resources can be used to benefit the broader economy. Local content can be measured by incomes received by locals at every stage of the industrial value chain. The focus is on greater community development, robustness and economic diversification.

1. Economic linkages

Using natural resources to create sustainable benefit can be achieved through linkages to the rest of the economy. There are some key factors that create linkages to other parts of the economy.[102]

The fiscal linkage occurs when captured taxes and rents from natural resources are used in other non-commodity sectors. The second is spatial or infrastructure linkage. It refers to using the activities and needs of the extractives sectors to build infrastructure, that can in turn help create other economic activities.

Another factor is the backward or upstream linkage, where goods and services are provided for the extractives industries from the national economy. These inputs allow for value creation within the local economy.

A fourth linkage is about knowledge, where supporting clusters are developed around the sector. Those create more value within the national economy, and participate in building local capacities. The other linkage is the power or downstream linkage, characterized by adding value to the extracted commodities, and producing higher value finished good.

For the private companies, it is in their best interest to develop the supply chain and procurement in particular. This would help bring in together the different linkages.

---

[101] See "Local content: Strengthening the Local Economy and Workforce" by NRGI (2015), and "Oil, Gas, and Mining: A Sourcebook for Understanding the Extractive Industries" by the World Bank Group (2017), for the ideas developed in the four paragraphs under this section.

[102] See https://www.extractiveshub.org/topic/view/id/47/chapterId/523 (last visited 5 June 2020).

It's important to note that the success in terms of local content and economic linkages, extends beyond the actors directly involved. Private entities need a supportive and facilitating business development environment, and good governmental services. Besides, there is a need to well-trained people. Thus, the education system and technical vocational training, play a role in providing adequate skills for the extractives activities.

2. Employment

Local employment is a key element of local content. It creates great expectations in the minds of citizens who are close to the natural resources. It is often played by politicians and others who sell a story of a lot of high-paying jobs.

Even if the narrative is sometimes correct, some or most high-paying jobs don't go to locals who lack the skills to assure them. Besides, there might be a high number of jobs, but only for very short periods of time.

Measuring local employment from the extractives sector can be achieved through the number of employed individuals or the services provided. Another important consideration is the benefit from trainings and professional experiences, that can be brought to the local and national economies, or applied in other sectors. To maximise this impact in Tunisia, there should be a focus on the long-term skills development, and in specific skills needed in repetitive activities throughout the sector, and elsewhere.

3. Technology transfer

Local entities get the ability to provide goods and services to the very complex and highly technological extractives industries, by transfer of technology from elsewhere.

There are some key channels for technology transfer. Demonstration and imitation give the local company the ability to learn something and to repeat it. It requires interactions between companies and perusal of their respective internal procedures. Another channel consists in workforce mobility, within an industry or between sectors. Besides, there are different models of business alliances that foster a partnership, which allows a better transfer of technologies.[103]

[103] Per OECD, in Chile in 2009, BHP Billiton started a supply development program with some suppliers, partly in partnership with the Chilean SOE CODELCO. The idea was "to ensure that the knowledge, skills and capacities that workers gained were relevant and could lead to creation of employment or business

Yet, creating linkages is not enough. The local company must have the capacity to take a transferred technology. In fact, local skills and the business environment ought to be in place to enable an effective transfer.

To be noted that not every available opportunity can or should be captured, especially in case of a huge gap between the parties.

4. Downstream

The extractives value chain has a downstream component where extracted materials are transformed into products. In a broader sense, downstream activities include processing, manufacturing, moving, storing and selling the materials.

However, it is difficult to determine whether to export raw materials or go downstream. Some of the factors that make the decision challenging, are the downstream investments, and the locations of the resources and the markets.

Generally, going downstream helps capture more value from the resources, and creates linkages. But there needs to be enough resources to justify the investments, and a market power and positioning to go through. [104]

The downstream transformation of products benefits the country by creating jobs and companies, generating revenues, affecting other sectors, thus, building different economic forces and diversifying the economy.

Section 7. Natural resource charter benchmarking

The Natural Resource Charter Benchmarking Framework is an instrument for benchmarking the management of extractives against best practices.[105] The framework

---

opportunities later on". By 2012, more than 60 suppliers were participating, and a range of new technologies with global applications were produced. This led to linkages where these suppliers became competitive, and were able to take their services outside of Chile.

https://www.oecd.org/dev/World_Class_Suppliers_Development_Programme_Chile.pdf

[104] Botswana took the opportunity of DeBeers renewing a 25-year license, to demand processing diamonds in the country and not exported raw. Botswana was eager to establish a cutting and polishing industry to create more employment opportunities in the sector. Since diamond mines were strategic to DeBeers' business, a mutually beneficial relationship was re-established.

[105] Oxford Policy Management and Natural Resource Charter researchers developed the first version of the framework in 2011.

builds on the Natural Resource Charter's policy and practical guidance. It consists of a set of questions that can be used by different stakeholders to organize analysis, debates and strategic planning. There are two levels of questions, under each precept. Primary questions break down the area of the precept into two to four main issues. Underneath each primary question is a series of secondary questions diving deeper into specificities.

The basic building blocks of the framework are the 12 precepts of the Natural Resource Charter presented in section 1 of this chapter.

The previous analyses of legal and institutional frameworks, and the different reflections about challenges and opportunities of natural resources governance in quest of sustainable development, suggest that some issues have higher priorities. The RGI points to certain aspects in particular. Tunisia scores poorly in allocation of rights, local impact and SOEs. The problem is even more conspicuous for the mining sector.

For the purpose of this benchmarking exercise, only precepts 3, 5 and 6 of the Charter are going to be addressed. They display the most, the primary governance issues. For practicality and to give more emphasis on prominent problems, the benchmarking framework will be only applied on the mining sector.

The framework would be used at the deepest level available, which means answering the secondary questions. In fact, the scope and objectives of this work is to provide in-depth analyses about the governance of extractive industries. The benchmarking exercise should help inform research, and direct official attention and efforts.

Annex 8 presents the benchmarking application. For each secondary question, an answer was given using the guidance notes and transparency tables provided by the Natural Resource Charter Benchmarking Framework. The answers were in the format of: yes, partially yes (most of the details match), partially no (some details match) and no. When deemed necessary, justifications or clarifications concerning the answer were provided under the relevant secondary question. The table is color-coded to give a broader visual perception.

All of the non-completely affirmative answers should be addressed, and constitute priority issues for the governance of the extractive industry in Tunisia. The key findings are:

- Local impacts and SOEs are heavily mismanaged. Exploration licensing and monitoring operations need a few improvements.

- There is a gap between the laws and regulations, and practice.[106] Many legal requirements are either not enforced, not sufficiently developed or not up to date.
- A lot of best practices and innovative solutions are not being implemented.
- Strong communication (especially in crisis) and strategic planning should be prevalent in public efforts, with emphasis on proactive measures.

This work can be the basis for further analyses and strategic reflections around natural resources. It should set the path for the benchmarking of the other precepts of the charter, and guide the sectorial reforms and improvements.

* * * * *

Governance of the extractives industries requires a wholesome rigorous analytical approach, evidence-driven strategic thinking and holistic implementation. These sectors are highly complex and intertwined with their different environments, creating heavy challenges at every step of the decision chain.

Dealing with these complexities require a sense of purpose and knowledge. Governance is not an end in itself, but a means to sustainable development, recognizing that natural resources are finite.

The different tools and notions discussed in this chapter seek to improve sectorial and global governance, fortify the economy and build capacities to sustain the different stakeholders, and protect the national interests beyond the lifecycle of natural resources.

[106] According to RGI, Practice score is 20% lower than Law score.

Conclusion

The purpose of this report was to improve the governance of the extractive industry in Tunisia. We have done so, by addressing the legal and institutional frameworks governing the sector. Analyses of the status quo were carried, before diving deeper onto the necessary measures and reforms.

A special attention was given to the main actors around the oil, gas and mining sectors. The SOEs are the cornerstone for any governmental intervention, and for the devolvement of natural resources. Their performance is quite important.

Afterwards, global challenges and opportunities of the extractive industry were presented, along with significant foundations and tools for governance. Then, a series of issues throughout the decision chain, and their suggested solutions were outlined.

An innovative benchmarking tool was used to prepare for further research work, and to help governmental and administrative efforts in the sector.

The report shows that moving forward with governance, is more than just implementing or building capacity. It requires a good understanding of the whole situation and the reigning dynamics. It suggests that an adopted good practice is merely an option among many others at the disposal of the government.

Practically, and obviously, Tunisia has a unique context distinct from other resource rich countries. It has specificities in terms of social, political, economic and geological features. There is not a particular model or experience to be followed. Rather, learning and benefiting from the different approaches and contextual efforts, would help avoid the common challenges and prevent certain mistakes. Besides, such a strategy of building on knowledge and experience can bring together the different stakeholders around a proven record or solution.

In tackling the various challenges, the decision makers must continually adapt and improve by research and analysis. As knowledge of the linkages between extractives and broader economic and social structures increases; the various regulations, contracts, other instruments and some of their contents need to be changed to reflect this.

It is important that the initial decisions are made with the need for versatility and flexibility in mind, or must provide ways of adapting to different circumstances.

However, for the transformations to be effective, there needs to be a transparent framework that fosters accountability, and helps drive institutional improvement as well.

The report also emphasises that allocation of rights has to be flexible and able to respond to geological and global market conditions. These factors are beyond government control, and will play a key role in setting strategies and risk assessments.

Finally, a key takeaway from this work, is that clarity of the roles and responsibilities of different entities is an important element in well-designed sector organization. This includes clarity in the roles of other non-extractive actors, and an optimal public sector structure.

Important steps are required to achieve this. They consist in ensuring that sufficient operational capacity is available at each level of the value chain, especially in terms of professional expertise, training, adequate resources, compensation, and proper relationship with politicians void from political interference; creating non-overlapping mandates such that every public entity has a uniquely defined and appropriate mandate; and the consistency between the different stakeholders in order to achieve sustainable development.

Bibliography

- BOOKS AND REPORTS

Alba, E., (2009), Extractive Industries Value Chain: A Comprehensive Integrated Approach to Developing Extractive Industries, World Bank Group, Africa Region Working Paper Series number 125.

ATCP, (2019), خفايا عقود المحروقات في تونس.

Bauer, A., (2014), Managing the public trust: How to make natural resource funds work for citizens, Revenue Watch Institute and Vale Columbia Center.

Bauer, A., (2018), Upstream Oil, Gas and Mining State-Owned Enterprises, Commissioned by the Extractive Industries Transparency Initiative.

Béjaoui, M., (2019), Coordinating the activities of prevention and control of pollution, and environmental monitoring.

Cameron, D. and Stanley M., (2017), Oil, Gas, and Mining: A Sourcebook for Understanding the Extractive Industries, World Bank Group.

Collier, P., (2007), The bottom billion: Why the poorest countries are failing and what can be done about it, Oxford University Press.

CPG, (2015), Activity report.

ETAP, (2018), Activity report.

Fanthorpe, R. and Gabelle, C., (2013), Political economy of extractives governance in Sierra Leone, World Bank Group.

Heller, P., (2019), National Oil Company Database: Global Launch, Open GovHub, Washington, DC April 25, 2019.

Heller, P. et al., (2014), Reforming National Oil Companies: Nine Recommendations.

Industrie Open Data, from http://catalog.industrie.gov.tn/

International Monetary Fund, (2018), Trinidad and Tobago: selected issues, Country Report number 18/286.

Manley, D., and Pitman, R., (2017), Natural Resource Charter Benchmarking Framework.

Ministère de l'Energie, des Mines et de la Transition Energétique, (2020), Conjoncture énergétique rapport mensuel premier trimestre de 2020.

Ministry of Finance, (2020), Report on State-owned enterprises Annex 9.

Nadejda, V., (2007), On measuring the performance of national oil companies, Stanford University, page 13.

NRGI, (2017), 2017 Resource governance index.

NRGI, (2018), Guide to Extractive Sector State-Owned Enterprise Disclosures.

NRGI, (2015), Local content: Strengthening the Local Economy and Workforce, NRGI Reader.

NRGI, (2014), Natural resource charter, Second edition.

NRGI, (2016), Parliamentary Guide for Approval of Natural Resource Contracts in Tunisia.

NRGI, (2018), The Natural Resource Charter Decision Chain, NRGI Primer.

Nigeria Natural Resource Charter, (2012), Benchmarking exercise report.

Ravat, A. and Kannan, S., (2012), Implementing EITI for Impact: A Handbook for Policy Makers and Stakeholders, World Bank Group.

Rosenblum, P. and Maples, S., (2009), Contracts confidential: ending secret deals in the extractive industries, Revenue watch.

Tunisian Presidency of the Government, (2014), National OGP action plan.

Tunisian Presidency of the Government, (2018), OGP national action plan 2018-2020.

Tunisian Presidency of the Government, (2016), OGP second national action plan 2016-2020.

Tunisian Presidency of the Government, (2018), Tunisian OGP: End term self-assessment report.

Woodroffe, N. et al., (2017), Tanzania's New Natural Resources Legislation: What Will Change?

- LEGISLATIVE AND REGULATORY TEXTS

Tunisian Constitution of 27 January 2014.

Tunisian Constitution of 1 June 1959.

Law 2019-59 dated 9 July 2019 approving appendix 3 revision to the agreement and its annexes for the hydrocarbons exploration permit known as “Borj El Khadra”

Law 2018-56 dated 27 December 2018 relative to the Finance Law of 2019.

Law 2018-35 dated 11 June 2018 relative to corporate social responsibility.

Law 2016-22 dated 24 March 2016 relative to access to information.

Law 2003-30 dated 28 April 2003 promulgating the mining code.

Law 99-93 dated 17 August 1999 promulgating hydrocarbons code, as amended and completed by law 2002-23 dated 14 February 2002; law 2004-61 dated 27 July 2004; law 2008-15 dated 18 February 2008, and law 2017-41 dated 30 May 2017.

Law 89-20 dated 22 February 1989 regulating the exploitation of quarries

Law 72-22 dated 10 March 1972 creating ETAP.

Decree 2020-314 dated 19 May 2020 fixing modalities of appointment, evaluation and exemption of administrators representing public shareholders and independent shareholders

Decree 2016-1158 dated 12 August 2016 creating governance cells and fixing their attributes.

Decree 2016-858 dated 15 June 2016 organizing the Ministry of energy and mines.

Decree 2016-294 dated 9 March 2016 creating Ministry of energy and mines.

Decree 99-2113 dated 27 September 1999, creating a national Energy council, and fixing its composition and modalities of functioning.

List of Figures

Figure 1. Mining contracting process in Tunisia (modified, NRGI, 2016).....13

Figure 2. Hydrocarbons contracting process in Tunisia (modified, NRGI, 2016).....26

Figure 3. Parliamentary approval of contracts in select countries (NRGI, 2016).....29

Figure 4. Revenue per employee versus Number of employees (2004) 35

Figure 5. Gypsum indicators in Tunisia (2007 to 2015) 56

Figure 6. Salt indicators in Tunisia (2007 to 2015).....56

Figure 7. Iron ore indicators in Tunisia (2007 to 2015).....57

Figure 8. Phosphate production (1900 to 2019).....58

Figure 9. Annual exports of phosphates derivatives (1980 to 2018) 59

Figure 10. Number of permits and discoveries (from 1970 to 2019).....60

Figure 11. Investments and operating companies (1985 to 2018) 61

Figure 12. National Oil production (1990 to 2019) 62

Figure 13. Natural gas resources (2014 to 2019) 63

Figure 14. Primary resources balance (1990 to 2019) 63

Figure 15. Natural resource charter decision chain.....66

Figure 16. Worldwide governance indicators for Tunisia.....71

Figure 17. Annual changes in GDP and diammonium phosphate in Tunisia 84

List of Tables

Table 1. Exploration permit summary 20

Table 2. National enterprise participation 23

Table 3. Recommendations for the governance of CPG 40

Table 4. Comparisons of RGI for oil and gas (2017) 73

Table 5. Comparisons of RGI for mining (2017) 75

Table of Contents

Introduction 1

Chapter 1: Legal framework 5

Section 1. Tunisia's Constitution of 2014 5

Section 2. Mining code 7

1. General terms and definitions 9
2. Prospecting license 10
3. Exploration permits 10
4. Exploitation concessions 11
5. Common obligations of title holders and associated rights 14
6. Fiscal, customs and foreign commerce and exchange regimes 14
7. Administrative control and sanctions 15
8. Conclusion 15

Section 3. Hydrocarbons code 16

1. Definitions and general provisions 17
2. Prospecting activity 17
   a. Prospecting authorization 17
   b. Prospecting permit 18
3. Exploration of hydrocarbons 18
4. Hydrocarbons exploitation 21
5. Common obligations of title holders and attached rights 22
6. Special regime of the national enterprise participation 23
7. Fiscal regulation 24
8. Administrative control and sanctions 24
9. Conclusion 25

Chapter 2: Institutional and organizational frameworks 28

Section 1. Parliament 28

1. Global experiences 29
2. Tunisian Assembly of the Representatives of the People 31
Section 2. Ministerial bodies 32
1. Consultative committee on mines 33
2. Consultative committee on hydrocarbons 33
Section 3. State owned enterprises 34
1. Gafsa Phosphates Company 36
a. Current governance system of CPG 37
b. Improving the system 39
2. Tunisian Enterprise of Petroleum Activities 43
a. Current system of ETAP 44
b. Improving the system 47
Section 4. International and Civil society 49
1. Civil society 49
2. International initiatives 50
a. Extractive Industries Transparency Initiative 51
b. Natural resource governance institute 53
Chapter 3: Key figures around natural resources 55
Section 1. Mining sector 55
Section 2. Hydrocarbons sector 59
Chapter 4: Challenges, opportunities and sustainable development 65
Section 1. Decision chain 65
Section 2. Global challenges and opportunities of oil, gas and mining 68
Section 3. Foundations for resource governance 69
1. Natural resources, politics and policy making 69
2. Broader governance framework 70
3. Accountability and transparency 72

4. Resource governance index 72
Section 4. Discovery and getting a good deal 76
1. Challenges around extraction 76
2. License allocation 78
3. Government effectiveness 79
4. Fiscal regime 79
5. Local impacts 81
a. Environmental impacts 81
b. Social impacts 82
Section 5. Managing revenues 83
Section 6. Investing for sustainable development 86
1. Economic linkages 86
2. Employment 87
3. Technology transfer 87
4. Downstream 88
Section 7. Natural resource charter benchmarking 88
Conclusion 91

ANNEX 1: OVERVIEW OF RECOMMENDED SOE DISCLOSURES

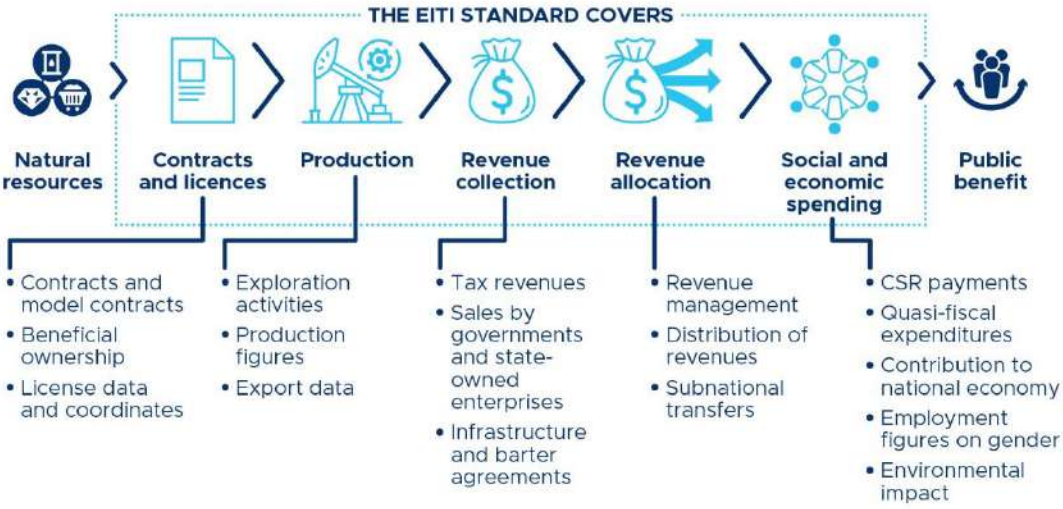
Category of SOE disclosure	Content	Features
Sector context	Legal and institutional context	
	Political, economic, social and environmental context	
Mission, structure and organization	Objectives	
	Ownership (including beneficial ownership)	
	Corporate structure	*Accessibility*
	Human resources	
	Partnerships	*Reliability*
	Corporate governance	
Role	Commercial activities	*Consistency*
	Non-commercial activities	
	Agreements	*Completeness*
Performance and results	Performance (e.g., production, sales, efficiency)	
	Financial results	*Frequency*
Transfers with the government or subnational government entities	Payments and receipts to/from national and subnational government entities	
Impact	Social, environmental, human rights impact and corporate social responsibility initiatives	*Timeliness*

ANNEX 2: ETAP PARTICIPATIONS PORTFOLIO

SECTOR	COMPANIES	RATE (%)	TND
EXPLORATION	1. JOINT OIL	50.0%	476 250
	2. NUMHYD	50.0%	644 337
PRODUCTION	3. SEREPT	50.0%	3 608 660
	4. CTKCP	50.0%	50 000
	5. MARETAP	50.0%	150 000
	6. SODEPS	50.0%	50 000
	7. TPS	50.0%	50 000
	8. APO	50.0%	250 000
DRILLING	9. CTF	90.0%	450 000
TRANSPORT	10. SOTRAPIL	18.28%	534 619
	11. SOTUGAT	99.8%	199 600
	12. SERGAZ	33.23%	32 900
STORAGE	13. TANKMED	24.0%	115 385
BANKS	14. BTS	0.83%	500 000
	15. STUSID BANK	0.125%	125 000
OTHERS	16. SOTULUB	27.09%	1 490 000
	17. BITUMED	8.0%	48 000
	18. SNDP	-	50
	19. TECI	4.8%	36 000
	20. PAEZ	12.4%	741 000
	21. T.A	0.1%	839 700
	22. SNIPE	4.86%	70 000
	23. ITF	0.4%	40 000
	24. SSC	40.0%	400 000
	25. S.A.GE.S	0.2%	1 000
DEVELOPMENT & INVESTMENT	26. SODIT-SICAR	44.44%	4 000 000
	27. FCPR-FP-PME	71.42%	5 000 000
	28. SODIK-SICAR	59.98%	2 999 000
STATE' ACCOUNT SECURITIES	29. SGTBC	2.951%	205 000
	30. BNA	4.1%	8 843 634
	31. STB	2.2%	36 375 427
	32. BH	16.6%	38 663 559
	33. TRAPSA	35%	15 709 196
	34. STAR	29.3%	5 715 197
	35. TUNIS RE	3.8%	6 166 348
	36. SCITT	25%	250 000
	37. BTL	-	7 125 300

ANNEX 3: OVERVIEW OF EITI

Data disclosed under the EITI



How the EITI works and how it achieves impact

1 The EITI is implemented at the national level, where local **multi-stakeholder groups** (MSGs) oversee implementation and ensure it's aligned with national priorities.

2 MSGs are responsible for **publishing**, **analysing**, and **communicating data** required by the EITI Standard to wider audiences, from ministers and parliamentarians to local communities and civil society groups.

3 Data is leveraged by stakeholders and wider society to **curb corruption**, **strengthen governance** and **support inclusive development**.

Opening data, building trust

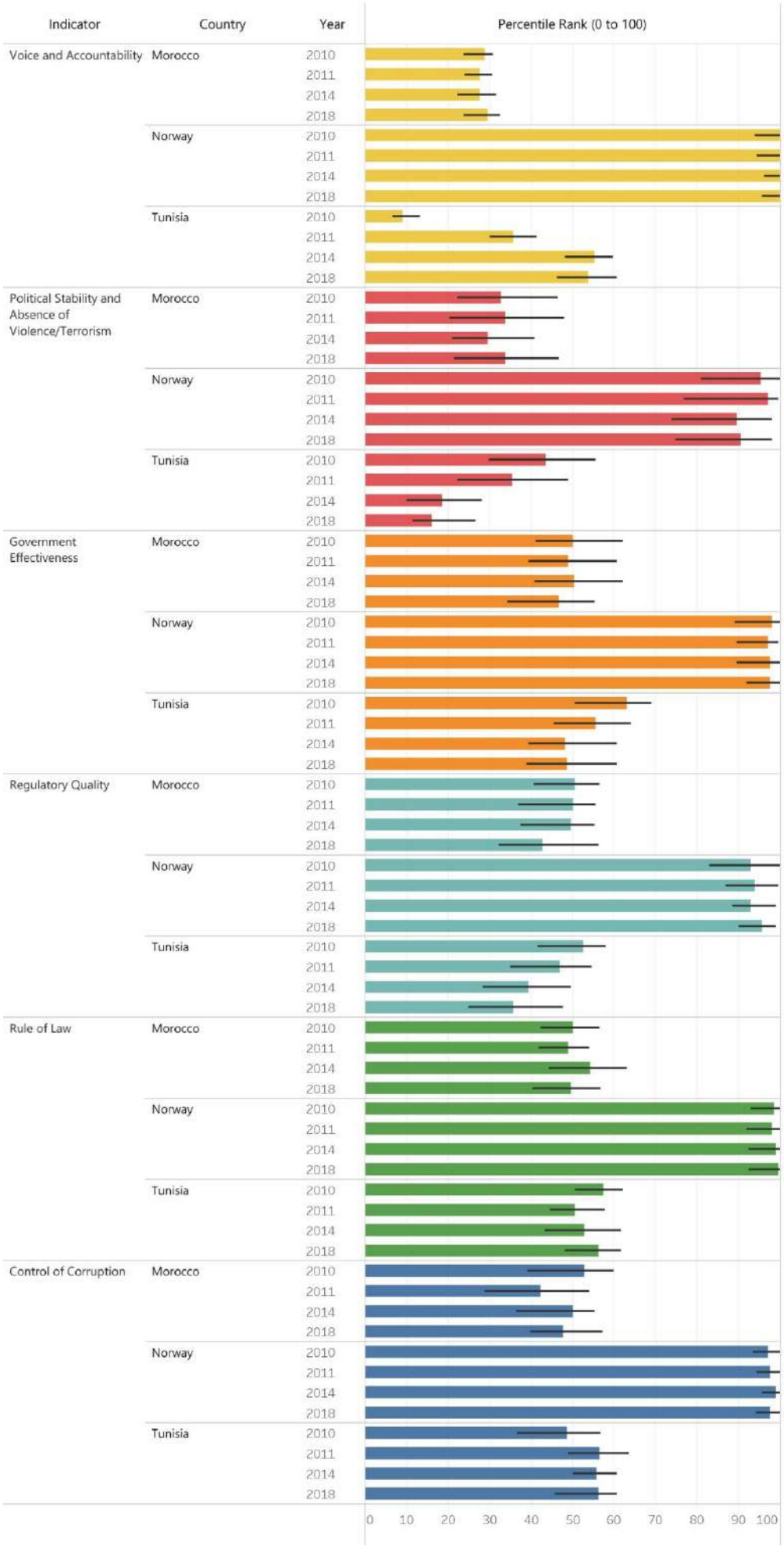
As the world becomes more digital, EITI disclosures are increasingly moving online, making data more timely, useful and cost-effective.

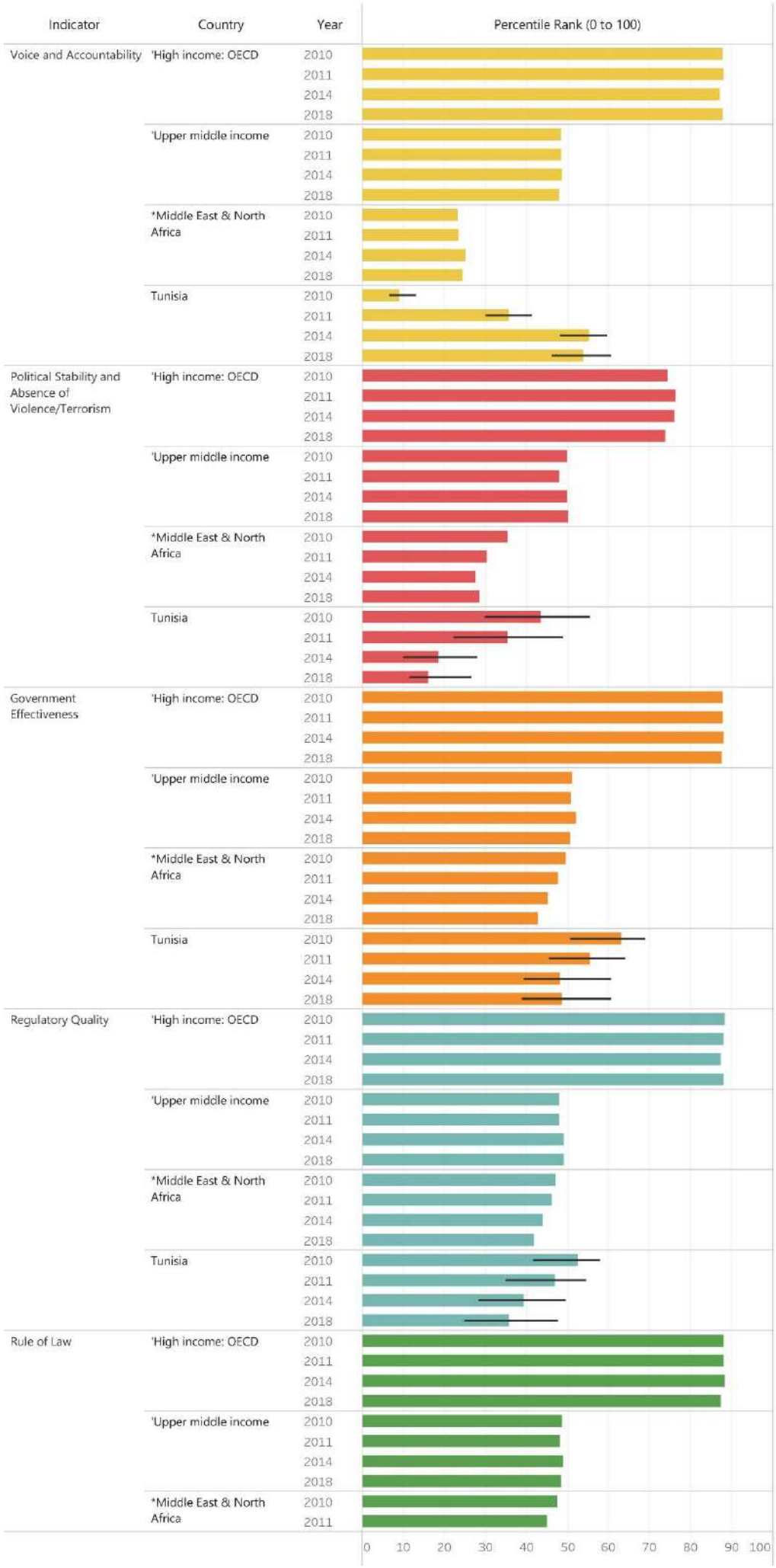
ANNEX 4: PRECEPTS OF NATURAL RESOURCE CHARTER

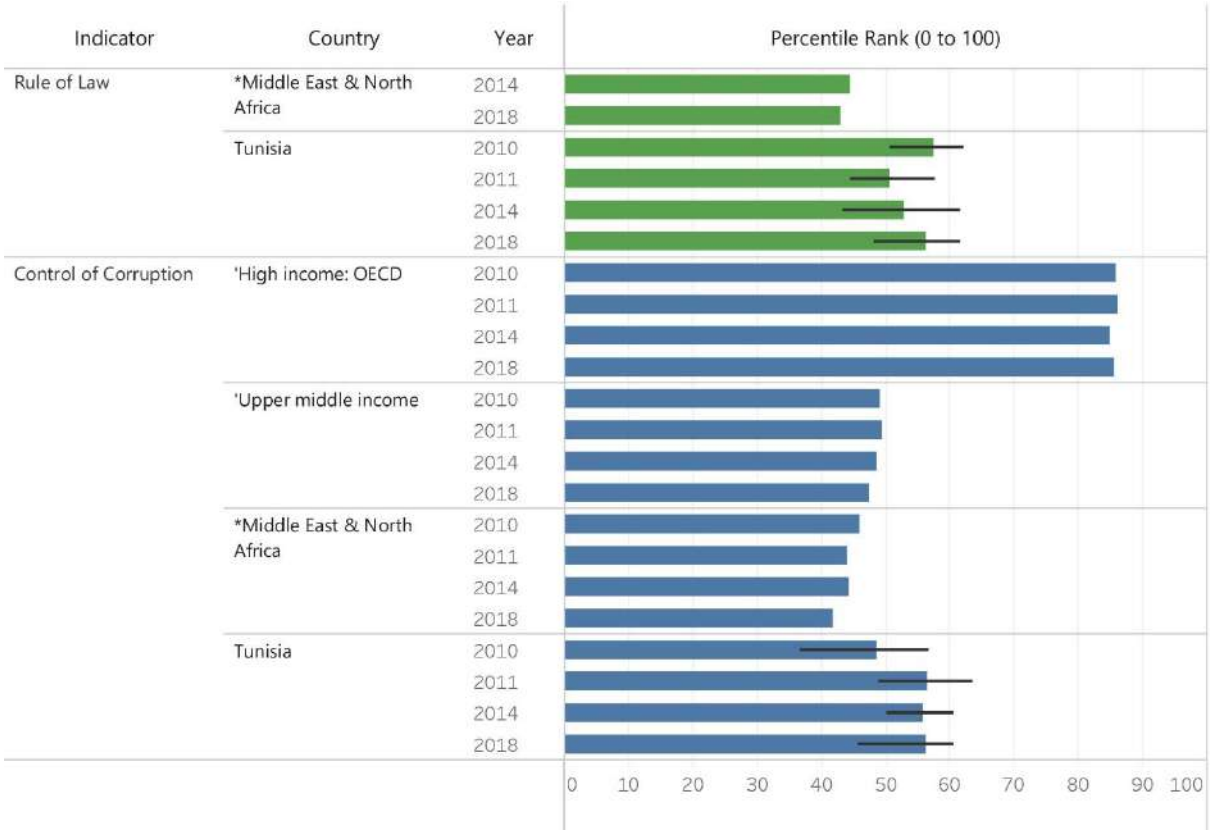
Charter precept	Primary questions covered by the precept
Precept 1. Resource management should secure the greatest benefit for citizens through an inclusive and comprehensive national strategy, clear legal framework and competent institutions.	**1.1 Fundamentals of the resource endowment.** Has the government clearly identified the country's resource endowment, who owns it, and the positive and negative impacts of extraction? **1.2 Resource strategy.** Does the government have an inclusive and comprehensive national strategy for the management of resources?
Precept 2. Resource governance requires decision-makers to be accountable to an informed public.	**2.1 Transparency.** Does the government ensure that resource management is sufficiently transparent for all actors to effectively understand and scrutinize decision-making and its implications? **2.2 Official oversight.** Do government oversight bodies hold officials to account? **2.3 Communications and public oversight.** Is there a critical mass of informed citizens that holds the government to account?
Precept 3. The government should encourage efficient exploration and production operations, and allocate rights transparently.	**3.1 License planning.** Does the government adequately prepare before allocating licenses? **3.2 Awarding resource licenses.** Does the government allocate licenses to competent and law-abiding companies, and in a way that maximizes value for the country? **3.3 Monitoring operations.** Does the government adequately monitor operations across project life cycles?
Precept 4. Tax regimes and contractual terms should enable the government to realize the full value of its resources consistent with attracting necessary investment, and should be robust to changing circumstances.	**4.1 Setting fiscal terms.** Does the fiscal regime secure a reasonable return for the government while still attracting sufficient investment? **4.2 Legal framework of fiscal terms.** Does the legal framework of fiscal terms provide sufficient accountability to citizens, stability for investors and flexibility to respond to changing circumstances? **4.3 Tax administration.** Do government authorities collect the full value of taxes and other payments owed to the state? **4.4 Accountability and transparency of fiscal regimes.** Is the government held to account for setting and collecting taxes and other company payments?
Precept 5. The government should pursue opportunities for local benefits and account for, mitigate and offset the environmental and social costs of resource extraction projects.	**5.1 Trust.** Does the government ensure that there are good working relationships between all stakeholders within affected communities? **5.2 Impact assessment.** Does the government maintain an effective system for assessing the potential impacts of resource projects? **5.3 Cost mitigation.** Does the government mitigate the environmental, social and health costs of resource projects? **5.4 Local benefits.** Does the government help affected communities to benefit from resource projects?
Precept 6. Nationally owned companies should be accountable, with well-defined mandates and an objective of commercial efficiency.	**6.1 SOE role and funding.** Does the government clearly define the SOE's role and establish a working funding mechanism for the company? **6.2 SOE corporate governance.** Do the SOE's corporate governance systems limit political interference in the company's technical decisions, while ensuring effective oversight? **6.3 SOE transparency and accountability.** Are SOE decision-making and operations transparent and accountable?
Precept 7. The government should invest revenues to achieve optimal and equitable outcomes, for current and future generations.	**7.1 Long-term fiscal sustainability.** Is the government's spending and borrowing fiscally sustainable given that nonrenewable natural resources are finite? 7.2 Absorptive capacity. Does the government adequately manage the rate of spending in the domestic economy?

Precept 8. The government should smooth domestic spending of revenues to account for revenue volatility.	**8.1 Expenditure volatility.** Is government spending independent of short-term changes in revenues?
Precept 9. The government should use revenues as an opportunity to increase the efficiency of public spending at the national and subnational levels.	**9.1 Public spending planning.** Does public spending align with national plans? **9.2 Revenue distribution.** Does the government distribute revenues in an accountable and transparent manner, and avoid off-budget transfers and spending? **9.3 Budget and project execution.** Does the government spend public revenues as intended? **9.4 Accounting,** reporting and oversight of public spending. Does the government account for and report on revenues and public spending, and is there strong oversight of public expenditure?
Precept 10. The government should facilitate private sector investments to diversify the economy and to engage in the extractive industry.	**10.1 Private sector enabling environment.** Does the government make general purpose investment and remove bottlenecks to non-resource sector growth? **10.2 Local content.** Does the government ensure that domestic businesses and workers have the opportunity and capacity to operate in the extractive sector? **10.3 Sharing infrastructure.** Does the government ensure that extractive industry infrastructure is open to third parties wherever economically feasible? **10.4 Domestic value addition and consumption.** Does the government take the opportunity to use oil, gas and mineral resources domestically, when the opportunity costs of doing so are less than the benefits?
Precept 11. Companies should commit to the highest environmental, social and human rights standards, and to sustainable development.	**11.1 Trust.** Does the company work transparently and seek to build trust with all stakeholders related to its activities? **11.2 Sustainable development.** Does the company work to maximize the potential benefits and minimize the social and environmental costs associated with resource extraction? **11.3 Corporate integrity.** Does the company act with honesty and integrity?
Precept 12. Governments and international organizations should promote an upward harmonization of standards to support sustainable development.	**12.1 Transparency.** Does the international community advance public disclosure requirements for the extractive industry? **12.2 Environmental, social and health protection.** Does the international community ensure that resource projects comply with internationally recognized standards of human rights, and environmental, social and health protection? **12.3 Corruption and illicit financial flows.** Does the international community tackle corruption and illicit financial flows?

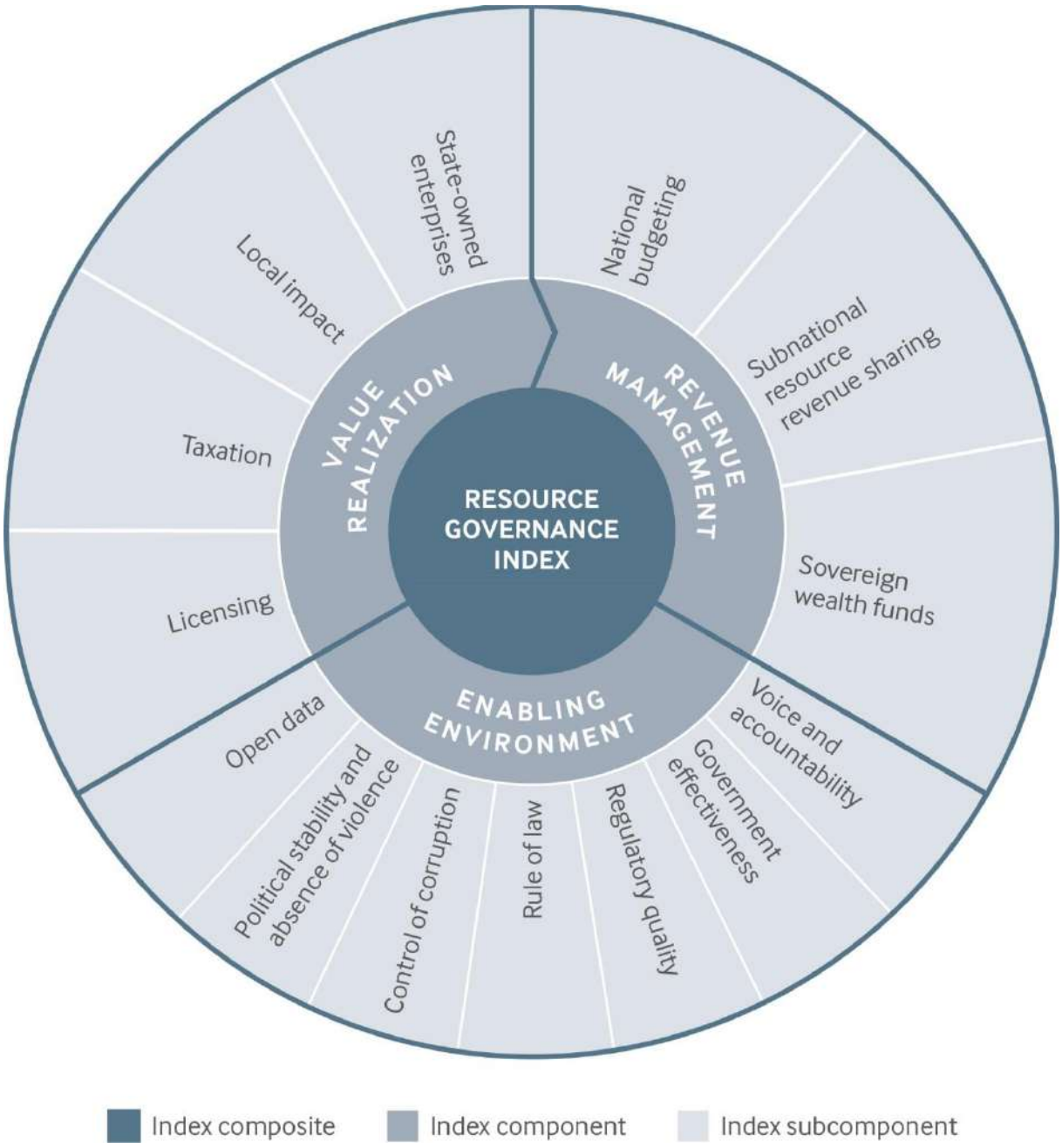
ANNEX 5: WORLDWIDE GOVERNANCE INDICATORS




Indicator
Country
Year
Percentile Rank (0 to 100)
Voice and Accountability
'High income: OECD
'Upper middle income
*Middle East & North Africa
Tunisia
Political Stability and Absence of Violence/Terrorism
Government Effectiveness
Regulatory Quality
Rule of Law
2010
2011
2014
2018
0
10
20
30
40
50
60
70
80
90
100


Indicator
Country
Year
Percentile Rank (0 to 100)
Rule of Law
*Middle East & North Africa
2014
2018
Tunisia
2010
2011
2014
2018
Control of Corruption
'High income: OECD
2010
2011
2014
2018
'Upper middle income
2010
2011
2014
2018
*Middle East & North Africa
2010
2011
2014
2018
Tunisia
2010
2011
2014
2018
0
10
20
30
40
50
60
70
80
90
100

ANNEX 6: RESOURCE GOVERNANCE INDEX



ANNEX 7: RGI TUNISIA PROFILE

Natural Resource Governance Institute

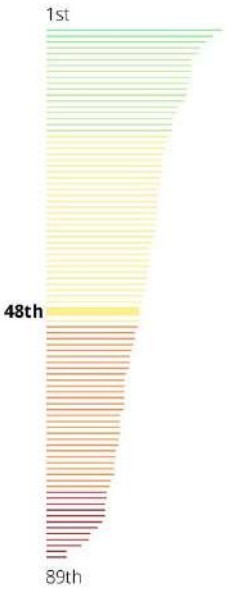
2017 RESOURCE GOVERNANCE INDEX

Tunisia

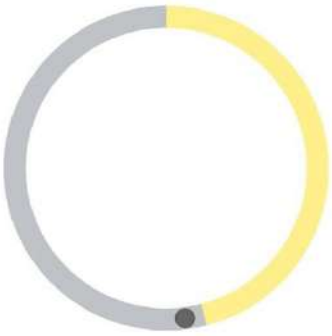
MINING

Tunisia is one of the world's top-ten phosphate producers[1] and home to the world's fifth largest phosphate producing company, the state-owned Compagnie de Phosphate de Gafsa (CPG). Tunisia's mining sector scores 46 of 100 points in the 2017 Resource Governance Index, placing it 48th among 89 assessments in the overall ranking. Despite the overall weak performance, Tunisia's mining sector ranks fifth in the Middle East and North Africa (MENA) region. The phosphate mining industry is prone to environmental challenges and this is reflected in Tunisia's weak performance in terms of local impacts. Since the 2011 Tunisian revolution, governance of the oil, gas and mining sectors has featured prominently in discussions about reform in the country. Of the index's "dual sector" countries—those whose mining and oil and gas sectors were both assessed—Tunisia has the largest difference in performance between the two sectors – 10 points and 22 ranks, pointing to potential for improvement in the mining sector.

TUNISIA (MINING): RGI SCORE AND RANK



TUNISIA (MINING): RGI AND COMPONENT SCORES



COMPOSITE

46 /100

VALUE REALIZATION

40 /100

REVENUE MANAGEMENT

30 /100

ENABLING ENVIRONMENT

67 /100

- Average

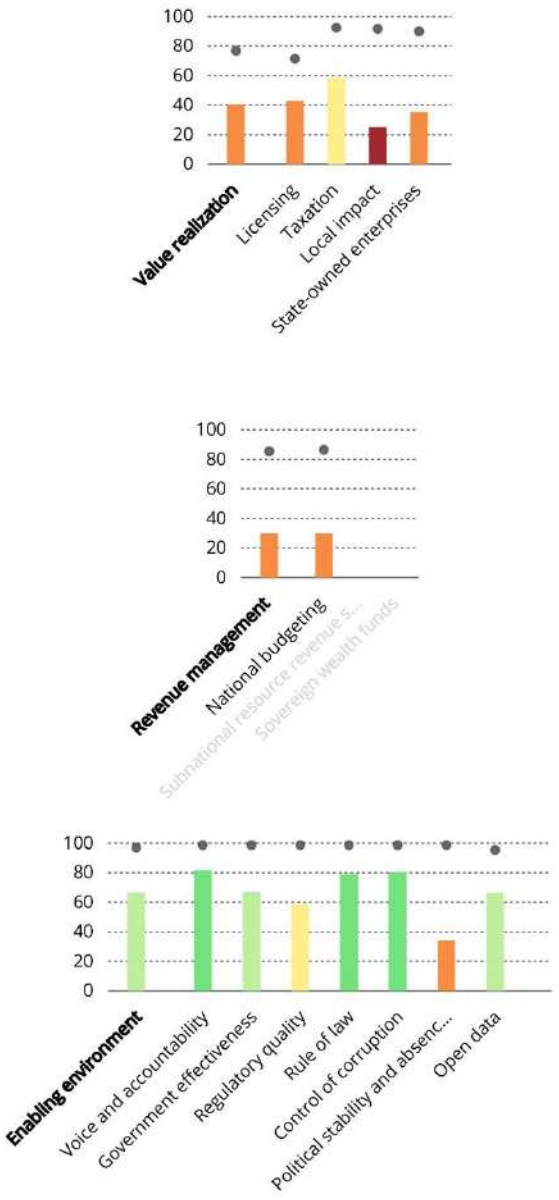
Index results summary

LOCAL IMPACT AND LICENSING ARE WEAKNESSES IN TUNISIA'S MINING GOVERNANCE

Tunisia, a middle-income country with a population of 11 million, scores 46 of 100 in mining governance. The Tunisian mining sector's satisfactory score of 67 of 100 in enabling environment is offset by poor performance in revenue management, with a score of 30 of 100. Tunisia scores 40 of 100 for value realization, the component that measures a country's ability to extract value from its resource endowments, compared to the index average of 50 of 100, and as a mineral producer it ranks 67th

overall. The licensing process is particularly opaque; the country's mining code does not require the disclosure of pre-qualification criteria or rules of the licensing process. The government discloses little information in practice, though the existence of a mining cadaster and disclosure of some contracts in 2016 have improved transparency around licensing.

TUNISIA (MINING): SUBCOMPONENT SCORES



● Best index score

Tunisia has made progress in transparency in some areas over the past five years, such as information about the state-owned enterprise's operations. However, lack of progress in the Extractive Industries Transparency Initiative (EITI) candidacy, despite the commitment made in the country's Open

Government Partnership action plan, remains a challenge. The mining code does not require disclosure of environmental and social impact assessments and management plans, but does set procedures for project rehabilitation, penalties for violation of environmental rules, and some compensation mechanisms for affected landowners and users. Implementation of and compliance with these requirements is, however, very weak and this is reflected in the nine-point gap between the quality of the country's relevant laws and its actual practices. Local media have reported cases of non-rehabilitation of phosphate projects, which has caused high levels of pollution in production CPG-controlled sites in Gafsa, the main phosphate-producing area.

TUNISIA (MINING): RESOURCE GOVERNANCE TRENDS

Issue	Score 2017 RGI	Direction
EITI compliance	30/100	●
Historical contract disclosure	100/100	▲
Environmental/social impact assessment disclosure	0/100	●
State-owned enterprise production disclosure	50/100	▲

State-owned enterprise governance

TUNISIA'S CPG SHOULD CATCH UP WITH ITS OIL COMPANY ETAP AND DISCLOSE FINANCES AND OPERATIONS IN ANNUAL REPORTS

As in neighboring Morocco, Tunisia's phosphate industry is nearly entirely controlled by its state-owned enterprise, Compagnie de Phosphate de Gafsa (CPG). In the index's assessment of SOEs, CPG scores a weak 35 of 100, and ranks 55th among the 74 SOEs assessed. CPG ranks tenth in the MENA region, just behind the Egyptian General Petroleum Corporation, and 17th among the 22 mining sector SOEs assessed. It is behind Morocco's phosphate giant OCP by 44 points and 50 ranks. CPG does not disclose how much revenue it contributes to the state's coffers, nor do its annual reports include basic financial information such as balance sheets, income statements or cash flow statements. On a positive note, CPG is less involved in the license award process than its oil and gas sector counterpart, ETAP, which takes part in tender award processes even though it has no legal mandate to do so.

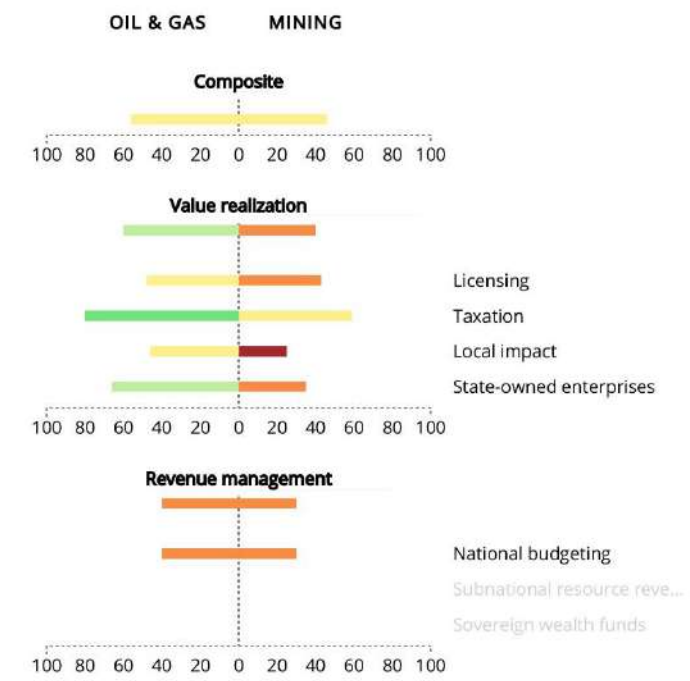
Enterprise:	Compagnie de Phosphate de Gafsa
State:	100%
Revenue:	260 million (2013)
Score:	35
(SOEs):	55
(Oil&Gas):	17

Governance performance across oil, gas and mining sectors

GAP BETWEEN EXTRACTIVE SECTORS POINTS TO POTENTIAL FOR IMPROVEMENT IN TUNISIA'S MINING GOVERNANCE

While Tunisia shows signs of improving governance of its oil and gas resources, this potential is not matched in the mining sector, which scores a weak 46 of 100 and ranks 56th in the index, 22 places lower than its oil and gas sector. This difference is driven by lower scores in the mining sector across policy areas, especially in taxation, local impact and SOE governance. Tunisia's mining sector is dominated by phosphate extraction, which has high environmental impacts; there is also an indication that the government has not always enforced compliance with requirements on closure of mining projects. In contrast, the majority of Tunisia's oil and gas reserves are located offshore with less immediate impact on local communities. Furthermore, the hydrocarbons code has more advanced requirements for developing environmental mitigation management plans in addition to environmental impact assessments. The difference in scores between Tunisia's two sectors in terms of revenue management derives from the lack of disclosure of mining revenue projections. The Tunisian government should produce and disclose projections on revenues from both sectors, given that it participates in oil, gas and mining production via its two SOEs.

TUNISIA: OIL & GAS VS. MINING SCORES



What is the Resource Governance Index?

The 2017 RGI assesses how 81 resource-rich countries govern their oil, gas and mineral wealth. The index composite score is made up of three components. Two measure key characteristics of the extractives sector – value realization and revenue management – and a third captures the broader context of governance — the enabling environment. These three overarching dimensions of governance consist of 14 subcomponents, which comprise 54 indicators calculated by aggregating 133 questions and external data.

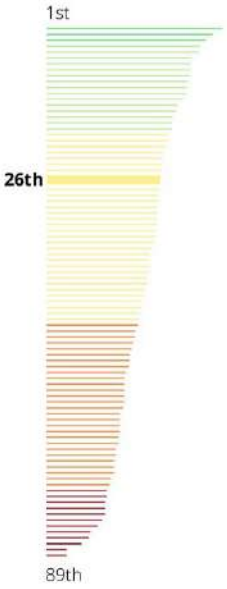
Independent researchers, overseen by NRGI, in each of the 81 countries completed a questionnaire to gather primary data on value realization and revenue management. For the third component, the RGI draws on external data from over 20 international organizations. The assessment covers the period 2015-2016. For more information on the index, how it was constructed, and references to external data, review the RGI Methodology.

Tunisia

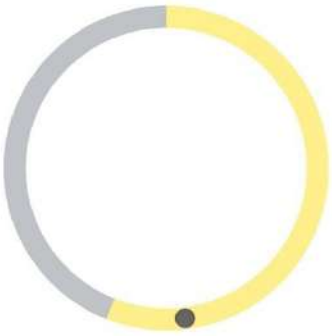
OIL & GAS

Tunisia's oil and gas sector scores 56 of 100 points in the 2017 Resource Governance Index, making it the best performer in the Middle East and North Africa (MENA) region and 26th among 89 assessments in the overall ranking. Tunisia has total natural gas reserves of two trillion cubic feet[1] and is not a major global hydrocarbons producer. According to the World Bank, hydrocarbons constituted seven percent of Tunisia's total exports in 2015.[2] Since the Tunisian revolution, governance of the oil, gas and mining sectors has featured prominently in national reform discussions and the rewriting of the constitution, which now names the Tunisian people as owners all resources. Translating constitutional provisions into specific transparency requirements of the hydrocarbons code remains a work in progress.

TUNISIA (OIL & GAS): RGI SCORE AND RANK



TUNISIA (OIL & GAS): RGI AND COMPONENT SCORES



COMPOSITE

56 /100

VALUE REALIZATION

60 /100

REVENUE MANAGEMENT

40 /100

ENABLING ENVIRONMENT

67 /100

● Average

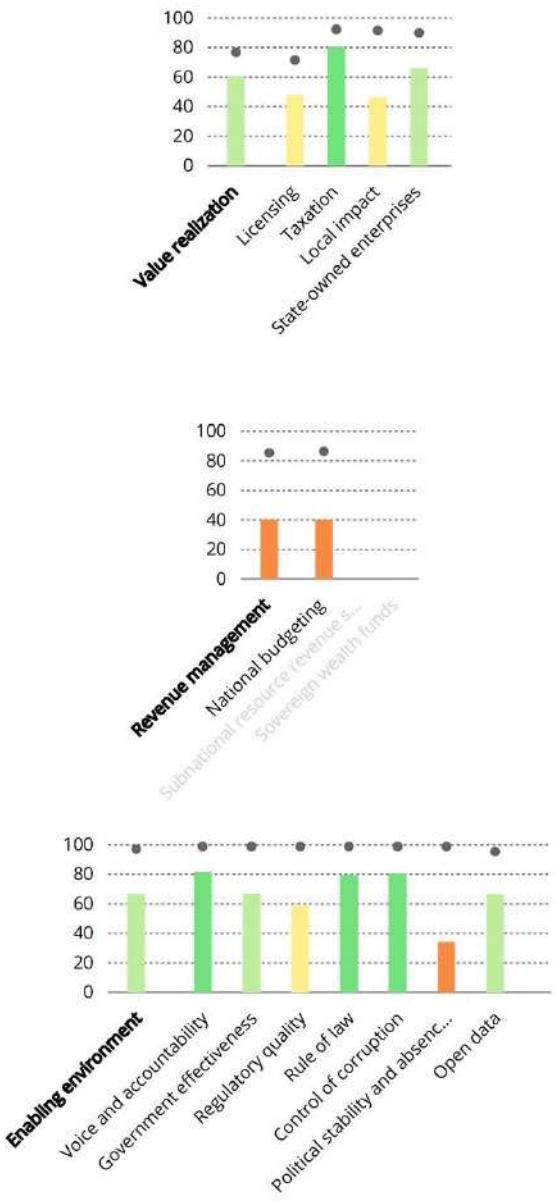
Index results summary

LEGAL PROVISIONS FOR ACCOUNTABILITY AND TRANSPARENCY ARE STILL UNDER WAY IN TUNISIA.

Tunisia achieves its highest component score in enabling environment, reflecting an institutional setting that favors accountability and participation, control of corruption and rule of law. Anticorruption measures relevant to the oil and gas sector are weak, however, as Tunisia does not require public disclosure of the identities of companies' "beneficial owners" or public officials' financial interests in extractive companies. In recent years, political instability has been exacerbated by regional conflict. As

part of its Open Government Partnership action plan for 2016–2018, Tunisia has committed to joining the Extractive Industries Transparency Initiative (EITI) by 2018. In practice, little progress has been made to fulfill that commitment.

TUNISIA (OIL & GAS): SUBCOMPONENT SCORES



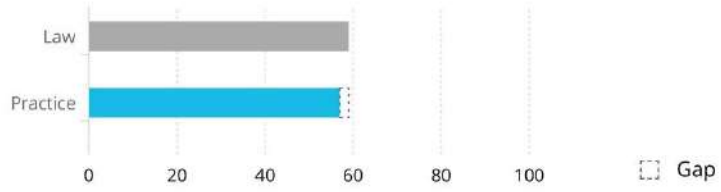
● Best index score

Tunisia performs satisfactorily in value realization – the component that measures a country's ability to extract value from its resource endowments. This result is driven by a score of 80 of 100 in taxation, the highest of all assessed MENA countries in this policy area. Despite scoring highly compared with its neighbors, Tunisia is still some way behind the index's best score of 92 of 100, mainly due to lack of

company-level disclosure of taxes and payments. The local impact subcomponent lowers the value realization score due to lack of transparency around documents, such as environmental impact assessments.

In 2016, Tunisia government disclosed all contracts with oil and gas companies, achieving a full score of 100 on contract disclosure practice. However, the government's recent draft amendment of the hydrocarbons code did not include provisions for mandatory disclosure of contracts. The absence of a legal framework for contract disclosure resulted in a failure to publish in the official gazette or the open data portal contract extensions concluded in 2016. In 2014, following a constitutional review, Tunisia reformed its licensing regime and instituted a legal requirement for parliamentary approval for oil and gas contracts. Implementation of this requirement through a revision of the hydrocarbons code has since stalled, and no new contracts have been approved by parliament since 2014.

TUNISIA (OIL & GAS): LAW AND PRACTICE SCORES



Tunisia does not perform as well in revenue management because the country lacks explicit fiscal rules that control revenues and spending. Tunisia has established a data portal containing information on production and exports; the country could develop this further to match global best practice by including resource reserve data. Tunisia does not currently have specific mechanisms for sharing extractive resource revenues with subnational authorities. Oil-producing regions have experienced unrest and citizens in these regions are demanding implementation of article 136 of the constitution, which requires revenue sharing between regions. Some have also advocated for additional revenue allocation to development programs in resource-producing regions, which experience the highest unemployment rates in the country.

State-owned enterprise governance

ETAP SHOULD CLARIFY ITS ROLE IN LICENSING AND DISCLOSE INFORMATION ABOUT ITS SALES

Tunisia's state-owned oil company, Entreprise Tunisienne d'Activités Pétrolières (ETAP), scores a satisfactory 66 of 100 in the index, the same as Indonesia's Pertamina and Iraq's South Oil Company. This places ETAP 17th among the 74 state-owned enterprises (SOEs) assessed in the index, 12th among oil and gas sector SOEs, and second among SOEs in the MENA region, behind Morocco's state-owned mining company, Office Cherifiendes Phosphates (OCP). Compared with other oil and gas SOEs, ETAP does well in basic financial and operational reporting practices. It does not, however, report on all aspects of its finances and operations, such as revenues and costs from joint ventures and subsidiaries. In particular, the company does not report how much it transfers to the government, despite rules governing fiscal transfers between ETAP and the government. It also falls behind in terms of disclosure

of details about volume, price and buyers of its production, and how the revenues are channeled to the government.

Enterprise:	Entreprise Tunisienne des Activités Pétrolière
State:	100%
Revenue:	621 million (2015)
Score:	66
(SOEs):	17
(Oil&Gas):	12

Governance performance across oil, gas and mining sectors

GAP BETWEEN EXTRACTIVE SECTORS POINTS TO POTENTIAL FOR IMPROVEMENT IN TUNISIA'S MINING GOVERNANCE.

While Tunisia shows signs of improving governance of its oil and gas resources, this potential is not matched in the mining sector, which scores a weak 46 of 100 and ranks 56th in the index, 22 places lower than its oil and gas sector. This difference is driven by lower scores in the mining sector across policy areas, especially in taxation, local impact and SOE governance. Tunisia's mining sector is dominated by phosphate extraction, which has high environmental impacts; there is also an indication that the government has not always enforced compliance with requirements on closure of mining projects. In contrast, the majority of Tunisia's oil and gas reserves are located offshore with less immediate impact on local communities. Furthermore, the hydrocarbons code has more advanced requirements for developing environmental mitigation management plans in addition to environmental impact assessments. The difference in scores between Tunisia's two sectors in terms of revenue management derives from the lack of disclosure of mining revenue projections. The Tunisian government should produce and disclose projections on revenues from both sectors, given that it participates in oil, gas and mining production via its two SOEs.

ANNEX 8: NATURAL RESOURCE CHARTER BENCHMARKING FRAMEWORK

	Primary questions	Secondary questions	Answer
Exploration, licensing and monitoring operations **(precept 3)**	**3.1 License planning.** Does the government adequately prepare before allocating licenses?	**3.1.1 Pre-licensing survey.** Does the government facilitate or fund pre-licensing surveys and make geological information available to companies?	Yes
		3.1.2 Strategic impact assessments. Does the government conduct and publish a strategic impact assessment before allocating licenses?	No
		3.1.3 Non-resource property rights. Prior to allocating licenses, does the government clearly establish who holds property rights to the land being licensed and how those rights will be upheld?	Yes
		3.1.4 Resource rights. Does the government organize licenses to ensure that license areas do not overlap or conflict with existing rights to explore and extract resources?	**Yes**
		3.1.5 Pace of licensing and size of licenses. Does the government have an effective policy on the pace of licensing and size of license areas?	Partially no
		The licensing policy doesn't change or take into account the change of risk after a major discovery has been made. The government grants several fixed-area blocks for exploration, fewer and smaller areas for exploitation, determined in the applications, without limiting the number of blocks obtained. The sizes don't change based on any external or market factors. The risk is that just a few companies control large portions of the prospective resources. The government uses a first-come, first-served application basis to license new areas. In theory, there is no consideration of regulatory agencies capacities. And the decision to allocate titles is fixed in the legislation. It is based on open and free market rationale.	

	3.2 Awarding resource licenses. Does the government allocate licenses to competent and law-abiding companies, and in a way that maximizes value for the country?	**3.2.1 License pre-qualification.** Does the government screen license applicants before allowing applicants to enter a licensing round or negotiation?	Yes
		Prequalification criteria are not explicitly defined or clear to applicants. The government has a discretionary capacity regarding evaluation of the financial and technical aspects of the application. The details of the pre-qualification process are not disclosed. The minimum thresholds are not disclosed after the pre-qualification and award process.	
		3.2.2 License award method. Does the government use a method of awarding licenses that accounts for the level of competitive interest and the administrative capacity of the government?	No
		The authority does not publicly disclose the rules governing the licensing process, such as auction or negotiation rules. Besides, the government awards licenses/contracts via a first-come, first-served process. Despite highly competitive interest for some minerals, the government does not have the capacity to run a license round.	
		3.2.3 License terms and post-bid negotiations. Does the government limit the use of negotiable/biddable terms and resist further negotiations after the bidding process?	Yes
		3.2.4 License transfers. Does the government submit license transfers to the same checks and balances as an initial license award?	Yes
		The transfer process does not allow the government to tax any selling company's capital gains. It also exempts operations between related companies from required authorizations.	
		3.2.5 License disclosure. Does the government disclose pre- and post-license round information?	Partially no

		The government is not required to publicly disclose all signed licenses/contracts with extractive companies. Concerning the mining cadastre, the registry excludes information on unassigned areas or blocks. The licensing authority does not disclose a list of companies that submitted bids/applications.	
		3.2.6 License oversight. Is oversight of the licensing process effective, and are conflicts of interest avoided?	Partially yes
		Lack of technical capacity in oversighting bodies. There is no requirement to publicly disclose the beneficial owners of extractive companies. Senior public officials do not publicly disclose their financial holdings in extractive companies.	
	3.3 Monitoring operations. Does the government adequately monitor operations across project life cycles?	**3.3.1 Development plans.** Does the government evaluate and approve development plans with appropriate consideration for all stakeholders without undue delay?	Yes
		3.3.2 Monitoring capacity. Does the government have the capacity to monitor companies during each stage of the project life cycle?	Yes
		3.3.3 Data management. Does the government collect and manage geological and operational data?	Yes
Local impacts **(precept 5)**	**5.1 Trust.** Does the government ensure that there are good working relationships between all stakeholders within affected communities?	**5.1.1 Meaningful participation.** Does the government ensure that affected communities meaningfully participate in decision-making about resource projects?	No
		Affected communities are not invited to participate in decision-making at each project stage, and impact assessment processes. Members of affected communities have access to the same information as any other citizen, but they do not receive support to adequately handle the situation.	

		Decision makers reactively take into account the perspective of the affected communities in final decisions, generally resulting in very poor unsustainable (to the company, the government and the community) decisions being made.	
		5.1.2 Managing the expectations of affected communities. Does the government ensure that affected communities have realistic expectations about the impacts of resource projects?	No
		No proactive communication. In practice, there is no communication about expectations concerning the benefits of the projects, until there are social tensions. SOEs do not communicate well with affected communities to address their expectations, whereas private companies tend to have a reactive or public relations campaign when faced with such issues.	
		5.1.3 Grievance and dispute resolution procedures. Does the government ensure that there are credible and effective dispute resolution procedures for affected communities?	No
		The dispute resolution mechanisms are very subjected to social tensions and protests. The process looks fragile and quite politicized, because of the electoral interests and the lack of political will to solve the disputes fairly. The administrative entities do not have the necessary resources	
		5.1.4 Security safeguards. Does the government ensure that government and private security providers related to resource projects do not use excessive force?	Partially no
		Recent events show some excessive force or disproportionate responses were used. However, the government is politically inclined in recent years to show restraint, even at the detriment of economic benefit.	

		5.1.5 Indigenous peoples. Does the government ensure that the rights of indigenous people are protected?	Not applicable
	5.2 Impact assessment. Does the government maintain an effective system for assessing the potential impacts of resource projects?	**5.2.1 Strategic impact assessments.** Does the government use strategic impact assessments before deciding to open an area to exploration and production activities?	No
		5.2.2 Environmental and social impact assessments. Does the government use environmental and social impact assessments to inform decision-making at all stages of resource projects?	Partially yes
		EIA do not include the social dimension, or account for cumulative impacts. The assessments are not available for public.	
	5.3 Cost mitigation. Does the government mitigate the environmental, social and health costs of resource projects?	**5.3.1 Approach to cost mitigation.** Does the government favour prevention over minimization, and avoid practices that require compensation and resettlement?	Partially no
		In theory, the government promotes preventive measures. In practice, compensation is by far more common.	
		5.3.2 Environmental, social and health regulation. Does the government set and enforce effective environmental, social and health regulations?	Partially yes
		The competent government institutions tasked with monitoring, preventing and managing pollution do not have the necessary resources to conduct their missions effectively. No particular government institution is responsible for managing the social impacts.	
		5.3.3 Environmental mitigation management plans. Does the government require companies to develop environmental mitigation management plans and does it ensure that these plans are followed?	No
		5.3.4 Disaster response plans. Does the government require companies to develop effective disaster response plans?	Partially yes
		As part of their industrial readiness and administrative procedures, companies are	

		required to prepare an evacuation plan with the local authorities, and especially with civil protection. However, the scope and effectiveness of these plans cannot be evaluated.	
		5.3.5 Project closure. Does the government effectively allocate responsibility for the execution and financing of project closure and land rehabilitation?	Partially yes
		The law specifies procedures governing rehabilitation and closure of extractive projects. However, there were many cases of non-rehabilitation and closure of phosphates projects. This brought high levels of pollution on production sites in Gafsa.	
		5.3.6 Compensation. Where social and environmental costs are unavoidable, does the government ensure that there is adequate compensation?	Partially yes
		The law specifies procedures governing compensation to landowners or land users when development interferes with their access to or use of land.	
		5.3.7 Resettlement. Where resettlement is unavoidable, does the government ensure that resettlement provides adequate redress?	No
		There are no clear legal requirements governing resettlement.	
	5.4 Local benefits. Does the government help affected communities to benefit from resource projects?	**5.4.1 Community development agreements.** Does the government ensure that companies come to an agreement with affected communities as to how companies will deliver community benefits?	No
		The government does not require companies to enter into community development agreements.	
		5.4.2 Employment, contracting and procurement in affected communities. Does the government encourage companies to direct employment and procurement opportunities toward affected communities?	Partially yes

		There no official documents that require the employment of locals. Yet, in practice and through unofficial work, public entities come to favour locals, mostly under social pressure and against the commercial success of the company.	
State-owned enterprises **(precept 6)**	**6.1 SOE role and funding.** Does the government clearly define the SOE's role and establish a working funding mechanism for the company?	**6.1.1 Commercial role.** Does the government clearly define a commercial role for the SOE that reflects the company's actual financial and technical capacity?	No
		There are many ill-suited activities and the SOEs fail to generate adequate returns. SOE does not have the financial and technical capacities to carry out its assigned commercial role.	
		6.1.2 Non-commercial roles. Does the government clearly define the company's non-commercial roles? Does this definition limit conflict of interest?	Partially no
		Non-commercial roles of SOEs are not exhaustively defined. These activities are consuming resources that could support commercial activities.	
		6.1.3 Funding mechanism. Does the government ensure that the SOE has a workable funding mechanism?	No
		Unsustainable funding mechanism, draining on national budget.	
	6.2 SOE corporate governance. Do the SOE's corporate governance systems limit political interference in the company's technical decisions, while ensuring effective oversight?	**6.2.1 Role of state shareholders.** Does the government clearly establish the identity and role of state shareholders in the SOE?	Partially yes
		Board membership is split between different government entities. The role of each shareholder is poorly defined or does not lead to coherent strategic choices.	
		6.2.2 Board models. Does the SOE have an empowered, professional and independent board?	No
		See chapter 2.	
		6.2.3 Staff integrity. Does the SOE invest in staff integrity and capacity?	Partially no
		Not enough investment in capacity building.	

		Systems for internal promotion and performance incentives are influenced by protests. The SOE does not have a publicly available code of conduct.	
	6.3 SOE transparency and accountability. Are SOE decision-making and operations transparent and accountable?	**6.3.1 SOE operational and payment data.** Does the SOE disclose key operational and payment data?	Partially no
		Only aggregate production and sales data is provided by the Tunisian institute of statistics, and by the SOE with a considerable delay in the annual activity report.	
		6.3.2 SOE financial reporting and audits. Does the SOE subject itself to independent financial audits, and publish the results?	Partially no
		SOE does not publicly disclose annual reports including income statements. SOE's annual financial statements are audited. However, audit reports are not published on SOE's website.	
		6.3.3 SOE legislative oversight. Does the legislature oversee SOE performance without unduly constraining its decision making?	Yes
		However, the legislature does not exhibit the requisite capacity and independence in oversight of the SOE.	

Governance of the extractive industry is important to optimize resource utilization, and to ensure that the outcomes from natural resources exploitation contribute to the sustainable development of the country.

Simultaneously obtaining higher economic revenues and better social impacts is not a simple task, and may be impeded by several practical and organizational obstacles, that focus on the present gains rather than on sustainable development.

Governance can be improved with the right legal, institutional and administrative measures, and by applying certain best practices. They must unfold in terms of multiple reforms carried out judiciously.

إنّ إدارة الصناعات الاستخراجية مهّمة لضمان مساهمة استغلال الموارد الطبيعية في التنمية المستدامة للبلاد. مع ذلك، فإنّ تحقيق عائدات اقتصادية أعلى وتأثيرات اجتماعية أفضل ليست مهمّة بسيطة. قد يعوقها العديد من المسائل العملية والتنظيمية، بسبب التركيز على المكاسب الحالية بدلاً من التنمية المستدامة. يمكن تحسين الحوكمة بالوسائل القانونية والمؤسسية الصحيحة والتدابير الإدارية، وتطبيق أفضل الممارسات. يجب أن يتمّ ذلك عبر حزمة إصلاحات بشكل ملائم.

La gouvernance de l'industrie extractive est importante pour optimiser l’utilisation des ressources, et garantir que les résultats de l'exploitation des ressources naturelles contribuent au développement durable du pays.

Obtenir simultanément des revenus économiques plus élevés et de meilleurs impacts sociaux n'est pas une tâche simple, et peut être entravé par plusieurs obstacles pratiques et organisationnels, qui se concentrent sur les gains actuels plutôt que sur le développement durable.

La gouvernance peut être améliorée avec les bons outils juridiques, institutionnels et administratives, et en appliquant certaines meilleures pratiques.

Ils doivent se dérouler en termes de réformes menées judicieusement.