

9 June 2022

English/French/Spanish

Implementation Review Group

Resumed twelfth session

Vienna, 13–17 June 2022

Agenda item 7

Other matters

**Document submitted by the UNCAC Coalition, a
non-governmental organization not in consultative status
with the Economic and Social Council***

The following document is being circulated in accordance with paragraph 1 (i) of resolution 4/6 of the Conference of the States Parties to the United Nations Convention against Corruption and rule 17, paragraph 3 (b), of the rules of procedure for the Conference.

This statement was made available to the Conference of the States Parties to the United Nations Convention against Corruption at its eighth session (CAC/COSP/2019/NGO/6).

* The present document is processed in the form in which it was received.



Transparency and Accountability in the Extractive Industries

Submission of the UNCAC Coalition's Regional Network in the Sub-Saharan Africa Region to
the
13th Session of the UNCAC Implementation Review Group

May 26, 2022

The UNCAC Coalition and the member civil society organizations from the Sub-Saharan African region submit this statement to the 13th session of the Implementation Review Group (IRG). This statement was developed through an open consultation process with civil society organizations (CSOs) in our regional network, outlining the challenges to transparency and accountability in the extractive industries in Sub-Saharan Africa, good practices to tackle this problem and recommendations for actions.

Extraction of natural resources is closely connected to environmental degradation. This linkage, which is often overlooked, must be addressed when focusing on sustainable development. The lack of accountability and transparency in the extractive industries has a higher cost than we can ever imagine. Revenues from oil, gas, and mining, not forgetting the other sectors extracting natural resources, such as fisheries and logging, should spur economic growth and social development in developing countries. Yet Africa's natural resources have for many decades been a source of power and wealth for the continent's ruling elites and multinational corporations, and less often for the citizens themselves.¹ The findings of a study by the World Bank on transparency and accountability in the extractive industries stress the importance of strong institutions to curb the negative growth effects of corruption in the wake of natural resource discoveries.²

With good governance and a high level of transparency, the extractive industries sector can contribute to economic growth and sustainable development. When natural resource management is reinforced by appropriate systems, informed, transparent and participatory decision-making, and efficient institutions, the sector can also boost foreign direct investment, government revenues, and inclusive benefit sharing. Promoting good governance in the extractives sector will also support a 'just transition' away from fossil fuels to tackle the climate crisis.³

¹ National Democratic Institute for International Affairs, edited by Shari Bryan & Barrie Hofmann, "Transparency and Accountability in Africa's Extractive Industries: The Role of The Legislature", https://www.ndi.org/sites/default/files/2191_extractive_080807.pdf, 2007.

² World Bank Governance Notes, prepared by Emmanuel F. Cuvillier and Sridar Padmanabhan Kannan, "EITI as an Instrument of Fiscal Transparency and Accountability: A Case Study of Two FCV Countries", <https://openknowledge.worldbank.org/bitstream/handle/10986/33108/EITI-as-an-Instrument-of-Fiscal-Transparency-and-Accountability-A-Case-Study-of-Two-FCV-Countries.pdf?sequence=1&isAllowed=>, November 2019.

³ See Natural Resource Governance Institute, "Supporting Just Transitions in the Oil and Gas Sector: the Role of External Actors", <https://resourcegovernance.org/blog/supporting-just-transitions-in-the-oil-and-gas-sector-in-africa-the-role-of-external-actors>, April 2022.

Challenges

Over the past decades, observers have noted that a **culture lacking in accountability and transparency** has contributed to the systemic corruption that exists in Sub-Saharan Africa’s fisheries, timber, and oil, gas and mining sectors.⁴ This culture is perpetuated by the trend of the involvement of politically connected persons in corruption cases and their persisting impunity. Corruption in the awarding of contracts and licenses in the extractives sector as well as in the awarding of quota rights in fisheries is a major challenge in the region.⁵

Some progress has been made to develop legal frameworks to enhance transparency and accountability in the extractives sector in Sub-Saharan Africa but a major challenge is effectively implementing these frameworks.⁶ However, the **failure of many States Parties to adopt and implement legal frameworks for the public disclosure of beneficial owners of companies that are awarded multimillion-dollar contracts in the extractive industries** will only continue the opacity that fuels corruption. Bribery of high-ranking politicians is another regional trend that affects the sector.⁷

Civil society understands accountability as a social contract with those in power being trustees who should be held to account by those they govern. The **lack of understanding and constant overlooking of the nexus between governance and extractives** results in low accountability and transparency of such leaders to their constituencies. Another challenge to transparency and accountability in the extractive sector is a **general lack of awareness among citizens of the importance of beneficial ownership transparency and open contracting**. Consequently, beneficial ownership information is not being collected at all or not adequately used by institutions and by the public as a tool to ensure accountability.

Business registries in countries across Sub-Saharan Africa are largely paper-based and not fully digitalized, and therefore information on companies and their direct owners are not accessible to the general public. While many countries in the region have committed to beneficial ownership transparency, **only three countries in the region have so far set up publicly accessible registers of beneficial owners**.⁸ Therefore, **limited sector data** is available that can add credibility to fiscal transparency and enable fiscal accountability. A lack of systematized data collection and disclosures is another challenge that can be addressed by creating and maintaining publicly

⁴ See National Democratic Institute for International Affairs, “Transparency and Accountability in Africa’s Extractive Industries: The Role of The Legislature”, https://www.ndi.org/sites/default/files/2191_extractive_080807.pdf.

⁵ For information on the fishrot scandal: <https://www.corruptionwatch.org.za/fishrot-whistle-blower-did-it-despite-the-risks/>.

⁶ “Natural Resource Governance Institute, “Resource Governance Index: From Legal Reform to Implementation in Sub-Saharan Africa”, <https://resourcegovernance.org/sites/default/files/documents/rgi-from-legal-reform-to-implementation-sub-saharan-africa.pdf>, April 2019.

⁷ For more information on bribery in Sub-Saharan Africa, see: <https://www.u4.no/publications/sub-saharan-africa-overview-of-corruption-and-anti-corruption#nature-of-corruption-challenges> and <https://www.theguardian.com/business/2022/may/24/glencore-to-pay-1bn-settlement-amid-us-bribery-and-market-abuse-allegations>.

⁸ See: Open Ownership: <https://www.openownership.org/en/map/>.

accessible digital mining cadastres, mineral license registers, quota and rights registers, company registries, beneficial ownership registries and open contracting databases.

The **lack of adequate institutional, legal, and digital frameworks** in dealing with the issue of illicit financial flows, where most multinational companies have operations in more than one country, is also a major challenge. Efforts must additionally focus on mutual legal assistance and other measures to promote the recovery of assets that have been stolen due to corruption in the extractive sector, which may involve various jurisdictions.

Best Practices

The more governments respect democratic freedoms, uphold standards of transparency and accountability, and demonstrate a commitment to building administrative capacity, the more likely oil and mineral wealth will be used for broad development purposes that improve people's lives. There are a number of **international initiatives underway to promote accountability and transparency**, such as the Extractive Industries Transparency Initiative (EITI), the Publish What You Pay (PWYP) Coalition, and Transparency International's efforts to combat corruption in the extractive industries.⁹

Recommendations

The following represent key recommendations from the UNCAC Coalition's Regional Network in Sub-Saharan Africa on priority actions to be taken by States Parties in the Sub-Saharan Africa Region:

1. States Parties should participate in initiatives such as the EITI and enshrine principles from these initiatives into law, including making the disclosure of company payments and government receipts compulsory. Participating in these initiatives will help strengthen government capacity where it is weak and enable commitments to be tracked.¹⁰
2. Train Members of Parliament on technical issues such as beneficial ownership transparency and its importance, which is essential to promote relevant law reform.
3. Governments should reform and implement their legal frameworks to strive towards full transparency in the award of all government contracts, permits and concessions, in particular those related to the extraction of natural resources as well as details of fishing quotas and other licenses and permits for the extraction of resources that are awarded.
4. Reform laws that give large discretion to high-level government officials to allocate quotas and licenses in the extractive industries, which is a major corruption risk and is further enabled by secrecy. In some

⁹ For more information on these initiatives, see: <https://eiti.org/>, <https://www.pwyp.org/>, <https://www.transparency.org/en/our-priorities/extractive-industries>.

¹⁰ World Bank Governance Notes, "EITI as an instrument of fiscal transparency and accountability: a case study of two FCV Countries", prepared by Emmanuel F. Cuvillier and Sridar Padmanabhan Kannan, available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/33108/EITI-as-an-Instrument-of-Fiscal-Transparency-and-Accountability-A-Case-Study-of-Two-FCV-Countries.pdf?sequence=1&isAllowed=>, November 2019.

countries, legislation was manipulated to work for the advantage of those in positions of power. Laws should ensure proper due process and transparency to prevent this problem.

5. Streamline and standardize data disclosure to improve transparency and accountability. Greater availability of sector data can strengthen fiscal transparency and fiscal accountability. Access to relevant, disaggregated data enhances the quality of information for governments to use.
6. Establish freely accessible registries of beneficial owners, starting with coverage of high-risk sectors including those extracting natural resources, joint ventures and public private partnerships, which need to be opened for scrutiny.
7. Take advantage of international interest and support for increased transparency and accountability in the management of extractive industries to develop more specialized knowledge of the extractive industry, and become more engaged in management and oversight issues.
8. Seek representation in multi-stakeholder bodies, such as local EITI committees, that provide a forum for addressing accountability and management challenges posed by extractive industry activities. Legislators who participate in such groups should provide regular updates to their colleagues and constituents.
9. Develop contacts with international organizations, local advocacy groups from civil society, and the private sector which may have developed access to information normally withheld or not made readily available by governments to increase understanding of areas of concern and any policy recommendations made by advocacy groups.
10. Improve cooperation and coordination with civil society organizations, the private sector, and legislatures to help transform recommendations into law and reinforce the leaders' responsibility to represent citizens and account to them.
11. Improve ethical conduct to build public confidence and increase legitimacy. Concern over standards of ethics in public office is one of the reasons for widespread skepticism about legislators' and the executive's capacity and political will for improved transparency and accountability in the extractive industries.
12. Include enforceable sanctions and penalties for non-compliance with ethical standards in codes of conduct or rules and provisions on financial disclosure and declarations of interests, as well as restrictions on conflicts of interests, outside employment, gifts, and travel.