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**AFRICA OIL GOVERNANCE
SUMMIT REPORT, 2017**



**Africa
Centre for
Energy Policy**



EXECUTIVE SUMMARY

The Africa Oil Governance Summit is an annual event that brings together stakeholders in Africa's petroleum industry to deliberate on emerging governance issues in the sector. Instituted in 2015, the summit provides a unique platform where stakeholders in Africa's petroleum industry share best practices on maximizing the benefits of resource extraction through efficient governance approaches. The Africa Center for Energy Policy (ACEP) realized the need for the African continent to consolidate gains and right wrongs made from the management of petroleum resources and initiate dialogue aimed at translating the extraction of oil into socio-economic development. The center recognizes that the vehicle to this is to strengthen governance framework that reduces incentives for corruption, builds capacity and invests revenues efficiently. The maiden summit in 2015, broadly discussed governance issues in Africa's oil resources. It touched on contract transparency, local content issues, institutional development and revenue accountability

In 2016, the summit focused on survival strategies for Africa's oil producers amidst low oil prices.

However this year's summit was anchored on open contracting and how African countries can recognize it as key for transparency and ultimate determination of national take. It was held at the Labadi Beach Hotel, Accra Ghana, on the 13th and 14th of November 2017 under the theme

“Maximizing the benefits of petroleum resources in Africa; the role of open contracting for efficient negotiations, revenue capture and effective revenue utilizations”. Open contracting refers to norms and practices for increased disclosure and participation in public contracting including tendering, performance and completion. Open contracting encompasses all public contracting, including contracts funded by public funds, private and donor sources.

Contracting establishes many of the commitment between government and companies within the extractive industries. This implies that benefits from petroleum resources are significantly determined by contracts within the petroleum value chain. Open contracting has been a challenge for many governments in resource rich countries. Many of the challenges influencing poor negotiation of contracts in Africa includes lack of institutional capacity in contract negotiation, corruption of public officials, allocation of contract to companies without financial and technical capacity, granting of tax to undeserving companies and lack of strong oversight institutions to scrutinize contract to ensure better deals.

This is however worsened by lack of transparency in contracting process and the net effect tend to create fertile grounds for rent seeking, corruption and nepotism in contract awards, information asymmetry between companies and government, individual interest against national interest and massive revenue loss to the state due to poorly negotiated contracts.

Participants

The summit, brought together over 250 participants from across Africa, mainly consisting of Experts, Representatives of governments, Civil Society Organizations (CSOs), Women, the Business community and the Media to discuss array of governance issues including how Africa must reposition itself in order to maximize benefits from the extraction of her resources in general and open contracting in particular as key for ensuring transparency and ultimate determination of national take.

This Summit was endorsed by Ghana's Ministry of Energy, and sponsored by partners including: OXFAM in Ghana, Natural Resource Governance Institute (NRGI), FORD Foundation, GOGIG, Open Contracting Partnership and STAAC.

The summit was convened to achieve the following objectives:

1. Track and harmonize progress made by Africa in the wake of global open contracting advocacy, and

2. Provide a platform for regional consensus building on strategies that must be adopted to maximize benefits from extraction of Africa's resources and promote open contracting.

Format of the summit

The Summit was structured into various sessions where distinguished experts discussed critical issues pertaining to open contracting and followed by panel discussions. Each panel was composed of experts in the selected areas and facilitated by a moderator. They were basically selected from public sector, industry, academia, Civil Society, and donor community.

Action points agreed upon

Participants at this year's summit agreed by consensus on certain key issues to take away with. They represent participants' expectations of what African governments should deliver including the following:

Participants reached consensus that the national share of resource extraction could be maximized if open contracting was pursued vigorously in resource extraction agreements. This is because, prudent negotiations would

determine how much a country could make as its share of resource extraction.

It was also agreed that open contracting could improve transparency, accountability and efficiency, making it possible for nations to increase revenues from resource extraction and reducing corruption. They therefore called on governments to put in place the policies and regulations needed to effectuate open contracting.

Participants also agreed to advocate for African governments to publish all Petroleum contract agreements as part of efforts to deepen transparency and accountability.

ACEP agreed to track the progress from various countries on these issue.

African governments were urged to take concrete steps in internalising the concept of Country Mining Visions (CMV) using the framework of the African Mining Vision (AMV). Eight years after the promulgation of the AMV, not much has been achieved. Many countries including Ghana still do not have Country Mining Vision.

As a post summit intervention, ACEP is to track progress from the participating African countries on the key issues agreed upon and to report at the next summit.

Gender issues

ACEP is conscious of the gender dimensions of the participation. This year's summit recorded an increased number of female participation registering about 24% of total participants. Significantly, the summit was chaired by a Female Energy expert in the person of Engineer Harriet Amissah Arthur. What contributed to the increased number of female participation was partly the gender strategy of affirmative action where selected women were invited to participate. ACEP also selected female Tertiary students who participated in the students engagement exercise (campus rallies) to take part in the summit. The participation of female tertiary students boasted their confidence to engage at the higher level and to also appreciate national and continental development issues. It is expected that the female students will be agents of change by imparting the knowledge gained on others.

Finally, Participants agreed that we could achieve more success if the scope of the summit was extended to cover governance issues around all natural resources instead of limiting it to only the oil sector. ACEP is therefore committed to engaging partners to discuss how to transition or incorporate it into the 2018 summit.

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ACRONYMS AND ABBREVIATIONS

CSOCivil Society Organization
NRGINatural Resource Governance Institute
GOGIG	.....Ghana Oil and Gas Inclusive Governance
STAAC	.....Strengthen Action Against Corruption
CMV	.....Country Mining Vision
AMV	..... Africa Mining Vision
AU	.....Africa Union
EITI	.....Extractive Industry Transparency Initiative
GNPC	.....Ghana National Petroleum Co operation
AOGCP	.....Accelerated Oil and Gas Capacity Programme
MOU	.....Memorandum of Understanding
DSDP	.....Direct Sale, Direct Purchase
PIAC	..... Public Interest and Accountability Committee
UNDP	.....United Nations Development Proramme
AMDC-UNECA	.....African Minerals Development Centre - United Nations Economic Commission for Africa
CEDA	.....Centre for Extractives and Development Africa
RGI	..... Resource Governance Index
WACAM	.....Wassa Association of Communities Affected by Mining

ACRONYMS AND ABBREVIATIONS

SDG	Sustainable Development Goals
CDD	Center for Democratic Development
BO	Beneficial Ownership
FIC	Financial Intelligence Centre
RGD	Register General Department
CISLAS	Civil Society Legislative Advocacy Center
NGO	Non Governmental Organization
PNDC	Provisional National Defence Council
RTI	Right to Information Bill

1.0 DAY ONE

1.1 Opening Remarks

The 2017 Africa Oil Governance Summit was chaired by Engineer Harriet Amissah-Arthur (Executive Partner at Arthur Energy Advisors). In her opening remarks, she thanked everyone for accepting the invitation to be part of this year's summit and welcomed all participants especially those coming from outside Ghana.

The chairperson stated that 'Governance' has been described as the infrastructure on which societies are built, and if this is true, what is the current state of governance infrastructure in Africa? How can it be built to deliver the industry necessary to propel economic growth? And how can all these contribute towards the desired robust economies and the prosperous nations that equitably benefit all segments of our society.



An array of participants at the 2017 Africa Oil Governance Summit

African Oil Governance Summit is an annual event organized by ACEP to serve as a platform for stakeholders to deliberate on emerging governance issues as a means of consolidating the gains and correcting the wrongs in the management of natural resources. Our performance as a continent leaves more room for improvement. We live in a continent that is rich in natural resources, characterized by high population that drive the markets but unfortunately high levels of naked poverty, illiteracy, unemployment, high preventable deaths, mismanagement of resources and corruption.



Engineer Mrs. Harriette Amissah-Arthur-Chairperson of the Summit

She lamented that after several decades of exploitation of natural resources in Africa, there is very little success stories to tell and a number of very basic questions remain on our minds of the people of Africa. These are:

1. Are the current systems used for the management of the natural resources effective and efficient?
2. Are they working for us?
3. Have the resources become a blessing or a curse?
4. Are we mindful of the equitable stake of future generations?

These questions will remain unanswered until we realize that we have mismanaged Africa's resources and adopt a new approach in harnessing our natural resources for sustainable development. Contracting is the bedrock for maximizing the benefits from our resources and open contracting will ensure transparency and accountability in the utilization of the proceeds.

She concluded by saying that the world is running and Africa can no longer continue to crawl,

it needs not only to run but in fact gallop to catch up and need to be bold in changing legislation if necessary to better manage resource extraction for its citizens. She called on all, to actively participate in the deliberation and share their valuable experiences to ensure a successful summit.

1.2 Welcome address

The Executive Director of the Africa Centre for Energy Policy (ACEP), Mr. Benjamin Boakye, delivered the welcome address. Mr. Boakye began by giving a brief history of the summit starting from the 2015 summit, through to 2016 before descending on the 2017 summit indicating that it is an annual event that provides a unique platform for African countries to deliberate on governance issues especially on how to reposition Africa to maximize the benefits of resource extraction. He went on to mention how oil resources could serve as catalyst for the socio-economic development of our people. According to Mr. Boakye, the summit seeks to deepen the consciousness that, beyond our national borders as Africans, we have continental aspirations which are consistent with the history of the African Union (AU).

Many oil and gas discoveries, he stated, have been made, particularly in frontier nations like Kenya, Tanzania, Senegal, Uganda, and Mozambique. This trend suggests that Africa's oil potential could be far more than has been discovered. He emphasized the relevance of acknowledging our collective failure to ensure that those resources lead to the transformation of our continent. The entrenchment of inequality resulting from corruption, environmental irrationality, active connivance with people entrusted with our natural resources are evident in our dealings with multinational corporations. He went on to state that there is the need to ensure transparency and accountability in the management of our natural resources. Open contracting, according to Mr. Boakye, empowers the citizens and relevant stakeholders to track the contracting process and monitor implementation so as to demand accountability. He remarked on the continent's support from international partners to achieve significant levels of transparency in Africa's resource governance in general.



Mr. Benjamin Boakye-Executive Director of ACEP

He stated that the governance system would improve if we have adequate legal and regulatory framework to create strategic linkages in resource development, efficient mobilization strategies, independent institutions and investment and research technology development.

Lastly, he stated the call by some stakeholders to transition the Africa Oil Governance Summit into Africa Resource Governance Summit in 2018.

This would broaden the discussion to encapsulate all natural resources but not limited to only oil especially as new natural resources are been discovered in many parts of the African continent.

He used the occasion to express his profound gratitude to all participants especially those from African countries who accepted the invitation to participate in the summit. He particularly thanked Ghana's Ministry of Energy for the continuous support of the summit since 2015. He acknowledged the partners who sponsored the summit including Oxfam in Ghana, NRG, GOGIG, Open Contracting Partnership, FORD Foundation and STAAC.

1.3 Official Opening of The 2017 Africa Oil Governance Summit

The Deputy Minister of Energy, in the person of Dr. Mohammed Amin Adam represented the substantive Minister of Energy (Hon. Boakye Agyarko) to deliver the official opening address of the summit. He indicated the Ministry's commitment to supporting the Summit in the past and will do so in future.

This is because the Ministry shares the rationale of the summit which allows stakeholders to meet to discuss relevant governance issues and to promote a common programme for Africa's rising agenda.

He further commented on Ghana's commitment in ensuring that our oil resources translate to socio-economic benefits for our people. According to Dr. Amin Adam, Ghana is also engaging with sister countries in the region in experience-sharing, collective development of policy, and ultimately transforming our economies so as to be competitive in the global space.



Dr. Mohammed Amin Adam-Deputy Minister of Energy-Ghana

He bemoaned the continent's failure to make the most of what we have been blessed with, that is, our natural resources.

The special Guest of Honor, went ahead to comment on African countries' reliance on international partners who own capital and technology to enable the exploitation of our natural resources; lamenting on the non-symbiotic partnership between the various African States and the partners. He attributed this situation to corruption and the incapacity of institutions to handle partnerships competently. The Deputy Minister went on to list several legislations which are purposely aimed at exposing corruption and stopping the looting of resources. They are as follows:

- I. The US Foreign Corrupt Practices Act;
- II. The UK Bribery Act ;
- III. Canada's extraction sector transparency Measures Act; and,
- IV. The European Accounting and Transparency Directives.

The distinguished Guest of Honor blamed the under-resourced and largely captured institutions for pursuing special interest leading to devastating consequences appropriating rent to the few in the society,

leading to inefficiency, and loss of economic rents. To reverse this trend, the processes of awarding contracts should be transparent and credible.

He stated that the Government of Ghana was committed in fighting corruption by putting in place some specific mechanisms including the following:

- I. Making the consequences for delving in corruption punitive and deterrent.
- II. Creating the Office of a Special Prosecutor
- III. Subscribing to International processes for dealing with extractive-based corruption such as the:
 - a) The Extractive Industries Transparency Initiative (EITI)
 - b) Open Government Partnership.

Furthermore, the Deputy Minister indicated that poorly conceived legal regulatory and fiscal frameworks result in inefficiencies and loss of economic rent which may not be mitigated through the allocation system. To him, the allocation of petroleum exploration and production rights to prospective companies remains a very key component for the effective management of the finite hydrocarbon resources.

The systems for allocating these resources can be generally grouped under two main types, the 'Open-door and biddable Systems'. Each category has advantages and disadvantages in terms of transparency, economy, efficiency and its impact and the benefits to the people of the country. Several African countries have various allocation mechanisms to achieve their desired specific goal.

In addition, Dr. Amin Adam, blamed the lack of a system for allocations that will be appropriate for all governments and under all circumstances. The optimum design of allocation policies will therefore depend on a range of factors and the country's specific objectives which may be more effectively attained by combining different allocation systems and other policy tools, in particular, the fiscal system and market regulations.

He stated however, that, while countries may adopt different allocation systems, one important requirement that cannot be negotiated is the transparency process for allocating these rights. He added that, credible investment attraction thrives in an open and transparent environment. On Ghana's efforts at institutionalizing Open-contracting, the Deputy Minister mentioned that,

2016, the new Petroleum Exploration and Production Act (Act 919) was passed and provides for open and competitive public tender of oil blocs as well as direct negotiations. Government recently published a notice of commencement of direct negotiations with Exxon Mobil in accordance with section 9(10) of Act 919.

He went further to comment on the country's determination to undertake open and competitive bidding. He began by saying that, for the first time, this is demonstrated by the development of draft regulations for that purpose and the broad consultations being held so far on those regulations to prevent further delay in the application of public tender processes. Government has also decided to give attention to sections of the Draft General Petroleum Regulations relating to competitive bidding and to lay those regulations before Parliament to make way for Ghana to hold its first bidding round in 2018. The regulation provides the exact procedure for licensing, pre-consideration and qualification criteria and other factors in line with international best practices. Also, closely linked with this, is the demarcation of Ghana's offshore sedimentary basins into grades.

He mentioned that 'open-contracting' requires that contracts are made public and easily accessible (provided for in section 56 of Act 919). The Petroleum Commission has also commenced the development of an online publication of contracts to allow public access to petroleum contracts, hoping to complete at the end of the year.

The Ministry of Energy, according to the Honorable Deputy Minister is also pursuing an aggressive exploration drive with the aim of replacing and increasing Ghana's oil and gas reserves stating "we are producing from our depleting resources and if we do not make more discoveries, we will be blocked out from our oil and gas industries in the near future".

The special Guest of honor mentioned further that, an Environmental Impact Assessment has been conducted on the Volta Basin and extensive contracts have also been awarded by the GNPC for work to commence on the basin; and that, the necessary community engagements have also been conducted so that all relevant issues may be solved and the various communities educated on the potential impact of oil and gas development.

He noted that, revenue from these resources must be equitably and efficiently distributed, and emphasized the need for the Petroleum Management Act (Act 919) to incorporate this criterion.

Honourable Dr. Amin indicated that the Government of Ghana this year has committed a significant portion of our oil revenue to the Pro-poor sectors of Education, Health and Agriculture adding that the President of Ghana (His Excellency Nana Addo Dankwa Akufo-Addo) has shown full commitment to the full implementation of the free SHS program which began in September 2017. What is significant about this is the use of our oil revenue to finance this noble social intervention.

Dr. Amin Adam, concluded by commenting on the role human resource development plays in the oil and gas sectors. The Government of Ghana has launched the Accelerated Oil and Gas Capacity Programme (AOGCP) to drive the agenda of ensuring that Ghanaians play front roles and take control of oil and gas development. This targets the training of technicians and middle level personnel for the oil and gas industry,

such as welders and other technicians who are in high demand.

The AOGC programme includes collaborations with seven institutions including the Takoradi Technical Institute and the Ghana Regional Maritime University to train first class welders and other categories of technicians to serve the needs of the oil and gas industry. The AOGC programme aims to ensure that about one thousand Ghanaians are trained every year in various technical skills.

Dr. Amin concluded his address by welcoming participants from different countries in Africa to Ghana and wished them a successful summit. This brought the opening ceremony to an end and then ushered the summit to the next session which was a panel discussion on the state of open contracting in Africa.

1.4 PANEL 1

“The state of Open Contracting in Africa: Examining the Challenges, opportunities and implications of open governance in resource contract.”



Panel 1: discussing the state of open contracting in Africa: examining the challenges opportunities and implications of open governance in resource contract

This panel was moderated by Eng. Mrs. Harriette Amissah-Arthur. The Discussants for the Session were; Honorable Dr. Mohammed Amin Adam, the Deputy Minister of Energy-Ghana, Ing. Jonson Awoyomi, Senior Technical Assistant to the Minister of State, Petroleum, Nigeria, and, Mr. Tabila Mazhamo from the Ministry of Mines and Minerals Development, Zambia.

The session commenced with the moderator posing guiding questions to regulate the focus of the Discussion. The discussion highlighted the immense benefits Africa stands to gain in practicing open contracting in the entire value chain of the contracting process.

1.4.1 Panel Submissions and discussions.

Dr. Adam took the lead in sharing his views on open contracting and why Africa is not at the fore front in open contracting. He indicated that Ghana has adopted what is called an “open door” policy in our engagement with international partners. This, he stated opened the door for Ghana to transition from the open door policy to a more competitive and transparent policy. He added that Ghana is yet to commence the application of the law on open contracting because it provides that this policy will be implemented as prescribed. According to him, in the last few months, Ghana’s Ministry of Energy has developed a number of relevant regulations on the E&P law and held stakeholder consultations around these regulations. Furthermore, he opined that if Ghana is to wait until the regulations are completely done, it may delay the application of open and competitive bidding process. The ministry, according to the honorable minister, has decided to pull out some relevant sections of the Petroleum (Exploration and Production) Law, Act 919 of 2016 as amended that deal with open and competitive bidding so that it can be put before Parliament for consideration.

He lamented that Ghana has not done well on the contracting side in political terms. This is so because, before the current government came into power, some MoUs had been signed which are legal and binding on the current government to complete the contracting process without competitive bidding. He was of the opinion that Ghana is doing well in regards to the revenue side of open contracting because open contracting does not end if we have an open process of allocating rights and does not end there, but must go through the value chain. The level at which you can assess the value of money is where you are collecting your revenue and there should be proper auditing and tax assessment to derive the value of open contracting.

He concluded by saying that, the transparency around how much Ghana is earning is significant. The amount of money which has been collected and the price at which Ghana’s oil has been sold should be published, as well as the various destinations where the oil revenue has been allocated.

Sharing the experiences of Zambia, Mr. Tabila Mazhamo, largely agreed with the submissions of Dr. Amin saying that Zambia's progress in open contracting is far from being satisfactory. He stressed that mining licensing without host communities involvement does not promote open contracting. He proposed that there should be an automated process of licensing, where the licensing process would be reviewed periodically to assess level of adherence to the terms of the license, and making the said process open. This process, he believes has and would continue to increase confidence in the extractive sector. He also emphasized the need for various environmental issues to be taken care of. Further, communities should be involved in the negotiations and how the allocations of resources are to be implemented and how much they will benefit. He went on to state that, having well-defined steps in acquiring mining rights will engender confidence and make administration easy.

Eng. Johnson Awoyomi of Nigeria sought to disagree with the popular description of Nigeria being an oil rich nation, saying that Nigeria is an oil dependent economy but not an oil rich nation.

To him, in order to ensure transparency, there is the need to broaden the engagement with key stakeholders which is missing in contracting process in Nigeria. There should also be full disclosure of every petroleum contract in the country through publishing them. Further, he stated that, every contract should be advertised and should go through competitive bidding process. Eng. Johnson, also recommended that, a monthly report should be made on how much barrels have been produced; how much refining was done; and how much money was made. He concluded by suggesting that, with open contracting, there should be "Direct Sales, Direct Purchase" (DSDP) which makes it very transparent.

Discussing the gaps and way forward, participants were of the view that the lack of political will to fully implement the law or policies, as well as corruption, poor governance issues, weak institutions, uninformed citizens, the incapacity of agencies, internet challenges, as well as synergy, are responsible for Africa's inability to implement open contracting.

Access to relevant information is key to citizens' demand for transparency and accountability.

That explains why certain institutions such as the EITI and PIAC have been established to serve as an interface between the country's managers and its citizens in providing the needed information on how proceeds from resource extraction are utilized. The situation in Ghana where the government's decision to invest significant part of oil revenues in financing education was applauded.

1.4.2 Audience participation

A participant wanted to know why government was engaging Exxon Mobil in 'one on one' negotiation instead of adhering to open and competitive bidding process which is key in achieving open contracting. Addressing this question, the Deputy Minister of Energy explained that open and competitive bidding method is Ghana governments' preferred option in allocating oil blocks for exploration and production. He added that regulations that are necessary for implementation of open and competitive bidding are being done and are yet to be passed by parliament. He allayed fears of the public by stating that there is no cause for alarm, Exxon Mobil is one of the most technically equipped and experienced in the industry.

He however, also stated that the process with Exxon Mobil was originally started by the former government was advanced to such an extent that the current government cannot curtail it but would rather ensure that Ghana achieves the best outcome for the people from this contract. Dr. Adam stated that the MOU was signed in 2015 with Exxon and therefore legally binding. There was a counter rebuttal about the explanation given for the Exxon Mobil contract, debunking the idea of Exxon's capacity as a reason. Stating the fact that drilling for the exploration was done by a third party not Exxon.

It was also discussed that oil producing nations should learn from others' best practices. Nigeria is currently taking lessons from Ghana even though it began oil exploration and production long before countries like Ghana, Trinidad, and Tobago did.

The issue of citizens' participation was highlighted when a participant asked: "At which point do you seek the views of the citizenry? Is it when you have finished drawing all the programs or when the programmed is being drawn in order to carry the citizens along?"

Eng. Awoyome responded, by stating that citizens' involvement is part of ensuing transparency which has three stages: The first is the actual transparency stage, which basically means, getting everyone on board. The second is oversight function, which entails appointing people with an oversight function that is periodic auditing. Third, being communication. Civil and media groups, including other stakeholders have to share information among them. With this approach, proper transparency would be achieved.

According to Mr. Mahzamo, there should be an agreement among stakeholders on whether there is acceptance of a particular extractive project. Stakeholder issues include impacts on environment and getting the opinions of the community at that level. He went on to state that, mining/ rent issues should be properly addressed through CSOs involved in providing oversight for community engagement and consultation.

1.5 PANEL 2

“Fashioning The Right Approach To Open Contracting: Country Context Versus Global Approach”



The panel was moderated by Henry Ademola (FOSTER-Nigeria) with other panelists in the persons of Ms. Nicola Woodroffe (Legal Analyst, NRG-UK), Titus Gwedmende (Southern Africa Regional Extractives Lead, Oxfam International), Ichumile Gqada (Senior Researcher, Open Society Foundation, South Africa) and Ikal Angelei (Extractive Director, Friends of Lake Turkana, Kenya).

Mr. Ademola set the stage for discussion by posing questions to guide the panelists. Do we start with processes or outcomes? Has Africa realized that open contracting is prerequisite to achieving maximum returns on our resources? Are all countries in Africa on the same page in the journey towards attaining open contracting? Should we contextualize our analysis/assessment of level of adherence to requirements of open contracting by various countries? He then encouraged panelists and the audience to participate in the session.

Ms. Woodroffe highlighted the need to make information about contracting available and accessible to all and on virtual platforms. She added that the information should be available in various forms to meet the demands of the citizens.

Lack of information or inadequate information on resource contracting processes hinders open contracting.

Mr Gwemende asserted that the laws on oil production give too much discretionary powers to Ministers in charge of oil and mining to take critical decisions in contracting. However, most of the time, these ministers consider their personal interest above the national interest. Elitism in our public offices is another barrier to achieving open contracting in Africa. Some of the public office holders do not consider Civil Society consultation necessary. They feel that they 'know all' and can do without CSO's involvement. Such contracts usually turn out to be corruption prone contract. Some people in government prioritize stability over efficiency since that will give them electoral fortunes. So there is a process which is flawed and inefficient, but accepted by competing factions, to keep peace stick with a flawed system and this can forestall genuine progress as well.

Discussing on how to generate trust by citizens in the extractive industries, Ichumile Gqada stated that trust is fundamental in building up democracy, open and transparent systems.

Building trust has to move beyond the analysis of open contracting to counter corruption, this is important but also needed to link the issue to human rights (i.e. open contracting in relation to rights to education, right to information, right to social security being undermined etc.). She further stated that, there is the need to reframe the language of open contracting to include access to human rights. This, she argued, will help in building up trust. Where there is transparency for accountability for fair distribution of natural resources, it will lead to real progress.

Ikal Angelei analyzed open contracting in relation to ecosystems. It is not just enough looking at aspects of revenue but not considering costs (i.e. in consider the revenue derived, it is important to quantifying the costs, especially at the local community level). When negotiating 'fair share', it is based on a very skewed system looking at what you are getting (revenue through resources) rather than the direct and indirect costs now and into the future. She stated that the cost of water used to the extraction of the minerals is often not even factored into mining costs yet water is so key and critical to downstream communities and is of high value.

she further gave an example of land negotiations and compensation in the mining market value of today rather than looking at the loss of land in 30 years time (if 30 years is the life of the mine) and what the value of land would be at that time the unborn generation that might be managing the land had it not been taking for mining at that time. This was all tied into ecosystems.

1.5.1 Audience participation

Pauline (ACEP) raised issues on what Nicola said that countries must work with what is best for them asking that what happens when there are some countries with very high corruption but the country themselves do not see any problems with this and are not keen in open contracting citing Angola as example. It is really a question of sovereignty compared with what is seen as right from a more global perspective rather than country specific.

The current US government's policy decisions on global issues raised by Dr. Amin became topical in this context. An example from Brazil was given about not only looking at best practice to stay with international standards but in fact to leapfrog it and get ahead of the game and set an example for others to follow.

It was said that Brazil set up a system that provides for disclosure of contracts (including full text, any amendments, those involved in the decision-making process, investments made in projects, production, reserves in the project, social monitoring and compliance, royalties, taxes, and links to laws and regulations that this project must abide by). Emphasized it is not a question of one size fits all but about being proactive not just to meet best standard practices, but to actually counter corruption by designing systems to inform citizens based on citizen concerns. He said the US decision/approach could be seen as an opportunity for each country and Africa as a continent to really take the lead in governing his or her own industries.

Titus Gwemende discouraged Africans from using what is happening in the US as an excuse but it needs to be done because it is good for the country to have it done, rather than because others are withdrawing from responsibilities of good governance. If there is a country for so much demand for accountability etc. then government will have no choice but to also make changes.

Ikal Angelei was quite cynical about the idea of following standards of countries that are operating and getting revenues from extraction of resources from African countries (and paying taxes in those countries – taxes which might not be too fair and so they may not have interest in making contracts open and transparent) as the benchmark from which to design open contracting and transparency. Also, he said that there was the need to realize that there were accountability measures in traditional community structures and need to explain accountability and transparency at a community level which may not always be fiscal but might be about management of waste, management of environment, job prospects etc.

Nicola Woodroffe also stated there is still a law that requires disclosure of payments at the project level. Also, EITI also requires disclosure of payments from both company and government side from a project level as starting from 2018 and this will capture some companies in countries where EITI is adopted. Consider what demands can African countries make from companies (even from US or other places that are reducing their transparency and accountability) in the way of contract negotiation.

Titus Gwemende again stated that in terms of transparency, there is looting for a large scale already existing in Africa by global and companies beyond the continent borders, this was occurring before Donald Trump and the shift has already been happening and needs to be countered. He further stated that any open contracting emphasis has to be long term. He talked about proper consultation needing to happen before signing of a contract, rather than post contract decision where it is not in consultation but just informing as legally required. Also choices of when and where consultation is occurring (i.e. doing consultations at night which exempted most women from consultation as they were cooking). He also said that, consulting chiefs and advisors does not capture full community opinion. The cultural considerations of a fair consultation (and more than one consultation if there are dominant personalities in a community and not all members will attend/speak up etc.) really need to be factored in and planned. Also, really need to figure out history of land tenure (including migration in colonial and other times) and how this relates to genuine consultation. There is assumption that a lack of interest or lack of trust comes from lack of information,

sometimes there is sufficient information but cynicism that the consultation will actually mean anything and viewpoints enforced from consultation.

It was stated that, there are fundamentally three things to look out for in achieving open contracting:

1. Culture of openness in information sharing,
2. Bottom-up demand (communities in physical space and virtual communities) to actively demand,
3. Political will.

1.6 PANEL 3

Topic: The Challenges And Opportunities Of Contextualizing The Africa Mining Vision To Achieve Contract Transparency At Country Levels

The session was facilitated by Sylvia Senu, an economic analyst at the UNDP with other panelists being Dr. Kojo Busia of AMDC-UNECA, Dr. Kojo Essien Mensah Abrapa of the Ministry of Planning Ghana, Emmanuel Kuyoli of CEDA-Ghana and Bernard Aryee of the Ministry of Lands and Natural Resources.



Third panel discussing the challenges and opportunities of contextualizing the Africa Mining Vision (AMV) to achieve contract transparency at country levels

The facilitator in her opening remarks stated that the AMV was adopted in 2009 by African Countries with the aim of making African countries “norm setters and not norm getters”. She added that in terms of localizing the AMV into policies and laws at country levels, it was only Lesotho which had made some progress in implementing the Africa Mining Vision.

Dr. Kojo Busia posited that, besides South Africa, Ghana had a comprehensive and dynamic framework for the mining sector. He further stated that about 24 countries had adopted different aspects of the AMV along the mineral value chain, stressing that the adoption of the Africa Mining Vision was demand driven. Lesotho was cited because it is the first African country that has gone the full haul to implement the AMV. He also averred that there has been overconcentration on revenue collection (taxes and rents) with very little attention paid to addressing other serious challenges affecting the sector resulting in leakages along the mining chain. He therefore recommended that much attention be given to maximization of benefits which the Africa Mining Vision seeks to address.

According to Emmanuel Kuyole, African governments have not really run with the Africa Mining Vision and this is amply demonstrated by the attitude of political parties before they assume power. He said political parties over the period have had no plan towards achieving the AMV as plans concerning mining have been missing, conspicuously from their manifestoes. He lamented that political parties assume the reigns of governance only to be preoccupied with finding money to finance government projects.

He averred that governments were more likely to implement the vision if funding was received from the African Union for its implementation explaining that African governments will accept funding and work with stringent conditions attached to these funds.

Dr. Mensah Abrampa described the extractive sector as a “technical cocoon” as it is not easily appreciated by both governments and citizens. He accused governments of having only highlighted parts of the extractive industry that are easily understood by its citizens and added that citizens have not been fully educated on how to position themselves to take full advantage of the extractive industry.

Mr. Bernard Aryee pointed out that governments, against the backdrop that they have a short term within which to rule a country, have a short sighted view of the extractive industry whilst planning in this sector must be done over a long period. He stated that this persisting contrast has produced a political party's extractive sector policy and not a national one. He added that governments have only focused on the product and not the process. The process being: Transparency, Publication on mining policy and Country Mining Vision (CMV). He noted that no two countries were the same and therefore countries would always adopt parts of the AMV which were relevant to their prevailing circumstances.

Discussing what transparency really means for Africa, Dr. Busia defined transparency as accessibility of the 'entire process of contract giving and not the event of contract giving'. He posited that citizens be carried along throughout the entire process and added that transparency when exhibited, must be capped with accountability. He vehemently called for change in description of "resource curse" to properly be described as institutional curse since institutions that were to ensure that

countries had long term policy are weak arguing that resources are never cursed, it is the institutions that mismanaged the resources should rather be described as cursed.

Mr. Kuyole contended that the African countries themselves lacked a national policy let alone a policy on the extractive business. He demanded that the cherry picking approach stopped and urged governments to take a comprehensive view of the entire process and make the right decision at every stage of the process to ensure that the citizens are served the transparency and accountability they so much need.

1.6.1 Audience Participation

A participant wondered why there was little engagement of citizens at the revenue collection level and that more powers should be given to communities to interrogate matters concerning extractive activities in their area. He drew attention to the fact that the current mineral Act 703 of Ghana, encouraged the obscurity in which contracts were awarded, citing a stability agreement in Ghanaian laws which protected the investments of mining companies.

He deplored that such agreements proved to be a refuge for companies even if they did the untoward.

In response to a question of how the AMDC handled contracts, minerals, research and development, Dr. Kojo Busia said that the AMDC through its technical staff, produces authoritative documents and these documents are authoritative since it goes through several validation processes. He added that everyone who matters including opposition parties and mining communities is invited during formulation of policies. Dr. Busia again called for a knowledge driven mining sector whereby innovations are developed to allow local industries to participate in the extractive sector and also to add value in order to achieve beneficiation.

Mr. Bernard Aryee revealed that a total of 12 Extractive Industry Transparency Initiative (EITI) reports have been published on the mining sector including oil and gas and 4 were currently in the process of being published. He however maintained that information with regards to discovery and being on site could not be given out.

1.7 Keynote Speech: Mr Gavin Hayman (Executive Director-Open Government Partnership)

Dr. Hayman began his presentation by exploring the other side of open contracting. He tried to explain what it is not, or the so called misrepresentation of “contract transparency” as open contracting. He stated that it refers to the entire process under which oil and gas contracts would be negotiated in a kind of public-utility framework whereby groups other than the parties themselves would have seats at the table and pass judgment on contract terms.



Dr Gavin Hayman delivering the Key Note speech

Dr. Hayman began his presentation by exploring the other side of open contracting. He tried to explain what it is not, or the so called misrepresentation of “contract transparency” as open contracting. He stated that it refers to the entire process under which oil and gas contracts would be negotiated in a kind of public-utility framework whereby groups other than the parties themselves would have seats at the table and pass judgment on contract terms.

Open contracting goes beyond contract transparency to include: access to user friendly data, Capacity building of stakeholders, Tool development & adaptation, working across entire contracting chain, Institutional mechanisms for feedback among others.

Three kinds of transparency needed:

- 1) The system (legislative and regulatory process)
- 2) The actors (who decides, who benefits etc)
- 3) The outcomes (contracts, exploration and production plans, benefit flows, social and environmental performance)

A number of questions are often being asked including how decisions are made and by whom?

How and where will industry develop? What are potential conflicts and trade-offs? What allocation processes are used? How geological information is managed? Policy and legislations are emphasized over negotiated outcomes (standalone agreements). Best licenses/contracts define obvious variables – where, who, when, what activity?

Emphasis should be given to underpinning legislation, regulation, model contracts, guidelines, the fiscal regime & fees easily accessible, Consistent criteria are applied to all applicants, Existing geological information is accessible & promoted, A clear timeline for how different phases of the allocation process will take and when decisions are likely, Clear rules on communication between regulators and applicants – i.e. when it can take place & when it cannot, Certainty of subsequent tenure, Make it clear to everyone that the allocation is happening & who is involved!

Beneficial Ownership information is one of the cardinal issues in open contracting. However, inadequate legislative provisions and regulations make it difficult to materialize.

Access to clear Contract award statement, who won (beneficial ownership), why & next steps, timely publication of critical information is important.

Better practices in implementation, investment and engagement should all start in the preceding stages but implementation tests their strength & effectiveness.

Good disclosure during the implementation stage, Outputs of the contracting process, e.g. benefit flows, EIAs, SIAs, community agreements, permit conditions, activity reports etc, Clarity over the process: how decisions will be made & implemented, Joined up, quality information, not just quantity of information, Important to have mechanisms for feedback, especially for conflict resolution with communities.

1.8 Paper Presentation

1.8.1 *'Rolling Back The Gains Of Upstream Open Contracting; The Case Of Revenue Mismanagement'*

This technical paper was presented by Miss Pauline Anaman (Head of Policy Unit, ACEP). She adopted a case study approach to explain how Africa's resources have been mismanaged citing examples of Nigeria, Ghana, Chad and Angola. She also made references to the NRG's 2017 Resource Governance Index (RGI) to assess how African countries are performing in the management of natural resources.

She averred that the Africa Mining Vision (AMV) sees Africa's abundant natural resource wealth as a window of opportunity to transform the African economy through industrialization, diversification, and ways that sustain growth, development, and poverty eradication (ECA, 2009). Natural resource exploitation in Africa must therefore lead to positive development outcomes.



Miss Pauline Anaman (Head of Policy Unit ACEP)

The presentation explored the dialogue about the momentum that upstream open contracting has taken globally. It used case studies to establish a correlation between upstream open contracting and value realization in the form of increased revenue. It also explained that upstream open contracting and effective and efficient revenue management are complementary and finds that there exist revenue management challenges that could undermine the gains to African governments from upstream open contracting if proper governance principles are not put in place.

Participants were taken through the dynamics around open contracting in the petroleum arena which is said to be targeting more on the upstream sector. But the question of whether or not African countries are ready to absorb the benefits of upstream contracting still lingers. Assuming that all African countries adopted upstream open contracting and secured its gains, poor revenue management framework and practices could roll back the gains. This paper therefore seeks to draw the attention of policy makers to appreciate that upstream open contracting and good governance of petroleum revenues complement each other.

This is achieved by evaluating the laws and practices of selected African countries against good petroleum revenue management principles generally, and open contracting at the petroleum revenue expenditure stage in particular, using Ghana as a case study. The paper goes on to make recommendations that should put African countries in a better position to effectively utilize the gains from upstream open contracting even as countries strive to adopt and implement the concept of upstream open contracting.

The following Challenges were highlighted among others:

- a. Lack of fiscal rules.
- b. Inconsistent and inadequate reporting
- c. Problematic laws

She concluded the presentation by giving some recommendations on how to improve revenue management. These included:

1. Countries should adopt fiscal rules and public financial management laws if not existent.
2. Countries should strengthen transparency through information sharing systems that are readily accessible and user-friendly to citizens.
3. Countries must institute strong oversight systems in revenue management. This involves removing opportunities for conflict of interest and wide discretionary powers.

1.8.2 “Reviving The Sleepy Vision: An Evaluation Of The Implementation State Of The Africa Mining Vision”

This technical paper on evaluation of the implementation state of the AMV in Africa was presented by Benjamin Boakye (Executive Director, ACEP). Participants were taken through the wide range of natural resources available in abundance, gaining the continent the enviable accolade- “resource Rich continent”. Admittedly, the continent is host to near-global monopolies of platinum-group metals, chromium and diamonds; a high proportion of the world’s gold,

cobalt and manganese reserves; and extensive reserves of bauxite, coal, soda ash, uranium, copper and nickel. Producing over five dozen different types of metals, minerals and ores, the continent is home to about a third of global reserves of extractive resources. About half of African economies are “commodity dependent”. That is, these countries derive a significant part of their incomes from the export of commodities, dominated by minerals.

The paradox of Africa’s natural resource wealth vis-avis a widespread poverty of its one billion population, remains a deep and often-noted feature of the continent’s economic landscape,⁶ thus further highlighting the perils of commodity dependence and the dominant extractive model.

It is not just enough to be resource rich but we must recognize our collective failure in translating these resources into improved socio-economic development for our people.



Mr Benjamin Boakye presenting a paper on Reviving the sleepy Africa Mining Vision

As the clearest expression of Africa's aspiration to shift from 'norm-taker' to 'norm-setter' for its mining sector, the AMV represents a paradigm shift from raw commodity export dependency towards improving Africa's industrial base through enhanced local beneficiation and value addition of minerals.

It recognized that the implementation process of the Africa Mining Vision (AMV) has been slow since its inception in 2009, even though African governments recognize that the transformation of the Continent can be facilitated by the re-organization of the governance processes around resource extraction. Notwithstanding the slow process, some efforts have been made. These include development of the action plan for the implementation of the AMV as well as the establishment of the Africa Minerals Development Centre (AMDC) to provide technical assistance to member states in realizing the Vision.

He mentioned that about 24 of the 52 African countries have started the process of a preparing a Country Mining Vision (CMV) but only Lesotho has concluded the process of a country mining vision.

He concluded the presentation by reaffirming the need to recognize the fact that mineral resources are finite. Hence, they need to be managed in a manner that benefits current and future generations. The AMV's aim of enhancing transparency, equity and optimal development of mineral resources to underpin broad-based sustainable growth and socioeconomic development in Africa is critical to addressing poverty, inequality and under-development on the continent. The framework's promotion of a sustainable and well-governed minerals sector that effectively garners and deploys resource rents and that is safe, healthy, gender and ethnically inclusive, environmentally friendly, socially responsible and appreciated by mine affected communities are critical to Africa's progress in the 21st century and even towards agenda 2063.

1.9 Panel discussion

The 4th and 5th Panels were merged and held together to discuss the two papers presented by Benjamin Boakye and Pauline Ananman. It was jointly moderated by Patrick Stephenson (Broadcast Journalist, EIB Network) and Evans Mensah (Broadcast Journalist, Multimedia). The panelists included: Kwesi Obeng (Oxfam in Ghana), Hannah Owusu Koranteng (Executive Director, WACCAM), Dr Ishmael Ackah (Technical Advisor on Macroeconomics, Petroleum and Energy Economics at the Ministry of Planning-Ghana) and Victoria Ohaeri (Founder/Director at SPACES FOR CHANGE)



Evans Mensah, of Multi Media-Ghana

Dr. Ishmael Ackah commenced the deliberation by expressing disgust at the revelation of how resource revenues are plundered by people in authority and suggested that, such acts of mismanagement be punished through enforcement of the laws of the country. Such acts of mismanagement is the bane of Africa's development. He also insisted that people must be made accountable for the decisions they take adding that the purpose should not just be for transparency but accountability not excluding punishment.

Kwesi Obeng equally lamented the scale of mismanagement of Africa's resource revenues. He asserted that there are inadequate legal frame works that should be applied to protect public purse. Even the already existing laws on preventing revenue abuse and mismanagement are not being enforced. He called for the need for transparency in the utilization of public resources. He encouraged African countries to expedite action on the AMV by preparing the Country mining Vision (CMV). The absence of the CMV creates a gap in terms of regulating how these resources are efficiently utilized.

The situation also makes it difficult for CSOs to monitor and track utilization of these resources. He added that the AMDC was set up to provide support to African countries to contextualize these provisions in the vision into country specific policies and legislations.

Hannah Owusu Koranteng, the Executive Director of WACCAM in Ghana stated that there is the need to widen the scope of transparency and accountability but not limited to the one defined by the EITI. There is a need for citizens to be active participants not just recipients of information from those that see themselves as most powerful. She advocated for the adoption of the participatory decision making process- “top down approach” in decision making on resources governance. Opportunities should be created for anybody to participate in decision making.

Commenting on how to enhance open contracting, Victoria Ohaeri indicated that the following three assumptions are *sin qua non* in making open contracting work:

- (1) Availability and accessibility of relevant data that is verifiable

- (2) Freedom of information should be legislated to make easy access to official information at the right time and
- (3) People demanding accountability can actually understand the information available to be able to do analysis and draw conclusions

There are a number of transparency initiatives which are been grappled with including the AMV, EITI, Publish What you pay, The Kimberly Scheme with countries moving to a state of ‘paper validity’ (tick the box mentality) by signing up to these agreements (but not necessarily being enthusiastic/proactive to implement this). Consultations must necessarily be the bottom up approach.

1.9.1 Audience participation

Generally, the discussions centered on how to maximize returns on resource revenues in Africa. In the past lack of adequate legal and policy regimes was blamed for our inability to transform resources into socio-economic development for the people. Same cannot be said today as many African countries can now boast of some modicum of regulatory frameworks.

The question is-do the availability of regulatory framework necessarily means good natural resource governance? It cannot be answered in the affirmative because, Nigeria for example has developed comprehensive legal framework to govern the exploitation of oil resource but the sector is the most mismanaged and abused than any sector. The story of the former Finance Minister of Nigeria is enough example of how Africans can steal money from extraction of our resources and attempts to hide them in foreign countries.

Access to adequate, relevant and timely information is very expedient in ensuring improved resource governance. Transparency and accountability can only be achieved if the citizens have access to information that will help them demand accountability. Dr Gavin Hayman stated that when people have information, listen to authorities and respond by giving feedback, it helps check abuse and improve governance. There are good examples of countries that have turned resource exploitation into sustainable development, such as Norway, just as there are bad examples how resource exploitation have rather pauperized the citizens like Nigeria,

, with many of them degenerating into civil wars and unending conflicts. The hope of AMV being seen as a solution will be overemphasizing what can really be achieved with it. The best way to address these is to

One of the major challenges translating AMV into CMV is funding the process. Governments have not prioritized the development of country mining Visions and that explains why after eight years, since ratifying the AMV, majority have yet to commence adoption of the vision in their respective nations. The AMV was praised as being localized and demand driven unlike other initiatives such as the EITI and that it makes provision for localizing the tenets to suit local contexts.

Politicization of nearly everything in African countries could also be the bane of Africa's underdevelopment. It is not uncommon to find political party supporters solidarizing with fellow party associates when they steal public resources. The time has come to let people account for decisions they take and suffer the consequences for their actions and inactions.

Contracting constitutes the basis of resource extraction. Most African countries are not able to explore and produce the natural resources because; they lack the needed capital and expertise to enter into exploration and production. That forms the basis of going into contractual relations with multinational corporations who wield resources and capacity to undertake the resource extraction. Contracting should be seen as the most important stage in the resource value chain. This is where, open contracting can be applied to benefit the countries. Open contracting will help maximize how much you can bargain for in entering into contractual relations with the multinational companies. Countries must as much as possible make available enough information, which must be relevant, timely, detailed, disaggregated and accessible to all in varying forms. This is a key requirement in enforcing open contracting.

The creation and management of sovereign fund and heritage fund became topical in the discussion. Some of the participants disagreed with the principle of preserving the heritage fund for future use and questioned why we borrow from the international markets

at higher interest rates when we could have used the sovereign funds. The investment of heritage funds does not bring back good returns. It is the suggestion of Ikal Angelei that we should utilize such funds and rather stop borrowing at higher interest rates.

Ben Boakye joined the debate regarding the use of the sovereign wealth fund involves people on both sides of the political divide. If we believe that the resources are not just for those living now, then we have to leave money aside for those unborn. A road might only last 5-10 years and those unborn will not benefit from such oil revenue invested now. Some participants are highly opposed to utilization of sovereign funds now arguing that it should be saved and reserved for future use because sustainability.

Dr Kojo Busia (AMDC-UNECA) expressed frustration about having limited time to discuss about the AMV. He seemed unhappy that ACEP had written and presented a paper about the AMV and argued that the AMDC should have been given the opportunity to make a presentation on the AMV instead.

African governments cannot have the expected reforms unless they owned the initiative and work towards addressing production of inequalities. Country Mining Vision (CMV) has to be a generally participatory so that citizens as well as leaders can genuinely own what is defined in it to avoid elites taking over the process.

Hannah Koranteng of WACAM argued that it is not the people of Africa that developed a lot of the recommendations of the AMV apart from endorsing the initiative by the African leaders. This could be the explanation why after so many years of its existence, the continent cannot boast of even tenth of having developed CMVs. No funding source has been dedicated to it yet CSOs are expecting the countries to develop it. Agriculture that has been the backbone of Ghana's economy for a long time yet receives nowhere near as much attention as energy and oil. There is a need to take some steps to refocus on other sectors not just the oil/gas/mining sectors that may shift from a blessing to a curse. We can't neglect other industries which give food/water.

Kwesi Obeng of Oxfam said that AMV is really not about mining but about the governance, how do we use our natural resources to transform and reduce the unacceptable levels of inequality. So how do we engage in educating the people about the SDGs, he said civil society were involved in the design of this vision as well, so should not be completely isolated from it. He however laid emphasizes again that the resources are finite and must be sustainably exploited. Australia extracts much mineral wealth but invested it back into technology hence having some very advanced underground mining technology.

2.0

DAY TWO

2.1 PANEL 1

“Beneficial Ownership (Bo) And Resource Governance”

The panel on Beneficial Ownership (BO) was facilitated by Dr. Jemima Nunoo (the Board Chairperson of the Africa Centre for Energy Policy (ACEP)). The panelists were: Samuel Bekoe of GOGIG, Korieh Duodu of STAAC and Dr. Kojo Asante of CDD, Ghana.

In setting the stage for commencement of discussion on the subject matter of beneficial ownership, the facilitator requested the panelists to share their initial thoughts on whether or not it is necessary to have BO provisions in our laws as African countries before we can practice it.

Mr. Duodu stated that Ghana has incorporated some limited amount of beneficial ownership disclosures in the Companies Act as amended.

He cautioned that the mere incorporation of BO provisions does not guarantee successful adherence to its dictates. But do we really need specific BO provisions before we observe the values of it? He is convinced that there are as many provisions as possible in the laws of Ghana that if respected and enforced will have same or similar effect as BO notwithstanding the absence of specific legal provisions in the laws of the country. He also contended that there is the need to make data publicly accessible. This is currently available to only the law enforcement agencies. He recommended that, there is the need to build a ‘fit for purpose’ register with all the features of the register implemented in the legislation. He went on to state that, it is important that the said register would be relevant to a beneficial ownership regime.



Panel Discussion on Beneficial Ownership and Resource Governance

According to Samuel Bekoe, (GOGIG, Ghana), Beneficial ownership provision is pre-requisite for improved resource governance in the African continent. He took time to provide the efforts CSO are making in attempt to influence decision making on BO. He stated that advocacy for the disclosure of beneficial ownership intensified over the past few years. In Ghana significant progress has been made to set the legal framework to demand the extraction of information from entities who want to conduct business with the state. Following the Anticorruption Summit Organized by the U.K. Government in June, the then president of Ghana,

John Dramani Mahama, committed to passing important laws to capture beneficial ownership disclosure which had been advocated for by civil society for more than two years. The promise coincided with the laying of two important legislations before parliament; petroleum (exploration and production) Bill and the Companies Bill. Though the President committed to incorporating the beneficial ownership disclosure into the two legislations, government finally decided to limit some parts of it to the Companies Bill, which was passed into law in August 2016.

The challenges that civil society faces are, for instance, the “Paradise Papers” published how individuals hide behind the cloak of legality to engage in tax avoidance schemes. These individuals usually shift all profits from these jurisdictions to various tax havens. He continued with the effects of foreign direct investments on host countries. To him, these investments do not reflect positively on these countries where they make a lot of monies, and used to develop their already developed countries. Companies who engage in illegal activities such as money laundering and the funding of terrorist activities, all carry out these activities under the cloak of legality. Beneficial owners, according to Mr. Bekoe, who are usually politically exposed persons, hide behind these companies to make directives and decisions in these companies, and in turn, make undisclosed profits. The public’s ignorance of the concept of beneficial ownership must therefore come to an end. He recommended that there should be public awareness of the concepts of beneficial ownership and open resource governance. Governments must endeavour to commit resources to raising public awareness on beneficial ownership disclosure and ensure that the law is implemented.

Dr. Kojo Asante, in making his submission, mentioned borrowing from the UNCAPP and some other international regulations in order to close the loop. He also recommended the strategies used in other jurisdictions like, China, to prevent beneficial owners from escaping. He emphasized the need to disclose the assets of politically-exposed persons’ publicly. He concluded by saying the government needs to be held accountable for the type of contracts they engage in. The challenge in implementing this strategy he stated would be, the victimization of business owners due to the fear of disclosing which side of the political divide they belong. He however stated that, this ‘excuse’ is being abused.

The facilitator asked the panelist to explore how African countries can practically deal with politically exposed persons who are behind certain government contracts or businesses. Mr. Bekoe defined benefit derived by these persons as any amount received from a business to facilitate and circumvent processes. He mentioned that, usually a family is defined in the nuclear term, while in Africa, a family consists of extended relatives.

To him, there is the need to have political will in order to avoid loopholes and it is also very important for politically-exposed persons to disclose their interests in businesses.

Mr. Duodu, stressed the need for the relevant, timely and accessible of data to be able to enhance citizens capacity to demand accountability. Access to good information leads to a greater level of scrutiny which would mean that critical analysis can be done.

Dr. Asante, discussing how to ensure due diligence, commented that, there is the need to have campaign financing rules. He also stated that, there is the need to have a register set up to disclose all businesses of all politically exposed persons.

2.1.1 Audience Participation

Contributing to the discussion, Dr. Gavin Hayman asked: How can the companies' register be included or reconciled with the E-Procurement register? The two must go hand in hand so as to extend the tentacles of BO and general transparency and accountability.

The hurdles currently encountered in practicing BO in Africa are necessary although a better

way can be adopted. He referred to Asia, where there are three tiers of disclosure, that is, the legal owners, the decision making owners, and the Board of Directors.

Commenting on the money laundering issue, it was observed that there is a lack of coordination between the Financial Intelligence Centre (FIC) and the Minerals Commission in doing background checks on mining companies, thus mining can easily be used to facilitate terrorism. Civil society plays key roles in ensuring successful implementation of BO provisions. Dr. Asante stated that there is a natural instinct for government to control civil societies and or adversarial relationship with CSOs that campaign for more transparency and accountability.

The facilitator in closing the session indicated that there must be collaboration among all stakeholders to promote the realization of Beneficial Ownership in African countries. The Registrar-General's Department (RGD) in Ghana, is been supported to develop a data base for this purpose. There is also the need to digitalize all such information and publish it in multiple formats including online.

This data base should cover international dimension of beneficial owners and there should be a mechanism for combating tax evasion and tax avoidance in our legislation.

2.2 PANEL 2

“Sharing Of Country Experience- A Multi Stakeholder Perspective On Open Contracting”.

This panel session was facilitated by Dr. Akanimo Odon (CEO, Envirofly Consulting, UK and Africa Strategy Advisor, Lancaster Environment Centre, UK). The panelists were: Mr. Kolawole Banwo (Civil Society Legislative Advocacy Center (Cislac), Mr. Joshua Obeng, Godber Tumushabe (Associate Director, Great Lakes Institute For Strategic Studies) and Dr. N’ shala



Panelists sharing country experiences- on a Multi Stakeholder Perspective on Open Contracting.

All the panelists in their opening remarks associated themselves to views already shared by other participants that open contracting can help Africa maximize returns on natural resource extraction. Dr. Odon opened the discussion by stating that the reason why problems in open contracting persist is because there is disconnect between the duty bearers and citizens. He asked the panel to share their various experiences on open contracting.

Dr. Nshala stated that he had not had a very good experience with open contracting so far. The petroleum and Mining sectors are both within the same Ministry in Tanzania. However, in 2015, an Act for open contracting was passed where petroleum was concerned. Mining laws still remain unchanged however. There is no competitive bidding with mining in Tanzania. Even within the 2015 Act, certain provisions allow for the Minister to negotiate whilst others prohibit the Minister from doing so, thereby creating inconsistencies. Tanzania is in the process of adopting Zambia's plan to encourage competitive bidding, he concluded.

Mr. Kolawole stated that, in Nigeria, there are two dimensions; the first is the award

of licenses upstream as well as a separate award concerning the environment. This is to ensure that local content is captured whilst protecting the rights of the people. The maximum take occurs when there is a positive reflection of the policies on the lives and livelihoods of the people. Nigeria also has a policy to ensure that local players play more of a role in the award of extraction contracts. The Public Procurement Act passed in 2007 is currently being amended to include more local content in Nigeria.

Mr. Tumushabe in talking about the Ugandan situation stated that in order to make open contracting successful, these conditions need to be considered:

1. The assumption that there is a functioning government in existence. Decisions are made by a "shadow government" nor properly elected one. He thinks that there are some powerful individuals who influence decisions some of whom may not be in government.

2. What are the laws regulating these contracts awarded to companies? He gave an example of the laws governing petroleum extraction working efficiently, while that of mining is lagging behind. He went on to question the progressive nature of the laws.

3. It is important to consider the nature and quality of citizenship in the countries practicing open contracting. The traditional and cultural formation of the country in question can affect the efficiency or otherwise of open contracting.

4. What kind of businesses run in the country in question and how conducive is the environment for said businesses?

5. Do civil Society Organizations exist, and how well do they perform in matters relating to the country's governance? He further mentioned how concerned CSOs have been in Eastern Africa as governments trying to clamp down on NGOs. For instance, to further clothe transparency, proceedings in government are prohibited from being broadcasted.

Mr Joshua Obeng gave a brief history of open contracting in Ghana. He stated that there were three legislative regimes. From 1890 to the early 80s, contracts were awarded in an ad-hoc manner. There was no proper legislation controlling or determining the manner in which contracts were awarded. It was purely discretionary. From the 1990s onwards, the PNDC laws for example set up a module for awarding contracts. The policy adopted in this and other legislation of the time were the open door policy which awarded contracts on first come, first served basis. The minister thereafter made an evaluation of the company. When he was satisfied, negotiations would begin between the minister, the company, and other stakeholders. In the context of open contracting, it was competitive to an extent because there was usually more than one company applying for the same blocks. It was also quite transparent because there was a clear laid down process and everything was sent to Parliament for approval.

Criticisms of the open contracting system in the past:

- There was too much power which was allocated to the sector minister as the final decision maker who decided who was awarded the contract.
- The process did not allow for the attraction of the super companies.

The competitive bidding process established by Act 919 now requires the Minister to use the method of competitive bidding in awarding contracts. However, this requires the development of regulations before it can be realized. CSOs must advocate for development of these regulations to give meaning to the legal provisions

In Nigeria, according to Mr. Kolawole the National Petroleum Authority is the body authorized to deal with local content issues. Efforts are being made to link all financial management systems. Other sectors still remain unlinked. The effects of the recession have caused the National Assembly of Nigeria to consider empowering entrepreneurs.

Mr. Nshala stated that the quality of government would ensure that all sectors catch up. Leadership would determine how well resources are managed. The interpretation in the plans would be determined by the leadership (government). Since the 2008 efforts have been underway to formulate a minerals policy and this is surprisingly slow since petroleum which has gained momentum over the years is in the same ministry as minerals.

In relation to the Zambia and Tanzanian situation, Dr. Nshala, stated that the prices of Minerals plummeted during the 1970s which affected state owned mines. By 1992, the directive was for foreign mining companies to take over from failing state-owned companies. The mines were sold at cheap prices only for the prices to rise and for the countries to realize that they had been short changed.

Tanzania copied the laws of Zambia in 1995, which was drafted by Clifford Chancy. The mining laws do not mirror international practices per se. Africa, has never sat down to discuss the cause of the failure and how to move forward.

In moving forward there is the need for an iron-clad assurance that a country will benefit from an activity of mining before allowing mining to be done at all. He went on to say that there needs to be evidence to prove how much money is being made to assess the effectiveness of the measures adopted.

Mr Obeng, in relation to Ghana's experience, stated that the business of mining needs to be well-structured. Every conduct and interaction needs to be well rooted in law. Full public disclosure is therefore very essential. In making regulations, all stakeholders need to be involved from its creation to the implementation.

2.2.1 Audience participation

The discussion mostly centered on the lack of trust in the system of open door policy and some of the policies are unpredictable as everything is subject to negotiations and which side of the political divide you belong. With the challenges for bidding, including the possibility of not attracting good companies, in the event of a failure in the tender process, investors may lose confidence in the geological prospectively.

Participants urged authorities to make the process of open contracting clear, predictable and transparent. The role of all stakeholders including the local authorities and traditional authorities be well defined. This will make the process for award of contracts and its criteria properly appreciated by the various stakeholders.

The problem in Uganda, and for that matter, the whole of the continent of Africa is largely influenced by political persuasion. In Nigeria, it is estimated that 1% of outsourced contracts go to local content so as to enable local players to apply for loans at very low interests. There must be a link between the democratic process and implementation. Governments need to feel the cost for not meeting the demands of the people by voting them out of power.

2.3 PANEL 3

“The Role Of Open Data For Csos To Work”.

This panel on the role of open data on the work of CSOs was facilitated by Dr. Ishmael Ackah with the panelists being Emmanuel Kuyole (Center For Extractive Development, Africa-Ghana), Mr Charles Wanguhu (Kenya Civil Society Platform For Oil And Gas), And Dr. Adriano Nuvunga (Director, Center For Public Integrity-Mozambique).



Panelists discussing the Role Of Open Data For CSOs To Work

Dr. Ackah in opening the discussion stated that in 2016, out of 92 countries, no sub-Saharan country made it to the top in terms of countries that adhered to the open data system. Kenya was ranked number 40, whilst the bottom 6 was from sub-Saharan Africa. That tells where we are as sub-Saharan Africa in our drive towards practicing open data. With this prelude, panelists were invited to comment on the topic by expressing their opinions on open data in the work of CSOs.

Mr. Kuyole, itemized the following challenges as being responsible for the poor ranking of countries in Africa when it comes to open data:

1. Contracts are shrouded in secrecy at almost every level, be it public institutions or even parliament, as well as with individual companies. There is a misguided belief that making the primary contract public will water down its competitive edge.
2. Laws are so archaic that even where there is the willingness to go through with the contracts the laws would prevent the exposure.
3. A case needs to be made that open contracting is good for business growth and development.

According to Mr. Wanguhu, open contracts are good for business to some extent because it does good public relations work for them. The financial flows on the other hand are always hidden.

Dr. Nuvunga, stated that there is no genuine interest in relation to open data. The right to information bill which was passed in 2014 in Mozambique censors the amount and kind of information that is accessible.

Willingness to making data accessible would fuel the pre-existing capacity. Information given usually cannot be used. Why is this so? It is because open contracting is at odds with those in power. Leaders do not want their poor leadership skills exposed. Public offices are mainly used for private gains, and not for the public good.

Mr. Wanguhu, wondered what Kenya is doing different and expressed surprise at Kenya being ranked among the top 40 countries that practised open data system, because the culture of silence and secrecy is still prevalent in Kenya. African countries must respect the rule of law and respect the right of citizens to have free access to data on development interventions in the various countries.

Citizens and CSOs in many countries in Africa are still starved of information that can make them hold leaders accountable and that it is better to have no law than to have a very bad freedom of information law. Citizens who are deprived of the access to information have found a way of accessing said information differently.

The role of pressure groups or movements cannot be underestimated in opening the system and making information available. Also, how would the law, if passed, reflect how information is accessed in modern times in order to avoid a situation where there may be a cessation of information altogether due to the Act.

In Uganda, people have found creative ways of getting information in spite of hitting many roadblocks, even from the Courts. The roadblocks are as a result of finding mechanisms of both democratic and non-democratic regimes, which are likely to be exposed with open data, which could create unrest. Even though, the route of litigation to get information exists, there is still the possibility of getting unfavorable judgment. Communities therefore need to demand disclosure, that is, to hold the leaders accountable.

Mr. Kuyole stated that, secrecy is not a cultural problem as such, just that, the people in wanting to hide their immoral behaviour, tend to be secretive. Value systems are corrupted because wealth is more valuable than integrity. This situation is this, a result of the failure of the system whose sanctions are weak.

According to Dr. Nuvunga, ethnicity plays more of a role than religion in making information accessible to all or to some. After independence, Mozambique became a socialist nation in which people were not particularly enthused about sharing information, even personal incomes are not declared in Mozambique. In the western world, mechanisms are such that it is nearly impossible to hide anything. For example, the filing of tax returns ensures the full disclosure of earnings. The plan of the authorities in Africa appears is to keep people in a perpetual state of under development.

2.3.1 Audience participation

Participants dwelled much on the effects of poorly negotiated contracts which often reduce national take and the devastating effects on the poor communities who do not have the capacity to assert their rights. CSO must endeavour to expose the practical examples of negative effects of bad contracts so that people will understand how these bad contracts affect them.

Participants were of the view that, many CSOs have weak capacity in developing countries which must be recognized and built.

Emphasized should be put on the need to train people on how to analyze data using modern techniques and methods. It is not enough to merely have the information, you should also be able to analyze it, understand the trends and draw conclusions. It was also stated that there should be a reliance on those trained already in the field of data analysis, such as economists. The civil societies also need to build their credibility.

Donors and funding organizations must see the need to build capacity of CSOs as part of factors to improve governance and democracy both long term and short term. To achieve transparency and accountability, open data is key. The need to make good laws came as important factor in addressing issues of open data. For instance, in Ghana, the Right to Information Bill (RTI) has been in the public, parliament and so on for many years now but is still not passed into law. Laws are executed to address prevailing situations but not to illegitimise past events.

There is indeed a need to consolidate the laws to eliminate the discrepancies and conflicts of laws in our statute books.

In terms of trust in the litigation process, the issue of unfavorable judgment arises where the issues set before the Court is unclear and unconvincing. In order to ensure success, one therefore needs to be clear about the issues.

2.4 Closing of the summit

The Executive Director of the Africa Centre for Energy Policy (Benjamin Boakye) expressed his gratitude to all the participants for prioritizing the summit in their calendar and stated that their efforts have made the summit a success. He advised participants to keep engaging their governments, and all stakeholders in the value chain in their respective countries. Continuous engagement will facilitate the achievement of greater results. He expressed special appreciation to the participants who came from other African countries for making the summit truly African.

Special recognition was paid to the Ministry of Energy, Ghana for endorsing the Summit. He acknowledged the sponsors of the summit including: GOGIG, STAAC, Oxfam in Ghana, NRGI, FORD Foundation and Open Contracting Partnership.

Jo Ann Sackey (a Senior Policy Analyst) at the Africa Centre for Energy Policy (ACEP) delivered the vote of thanks to finally bring the summit to a close.

Key Recommendations As “Take Away” From The Summit.

Participants at this year’s summit agreed by consensus on certain key issues to take away with. They represent participants’ expectations of what African governments should deliver including the following:

Participants reached consensus that the national share of resource extraction could be maximized if open contracting was pursued vigorously in resource extraction agreements. This is because, prudent negotiations would determine how much a country could make as its share of resource extraction.

It was also agreed that open contracting could improve transparency, accountability and efficiency, making it possible for nations to increase revenues from resource extraction and reducing corruption. They therefore called on governments to put in place the policies and regulations needed to effectuate open contracting.

Participants also agreed to advocate for African governments to publish all Petroleum contract agreements as part of efforts to deepen transparency and accountability.

ACEP agreed to track the progress from various countries on these issue.

African governments were urged to take concrete steps in internalising the concept of Country Mining Visions (CMV) using the framework of the African Mining Vision (AMV). Eight years after the promulgation of the AMV, not much has been achieved. Many countries including Ghana still do not have Country Mining Vision.

As a post summit intervention, ACEP is to track progress from the participating African countries on the key issues agreed upon and to report at the next summit.

Gender issues

ACEP is conscious of the gender dimensions of the participation. This year's summit recorded an increased number of female participation registering about 24% of total participants. Significantly, the summit was chaired by a Female Energy expert in the person of Engineer Harriet Amisshah Arthur.

What contributed to the increased number of female participation was partly the gender strategy of affirmative action where selected women were invited to participate. ACEP also selected female Tertiary students who participated in the students engagement exercise (campus rallies) to take part in the summit. The participation of female tertiary students boasted their confidence to engage at the higher level and to also appreciate national and continental development issues. It is expected that the female students will be agents of change by imparting the knowledge gained on others.

Finally, Participants agreed that we could achieve more success if the scope of the summit was extended to cover governance issues around all natural resources instead of limiting it to only the oil sector. ACEP is therefore committed to engaging partners to discuss how to transition or incorporate it into the 2018 summit.



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