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# AFRICA OIL GOVERNANCE

REPORT

ACEP Africa  
Centre for  
Energy Policy

IBIS 



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# ABOUT THE REPORT

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The Africa Oil Governance Report (AOGR) is a project initiated by the Africa Centre for Energy Policy (ACEP). It is a flagship publication highlighting governance issues such as transparency, accountability, corruption, policy and regulatory issues in the oil and gas industry in Africa. As part of its mission, ACEP is mandated to conduct research, analyse and influence policies in the extractive sector. The AOGR is therefore a central project in line with ACEP's mission. In addition, this report is an attempt to provide alternative solutions for efficient and transparent management of oil and gas resources in Africa.

The AOGR identifies the key governance challenges that confront African oil and gas producers and how such challenges can be addressed through policy, legal and institutional interventions. It also brings to the fore, the efforts of countries in adopting best governance practices along some selected governance indicators in the management of oil and gas resources.

The Report became necessary following recommendations from the maiden Africa Oil Governance Summit (AOGS), held in November 2015, for a systematic tracking of the progress made by African oil and gas producers on oil and gas governance in line with the Communique from the Summit. The communique from the AOGS is therefore included in this report highlighting the recommendations made for reference.

# EXECUTIVE SUMMARY

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Africa has vast petroleum resources which when utilized efficiently, can accelerate economic growth and development. Translating natural resource wealth into sustainable development depends to a large extent on good governance. Good oil governance calls for utmost attention in Africa as the region's oil industry is bedevilled by several governance challenges. The Africa Oil Governance Report therefore presents the governance efforts and lapses of the eighteen member countries of the African Petroleum Producers Association (APPA).

The objectives of this report are to highlight the governance efforts of African oil producing countries and to provide information on the gaps existing in their governance frameworks; thereby serving as a wake-up call for African governments to strengthen their resource governance policies, systems and institutions. The assessment of the oil governance of countries is not intended to rank countries. It is aimed at providing the narration on the extent to which countries are adopting best governance practices; thereby providing the status of oil governance in these countries. The AOGGR therefore assesses the efforts of the APPA member countries against eleven (11) selected governance indicators based on data sourced from their legal frameworks including national constitutions and petroleum laws.

The report finds that APPA member countries have made some commendable efforts to govern their petroleum resources. However, more effort is required as issues of beneficial ownership disclosure and mandatory contract disclosure among others remain unsatisfactory. Highlights of the report's major findings include:

- i. There is increasing adoption of open and competitive bidding process for the award of oil and gas rights.
- ii. Mandatory disclosure of oil and gas contracts is still not widely accepted among African oil producing countries.
- iii. The adoption of EIA is becoming a norm among African oil producing countries
- iv. FPIC is still not widely accepted within the oil and gas industry of the African countries under consideration.
- v. There are some appreciable efforts by African oil producing countries in adopting open budgeting process.
- vi. Distribution of oil revenues to affected communities is not yet a well accepted norm among African oil producing countries.
- vii. The adoption of EITI is becoming a practice in the oil and gas industry within the African region.
- viii. The adoption of anti-corruption provisions is gaining relevance within the oil and

- 
- gas industry among African oil producing countries.
- ix. Mandatory disclosure of beneficial ownership continues to remain a challenge among African oil producing countries.
  - x. There is increasing adoption of public accountability institutions among African oil producing countries.
  - xi. The adoption of right to information legislation continues to remain a challenge in Africa's oil and gas producing countries.

**Some key recommendations from this report are:**

- i. Countries which do not have competitive bidding provisions in their petroleum laws should introduce them as the default process for awarding resource rights. Competitive bidding processes give countries the opportunity to have the most optimum investment offer for their petroleum blocks.
- ii. The Open Contracting Partnership and other contract transparency movements including national level civil society organizations must increase advocacy for the mandatory disclosure of oil and gas contracts. The African Mining Vision, which promotes contract transparency, must develop an implementation and assessment tool for ensuring that member states adopt these principles.
- iii. In view of the relevance of EIAs to the oil and gas sector, environmental considerations should progressively become a biddable factor during licensing of oil and gas resource rights. Therefore, oil and gas companies that have poor previous environmental record should not be considered for the award of resource rights.
- iv. African oil producing countries must adopt the principle of FPIC and develop legislation to guide its implementation as a fundamental human right.
- v. Countries should ensure that their supreme audit institutions have adequate funding and independence to perform their duties. The appointment and removal of any Auditor General of audit institutions must be backed by legislative approval to avoid political interference of their duties and further foster their independence.
- vi. In countries where the formula for sharing revenue to affected communities is not available, steps should be taken to clearly define the formula upon which petroleum revenues should be distributed to affected communities. This formula should be designed in consultation with all stakeholders including the affected communities. Building consensus among the different stakeholders is extremely important for the stability of the formula especially in politically contested and ethnically diverse environments.
- vii. Non-candidates of the EITI must sign up to the initiative as it contributes tangibly to extractive resource management. This will help avert the 'resource curse' and manage the potential risk of conflict which usually results from dissatisfaction.



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- viii. Oil and gas producing countries must incorporate anti-corruption clauses in their Petroleum Laws and contracts. Such clauses should seek to criminalize conflict of interest situations involving public officials who are engaged in oil and gas contracting and in regulating oil and gas operations.
  - ix. Governments must make provision for the establishment of public registers of beneficial ownership and to proactively maintain and regularly update the registers. The registers must be comprehensive, comprehensible and easily accessible to the public.
  - x. African oil and gas producing countries should establish independent oversight bodies backed by legislation, with dedicated funding mechanism, to specifically monitor and evaluate compliance with regulations for the management of oil and gas resources and revenues.
  - xi. Oil and gas producing countries must pass right to information legislation to improve the access of their citizens to information. However, such extensive exemptions that have become features of such legislations must be reduced. Independent compliance institutions must be given powers to determine what should be exempted from disclosure. This allows them to apply the harm and public interest override tests to any information requests to determine the scope of disclosure.

# Section 01

## BACKGROUND

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### 1.1. Introduction

Africa is a continent endowed with natural resources such as; oil and gas, coal, sunshine, shale among others. However, the rich resources hardly translate into economic growth and development for the African people. According to the African Progress Report 2013, harnessing the natural resource potential of Africa will largely depend on the ability of African Governments to strengthen fiscal policy formulation, equitable public spending in infrastructure and adhering to transparency and accountability in the management resources<sup>1</sup>. A study by the World Bank in 2014 projected Africa's regional GDP growth to reach 5.2 percent yearly in 2015-16; and from 4.6 percent in 2014, but this would be largely propelled by the extractive

industries in the natural resources sector and a surging services industry<sup>2</sup>.

Even though a few African governments blessed with oil and gas wealth have made impressive efforts at adopting best practices for the governance of their oil and gas resources, serious governance challenges are prevalent in most of Africa's oil and gas provinces thereby dwarfing the transformative potential of oil<sup>3</sup>. The Africa Oil Governance Report therefore provides stakeholders with relevant governance information on oil producing African countries to influence policy decisions along the oil extraction value chain.

### 1.2. Objectives of the Africa Oil Governance Report

The objectives of the Africa Oil Governance Report are twofold. It is firstly aimed at highlighting the efforts of African countries in establishing the governance frameworks necessary for managing their oil and gas resources. Secondly, it is to provide African oil producing countries information on the gaps in their governance structures, serving as a wake-up call to African governments to strengthen their resource governance policies, systems and institutions.

Natural resource governance refers to the

rules, norms and principles that determine the management of natural resources<sup>4</sup>. Africa's oil sector is fraught with corruption, lack of revenue transparency, weak regulatory institutions and political crises. This report therefore provides an opportunity for oil and gas producing countries to reflect on their performance in the governance of their oil and gas wealth; and to reposition themselves for transforming this wealth into sustainable development for their citizens.

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<sup>1</sup> Africa Progress Report is the Africa Progress Panel's flagship publication, published every year to recommend policy choices and action for African policy makers.

<sup>2</sup> Press Release by the World Bank, October, 2014.

<sup>3</sup> Welcome address by Executive Director of ACEP at the maiden African Oil Governance Summit held November 2015. Available at <http://www.ghana.gov.gh/index.php/media-center/news/2174-africa-oil-governance-summit-2015-ends-in-accra>

<sup>4</sup> Ushie (2013). The Management and Use of Natural Resources and their Potential for Economic and Social Development in the Mediterranean. IAI working papers 13 | 29.

### 1.3. Governance Indicators

Oil and gas resource management in Africa has been synonymous with the resource curse hypothesis. That is, oil production and oil revenues have been associated with negative impact on economic growth in oil producing African countries<sup>5</sup>.

Figure 1 shows the ranking of some selected African oil producing countries on their transparency and accountability efforts between 2005 and 2014.

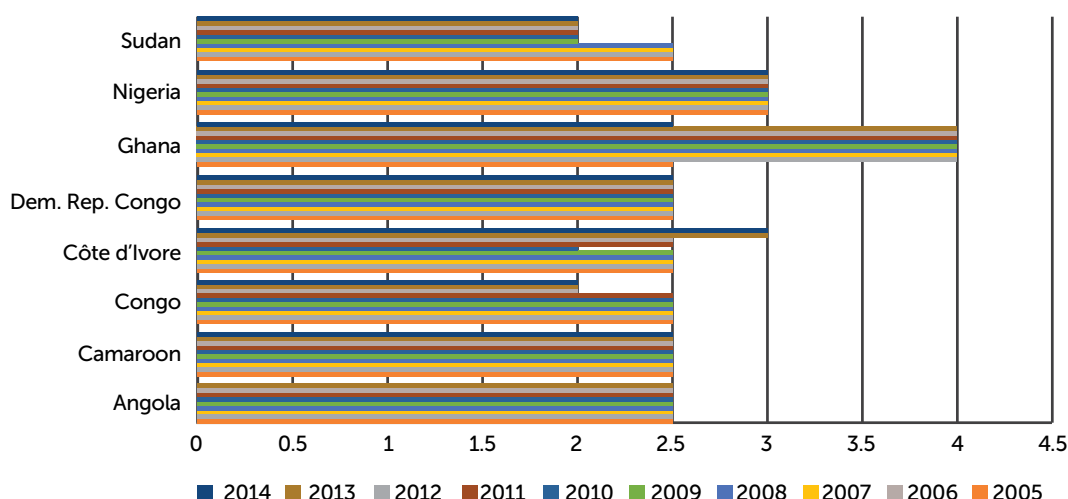


Figure 1: Transparency accountability rating (1 is low, 6 is high)

**Source: World Development Indicators, 2015**

In recent times, there have been efforts at the international, national and corporate levels to reverse the resource curse phenomenon. These efforts include the Extractive Industries Transparency Initiatives (EITI), which is made up of a set of standards that must be complied with by governments that have subscribed to them through a multi-stakeholder mechanism involving the private sector, civil society and government; the Open Contracting Partnership (OCP), and

the African Mining Vision. At the national level, countries such as the United States, Canada and the European Union have passed legislations that make payment disclosure mandatory for listed companies<sup>6</sup>.

For the purpose of the AOGR, eleven (11) governance indicators have been selected to ascertain the strength of oil governance in African oil producing countries.

<sup>5</sup> Sachs & Warner (1995). Natural resource abundance and economic growth. Working paper 5398. National Bureau of Economic Research.

<sup>6</sup> The EU Transparency Law also covers non-listed companies.

**a. Resource Management**

- i. Open and Competitive Bidding Process for allocating oil and gas rights
- ii. Mandatory Contract Disclosure
- iii. Environmental Impact Assessments
- iv. Free Prior and Informed Consent (FPIC)

**b. Fiscal Management**

- i. Open Budgeting
- ii. Distribution of Resource Revenues to Communities Affected by Extraction

**c. Transparency and Accountability**

- i. Adoption of International Governance Initiatives
- ii. Anti-Corruption Provisions
- iii. Mandatory disclosure of Beneficial Ownership Information
- iv. Public Accountability Institutions
- v. Right to Information Legislation

In order to ensure efficient management of natural resources, resource rich countries need to take a wide range of decisions along the natural resource value chain and make effective policy choices to implement these range of decisions. The natural resource value chain consists of processes from discovering the resource and deciding whether or not to extract the resource; securing sufficient government revenue from its extraction; maximizing associated benefits while minimizing cost such as environmental

impacts; and managing, allocating and investing the revenues for sustainable development. Each stage of the value chain also requires effective policies to ensure that decisions taken benefits all stakeholders.

For any governance indicator to be useful for assessment, it must be:

- i. **Valid:** an indicator is valid if it evaluates, analyzes or measures exactly what it is supposed to.
- ii. **Clear:** an indicator is clear when it is easy to understand and is straightforward in a manner that makes it easy for data collectors to know the right data needed to be collected and its mode of collection.
- iii. **Objective:** an objective indicator allows anyone reviewing it to reach the same conclusion about it.
- iv. **Practical:** an indicator is practical if it is feasible to evaluate and measure. Data needed to review such an indicator must be easily available and affordable to collect.

These attributes provided the basis for which the above-listed governance indicators were selected. The selected eleven (11) indicators therefore lay emphasis on the policies, legislations and other provisions instituted in each country for the management of its oil sector.

## 1.4. Selection of Countries

Eighteen (18) African oil-producing countries were covered in this report. The countries were selected based on their membership to the African Petroleum Producers Association (APPA). The APPA is a recognized organization of resource-endowed African oil producing countries which aims to promote common policy initiatives in all facets of the petroleum industry in order to maximise the developmental benefits accruable from petroleum exploitation activities<sup>7</sup>. The APPA member countries are:

- i. Algeria,
- ii. Angola,
- iii. Benin,
- iv. Cameroon,
- v. Chad,
- vi. Congo Republic,
- vii. DR Congo,
- viii. Egypt,
- ix. Equatorial Guinea,

- x. Gabon,
- xi. Ghana,
- xii. Ivory Coast,
- xiii. Libya,
- xiv. Mauritania,
- xv. Niger,
- xvi. Nigeria,
- xvii. South Africa and
- xviii. Sudan Republic.

The report does not cover frontier countries that have not yet produced oil or gas. In fact, some of the frontier countries have made significant efforts at adopting best governance practices for the management of their future oil and gas resources. In future, the report will be expanded to cover such frontier areas to highlight their efforts at escaping from the resource curse. The report is therefore limited to only APPA member countries.

## 1.5. Assessment of Governance Efforts

Assessment of the oil governance performance of the countries under consideration is done through the following criteria:

1. The adoption of the governance indicators listed above - Adoption in this case means providing for a governance indicator in legal documents such as the National Constitution, the Petroleum Law, or any other related legislation, regulation or framework.

2. Non-adoption of the governance indicators listed above - Non-adoption in this case means not providing for a governance indicator in legal documents such as the National Constitution, the Petroleum Law, or any other related legislation, regulation or framework.

The assessment of the oil governance of countries is not intended to rank countries. It is aimed at providing the narration on the

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<sup>7</sup> African Petroleum Producers Association website

extent to which countries are adopting best governance practices; thereby providing the status of oil governance in these countries. The report therefore identifies the governance gaps in oil producing countries for the attention of governments, civil society, the private sector and development partners. It also provides a systematic guide on the governance indicators that should be adopted by the governments of these countries. Finally, it provides an advocacy opportunity for civil society, parliaments and the media to demand urgent reforms in the governance of oil and gas resources and to ensure that the conditions that promote resource curse are eliminated.

# Section 02

## THE STATE OF OIL GOVERNANCE IN AFRICA'S OIL AND GAS PRODUCING COUNTRIES

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### 2.1. Introduction

This section presents the assessment of the state of governance practices in African oil and gas producing countries. The assessment is based on the adoption of best practices in the governance of oil and gas resources.

It also follows three broad categories – Resource Management, Fiscal Management; and Transparency and Accountability.

### 2.2. Resource Management

#### 2.2.1. Open and Competitive Bidding Process

Governments use the revenues that accrue from the exploration and exploitation of oil resources as a tool for national development<sup>8</sup>. This means that, each stage of the contracting process should provide optimal returns for the state and the investor. Furthermore, the process should be transparent so as to minimize or prevent the incidence of rent seeking. These have led to the utilization of different means to allocate the right to oil resources by different countries. Irrespective of the means, the purpose is to select the best candidate, maximize revenues and minimize the distortion of incentives to perform.

Generally, the awarding process is grouped into two: that is, the negotiation process and the licensing process. The negotiation process can take the form of 'first come, first serve' or direct negotiations. On the other hand, licensing is made up of administrative process and auctioning. Since "first come, first serve", direct negotiation and administrative processes depend on the discretionary powers of authorities, they are considered a pathway to rent-seeking and corruption. Therefore, the open auction (open and competitive bidding process) has become the best practice in licensing of oil and gas resource rights as it ensures transparency and offers optimal returns.

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<sup>8</sup> Bremmer, I., & Johnston, R. (2009). The rise and fall of resource nationalism. *Survival*, 51(2), 149-158.

**Table 1: Oil producing countries adoption of open and competitive bidding**

COUNTRY	ADOPTED/NOT ADOPTED	PROVISION	COMMENT/IMPLEMENTATION STATUS
Algeria	Adopted	Petroleum Law	
Angola	Adopted	Petroleum Law	The Minister is required to declare proposal for direct negotiations through public notice, and can commence negotiations with the company if, within fifteen days from the date of the notice, no other entity declares an interest in the area in question. But if any entity declares an interest, a tender shall open for competitive process.
Benin	-	-	No data found
Cameroon	Not Adopted		The petroleum law however grants the Minister of Mines the discretion whether or not to establish a competitive bidding procedure
Chad	Adopted	Petroleum Law <sup>9</sup>	
Congo Republic	Adopted	Petroleum Law	
DR Congo	Adopted	Petroleum Law	
Egypt	Adopted	Petroleum Law	
Equatorial Guinea	Adopted	Petroleum Law	
Gabon	Adopted	Petroleum Law	
Ghana	Not Adopted		Ghana's new Exploration and Production Bill which makes room for competitive bidding process is yet to be passed by its Parliament.

<sup>9</sup> Freshfields Bruckhaus Deringer (2013). Chad. Available at [http://www.freshfields.com/uploadedFiles/SiteWide/News\\_Room/Insight/Africa\\_ENR/Chad/Chad%20oil%20and%20gas.pdf](http://www.freshfields.com/uploadedFiles/SiteWide/News_Room/Insight/Africa_ENR/Chad/Chad%20oil%20and%20gas.pdf) Accessed March, 2016.



COUNTRY	ADOPTED/NOT ADOPTED	PROVISION	COMMENT/IMPLEMENTATION STATUS
Ivory Coast	-	-	No data found
Libya	Adopted	Petroleum Law	
Mauritania	-	-	No data found
Niger	-	-	No data found
Nigeria	Not Adopted		Nigeria's current petroleum law does not make such provision. However, Nigeria new Petroleum Bill which is yet to be passed, makes room for competitive bidding.
South Africa	Adopted	Petroleum Law	
Sudan Republic	Adopted	Petroleum Law	

**Source: Author's compilation**

**We found that:**

There is increasing adoption of open and competitive bidding process for the award of oil and gas rights.

- i. Nine (9) oil and gas producing countries in Africa have adopted competitive bidding processes for the award of petroleum contracts. Three (3) countries – Cameroon, Ghana and Nigeria have not yet adopted an open and competitive bidding process. (No data was found for the remaining six (6) countries).
- ii. Even though some of the countries such as Angola have open and competitive process in place, contracts are often negotiated directly with the Ministry in charge of the Petroleum Sector or the

state oil company.

- iii. Most oil and gas producing countries that adopted the open and competitive bidding process also have provisions in their laws, which allow them to opt for direct negotiations in some exceptional cases. However, in most cases, direct negotiation has therefore become the norm rather than the exception.

**We recommend that:**

- i. Countries which do not have competitive bidding provisions in their petroleum laws should introduce them as the default process for awarding resource rights. Competitive bidding processes give countries the opportunity to have the most optimum investment offer for their

petroleum blocks.

- ii. Where direct negotiation is allowed under some circumstances, such exceptional circumstances must be well defined in law; and where they are triggered, public notices justifying their application must be issued to allow aggrieved persons to challenge the decisions where necessary.

### 2.2.2. Mandatory Contract Disclosure

Access to information on contracts and payments has been identified as key to natural resource governance. However, contracts between governments and oil and gas companies are often shrouded in secrecy. Yet, without access to contracts, it is not possible for citizens to understand the contents of the agreements that their governments have made on their behalf. With contract transparency, citizens are able to monitor government and company deals.

There is a growing international call to make the terms of extractive industry contracts available to the public. A number of international directives have been provided to

guide the disclosure of information relating to contracts and payments in the extractive sector. Such directives include the EITI reporting standard, which requires compliant countries to publish the government’s policy on contract transparency. Also, contract disclosure is now a requirement under new standards issued by EITI. In addition, the EU’s amended Accountability and Transparency Directives and the Dodd-Frank Act require natural resource extractive companies to report what they pay to governments.

Although some countries disclose contracts and payments, most African oil producing countries make disclosures of oil contracts and payments voluntarily and not on a mandatory basis. Mandatory disclosure is needed so all rather than some selected oil contracts are disclosed. Table 2 below shows which countries have adopted/not adopted mandatory disclosure of oil contracts and payments.

**Table 2: Adoption of mandatory contract disclosure in African oil producing countries**

COUNTRY	ADOPTED/NOT ADOPTED	PROVISION	COMMENT/IMPLEMENTATION STATUS <sup>10</sup>
Algeria	Not Adopted		There are minimal disclosures about licensing, contracts, environmental assessments and resource revenues. Finance Ministry publishes limited information on oil prices and value of resource exports.

<sup>10</sup>NRGI compilation of resource governance information by country. Available at: <http://www.resourcegovernance.org/countries>

COUNTRY	ADOPTED/NOT ADOPTED	PROVISION	COMMENT/IMPLEMENTATION STATUS <sup>10</sup>
Angola	Not Adopted		Reporting on the oil sector is "weak," with little information available on contract terms. Data on revenue streams and production is also incomplete. A model for production sharing agreement was published, but specific negotiated terms for exploration, production or contracts with companies was not made available.
Benin	Not Adopted		
Cameroon	Not Adopted		The Mines Ministry does not publish any information on the oil sector. The National Oil Company (SNH) has recently begun publishing terms of reference for the licensing of new oil blocks, representing an improvement in transparency. However, contracts are not published.
Chad	Not Adopted		
Congo Republic	Not Adopted		
D.R. Congo	Not Adopted		Incomplete government reporting on most aspects of the extractive industries. A decree signed in May 2011 requires the government to publish all mining, oil and forestry contracts. However, the government did not begin systematically disclosing agreements until June 2012, and a few controversial contracts remain secret.
Egypt	Not Adopted		Egypt's official gazette, final contracts are not published in full
Equatorial Guinea	Not Adopted		Most petroleum contracts are published before and after negotiations. Most oil revenue receipts are not published by the finance ministry.
Gabon	Not Adopted		Reports on key revenue indicators, but lacks contract transparency. It is partially doing well with disclosure
Ghana	Not Adopted		Ghana already publishes its contracts, without any mandatory measures, but with the minister's own discretion. Under contractual disclosure (Clause 56) a lot should be done to promote transparency and accountability.
Ivory Coast	Not Adopted		
Libya	Not Adopted		Lack of disclosure in contractual process and revenues
Mauritania	Not Adopted		
Niger	Not Adopted		

COUNTRY	ADOPTED/NOT ADOPTED	PROVISION	COMMENT/IMPLEMENTATION STATUS <sup>10</sup>
Nigeria	Not Adopted		A lack of contract transparency and incomplete reporting. Petroleum ministry publishes less about upstream licensing process.
South Africa	Not Adopted		
Sudan Republic	Not Adopted		

**Source: Author's compilation**

**We found that:**

Mandatory disclosure of oil and gas contracts is still not widely accepted among African oil producing countries.

- i. None of the eighteen (18) oil and gas producing countries in Africa has mandatory requirements for the disclosure of oil and gas contracts. Some countries do publish some contracts through voluntary initiatives.
- ii. In spite of the decade long campaigns for contract transparency, countries producing oil and gas are still averse to it, an indication that there is relatively little success in contract transparency.

**We recommend that:**

- i. Oil and gas producing countries in Africa must incorporate provisions on mandatory contract disclosure in their petroleum laws as they do not impose any investment risks. They also minimize public mistrust and wrong perceptions in resource management, thereby, building citizens confidence in the systems and institutions for managing oil and gas resources.

- ii. The Open Contracting Partnership and other contract transparency movements including national level civil society organizations must increase advocacy for the mandatory disclosure of oil and gas contracts. The African Mining Vision, which promotes contract transparency, must develop an implementation and assessment tool for ensuring that member states adopt these principles.

**2.2.3. Environmental Impact Assessment (EIA)**

Although Africa's oil and gas industry contributes to high level of economic growth, it can also have a detrimental effect on the environment. Major ways by which the oil industry impacts the environment (especially coastal and marine environments) is usually via exploration and production, gas flaring and oil spills. An environmental impact assessment is an effective tool by which the anticipated effects on the environment of a proposed development, such as an oil exploration and development project, are measured. EIAs also provide a means for implementing mitigation

measures to reduce or avoid such effects.

Oil spills notably pose major direct risks to the environment and human health while also undermining fishing and farming livelihoods. Gas flaring, also a common practice in the oil and gas industry, contributes dangerously to greenhouse gas emissions, with negative impacts on the health and livelihoods of local communities. It remains particularly challenging in the Niger Delta where much of the production happens onshore; with estimates of the share of gas being flared ranging from 20% to 76% compared with a worldwide average of 4.8%. A number of illnesses associated with the pollution have been reported in some communities, including gastrointestinal problems, skin diseases, cancers and respiratory ailments<sup>11</sup>.

Oil extraction has caused severe environmental degradation for most African countries as a result of lax environmental

regulations. A survey of 27 oil producing countries (11 of which are African countries) conducted by the Integrated Environments Limited and D'Appolonia SpA indicates that for the majority of African countries surveyed, a sufficiently appropriate, but largely theoretical environmental policy and legal framework is in place. However, the effectiveness of this framework tends to be compromised by the lack of a sufficiently organized administrative structure that enables efficient regulatory compliance and enforcement<sup>12</sup>.

Most African oil producing countries have however demonstrated commitments to environmental protection by adopting EIA frameworks. The table below shows which African oil and gas producing countries have adopted EIAs and developed legislative framework for implementation.

**Table 3: African oil producing countries adoption of EIA**

COUNTRY	ADOPTED/ NOT ADOPTED	PROVISION			COMMENT/ IMPLEMENTATION STATUS
		Constitutional Law	Environmental Law	Petroleum Law	
Algeria	Adopted	Constitutional Law			
Angola	Adopted	Constitutional Law			
Benin	Adopted		Environmental Law		
Cameroon	Adopted		Environmental Law		

<sup>11</sup> The effects of oil companies' activities on the environment, health and development in sub-Saharan Africa by Baumüller, H., Donnelly, E., Vines, A., & Weimer, M. (2011).

<sup>12</sup> Environmental governance in oil-producing developing countries. Findings from a survey of 32 countries.

COUNTRY	ADOPTED/ NOT ADOPTED	PROVISION			COMMENT/ IMPLEMENTATION STATUS
		Constitutional Law	Environmental Law	Petroleum Law	
Chad	-	-	-	-	No data found
Congo Republic	Adopted		Environmental Law		
DR Congo	Adopted		Environmental Law		
Egypt	Adopted		Environmental Law		
Equatorial Guinea	Adopted			Petroleum Law	
Gabon	Adopted	Constitutional Law			
Ghana	Adopted		Environmental Law		
Ivory Coast	Adopted	Constitutional Law			
Libya	Adopted	Constitutional Law			
Mauritania	Adopted		Environmental Law		
Niger	-	-	-	-	No data found
Nigeria	Adopted	Constitutional Law			
South Africa	Adopted		Environmental Law		
Sudan Republic	Adopted		Environmental Law		

**Source: Author's compilation**

**We found that:**

The adoption of EIA is becoming a norm among African oil producing countries.

- i. Sixteen (16) of the eighteen (18) countries surveyed have adopted EIAs for implementation in their oil and gas industries.
- ii. Oil and gas producing countries in Africa

have different types of environmental frameworks. Nine (9) of the countries have made provision for EIAs in their Environmental Laws; six (6) in their National Constitutions; and one (1) country – Equatorial Guinea has such provisions in its Petroleum Law.

- iii. Although most of the selected African

countries have put in place EIA systems, the extent to which the EIA systems influence environmental development decisions shows different levels of success in different countries.

**We recommend that:**

- i. Due to conflict of laws and the tensions often existing between general and sector specific laws, oil and gas producing countries should urgently incorporate environmental provisions in their petroleum laws and contracts.
- ii. In view of the relevance of EIAs to the oil and gas sector, environmental considerations should progressively become a biddable factor during licensing of oil and gas resource rights. Therefore, oil and gas companies that have poor previous environmental record should not be considered for the award of resource rights.
- iii. Although many oil and gas producing countries have EIA requirements, the need to strengthen environmental protection agencies and institutions cannot be over-emphasized. The institutions should be strengthened by laws that enable them to have the power to apply sanctions to oil companies which fall short of complying with EIA regulations.
- iv. Capacity building programmes for institutions overseeing EIA implementation should be increased. Project management teams of companies should also include staff with relevant environmental expertise and the knowledge required to implement EIAs when undertaking projects.

#### **2.2.4. The Principle of Free Prior and Informed Consent (FPIC)**

Oxfam America (2014) defines Free Prior and Informed Consent (FPIC) as the principle whereby indigenous peoples and local communities are adequately informed about projects in a timely manner and given the opportunity to approve (or reject) a project before its operations begin. A central element of FPIC, therefore, is genuine inclusion, disclosure, and respect for local citizenry in decision-making processes. FPIC is emerging as a best practice for safeguarding the human rights of all communities affected by extractive industry projects.

The principle is on the rise in land and natural resource governance initiatives across the globe. It was enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as a result of indigenous peoples' struggles against intrusions by companies into their territories<sup>13</sup>. FPIC is therefore a right for indigenous peoples under international human rights law and must be implemented as such at national and regional levels.

In Africa, indigenous people are not much aware that their consent must be duly sought before the implementation of projects in their communities. Notwithstanding this, regional institutions and civil society organizations have recently begun to call for FPIC processes for natural resource projects that have the potential to impact local communities. Since 2009, African regional institutions such as the Economic Community of West African States

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<sup>13</sup> Reclaiming Free, Prior and Informed Consent (FPIC) in the context of global land grabs by Jennifer Franco (2014).

(ECOWAS), African Commission on Human and Peoples' Rights (ACHPR), Pan-African Parliament and Africa Mining Vision have all called on their member states to respect more broadly, the FPIC of local communities that face potential impacts from mining, hydrocarbon development, or natural resource projects<sup>14</sup>.

The ECOWAS developed the 2009 ECOWAS Directive with input from Government officials, civil society organizations, and extractive-project-affected communities. This Directive calls for FPIC when communities will be affected by mineral or hydrocarbon projects. The directive is binding on all member states including Ivory Coast, Ghana and Nigeria. In May 2012, ACHPR issued a resolution calling on States to ensure local participation in decision making related

to natural resource governance. However, this resolution can only be binding on African Union (AU) members if it is adopted by the AU<sup>15</sup>. In addition some African oil producing countries are in support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) which sets out important standards to protect the rights of indigenous people. With the exception of Chad, Equatorial Guinea, Ivory Coast, Kenya and Nigeria, all other members of the African Petroleum Producers Association are signatories to the UNDRIP Declaration.

Although most African countries have pledged their support to the UNDRIP Declaration and ECOWAS Directive, they have not yet domesticated the FPIC principle in any of their legislations.

**Table 4: Adoption of FPIC in African oil producing countries**

COUNTRY	ADOPTED/NOT ADOPTED	PROVISION	COMMENT/IMPLEMENTATION STATUS
Algeria	Not Adopted		
Angola	Not Adopted		
Benin	Not Adopted		
Cameroon	Not Adopted		
Chad	Not Adopted		
Congo Republic	Not Adopted		
DR Congo	Not Adopted		
Egypt	Not Adopted		
Equatorial Guinea	Not Adopted		

<sup>14</sup> Oxfam America report on Free, Prior and Informed Consent in Africa. Available from <http://www.oxfamamerica.org/static/media/files/community-consent-in-africa-jan-2014-oxfam-americaAA.PDF>

<sup>15</sup>Ibid



COUNTRY	ADOPTED/NOT ADOPTED	PROVISION	COMMENT/IMPLEMENTATION STATUS
Gabon	Not Adopted		
Ghana	Not Adopted		Ghana has ratified and gazetted the ECOWAS Directive <sup>16</sup> .
Ivory Coast	Not Adopted		
Libya	Not Adopted		
Mauritania	Not Adopted		
Niger	Not Adopted		
Nigeria	Not Adopted		
South Africa	Not Adopted		
Sudan Republic	Not Adopted		

#### **We found that;**

FPIC is still not widely accepted within the oil and gas industry of the African countries under consideration

- i. None of the eighteen (18) oil and gas producing countries in Africa has adopted the principle of Free Prior and Informed Consent in their legislations.
- ii. Although the ECOWAS Directive has been found to be the most significant FPIC policy requirement in Africa, member states have discretion in determining how the objectives of ECOWAS Directives will be met.

#### **We recommend that:**

- i. African oil producing countries must adopt the principle of FPIC and develop legislation to guide its implementation as a fundamental human right.
- ii. Governments of the countries under consideration must domesticate the ECOWAS Directive, ACHPR Resolution and the UNDRIP Declaration into their legal frameworks where applicable. This will provide national legal effect to international law provisions on FPIC.

## **2.3. Fiscal Management**

### **2.3.1. Open Budgeting**

Budgets are key documents which lay out a Government's priorities in terms of policies and programs. Opening up budgets and democratizing the budget process gives citizens a say in policy formulation and

resource allocation. While providing the public with comprehensive and timely information on the Government's budget and financial activities and opportunities to participate in decision making can strengthen oversight and improve policy choices, keeping the

<sup>16</sup> Online news article. Ghana Today, December 2014. Available from <http://www.todaygh.com/embrace-fpic-wacam-urges-mining-companies/>

process closed can have the opposite effect. Restricting access to information gives room for corrupt governments to hide unpopular, wasteful, and corrupt spending of resources that should have been used to benefit the masses.

Opening up the budget process from planning to implementation results in more efficient use of resources. This is because Government officials are less likely to misuse or misappropriate funds since their actions are more likely to be scrutinized and thus leads to less corruption. Citizens and oversight institutions such as the legislature and audit institutions also have the opportunity to provide feedback on the quality and adequacy of services and infrastructure provided.

Based on internationally accepted criteria<sup>17</sup> open budgeting demands budget transparency, public participation and oversight responsibilities by the legislature

and supreme audit institutions are able to provide effective budget oversight. For budget transparency, the Open Budget Survey (OBS) assesses whether central governments provide comprehensive and timely information on eight (8) key documents; Pre-Budget Statement (PBS), Executive's Budget Proposal (EBS), Enacted Budget (EB), Citizens Budget (CB), In-Year Reports (IYR), Mid-Year Review (MYR), Year-End Report (YER) and Audit Report (AR). For public participation, the Open Budget Survey assesses the degree to which government provides opportunities for the public to engage in the budget process. The executive, the legislature and the supreme audit institution must provide such opportunities throughout the budget process. The Open Budget Survey in this report covered twelve (12) of the APPA member countries excluding the following: Chad, Congo Republic, Gabon, Ivory Coast, Libya and Mauritania.

**Table 5: Adoption of Open Budget Initiative in oil producing African countries**

COUNTRY	PUBLIC PARTICIPATION	OVERSIGHT BY LEGISLATION	OVERSIGHT BY AUDIT	TRANSPARENCY
Algeria	No public participation	Weak	Weak	Scant
Angola	Weak	Weak	Weak	Minimal
Benin	Weak	Weak	Limited	Limited
Cameroon	Weak	Weak	Weak	Limited
DR Congo	Weak	Weak	Weak	Limited
Egypt	Weak	No oversight	Limited	Scant
Equatorial Guinea	Weak	Weak	No oversight	Scant

<sup>17</sup> Internationally accepted criteria developed by multilateral organizations, such as the International Monetary Fund (IMF), the Organization for Economic Co-operation and Development and the International Organization of Supreme Audit Institutions (INTOSAI).

COUNTRY	PUBLIC PARTICIPATION	OVERSIGHT BY LEGISLATION	OVERSIGHT BY AUDIT	TRANSPARENCY
Ghana	Weak	Limited	Adequate	Limited
Niger	Weak	Adequate	Limited	Scant
Nigeria	Weak	Adequate	Limited	Minimal
South Africa	Adequate	Adequate	Adequate	Adequate
Sudan Republic	No public participation	Weak	Weak	Scant

**Source: International Budget Partnership (2015)**

**We found that:**

There are some appreciable efforts by African oil producing countries in adopting open budgeting process.

- i. Amongst all the twelve (12) countries surveyed, Sudan and Algeria do not engage the public in the budget process.
- ii. With the exception of South Africa, which provides the public with an adequate opportunity to engage in the budget process, the Governments of the remaining nine (9) countries are weak in providing the public with opportunities to engage in the budget process.
- iii. Out of all the twelve (12) countries, it is only in South Africa that both the supreme audit institution and the legislature have an adequate oversight over the budget planning and implementation.
- iv. Budget oversight by the legislature in seven (7) countries is weak. These countries are Algeria, Angola, Benin, Cameroon, DR. Congo, Equatorial Guinea and Sudan Republic. Budget oversight by the legislature was non-existent in Egypt as the legislature was not in place at the time the survey was conducted.

Budget oversight by the legislature in Ghana is limited. In Equatorial Guinea for instance, the executive does not receive prior approval by the legislature before implementing a supplementary budget.

- v. The supreme audit institution in Ghana has an adequate oversight over the budget. Under Ghana’s law, the supreme audit institution has full discretion to undertake audits as it sees fit. Moreover, the Auditor General cannot be removed without legislative or judicial approval, which bolsters its independence.
- vi. For budget transparency, the Governments of Equatorial Guinea, Sudan Republic, Niger and Algeria provide scant budget information to the public whilst minimal budget information is provided to the public by the Government of Angola. The remaining countries provide substantial budget information to the public with the exception of South Africa which provides adequate budget information to the public.

**We recommend that:**

- i. Algeria and Sudan should establish

credible and effective mechanisms such as public hearings, surveys and focus groups for capturing a range of public perspectives on budget matters. The remaining countries should improve upon their existing mechanism and also provide detailed feedback on how public perspectives have been taken into account.

- ii. Equatorial Guinea should ensure that the executive receives prior approval from the legislature before supplementary budget is implemented. Countries where oversight by the legislature is weak and limited should ensure that in both law and practice, the legislature is consulted prior to the transfer of funds in the enacted budget and the spending of contingency funds that were not identified in the enacted budget.
- iii. Countries should also ensure that their supreme audit institutions have adequate funding and independence to perform their duties. The appointment and removal of any Auditor General of audit institutions must be backed by legislative approval to avoid political interference of their duties and further foster their independence.
- iv. In order to track the utilization of oil revenues, specific projects and programs which are funded with oil revenues should be outlined in the budget statement or a supporting document such as an appendix.
- v. Key budget documents should be made available to the public in a timely manner.

These documents should be easily accessible to the general public. This can be achieved by distributing hard copies free of charge and if possible should be made available in local dialects.

### **2.3.2. Distribution of Resource Revenues to Communities Affected by Extraction**

Oil and gas production is a major revenue generating activity for producing countries but is not without damages or negative effects on the communities or environment in which these production activities take place. These damages result mainly from oil spills, gas flares, effluent and waste discharges among others.

The exploitation of minerals or hydrocarbons in an irresponsible manner can result in displacement, epidemics, and hunger for affected communities. In some extreme cases, conflicts have been provoked by the urge to control such wealth. In other cases, corporations and Governments have forced entire communities to leave their ancestral land without prior consultation and adequate compensation. Poor rural and indigenous populations are not usually equipped to enforce their rights concerning such projects. Such communities are, moreover, highly dependent on their environment for their survival and livelihoods. Unfortunately, these communities usually lack education services and live in remote areas with little access to the justice system, which limits their ability to access decision makers, to understand decision making processes, to formulate

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<sup>18</sup>Itriago, D. (2009). Lifting the Resource Curse: How poor people can and should benefit from the revenues of extractive industries.

appropriate inputs, and to fully claim their rights<sup>18</sup>.

The damage from oil and gas operations is chronic and cumulative, and has acted synergistically with other sources of environmental stress to result in a severely impaired coastal ecosystem and compromised livelihoods and health of the region's impoverished residents<sup>19</sup>. In this

context, establishing clear fiscal rules for revenue sharing, including the mandatory allocation of rents to communities in affected areas, can help to shield resource revenues from undue influence and guarantee that a meaningful share of the returns to resource extraction is devoted to offsetting its social, environmental and infrastructure costs<sup>20</sup>.

**Table 6: Distribution of oil revenues to communities affected by extraction in African oil producing**

COUNTRY	ADOPTED/ NOT ADOPTED	PROVISION				COMMENT/ IMPLEMENTATION STATUS
		Constitutional Law	Petroleum Law	Public Finance Management Law	National Budget	
Algeria	Not Adopted					
Angola	Adopted				National Budget	The Government transfers a percentage of petroleum tax revenues to producing regions. Rules for these transfers are published for some provinces, but their amounts are not reported by the central Government.
Benin	Not Adopted					
Cameroon	Not Adopted					Distribution exists for minerals but not for oil
Chad	Adopted		Petroleum Revenue Management Plan			Producing regions in the country receive 5% of oil royalties <sup>21</sup>

<sup>19</sup>Federal Ministry of Environment, Nigeria Conservation Foundation, WWF UK and CEESP-IUCN Commission on Environmental, Economic and Social Policy

<sup>20</sup>Sharing Natural Resource Revenues with Affected Communities: Policy Options for Mozambique.

<sup>21</sup> Chad: Towards Democratisation or Petro-dictatorship? Available at <https://books.google.com.gh/books?id=GftPTy5yMoMC&printsec=frontcover#v=onepage&q&f=false>

COUNTRY	ADOPTED/ NOT ADOPTED	PROVISION				COMMENT/ IMPLEMENTATION STATUS
		Constitutional Law	Petroleum Law	Public Finance Management Law	National Budget	
Congo Republic	-	-	-	-	-	No data found
DR Congo	Not Adopted					Distribution exists for minerals but no information found on oil
Egypt	Not Adopted					
Equatorial Guinea	Not Adopted					
Gabon	Adopted		Petroleum Law			The petroleum law that mandates companies to allocate part of the oil revenues, specific to their contracts for building infrastructure in the local area of the exploitation.
Ghana	Adopted		Petroleum Revenue Management Act			The PRMA makes provision for royalties to be paid in accordance with relevant laws where there is onshore production. Also, where petroleum operations affect communities there is provision to pay compensation to communities or persons when they can prove adverse effects of such oil operations <sup>22</sup> .
Ivory Coast	Not Adopted					
Libya	Not Adopted					
Mauritania	-	-	-	-	-	No data found
Niger	-	-	-	-	-	No data found

<sup>22</sup> At the moment, Ghana's production is offshore. However, once production moves onshore, this law can be triggered.

COUNTRY	ADOPTED/ NOT ADOPTED	PROVISION				COMMENT/ IMPLEMENTATION STATUS
		Constitutional Law	Petroleum Law	Public Finance Management Law	National Budget	
Nigeria	Adopted	Constitutional Law				Oil producing states receive 13% of revenues from the oil produced in their state in addition to standard revenue allocations.
South Africa	Not Adopted					
Sudan Republic	-	-	-	-		No data found

**Source: Author's compilation**

**We found that:**

Distribution of oil revenues to affected communities is not yet a well accepted norm among African oil producing countries

- i. Five (5) of the oil producing countries have a provision in place to distribute a share of oil revenues to communities affected by oil production activities. Nine (9) countries have no provision in place for affected communities.
- ii. Different countries have different frameworks for distributing resource revenues. Gabon has enshrined revenue distribution provision in its Petroleum Law, Chad in its Petroleum Revenue Management Plan, Ghana in its Petroleum Revenue Management Act; Angola in its Budget Law and Nigeria in its Constitution.
- iii. In all the countries which have adopted the provision, there is no description of the specific use to which the revenues shared to the producing regions should be put. As a result, they fail to meet any specific

objective, whether it should be used for compensation for extractive activities or conflict prevention or mitigation.

**We recommend that:**

- i. In countries where the formula for sharing revenue to affected communities is not available, steps should be taken to clearly define the formula upon which petroleum revenues should be distributed to affected communities. This formula should be designed in consultation with all stakeholders including the affected communities. Building consensus among the different stakeholders is extremely important for the stability of the formula especially in politically contested and ethnically diverse environments.
- ii. The agreed formula should be codified in legislation or regulation. Also, the objectives for sharing the revenues to producing states should be clearly defined and clarified in legislation

to prevent the use of revenues from exhaustible resources for consumption or recurrent spending. Revenues from exhaustible resources should be used for capital spending to contribute to the development of the capital base of local economies to support medium to long-term development.

- iii. In order for producing communities to ascertain that the share of revenue they receive is what is legally due them, there should be a project-by-project reporting

of project level data to enable them independently compute and verify these amounts based on the agreed formula.

- iv. To ensure efficient procurements and value for money in the use of petroleum revenues by governments and local authorities, the governments of oil and gas producing countries must adopt the Open Data Standards to ensure that project level transparency and accountability are enhanced.

## 2.4. Transparency and Accountability

### 2.4.1. International Governance Initiatives

One important question posed about African resource-rich countries is why in spite of all the vast amounts of natural resources they are endowed with, the continent is still laden with high levels of poverty. This resonates the concept of the 'resource curse' which has so bedevilled resource-rich countries. Global attention on addressing 'resource curse' in developing countries has led to increased emphasis on the relevance of natural resource governance, which now plays an important role in ensuring economic growth and sustainable development.

One important international governance initiative embraced by most African resource producing countries to combat poor governance in the extractive sector is the Extractive Industries Transparency Initiative (EITI).

The Initiative is a global standard for promoting open and accountable management of natural resources. It seeks to strengthen government and company systems, inform public debate, and enhance trust. In each implementing country it is supported by a coalition of governments, companies and civil societies working together<sup>23</sup>.

Table 7 shows African oil and gas producing countries within the African Petroleum Producers Association that have adopted/ not adopted the EITI. Under the initiative, compliant countries refer to countries which are confirmed to have met all of its requirements. Candidate countries refer to countries implementing EITI, but not yet compliant. Suspended countries are those whose compliance or candidate status is temporarily suspended.

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<sup>23</sup> EITI website showing list of EITI candidate, compliant and suspended countries.



**Table 7: African oil producing countries' adoption of EITI**

COUNTRY	ADOPTED/NOT ADOPTED	CANDIDATE	COMPLIANT	SUSPENDED
Algeria	Not Adopted			
Angola	Not Adopted			
Benin	Not Adopted			
Cameroon	Adopted		Compliant	
Chad	Adopted		Compliant	
Congo Republic	Adopted		Compliant	
DR Congo	Adopted		Compliant	
Egypt	Not Adopted			
Equatorial Guinea	Not Adopted			
Gabon	Not Adopted			
Ghana	Adopted		Compliant	
Ivory Coast	Adopted		Compliant	
Libya	Not Adopted			
Mauritania	Adopted		Compliant	
Niger	Adopted		Compliant	
Nigeria	Adopted		Compliant	
South Africa	Not Adopted			
Sudan Republic	Not Adopted			

**Source: EITI (2016)**

**We found that:**

The adoption of EITI is becoming a practice in the oil and gas industry within the African region

- i. Only nine (9) of the eighteen (18) oil and gas producing countries in Africa have adopted the EITI.
- ii. All nine (9) oil and gas producing countries which have adopted the EITI are compliant.
- iii. Gabon lost its status as an EITI candidate

on 27th February 2013, and is no longer recognised as an EITI implementing country<sup>24</sup>.

**We recommend that:**

- i. Non-candidates of the EITI must sign up to the initiative as it contributes tangibly to extractive resource management. This will help avert the 'resource curse' and manage the potential risk of conflict which usually results from dissatisfaction.

<sup>24</sup> EITI (2016). Gabon. Available at <https://eiti.org/Gabon> Accessed March, 2016.

<sup>25</sup>Kar and Spanjers (2015). Illicit Financial Flows from Developing Countries: 2004-2013. Global Financial Integrity

ii. Due to the voluntary nature of EITI, countries that adopt it must seek legal backing for the initiative by enacting EITI legislations. This also empowers citizens to trigger the law when the principles of EITI are not being adhered to.

#### 2.4.2. Anti-Corruption Provisions

Much too often, resource wealth is controlled by politicians and powerful industry insiders rather than benefit the masses. Through secret payments to governments, bribery and embezzlement, lack of transparency in the award of contracts, among others; the oil and gas industry continues to be confronted with corruption. Many oil and gas companies protect the identities of their shareholders and subsidiaries; making room for corrupt leaders to hide stolen funds in secret jurisdictions.

According to Global Financial Integrity, the African continent has lost more than US\$675 billion in illicit financial outflows between 2004 and 2013<sup>25</sup> due to corruption, trade mis-

invoicing and other tax avoidance schemes. That aside, corruption has also led to conflicts in some parts of the continent. For example, the Niger Delta conflict in Nigeria recounts the story of how citizens who felt exploited by oil companies, attacked and kidnapped dozens of oil workers and their relatives, including children<sup>26</sup>.

To combat corruption in the oil and gas industry, some oil producing countries have adopted national anti-corruption strategies and laws. Some countries have also signed on to international anti-corruption instruments such as the African Union (AU) Convention against Corruption and United Nations (UN) Convention against Corruption. All these provisions are useful in checking corruption in the oil industry.

Table 8 below shows which of the African oil producing countries have established national anti-corruption strategies and signed unto international anti-corruption instruments.

**Table 8: African oil producing countries' adoption of anti-corruption provisions**

COUNTRY	ADOPTED/NOT ADOPTED	PROVISION				COMMENT/IMPLEMENTATION STATUS
		National Anti-Corruption Strategy	National Anti-Corruption Act/Law	AU Convention against Corruption	UN Convention against Corruption	
Algeria	Adopted		National Anti-Corruption Act	AU Convention	UN Convention	
Angola	Adopted		National Anti-Corruption Act	AU Convention	UN Convention	

<sup>26</sup> Amnesty International (2011). Conflicts in the Niger Delta.

COUNTRY	ADOPTED/NOT ADOPTED	PROVISION				COMMENT/IMPLEMENTATION STATUS
		National Anti-Corruption Strategy	National Anti-Corruption Act/Law	AU Convention against Corruption	UN Convention against Corruption	
Benin	Adopted	National Anti-Corruption Strategy		AU Convention	UN Convention	
Cameroon	Adopted	National Anti-Corruption Strategy		AU Convention	UN Convention	AU Convention has been signed but not ratified
Chad	Adopted	National Anti-Corruption Strategy		AU Convention		AU Convention has been signed but not ratified
Congo Republic	Adopted	National Anti-Corruption Strategy		AU Convention		UN Convention
DR Congo	Adopted			AU Convention	UN Convention	
Egypt	Adopted	National Anti-Corruption Strategy			UN Convention	
Equatorial Guinea	Adopted			AU Convention		AU Convention has been signed but not ratified
Gabon	Adopted			AU Convention	UN Convention	
Ghana	Adopted	National Anti-Corruption Strategy		AU Convention	UN Convention	
Ivory Coast	Adopted	National Anti-Corruption Strategy		AU Convention	UN Convention	
Libya	Adopted	National Anti-Corruption Strategy		AU Convention	UN Convention	
Mauritania	Adopted	National Anti-Corruption Strategy		AU Convention	UN Convention	AU Convention has been signed but not ratified

COUNTRY	ADOPTED/NOT ADOPTED	PROVISION				COMMENT/IMPLEMENTATION STATUS
		National Anti-Corruption Strategy	National Anti-Corruption Act/Law	AU Convention against Corruption	UN Convention against Corruption	
Niger	Adopted			AU Convention	UN Convention	
Nigeria	Adopted	National Anti-Corruption Strategy		AU Convention		Nigeria's national anti-corruption strategy is a draft version and is yet to be adopted by its parliament
South Africa	Adopted		National Anti-Corruption Act	AU Convention	UN Convention	
Sudan Republic	Adopted			AU Convention	UN Convention	AU Convention has been signed but not ratified.

**Source: Author's compilation**

**We found that:**

The adoption of anti-corruption provisions is gaining relevance within the oil and gas industry among African oil producing countries.

- i. All the eighteen (18) countries of the African Petroleum Producers Association have adopted at least one anti-corruption framework, only three countries – Algeria, Angola and South Africa have enacted national laws on anti-corruption.
- ii. Four (4) of the countries surveyed – DR. Congo, Equatorial Guinea, Gabon, and Niger, have no national anti-corruption frameworks, and are therefore too exposed to corrupt practices.
- iii. Some of Africa's oil producers have relatively low commitment to the African

Union Convention against corruption as five countries – Cameroon, Chad, Equatorial Guinea, Mauritania and Sudan Republic, have not yet ratified the Convention.

**We recommend that:**

- i. All oil producing countries in Africa must show serious commitment to fighting corruption especially in the oil and gas sector. They must not only develop anti-corruption frameworks, but must also show strong commitment to implementing the frameworks.
- ii. Oil and gas producing countries must incorporate anti-corruption clauses in their Petroleum Laws and contracts. Such clauses should seek to criminalize conflict of interest

situations involving public officials who are engaged in oil and gas contracting and in regulating oil and gas operations.

### 2.4.3 Beneficial Ownership Information Disclosure

According to the requirement 3.11 (i) of the EITI standards, beneficial owner in terms of a company are “natural person(s) who directly or indirectly ultimately owns or controls a corporate entity”. The 2013 standards therefore recommended that owners of companies who bid, operate or/and invest in the extractive industries be made public. Countries were encouraged to maintain a publicly available and accessible register on the beneficial owners and their level of ownership. The register should detail the name and contacts of beneficial owners and indicate whether there is any beneficial owner politically involved with governments and the means of entity control.

International interest in beneficial ownership disclosure has intensified. The United Kingdom has committed to a beneficial ownership register whilst the United States

and France have each declared their intentions to formulate legislation to back beneficial ownership disclosure. The EITI has also been undertaking a pilot program in some selected countries<sup>27</sup>. The objective of the pilot is to assess the feasibility of requiring beneficial ownership disclosure through the EITI, including reviewing existing disclosure practices in implementing countries participating in the pilot and identifying suitable approaches for disclosure. However, latest standards issued by EITI have made disclosure of beneficial ownership a requirement by 2020.

Without beneficial ownership information disclosure, transparency in the oil and gas sector is minimal, resulting in corruption, money laundering and tax evasion. The essence of this indicator therefore is to minimize or prevent the risk of corruption and fronting through transparency. Table 9 shows countries’ efforts in disclosing beneficial ownership information in the petroleum sector.

**Table 9: Beneficial ownership information disclosure African oil producing countries**

COUNTRY	ADOPTED/ NOT ADOPTED	PROVISIONS		COMMENT/ IMPLEMENTATION STATUS
		Petroleum Law	Voluntary	
Algeria	Not Adopted			
Angola	Not Adopted			
Benin	Not Adopted			

<sup>27</sup> NRGi report on beneficial ownership disclosure in Ghana. Available at <http://www.resourcegovernance.org/blog/transparency-beyond-basics-ghana-eiti-step-efforts-beneficial-ownership-disclosure>

COUNTRY	ADOPTED/ NOT ADOPTED	PROVISIONS		COMMENT/ IMPLEMENTATION STATUS
		Petroleum Law	Voluntary	
Cameroon	Not Adopted			
Chad	Not Adopted			
Congo Republic	Not Adopted			
DR Congo	Not Adopted			EITI currently piloting beneficial ownership
Egypt	Not Adopted			
Equatorial Guinea	Not Adopted			
Gabon	Not Adopted			
Ghana	Not Adopted			
Ivory Coast	Not Adopted			
Libya	Not Adopted			
Mauritania	Not Adopted			
Niger	Not Adopted			
Nigeria	Not Adopted			EITI currently piloting beneficial ownership
South Africa	Not Adopted			
Sudan Republic	Not Adopted			

**Source: Author's Compilation**

**We found that:**

Mandatory disclosure of beneficial ownership continues to remain a challenge among African oil producing countries

- i. None of the eighteen (18) oil and gas producing countries in Africa surveyed in this study have adopted provisions for the public disclosure of beneficial ownership information.
- ii. Some countries, for example Ghana, have provisions in their Companies

Codes which require companies to keep a register of their beneficial owners, but they fall short of making such registers public. In some jurisdictions, such registers are open only to investigative and compliance institutions.

**We recommend that:**

- i. Governments must make provision for the establishment of public registers of beneficial ownership and to proactively

maintain and regularly update the registers. The registers must be comprehensive, comprehensible and easily accessible to the public.

- ii. The African Union (AU) must increase cooperation among its member states on exchange of tax information, information on companies and their affiliates operating in Africa. An African Initiative for the Automatic Exchange of Information will be appropriate in enhancing such cooperation. African countries must also negotiate to participate in the global initiatives for voluntary and automatic exchange of information.

utilized to meet the social and fiscal needs of the people. Yet, public accountability especially in resource rich countries has been unsatisfactory, giving room for corruption and lack of development in such countries.

Some countries have established public accountability institutions to oversee and monitor public expenditure. In some oil producing African countries, the governments have established accountability institutions to monitor the allocation of exploration rights and oil revenue expenditure. Such institutions call for governments' compliance to oil revenue expenditure regulations, provide a platform for public discussions on oil revenue management and independently assess how oil revenues are utilized. Table 10 shows which African oil producing countries have established public accountability institutions and which countries have not.

#### 2.4.4. Public Accountability Institutions

Public accountability is a key feature of good governance. Public accountability ensures that those entrusted with the management of resource wealth are answerable to the public on how such resources are being

**Table 10: African oil producing countries' adoption of public accountability institutions**

COUNTRY	ADOPTED/NOT ADOPTED	NAME OF ACCOUNTABILITY INSTITUTION	COMMENT/IMPLEMENTATION STATUS
Algeria	Adopted	Audit Court	The court has comprehensive prerogatives over all public funds whatever the legal status of their managers or of their beneficiaries, as well as audit and assessment authority over the efficiency, effectiveness and economy of implementation of the budget, without the prerogative to express opinion on the opportune nature of public expenditure.

COUNTRY	ADOPTED/NOT ADOPTED	NAME OF ACCOUNTABILITY INSTITUTION	COMMENT/IMPLEMENTATION STATUS
Angola	Adopted	Court of Auditors	The Court of Auditors is the supreme supervisory body responsible for overseeing the legality of public finances and judging such accounts as the law may require to be submitted to it.
Benin	Adopted	Court of Audit	The Court of Audit is responsible for auditing public expenditures and public procurements.
Cameroon	Adopted	Chambre des Comptes	Responsible for the audit of the accounts of state-owned companies as well as government accounts.
Chad	Adopted	Collège de Contrôle et de Surveillance des Ressources Pétrolières (Petroleum Revenue Oversight and Control Committee)	Mandated to conduct ex-post assessments of oil revenue expenditure and approve withdrawals from special oil revenue accounts.
Congo Republic	-	-	No data found
DR Congo	Adopted	Cour des Comptes(CdC)	Controls the conditions established by law for the management of State finances, public goods as well as the accounts of the provinces, the decentralized territorial entities and the public bodies.
Egypt	Adopted	Central Auditing Organisation (CAO)	The CAO is an independent organization with public legal personality subordinated to the president of the Republic. It is responsible for the external audit of public sector entities, including about 130 central government departments and administrative units, 120 service agencies, 29 governorates, 50 economic authorities and more than 160 state-owned enterprises, political parties, trade unions, national and party news media, and all units subsidised by the State. The CAO may also audit and examine the work and accounts of any other entity, as assigned by the President.
Angola	Adopted	Court of Auditors	The Court of Auditors is the supreme supervisory body responsible for overseeing the legality of public finances and judging such accounts as the law may require to be submitted to it.



COUNTRY	ADOPTED/NOT ADOPTED	NAME OF ACCOUNTABILITY INSTITUTION	COMMENT/IMPLEMENTATION STATUS
Benin	Adopted	Court of Audit	The Court of Audit is responsible for auditing public expenditures and public procurements.
Cameroon	Adopted	Chambre des Comptes	Responsible for the audit of the accounts of state-owned companies as well as government accounts.
Chad	Adopted	Collège de Contrôle et de Surveillance des Ressources Pétrolières (Petroleum Revenue Oversight and Control Committee)	Mandated to conduct ex-post assessments of oil revenue expenditure and approve withdrawals from special oil revenue accounts.
Congo Republic	-	-	No data found
DR Congo	Adopted	Cour des Comptes(CdC)	Controls the conditions established by law for the management of State finances, public goods as well as the accounts of the provinces, the decentralized territorial entities and the public bodies.
Egypt	Adopted	Central Auditing Organisation (CAO)	The CAO is an independent organization with public legal personality subordinated to the president of the Republic. It is responsible for the external audit of public sector entities, including about 130 central government departments and administrative units, 120 service agencies, 29 governorates, 50 economic authorities and more than 160 state-owned enterprises, political parties, trade unions, national and party news media, and all units subsidised by the State. The CAO may also audit and examine the work and accounts of any other entity, as assigned by the President.
Equatorial Guinea	Adopted	National Audit Court	National Audit Court requires that entities responsible for managing the funds or assets of Equatorial Guinea should submit to the President and Parliament an annual report on the performance of their duties and certify their financial situation and the accounts of the State.
Gabon	-	-	No available information found

COUNTRY	ADOPTED/NOT ADOPTED	NAME OF ACCOUNTABILITY INSTITUTION	COMMENT/IMPLEMENTATION STATUS
Ghana	Adopted	Public Interest and Accountability Committee (PIAC)	PIAC is a statutory body created by an Act of Parliament – the Petroleum Revenue Management Act - to exercise oversight in respect of the collection and utilisation of Ghana’s petroleum revenues.
Ivory Coast	Adopted	Court of Audit	Responsible for the monitoring and audit of public institutions accounts of state companies, joint venture companies.
Libya	Adopted	Audit Bureau	Mandated to review and conduct audits on use and disbursement of resource revenue to establish that internal controls are adequate and provide assurances of integrity of public funds and sound financial management.
Mauritania	Adopted	Court of Auditors	The Court of Auditors exercises administrative and judicial control over public finances.
Niger	Adopted	The Court of Account	The Court of Account is responsible for the auditing of all public accounts.
Nigeria	Adopted	Revenue Mobilization Allocation and Fiscal Commission (RMAFC)	Mandated to monitor the accruals into and disbursement of revenue from the Federation Account; review from time to time, the revenue allocation formulae and principles in operation to ensure conformity with changing realities provided that any revenue formula which has been accepted by an Act of the National Assembly shall remain in force for a period of not less than five years from the date of commencement of the Act; among others
South Africa	Adopted	The Auditor-General of South Africa (AGSA)	AGSA annually produces audit reports on all government departments, public entities, municipalities and public institutions. Over and above these entity-specific reports, the audit outcomes are analysed in general reports that cover both the Public Finance Management Act (PFMA) and Municipal Finance Management Act (MFMA) cycles.
Sudan Republic	Adopted	National Audit Chamber	National Audit Chamber responsible for oversight over petroleum revenue expenditure.

**Source: Author’s Compilation**

**We found that:**

There is increasing adoption of public accountability institutions among African oil producing countries.

- i. Sixteen (16) countries out of the total eighteen (18) oil and gas producing countries under study have established public accountability institutions. For the remaining two (2) countries - Congo Republic and Gabon, there is no data found.
- ii. Only Ghana and Chad have established industry-specific independent oversight bodies with legislative backings to monitor oil revenue expenditures. In Ghana's case, the mandate of the Public Interest Accountability Committee (PIAC) extends beyond monitoring oil revenue expenditures to ensuring that the Government and other institutions act in accordance with the provisions of the PRMA.
- iii. With the exception of Ghana and Chad, the remaining oil producing countries rely on their national audit institutions to monitor oil revenue expenditures. In Nigeria, there is a department for oil and gas under the Revenue Mobilization Allocation and Fiscal Commission which oversees expenditure of oil revenues.
- iv. Public accountability institutions normally suffer from inadequate funding and lack of human and technical expertise. This places a limitation on their ability to fulfil their constitutional mandates.
- v. In some of these countries the independence of the audit institutions is undermined. For example in Egypt only a presidential decree is required to

remove the head of the Central Auditing Office. No input from the judiciary or the legislature is required.

**We recommend that:**

- i. African oil and gas producing countries should establish independent oversight bodies backed by legislation, with dedicated funding mechanism, to specifically monitor and evaluate compliance with regulations for the management of oil and gas resources and revenues.
- ii. Public institutions should undergo regular capacity building in data management and analysis, legal and regulatory framework governing the oil industry as well as revenue management to enable them function effectively.

**2.4.5. The Right to Information Legislation**

The African continent continues to be engulfed in secrecy as far as disclosure of information pertaining to the oil and gas sector is concerned. One of the many industries that shield investor information is the oil and gas industry. Oil companies most often keep relevant information of public interest away from the primary owners of the host country's resources. This is mostly attributed to the belief that information pertaining to technological innovations, data from seismic surveys and upstream project economics which include variables like production cost, price and rate of investments tend to make them less competitive when they are disclosed.

A Right to Information (RTI) legislation

however can give the general citizenry access to public documents such as budgets and revenue data on the oil and gas industry, which do not under any circumstances pose competitive harm to the government and investors. This serves as a key instrument

that allows citizens to effectively monitor activities in the oil and gas sector to enable them demand for accountability. Table 11 shows countries' efforts in adopting right to information legislation.

**Table 11: Adoption of right to information legislation in African oil producing countries**

COUNTRY	ADOPTED/ NOT ADOPTED	PROVISION		COMMENT/ IMPLEMENTATION STATUS
		CONSTITUTIONAL LAW	RIGHT TO INFORMATION LAW	
Algeria	Not adopted			
Angola	Adopted		Law On Access To Administrative Documents (No. 11/02, 2002) Amended in 2006	Angola passed a Right to Information law in 2002 which was binding on private sector but not government bodies. In 2006, the law was amended to include government bodies.
Benin	Not Adopted			
Cameroon	Not adopted			
Chad	Not adopted			
Congo Republic	Not adopted			
D.R. Congo	Not adopted			
Equatorial Guinea	Not adopted			
Egypt	Not adopted			
Gabon	Not Adopted			
Ghana	Not Adopted			Ghana has a draft Right to Information Bill yet to be passed
Ivory Coast	Adopted		Right to Information Law	Signed by the President on 23rd December, 2013
Libya	Not adopted			

COUNTRY	ADOPTED/ NOT ADOPTED	PROVISION		COMMENT/ IMPLEMENTATION STATUS
		CONSTITUTIONAL LAW	RIGHT TO INFORMATION LAW	
Mauritania	Not adopted			
Niger	Adopted		Right to Information Law	
Nigeria	Adopted		Freedom of Information (FOI) Act	The House of Representatives passed the Bill on February 24, 2011 and signed by the president in in May 28, 2011
South Africa	Adopted	Article 32 of the 1996 Constitution	Promotion of Access to Information Act, 2000	
Sudan Republic	Not Adopted			

**Source: Author's Compilation**

**We found that:**

The adoption of right to information legislation continues to remain a challenge in Africa's oil and gas producing countries.

- i. Out of the eighteen (18) oil and gas producing countries of Africa, only five (5) – Angola, Ivory Coast, Nigeria, Niger, and South Africa have adopted the right to information legislation whilst thirteen (13) have not.
- ii. In Ghana, article 21 of the 1992 Constitution guarantees that right of all persons to information. However, this right is subject to qualifications that are necessary in a democratic society. This does not provide detailed information of the kind of information that can be

disclosed, the processes for accessing the information; and the penalties for refusing access.

**We recommend that:**

- i. Oil and gas producing countries must pass right to information legislation to improve the access of their citizens to information. However, such extensive exemptions that have become features of such legislations must be reduced. Independent compliance institutions must be given powers to determine what should be exempted from disclosure. This allows them to apply the harm and public interest override tests to any information requests to determine the scope of

disclosure.

- ii. To ensure that the right to information legislations do not undermine the right of citizens to information through bureaucratic processes and payment of access fees, it is encouraged that

governments set up open data portals where all public documents are published. The right to information legislation can therefore be applied where citizens need information, which has not yet been published.

# Section 03

## FINDINGS AND RECOMMENDATIONS

### 3.1. Introduction

This section presents the findings from the report. It also contains recommendations for addressing the challenges confronting oil

and gas producing countries in Africa in the governance of oil and gas resources.

### 3.2. Resource Management

#### 3.2.1. Findings

##### a. Open and Competitive Bidding Process for licensing oil and gas rights

There is increasing adoption of open and competitive bidding process for the award of oil and gas rights.

- i. Nine (9) oil and gas producing countries in Africa have adopted competitive bidding processes for the award of petroleum contracts. Three (3) countries – Cameroon, Ghana and Nigeria have not yet adopted an open and competitive bidding process. (No data was found for the remaining six (6) countries).
- ii. Even though some of the countries such as Angola have open and competitive process in place, contracts are often negotiated directly with the Ministry in charge of the Petroleum Sector or the state oil company.
- iii. Most oil and gas producing countries that adopted the open and competitive bidding process also have provisions in their laws, which allow them to opt for direct negotiations in some exceptional cases. However, in most cases, direct

negotiation has therefore become the norm rather than the exception.

##### b. Mandatory Contract Disclosure

Mandatory disclosure of oil and gas contracts is still not widely accepted among African oil producing countries.

- i. None of the eighteen (18) oil and gas producing countries in Africa has mandatory requirements for the disclosure of oil and gas contracts. Some countries do publish some contracts through voluntary initiatives.
- ii. In spite of the decade long campaigns for contract transparency, countries producing oil and gas are still averse to it, an indication that there is relatively little success in contract transparency.

##### c. Environmental Impact Assessments

The adoption of EIA is becoming a norm among African oil producing countries.

- i. Sixteen (16) of the eighteen (18) countries surveyed have adopted EIAs for implementation in their oil and gas industries.

- ii. Oil and gas producing countries in Africa have different types of environmental frameworks. Nine (9) of the countries have made provision for EIAs in their Environmental Laws; six (6) in their National Constitutions; and one (1) country – Equatorial Guinea has such provisions in its Petroleum Law.
- iii. Although most of the selected African countries have put in place EIA systems, the extent to which the EIA systems influence environmental development decisions shows different levels of success in different countries.

**d. The Principle of Free Prior and Informed Consent (FPIC)**

FPIC is still not widely accepted within the oil and gas industry of the African countries under consideration

- i. None of the eighteen (18) oil and gas producing countries in Africa has adopted the principle of Free Prior and Informed Consent in their legislations.
- ii. Although the ECOWAS Directive has been found to be the most significant FPIC policy requirement in Africa, member states have discretion in determining how the objectives of ECOWAS Directives will be met.

**3.2.2. Recommendations**

**a. Open and Competitive Bidding for licensing oil and gas rights**

- i. Countries which do not have competitive bidding provisions in their petroleum laws should introduce them as the default process for awarding resource rights. Competitive bidding processes give

countries the opportunity to have the most optimum investment offer for their petroleum blocks.

- ii. Where direct negotiation is allowed under some circumstances, such exceptional circumstances must be well defined in law; and where they are triggered, public notices justifying their application must be issued to allow aggrieved persons to challenge the decisions where necessary.

**b. Mandatory Contract Disclosure**

- i. Oil and gas producing countries in Africa must incorporate provisions on mandatory contract disclosure in their petroleum laws as they do not impose any investment risks. They also minimize public mistrust and wrong perceptions in resource management, thereby, building citizens confidence in the systems and institutions for managing oil and gas resources.
- ii. The Open Contracting Partnership and other contract transparency movements including national level civil society organizations must increase advocacy for the mandatory disclosure of oil and gas contracts. The African Mining Vision, which promotes contract transparency, must develop an implementation and assessment tool for ensuring that member states adopt these principles.

**c. Environmental Impact Assessments**

- i. Due to conflict of laws and the tensions often existing between general and sector specific laws, oil and gas producing countries should urgently incorporate environmental provisions in their



- petroleum laws and contracts.
- ii. In view of the relevance of EIAs to the oil and gas sector, environmental considerations should progressively become a biddable factor during licensing of oil and gas resource rights. Therefore, oil and gas companies that have poor previous environmental record should not be considered for the award of resource rights.
  - iii. Although many oil and gas producing countries have EIA requirements, the need to strengthen environmental protection agencies and institutions cannot be over-emphasized. The institutions should be strengthened by laws that enable them to have the power to apply sanctions to oil companies which fall short of complying with EIA regulations.
  - iv. Capacity building programmes for institutions overseeing EIA

implementation should be increased. Project management teams of companies should also include staff with relevant environmental expertise and the knowledge required to implement EIAs when undertaking projects.

#### **d. The Principle of Free Prior and Informed Consent (FPIC)**

- i. African oil producing countries must adopt the principle of FPIC and develop legislation to guide its implementation as a fundamental human right.
- ii. Governments of the countries under consideration must domesticate the ECOWAS Directive, ACHPR Resolution and the UNDRIP Declaration into their legal frameworks where applicable. This will provide national legal effect to international law provisions on FPIC.

### **3.3. Fiscal Management**

#### **3.3.1. Findings**

##### **a. Open Budgeting**

There are some appreciable efforts by African oil producing countries in adopting open budgeting process.

There are some appreciable efforts by African oil producing countries in adopting open budgeting process.

- i. Amongst all the twelve (12) countries surveyed, Sudan and Algeria do not engage the public in the budget process.
- ii. With the exception of South Africa, which provides the public with an adequate opportunity to engage in the budget process, the Governments of the

remaining nine (9) countries are weak in providing the public with opportunities to engage in the budget process.

- iii. Out of all the twelve (12) countries, it is only in South Africa that both the supreme audit institution and the legislature have an adequate oversight over the budget planning and implementation.
- iv. Budget oversight by the legislature in seven (7) countries is weak. These countries are Algeria, Angola, Benin, Cameroon, DR. Congo, Equatorial Guinea and Sudan Republic. Budget oversight by the legislature was non-existent in Egypt as the legislature was not in place

at the time the survey was conducted. Budget oversight by the legislature in Ghana is limited. In Equatorial Guinea for instance, the executive does not receive prior approval by the legislature before implementing a supplementary budget.

- v. The supreme audit institution in Ghana has an adequate oversight over the budget. Under Ghana's law, the supreme audit institution has full discretion to undertake audits as it sees fit. Moreover, the Auditor General cannot be removed without legislative or judicial approval, which bolsters its independence.
- vi. For budget transparency, the Governments of Equatorial Guinea, Sudan Republic, Niger and Algeria provide scant budget information to the public whilst minimal budget information is provided to the public by the Government of Angola. The remaining countries provide substantial budget information to the public with the exception of South Africa which provides adequate budget information to the public.

**b. Distribution of Revenue to affected Communities**

Distribution of oil revenues to affected communities is not yet a well accepted norm among African oil producing countries.

- i. Five (5) of the oil producing countries have a provision in place to distribute a share of oil revenues to communities affected by oil production activities. Nine (9) countries have no provision in place for affected communities.
- ii. Different countries have different frameworks for distributing resource

revenues. Gabon has enshrined revenue distribution provision in its Petroleum Law, Chad in its Petroleum Revenue Management Plan, Ghana in its Petroleum Revenue Management Act; Angola in its Budget Law and Nigeria in its Constitution.

- iii. In all the countries which have adopted the provision, there is no description of the specific use to which the revenues shared to the producing regions should be put. As a result, they fail to meet any specific objective, whether it should be used for compensation for extractive activities or conflict prevention or mitigation.

**3.3.2. Recommendations**

**a. Open Budgeting**

- i. Algeria and Sudan should establish credible and effective mechanisms such as public hearings, surveys and focus groups for capturing a range of public perspectives on budget matters. The remaining countries should improve upon their existing mechanism and also provide detailed feedback on how public perspectives have been taken into account.
- ii. Equatorial Guinea should ensure that the executive receives prior approval from the legislature before supplementary budget is implemented. Countries where oversight by the legislature is weak and limited should ensure that in both law and practice, the legislature is consulted prior to the transfer of funds in the enacted budget and the spending of contingency funds that were not identified in the enacted budget.
- iii. Countries should also ensure that their

supreme audit institutions have adequate funding and independence to perform their duties. The appointment and removal of any Auditor General of audit institutions must be backed by legislative approval to avoid political interference of their duties and further foster their independence.

- iv. In order to track the utilization of oil revenues, specific projects and programs which are funded with oil revenues should be outlined in the budget statement or a supporting document such as an appendix.
- v. Key budget documents should be made available to the public in a timely manner. These documents should be easily accessible to the general public. This can be achieved by distributing hard copies free of charge and if possible should be made available in local dialects.

#### **b. Distribution of Revenue to affected Communities**

- i. In countries where the formula for sharing revenue to affected communities is not available, steps should be taken to clearly define the formula upon which petroleum revenues should be distributed to affected communities. This formula should be designed in consultation with all stakeholders including the affected communities. Building consensus among

the different stakeholders is extremely important for the stability of the formula especially in politically contested and ethnically diverse environments.

- ii. The agreed formula should be codified in legislation or regulation. Also, the objectives for sharing the revenues to producing states should be clearly defined and clarified in legislation to prevent the use of revenues from exhaustible resources for consumption or recurrent spending. Revenues from exhaustible resources should be used for capital spending to contribute to the development of the capital base of local economies to support medium to long-term development.
- iii. In order for producing communities to ascertain that the share of revenue they receive is what is legally due them, there should be a project-by-project reporting of project level data to enable them independently compute and verify these amounts based on the agreed formula.
- iv. To ensure efficient procurements and value for money in the use of petroleum revenues by governments and local authorities, the governments of oil and gas producing countries must adopt the Open Data Standards to ensure that project level transparency and accountability are enhanced.

### **3.4. Transparency and Accountability**

#### **3.4.1. Findings**

##### **a. International Governance Initiatives**

The adoption of EITI is becoming a practice in the oil and gas industry within the African

region.

- i. Only nine (9) of the eighteen (18) oil and gas producing countries in Africa have adopted the EITI.

- ii. All nine (9) oil and gas producing countries which have adopted the EITI are compliant.
- iii. Gabon lost its status as an EITI candidate on 27th February 2013, and is no longer recognised as an EITI implementing country<sup>28</sup>.

### **b. Anti-Corruption Provisions**

The adoption of anti-corruption provisions is gaining relevance within the oil and gas industry among African oil producing countries.

- i. All the eighteen (18) countries of the African Petroleum Producers Association have adopted at least one anti-corruption framework; only three countries – Algeria, Angola and South Africa have enacted national laws on anti-corruption.
- ii. Four of the countries surveyed – DR. Congo, Equatorial Guinea, Gabon, and Niger, have no national anti-corruption frameworks, and are therefore too exposed to corrupt practices.
- iii. Some of Africa’s oil producers have relatively low commitment to the African Union Convention against corruption as five countries – Cameroon, Chad, Equatorial Guinea, Mauritania and Sudan Republic, have not yet ratified the Convention.

### **c. Beneficial Ownership Information Disclosure**

Mandatory disclosure of beneficial ownership continues to remain a challenge among African oil producing countries

- i. None of the eighteen (18) oil and gas

producing countries in Africa surveyed in this study have adopted provisions for the public disclosure of beneficial ownership information.

- ii. Some countries, for example Ghana, have provisions in their Companies Codes which require companies to keep a register of their beneficial owners, but they fall short of making such registers public. In some jurisdictions, such registers are open only to investigative and compliance institutions.

### **d. Public Accountability Institutions**

There is increasing adoption of public accountability institutions among African oil producing countries.

- i. Sixteen (16) countries out of the total eighteen (18) oil and gas producing countries under study have established public accountability institutions. For the remaining two (2) countries - Congo Republic and Gabon, there is no data found.
- ii. Only Ghana and Chad have established industry-specific independent oversight bodies with legislative backings to monitor oil revenue expenditures. In Ghana’s case, the mandate of the Public Interest Accountability Committee (PIAC) extends beyond monitoring oil revenue expenditures to ensuring that the Government and other institutions act in accordance with the provisions of the PRMA.
- iii. With the exception of Ghana and Chad, the remaining oil producing countries rely on their national audit institutions

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<sup>28</sup> EITI (2016). Gabon. Available at <https://eiti.org/Gabon> Accessed March, 2016.

to monitor oil revenue expenditures. In Nigeria, there is a department for oil and gas under the Revenue Mobilization Allocation and Fiscal Commission which oversees expenditure of oil revenues.

- iv. Public accountability institutions normally suffer from inadequate funding and lack of human and technical expertise. This places a limitation on their ability to fulfil their constitutional mandates.
- v. In some of these countries the independence of the audit institutions is undermined. For example in Egypt only a presidential decree is required to remove the head of the Central Auditing Office. No input from the judiciary or the legislature is required.

#### **e. The Right to Information Legislation**

The adoption of right to information legislation continues to remain a challenge in Africa's oil and gas producing countries.

- i. Out of the eighteen (18) oil and gas producing countries of Africa, only five (5) – Angola, Ivory Coast, Nigeria, Niger, and South Africa have adopted the right to information legislation whilst thirteen (13) have not.
- ii. In Ghana, article 21 of the 1992 Constitution guarantees that right of all persons to information. However, this right is subject to qualifications that are necessary in a democratic society. This does not provide detailed information of the kind of information that can be disclosed, the processes for accessing the information; and the penalties for refusing access.

### **3.4.2. Recommendations**

#### **a. International Governance Initiatives**

- i. Non-candidates of the EITI must sign up to the initiative as it contributes tangibly to extractive resource management. This will help avert the 'resource curse' and manage the potential risk of conflict which usually results from dissatisfaction.
- ii. Due to the voluntary nature of EITI, countries that adopt it must seek legal backing for the initiative by enacting EITI legislations. This also empowers citizens to trigger the law when the principles of EITI are not being adhered to.

#### **b. Anti-corruption Provisions**

- i. All oil producing countries in Africa must show serious commitment to fighting corruption especially in the oil and gas sector. They must not only develop anti-corruption frameworks, but must also show strong commitment to implementing the frameworks.
- ii. Oil and gas producing countries must incorporate anti-corruption clauses in their Petroleum Laws and contracts. Such clauses should seek to criminalize conflict of interest situations involving public officials who are engaged in oil and gas contracting and in regulating oil and gas operations.

#### **c. Beneficial Ownership Information Disclosure**

- i. Governments must make provision for the establishment of public registers of beneficial ownership and to proactively maintain and regularly update the registers. The registers must be

comprehensive, comprehensible and easily accessible to the public.

- ii. The African Union (AU) must increase cooperation among its member states on exchange of tax information, information on companies and their affiliates operating in Africa. An African Initiative for the Automatic Exchange of Information will be appropriate in enhancing such cooperation. African countries must also negotiate to participate in the global initiatives for voluntary and automatic exchange of information.

#### **d. Public Accountability Institutions**

- i. African oil and gas producing countries should establish independent oversight bodies backed by legislation, with dedicated funding mechanism, to specifically monitor and evaluate compliance with regulations for the management of oil and gas resources and revenues.
- ii. Public institutions should undergo regular capacity building in data management and analysis, legal and regulatory framework governing the oil industry as

well as revenue management to enable them function effectively.

#### **e. The Right to Information Legislation**

- i. Oil and gas producing countries must pass right to information legislation to improve the access of their citizens to information. However, such extensive exemptions that have become features of such legislations must be reduced. Independent compliance institutions must be given powers to determine what should be exempted from disclosure. This allows them to apply the harm and public interest override tests to any information requests to determine the scope of disclosure.
- ii. To ensure that the right to information legislations do not undermine the right of citizens to information through bureaucratic processes and payment of access fees, it is encouraged that governments set up open data portals where all public documents are published. The right to information legislation can therefore be applied where citizens need information, which has not yet been published.

# Appendix 01

## COMMUNIQUE OF THE AFRICA OIL GOVERNANCE SUMMIT

### Overview

Accra witnessed the maiden Africa Oil Governance Summit on the 23rd and 24th of November. The Summit sought to highlight the governance challenges faced by oil producing countries in Africa and to drive consensus to manage the challenges. Ultimately the Summit aimed at ensuring that the production of oil and gas is linked to the development of producer countries through transparent, accountable and efficient management of the industry's value chain.

The Summit with the theme: ***"Africa rising as oil curse beckons for most countries – Is***

***good governance the missing link between oil wealth and development?"*** brought together participants from Governments, industry, civil society and the media across Africa and beyond to discuss contract governance, institutional development, revenue management, and community rights.

At the end two-day discussions, key recommendations were distilled, consolidated and adopted by participants to guide African states and all stakeholder for the proper governance of oil resources in the continent.

### Conclusion and Recommendations

Whilst there is progress in terms of transparency in the oil and gas sector in Africa, accountability appears to be a mirage in most oil producing African countries. This has been compounded by the absence of independent and well-resourced regulatory institutions that have oversight responsibility in oil resource management.

The 2015 edition of the Africa Oil Governance Summit provided a platform for information sharing, consensus building and identification

of strategies for effective and efficient oil resource management that promote the well-being of the citizenry. The 2016 edition is much awaited with great optimism that together the solutions to the governance challenges in Africa's oil sector will be discovered and adopted to accelerate development. It is a collective duty on all to ensure that the governance space for efficient transparent and accountable management of the entire value chain of the oil industry is monitored.

## Recommendations to African governments:

### **a. Optimization of benefits**

African governments should optimise the benefits from oil and gas exploration through a combination of fiscal and non-fiscal reforms, specifically by:

- i. Stopping unnecessary tax concessions
- ii. Applying optimal fiscal terms that match specific conditions pertaining to different blocks
- iii. Maximize local content initiatives.

### **b. Revenue management**

African governments should develop comprehensive resource revenue management frameworks, extensive disclosure requirements and productive investment choices based on long-term national development and public investment plans developed through broad consultation.

### **c. Contracts**

African governments should build a transparent regime for licensing of oil concessions. In particular, governments should adopt open and competitive bidding processes, mandatory disclosure of contracts, disclosure of beneficial ownership information and provision of anti-corruption clauses that penalise companies and public officials involved in corruptly facilitating the acquisition of licences.

### **d. International transparency initiatives**

African governments whose countries have not yet signed onto the EITI are encouraged to do so as a way of enhancing transparency and accountability mechanisms in their

countries.

### **e. Regional cooperation**

- i. African governments should develop a regional protocol linked to the African Mining Vision, for addressing common tax issues, cross-border resource management, conflict and regional infrastructure issues.
- ii. African governments should lead and demand an international response to combating illicit financial outflows which are perpetrated through transfer pricing, tax avoidance, thin capitalisation and other such practices. As recommended by the African Mining Vision, the Africa Union should intensify steps to cooperate more effectively with Organization for Economic Cooperation and Development (OECD) and other international bodies to design and implement appropriate guidelines for addressing such illicit financial flows.

### **f. Institutional capacity development**

- i. Africa governments must demonstrate commitment to building independent and well-resourced institutions for efficient tax administration, contract negotiation and execution, mitigation of adverse environmental impacts and effective parliamentary oversight.
- ii. We also encourage cooperation among institutions particularly between resource and tax administrations.



#### **g. Community participation**

Africa governments must ensure the protection of community rights and interests by adopting or introducing appropriate policies such as Free Prior and Informed

Consent (FPIC), simplifying reports for public hearing to facilitate effective community participation and provide appropriate channels for communities to seek redress.

### **Recommendation to oil companies**

Oil companies should negotiate and implement Community Based Agreements (CBAs) in consultation with communities to

support community development, protect their rights and ensure environmental sustainability.

### **Recommendations to civil society**

Increase dialogue between government and civil society organizations and non-state actors to build consensus on the key issues affecting oil and gas development. Civil society organizations should also take

proactive steps to increase their technical capacities on the sector as well as advocacy skills to engage more effectively with other stakeholders.

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