Transparency in Extractives Industry Taxation in Africa

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Outline

- Background and Introduction
- Existing Initiatives promoting transparency in taxation in Africa
- Existing Initiatives promoting transparency in taxation globally
- Conclusion and Recommendations
Background and Introduction

- Africa’s worsening socio-economic conditions and the ‘Paradox of Plenty’
- Oil, gas and mining represent the single biggest source of revenue in Africa – US$333 billion in 2011
- Weak (or lack of) legal and institutional frameworks
  - Executive: Transparency and Accountability; fight against Corruption and other illegal activities.
  - Parliamentarians
  - Citizens fully participating and benefiting from the exploitation of natural resources.
- Transparency at all levels and stages: Raising resources, Allocating resources and Spending.
## Some leading African Mineral Resources

<table>
<thead>
<tr>
<th>Mineral</th>
<th>Production</th>
<th>Rank</th>
<th>Reserves</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Platinum</td>
<td>54%</td>
<td>1</td>
<td>60+%</td>
<td>1</td>
</tr>
<tr>
<td>Phosphate</td>
<td>27%</td>
<td>1</td>
<td>66%</td>
<td>1</td>
</tr>
<tr>
<td>Gold</td>
<td>20%</td>
<td>1</td>
<td>42%</td>
<td>1</td>
</tr>
<tr>
<td>Chromium</td>
<td>40%</td>
<td>1</td>
<td>44%</td>
<td>1</td>
</tr>
<tr>
<td>Manganese</td>
<td>28%</td>
<td>2</td>
<td>82%</td>
<td>1</td>
</tr>
<tr>
<td>Vanadium</td>
<td>51%</td>
<td>1</td>
<td>95%</td>
<td>1</td>
</tr>
<tr>
<td>Cobalt</td>
<td>18%</td>
<td>1</td>
<td>55+%</td>
<td>1</td>
</tr>
<tr>
<td>Diamonds</td>
<td>78%</td>
<td>1</td>
<td>88%</td>
<td>1</td>
</tr>
<tr>
<td>Aluminum</td>
<td>4%</td>
<td>7</td>
<td>45%</td>
<td>1</td>
</tr>
</tbody>
</table>

*Source: African Union, Africa Mining Vision, p. 7*
Why Transparency in Extractives Taxation

- Starts with the **Contract transparency**
  - essential for the responsible management of natural resources and the potential for growth and economic development that those resources can provide

- Citizens have a **right to know how their government is selling their resources.**

- It is **undemocratic for these contracts and taxes to be kept secret. Contracts are essentially the law of a public resource project**, and a basic tenet of the rule of law is that laws shall be publicly available.

- Without transparency, **fears of the worst flourish, and mistrust and conflict** are magnified among stakeholders.

- Contract transparency **helps governments get a better deal for their resources**, provide an incentive for governments and companies to make more durable deals, and deter corruption.

- Stability and Effectiveness of government can be enhanced by **contract transparency**. Conflict over ‘control’ of natural resource issues can extend to branches/agencies of the government who feel/are bypassed by the lucrative deals.
Why others are anti-transparency in extractives

- The need to protect commercially sensitive information
- A fear of having to match concessionary deals, or competing in a “race to the bottom;”
- The desire to avoid antagonizing constituents and exposing incompetence or corruption.
Transparency and political systems

- Generally, there is a negative correlation between dependence on oil and gas revenues and budget transparency. (OBI 2008, 2011), (Ross 2013)
  - However among democracies, oil wealth is associated with more transparent public finances, while among authoritarian states more oil wealth is clearly correlated with lower transparency.
Relationship between Oil wealth and Transparency in Democracy vs. Autocracy
Secrecy Clauses

The laws of contract and international commercial relations generally suppose two corporate entities doing business with each other, both seeking profits and answering to shareholders.

The Secrecy clauses:

- Available to the private company’s shareholders and not to government shareholders?
- Yes even as they conduct business, governments have duties, obligations and interests that go well beyond pure profit maximization.
- Contracts concerning non-renewable resources simply call for even more transparency, accountability and scrutiny.
Existing Initiatives promoting transparency in taxation in Africa

- Africa does not have a single harmonised manual for negotiating, contracting, managing contracts in extractives sector.
- Initiative has started (July 2013) with steering committee comprising Cameroon, Ghana, Liberia, Malawi, Mozambique and Zimbabwe, (with support from Australia).
- There are however a number of continent wide guidelines:
African Mining Vision (AMV)

- Adopted by the African Heads of State in February 2009.
- AMVision is “Transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development”
- Is informed by several other initiatives such as
  - the Johannesburg Political Declaration and Plan of Implementation [chapter 46 and paragraphs (f and g) of chapter 62 (Sustainable development for Africa)] of the World Summit on Sustainable Development,
  - the Yaoundé Vision on Artisanal and Small-scale Mining,
  - the Africa Mining Partnership’s Sustainable Development Charter and Mining Policy Framework,
  - the SADC Framework and Implementation Plan for Harmonisation of Mining Policies, Standards, Legislative and Regulatory Frameworks,
  - UEMOA’s Common Mining Policy and “Code Miniere Communautaire”,
  - the Summary Report of the 2007 Big Table1 on “Managing Africa’s Natural Resources for Growth and Poverty Reduction”
- AMV provides for “safeguard transparency and good governance as well as enforce internationally acceptable safety and health standards, environmental and material stewardship, corporate social responsibility, and preferential recruitment of local staff.” (p.22)
- African Mining Development Center (AMDC): Objective: to ensure that Africa’s interests and concerns in this lucrative sector are properly defined and internalized across the continent for the benefit and prosperity of all.
The High Level Panel on Illicit Financial Flows from Africa (HLP)

- Established in February 2012 by the Economic Commission for Africa (ECA) and the African Union (AU).
- The Panel is chaired by President Mbeki and composed of 9 other distinguished personalities from within and outside Africa.
- Aims to address the debilitating problem of illicit financial outflows from Africa estimated at $50 billion a year.
- The Panel's overall mission is to make clear recommendations on curbing illicit financial flows from Africa.
The African Peer Review Mechanism (APRM)

- An initiative to develop voluntary self assessments of governance by the African Union (AU) member states with the objective of ensuring that countries comply with the Declaration on
  - Democracy and political governance,
  - Economic governance and management
  - Corporate governance and,
  - Socio-economic development.
International Initiatives
The Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development

- An informal grouping of 43 countries; Officially launched in February 2005.
- It is one of the Partnership Initiatives aimed at promoting the implementation of the Johannesburg World Summit Plan.
- It plays a leading role in promoting good governance and transparency in the extractive industries; by strengthening the capacity of developing countries (the exchange of information, dissemination of knowledge and the promotion of best practices in order to effectively manage the development of mineral resources and to ensure the sustainability of the extractive sector and its contribution to sustainability.)
USA: Dodd–Frank Financial Reform and Consumer Protection Act

- The United States adopted the Wall Street Reform and Consumer Protection Act, known as the Dodd–Frank Act in 2010.

- Section 1504 of the Act provides that companies in the extractive sector (oil, gas and mining) listed in the United States must annually publish all payments they make to the countries in which they operate, with a proposed retail project.

- The rules implementing this law were adopted on 22 August 2012 by the Securities and Exchange Commission (SEC), the regulator of financial markets in the US.

- Starting in 2014, an estimated 1,100 companies will have to start disclosing the payments they make to Governments on a country–by–country and project–by–project basis.
European Union – Transparency in extractive industries

- As part of the review of its accounting policies and transparency, the Commission, the Council and the European Parliament reached an agreement April 9, 2013.
- This agreement requires listed companies in the EU in the oil, gas and mining industry to publish all payments they make to the countries in which they operate, on a project by project basis. Companies will thus publish detailed reports every year, allowing for scrutiny of payments related to each extraction project in all countries in which they operate around the world.
- The threshold for transparency has been set at EUR 100,000.
EU Declaration by country (Country-by-country reporting):

- Regulation and Directive on Capital Requirements (CRD IV and CRR) to stabilize and strengthen the banking system:
  - They introduced stricter provisions on transparency forcing European banks to disclose fully, from 1 January 2015, on an individual country basis, their profit and turnover and number of employees and any receipt from a public subsidy.
  - Similar reporting requirements were imposed on certain entities operating in the sectors of mining and logging, according to the Transparency and Accounting Directives of the EU.
The Extractive Industry Transparency Initiative (EITI)

- A voluntary initiative to promote transparency and accountability involving governments, the private sector and civil society (proposed in 2002 by UK).
- It promotes revenue transparency and accountability in the extractive industries by comparing the revenue disclosed by governments with tax declarations by the companies working in the extractive industry.
- It establishes a mechanism for publishing information that may be crucial in the fight against corruption in extractive industries as well as help people living in resource rich countries to benefit from their operations.
- All significant payments made by companies to governments, and all revenues received by governments from extractives are published & disseminated to public. To date, 39 countries have implemented the EITI.
EITI cont’d

- A new "standard EITI" was adopted in May 2013 and replaced "The EITI Rules including the Validation Guide" that were in effect since Nov 2011. The new standard:
  - outlines new disclosure requirements,
  - requires annual activity reports for all implementing countries,
  - improves EITI validation procedures,
  - presents simplified and restructured requirements, and
  - encourages countries to make accessible their data using machine readable formats.
Stolen Asset Recovery (STAR) Initiative

- This initiative was launched jointly by the UNODC and the World Bank.
- “By signaling to corrupt leaders that there will be no safe haven for stolen assets, StAR would constitute a formidable deterrent to corruption in developing countries.”
- Sec 5.2 faults: “Lack of transparency and low public accountability facilitate the looting of public assets. Typically, adherence to principles of open, accountable government tends to be weak, with deficiencies in the system of checks and balances and key public institutions, limited freedom of civil society organizations to monitor public activity, and low respect for—or outright flouting of—the rule of law.
- The initiative offers capacity-building, policy analysis and knowledge-building and provides, upon request, technical assistance to countries that are operationally engaged in asset recovery cases.
Conclusion & recommendations

- The untouchable MNCs and the complicity of those in government positions makes it extremely difficult to enforce laws and standards.
- Best policies and practices can only do so little in Africa in the absence of global political will, a global regulator and robust legal and institutional frameworks that foster greater transparency and accountability in the sector.
- An integrated international approach is therefore needed in order for taxation to contribute meaningfully to Africa’s development.
Transparency in taxation of extractives calls for the right systems and institutions:

- Independent **judiciary** and the use of regional and international protocols;
- Independent **competition authorities** and integration into regional economic blocks (FTAs, customs unions) to increase market size and the ability of the market to self-regulate competition;
- **Infrastructure regulators** (transport, energy, water, telecom) and the pooling of limited national resources through cross-border regulators (catchment bodies, transport authorities, power pools, etc.);
- Autonomous **Higher Education Institutions** (HEIs: universities, colleges) and the linking of these institutions with other regional and international institutions; Technology development institutions (R&D) However, the most important institution is the **resource exploitation licensing/contracting body**, which would benefit from national, regional (RECs), continental (AU–APRM) and international (EITI, KPC) oversight.
Recommendations

- Need an International Regulator of Tax
- Domesticate the AMV, harmonise it with other existing natural resource barometers and sign up to the APRM.
- Adopt and sign up to the EITI, Revenue Watch, Publish What You Pay, KPSC and the Africa Progress Panel.
- Formulate tripartite initiatives between Government, the private sector and civil society that promote transparency and the responsible management of the extractive sector.
Asante Sana
Zikomo kwambiri
Thank you