

# Parliamentary Oversight of Extractive Industries in Africa

## Policy Brief, Presenting Key Issues & Lessons Learned

### Introduction

The substantial growth in Africa's extractives exports —from oil and gas to minerals like gold, copper, and iron— significantly contribute to the economic growth projections of the continent, as the minerals and metals account for over 20 percent of Africa's economic output. Many international mining companies are expanding their work in Africa, where the large deposit of minerals is met with low-cost labor and a developing regulatory framework. However, the oil & gas and mining industries are the fourth and fifth most corrupt industries globally. They are exposed to government patronage *and* requests to pay third-party agents. These requests, especially those associated with an official's decision, carry the risk of an official's undisclosed interest. Many companies have felt forced to sign deals that 'compensate' interested third parties in order to do business. Corruption is a socially complex and multi-layered problem with many stakeholders. Some African countries, such as (Rwanda, Namibia, Senegal, Burkina Faso, and Togo) have made considerable progress in curbing corruption. In contrast, others (Ghana, The Gambia, Angola, Uganda, and Malawi) have slipped back.

One of the critical components of anti-corruption strategies is legislative oversight; however, there is little research on how legislative oversight can help reduce corruption, in general, and in the extractives sector, in particular. This brief examines legislative oversight of the mining industry in Ghana, Burkina Faso, and Tanzania, with specific emphasis on the role of parliament in promoting transparency and government accountability. Drawing from key

### THE MINING PROJECT CYCLE

Mining projects comprise two components: (1) Exploration, when 'junior' mining companies seek approvals and licenses to explore and where decision-making focuses on policy objectives, the identification and justification of the projects, and the business plan. And (2) the development component, including the project plan, the tendering and contracting process, and evaluation and audit. The two processes together form the investment process. The project is then assessed to determine if a mining investment will be viable or not.

Good practice generally calls for rigorous planning to identify the most feasible projects and explain the reasons for the project and how the decisions have arrived. Once mining investments have been approved, relevant financial requirements need to be captured in the government's multi-year budget projections. When it is included in the budget and approved by the legislature, the relevant government institutions are authorized to regulate its execution.

There are four stages in project execution: the project plan, the tender process, contracting, and implementation. The principal means of ensuring sound management at all stages of natural resource exploitation – from extraction to the collection and expenditure of revenues – is through the adoption of practices that adhere to agreed-upon standards of accountability and transparency. It is here that parliaments can play their principal role. However, their effectiveness depends on their willingness, their capacity, and power within the political structure of a country.

informant interviews and surveys with approximately 20 Canadian mining representatives, host government officials, legislators, and civil society representatives in each country, and focus groups in two of the three countries, this research held between 2016 and 2017 explore how parliamentary oversight reduces corruption in mining. The study identified five themes: (1) lack of implementation of legislation/regulations; (2) weak institutional legislative capacity; (3) the complex nature of the industry; (4) the absence of political will to confront the culture of corruption; and (5) conflict of interest.

### **Political Context and Background**

African parliaments do not all ensure transparency and accountability in natural resource management at the same levels. Differences depend on the political climate, parliamentarian capacity and education, the development of legislative institutions, financial resources, and political will. While some aim to provide effective industry oversight more actively, others are financially and administratively constrained and are hindered by excessive executive dominance.

Over 30 countries in Africa passed new legislation between 1990 and 2000 to regulate the mining industry, with additional changes occurring between 2000 and 2010. Many of these reforms, however, were directed towards attracting more significant foreign investment through decreased regulation, liberalized social and labor policies, and more private sector-friendly ownership and taxation schemes, rather than ensuring transparency and accountability.

Many African parliaments have established parliamentary committees to oversee the extractives industries, providing the framework for active legislative involvement in lawmaking and executive oversight, as well as a platform for citizen engagement. These committees enact laws to govern operations, hold public hearings, conduct outreach, engage with communities, and conduct effective oversight (Ghana: Mines and Energy Committee; Cameroon: Natural Resource Committee; South Africa: Energy and Mineral Resources committee; Nigeria: Committees on Oil and Gas and Committee on Solid Minerals). Some legislatures have established specialized audit or Public Accounts Committees also, which work closely with the SAI, which can enhance ex-post budget oversight and complement the policy oversight of other committees.

There are also *special commissions of inquiry* that:

- Examine issues of public concern;
- Make policy and legislative recommendations;
- Are time-bound;
- Work with agencies and committees;

- Summon witnesses to testify, including executive witnesses;
- Demand documents and order on-site inspections.

Kenya, Sao Tome, and Principe, Nigeria, and Ghana have established such commissions.

Not all mining projects will receive detailed parliamentary oversight attention. Parliaments determine which projects are reviewed, the cost, and the circumstances that warrant review, and sometimes only *after* audit or media attention. Members of the relevant parliamentary committees require a working understanding of the investment and documentation process in order to ask *appropriate* oversight questions. In order to do effective oversight, parliamentarians need access to plans, processes, management reports, etc., which must be supplied by the government. However, government institutions may take short cuts or not adhere to good practices in overseeing and regulating mining investments. Further, audits often give *less* attention to revenues from mining projects than other forms of government spending, making it even more critical that the legislature is equipped to conduct effective inquiries. Finally, the legislature can exercise oversight over a particular project at any time during the investment process, not just during approval.

**Extractive Industries Transparency Initiative and the Role of Parliaments.** The Extractive Industries Transparency Initiative (EITI) was set up by governments, companies and civil society organizations in the shared belief that natural resource wealth should benefit citizens and that this requires high standards of transparency and accountability. EITI requires countries to publish timely and accurate information on critical aspects of natural resource management, including how licenses are allocated, how much tax and social contributions companies are paying and where this money ends up in the government, so that all stakeholders know who is operating, under what terms, the revenue generated, and where it ends up. Parliamentarians serve as members of the national EITI Multi-Stakeholder Group (MSG) in their countries to better govern resources and revenues, improve policy, initiate sector reforms, facilitate EITI reporting, and help oversee EITI compliance.

**Corruption and Public Trust in Parliament.** Corruption is a 'mild' deterrent to investment in Ghana and Burkina Faso, but a somewhat more significant deterrent in Tanzania. Parliaments need to fully exploit their constitutional roles and use parliamentary oversight tools, such as audit or Public Accounts Committees, question periods, and field visits, to carry out their constitutional roles in the mining industry. Parliament is meant to ensure a robust legal anti-corruption framework, which means not only passing anti-corruption legislation but also lobbying governments to ratify international instruments, such as the United Nations Convention against Corruption. Parliaments can enact laws to address inappropriate behavior by citizens, businesses, and other organizations, and can hold governments accountable through budget participation,

oversight through anti-corruption commissions, and Supreme Audit Institution collaborations, as well as by promoting a media-friendly environment. Parliaments and parliamentarians can design and implement national anti-corruption strategy, anti-corruption bodies, and frame and review relevant legislation; however many parliamentarians still face severe challenges in fulfilling their roles, including weak individual and institutional capacity, little independence from more powerful executives and ruling political parties, and limited political will. A common perception further complicates oversight of the extractive industries that the industry's technical complexity is beyond a parliamentarian's comprehension, which often lacks the information and confidence to influence legislation, policy, or management of the extractive industries.

The corruption and transparency problem in the mining and extractive industries is substantial. Mining officials' mining titles are often gained through kickbacks to government officials, and the same problem occurs in the private sector and Public-Private Partnerships. Additionally, legal and judicial weaknesses in the anti-corruption system, high politicization and discretionary power in decision-making, inadequate governance of the extractives sector, gaps and discrepancies in corporate due diligence procedures, and opacity on beneficial ownership, also challenge the role of parliament in improving the integrity of the mining industry.

There is consensus that citizens are being shortchanged, with one former MP arguing that *“we do not have much to show for all the mineral wealth. Whether it is because we are not getting as much revenue as we should get because of corruption or whether the revenues that end up with government are not properly utilized, one is not very sure.”*

Five themes emerged in the examination of parliament's role in curbing corruption in the mining sector and the extractives industries:

- **Lack of implementation of existing laws and regulations** that govern corrupt practices. There are laws against corruption in the three countries studied. Ghanaian anti-corruption law is contained in the Criminal Code, which criminalizes active and passive bribery, extortion, willful exploitation of public office, use of public office for private gain and bribery of foreign public officials; Burkina Faso passed an anti-corruption law in 2015 in which government officials, including the president, must declare their assets as well as any gifts or donations received while in office. In Tanzania, the Prevention and Combating of Corruption Act (PCCA) passed in 2007. Therefore, it is not a lack of laws that is the problem, rather the weak implementation of the laws.
- **Weak institutional capacity of legislators and legislatures.** Most legislators in Africa are inexperienced and operate in weak institutions that cannot serve as counterweights to more powerful executive branches. Many African parliamentarians do not possess the technical

knowledge required to critically examine the mining contracts or documents that come before them for scrutiny. One Tanzanian respondent shared, *“You have members of the Mining Committee who do not understand the mining sector, and they do not have any technical staff to assist them in conducting research and analysis of the sector. On top of this, Parliamentary Committees are re-shuffled every two and a half years. How do you retain and sustain the technical knowledge of the industry in this manner?”* Parliament has very little influence in negotiating mining contracts with negotiations held between the Minerals Commission, Sector Ministry, and Chamber of Mines, without parliament.

- **The complex and opaque nature of the mining industry** is another major theme. Many legislators believe the technical complexity is beyond their comprehension. This is made worse by the secrecy surrounding the mining industry in most African countries, as contracts or processes are usually not accessible or open to the public. As a result, citizens are not privy to compromises made to benefit the companies at the expense of the citizens. The asymmetry of information between negotiators and the lack of transparency in contract negotiations make negotiation phase corruption, especially bribes, a genuine risk.
- **The absence of political will to confront the culture of corruption** in the extractives industries is another recurring theme. Despite anti-corruption laws and regulations, political will among elected officials is not significant enough to enforce these laws. When corruption is politicized, some argue it makes it difficult to prosecute. Corruption is further exacerbated when the governance system encourages executive dominance, and anti-corruption laws are largely unenforced. This all reflects a lack of political will among key influential bureaucrats and politicians to combat corruption.
- **Conflict of interest** is another central theme identified as an obstacle to effective oversight of the mining industry. Political parties reward members with appointments, and in Ghana, this means *all* public service appointments being made by the President and MPs serving on company boards, according to one respondent. This same problem was addressed in Tanzania by preventing MPs from serving on Boards of State-Owned Enterprises. Besides, personal ties and personal interests often override the public interest in decision making. Finally, Members of Parliament may wear two hats in the mining business, both sitting on the board of the mining company and serving as an elected representative to the people. As legislators represent citizens, however, they need to reflect the ethical standards of their community, be exemplary in performing their mandate and adhere to the highest standards of integrity.

## **Conclusions and Recommendations**

The study confirms that corruption is pervasive in the mining sector in Africa, and that parliaments can play a significant role in its reduction through its lawmaking, representation, and oversight roles. In natural resource management, parliaments are charged with ensuring an appropriate legal framework to guide the extractive industries. They must have regular dialogue with citizens throughout the value chain and provide effective oversight over management and revenue spending. However, African parliaments are constrained by weak institutions and lack of capacity among parliamentary members and staff, low political will, conflict of interests, lack of financial autonomy, and the complex nature of extractives industries, among other reasons.

All three countries in the study are working hard to provide appropriate regulatory frameworks for the mining sector. For example, there is an anti-corruption law in Burkina Faso, Ghana's anti-corruption law is found in the country's Criminal Code, and Tanzania's Prevention and Combating of Corruption Act (PCCA). However, these laws must be enforced. With many African parliaments operating like an appendage of the executive, they lack the autonomy and will be required to take on the executive in the implementation of the laws enacted by parliaments, instead of rubber-stamping executive proposals.

The mining industry is complex and opaque, which incentivizes some to shut-out the public — including Parliaments— from knowing all that occurs, and thereby preventing effective public scrutiny and participation in natural resource management. Contract transparency is critical. Given the history of sector corruption and mismanagement, there is a more urgent call for sector transparency and accountability. With extractive contracts publicly available, government officials will have a strong incentive to stop negotiating bad deals, due to corruption, incompetence, or otherwise. More importantly, citizens will better understand the complex nature of extractive agreements.

Parliaments are essential across the whole spectrum of the Extractive Industries value chain, particularly in the fight against corruption in the mining sector. It is parliament's responsibility to ensure the sustainable and judicious use of natural resources, as representatives of the people whose lives the extraction impacts directly. A multi-stakeholder approach for accountability with parliaments working closely and collaboratively with other demand actors such as civil society organizations, the media, Supreme Audit Institutions, anti-corruption agencies, national secretariats of EITI and other external actors, can work well. Effective legislative engagement reinforces the efforts of civic groups and others to improve the management of the extractives industries. Civil society should actively engage in EITI to ensure that the broader public has access to information about the payments and transfers made from extractive industries in order to hold companies and governments accountable. Good governance of the extractives sector requires participation, transparency, and accountability across the EI value chain.

Parliamentarians must engage in the financial oversight of the extractives sector and must gain the skills and knowledge to monitor and validate government estimates and forecasts of the EI revenues in the annual budget. Also, parliaments need internal mechanisms, tools, and skillsets to ensure that revenues are appropriately accounted for, optimized, and deployed appropriately for current and long-term sustainable development purposes. Establishing a Parliamentary Budget Office (PBO) will assist parliamentarians in analyzing the national budget in an objective and non-partisan manner and will help in the forecasting of revenues from extractive industries. The establishment of a PBO will help African parliaments to overcome such institutional barriers as lack of information, the inexperience of legislators, and excessive executive dominance, among others. Additionally, they will enhance parliaments' credibility and promote accountability. Further research to examine evidence of what works and what did *not* work through legislative engagement in the oversight of extractive industries is still needed. There is a significant knowledge gap around this issue, and a systematic assessment of the roles of legislatures in curbing corruption throughout the EI value chain is suggested to understand this phenomenon better.

This Briefing Note was written by Deji Olaore and Rick Stapenhurst. Full research results can be found in Deji Oloare and Rick Stapenhurst, with Emine Sarigollu, Myung-Soo Jo, Fahri Karakas and Myriam Ertz (2018) "Journal of Anti-Corruption Law" Vol 2, 2018 pp. 1-30.

Additional research results can be found at Rick Stapenhurst, Rasheed Draman, Brooke Larson and Anthony Staddon (2020) "Anti-Corruption Evidence: The Role of National Parliaments in Curbing Corruption" New York: Springer.