

Illicit financial flows and the extractives sector on the African continent: Impacts, enabling factors and proposed reform measures

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INTRODUCTION

In this article I will describe illicit financial flows (IFFs) in the context of the extractives sector in Africa. I will summarize their adverse economic, political and environmental impacts and identify gaps in current legislation and policy; and weaknesses in national tax systems. I propose specific actions to strengthen effectiveness of current legal and regulatory measures, achieve policy coherence, and increase domestic resource mobilization.

Definition of Illicit Financial Flows

The definition of the term 'illicit financial flows' (IFFs) is debatable. As per the normative interpretation, IFFs is "capital taken abroad in a hidden form, because it might be illegal, or goes against the socially acceptable standards, or it might be susceptible to economic and political threats."¹¹ IFFs can also be defined as "money illicitly earned, transferred or utilized," including corruption, money laundering, tax evasion and tax avoidance¹²

In this essay the term 'illicit financial flows' is intended to encompass any or all of the activities noted in the definitions above.

IFFs and sustainable development

Illicit financial flows and measures to combat them are complex areas of international and national economic, development, security, and the rule of law policy. They affect (and are affected by) many wider policy objectives and involve many disparate actors across a variety of governmental and non-governmental policy disciplines. Therefore, there is a risk that policies which regard to illicit financial flows might be incomprehensible or badly coordinated¹³ and that their implementation may result in lack of sustainability, unintended consequences, and competing priorities because of this risk. Consequently, illicit financial flows are a priority area for Policy Coherence regarding to Sustainable Development¹⁴.

Regarding their essentiality as a disabler of development efforts, the Sustainable Development Goals framework consolidates IFFs¹⁵. According to the Sustainable Development Goals target 16.4, it aims at significantly reducing the unlawful capital flight and arms flows to strengthen recovery and the return of stolen assets as well as combating organized crimes.¹⁶ Additionally, the IFFs are reflected directly only to one target which is related to Goal 16 which addresses peace

¹¹ Reuter P, (2017) Illicit Financial Flows and Governance: The Importance of Disaggregation. Background paper for the World Development Report 2017. School of Public Policy and Department of Criminology University of Maryland

¹² Le Billon, P. (2011). Extractive sectors and illicit financial flows: what role for revenue governance initiatives?. U4 Anti-corruption Resource Centre, 2011:13, 1-45.

¹³ https://www.oecd.org/gov/pcsd/IFFs%20thematic%20module%20v12cl_for%20web.pdf

¹⁴ Dohlman E. and Neylan T. (2016) Policy Coherence in Combating Illicit Financial Flows. OECD

¹⁵ Ibid

¹⁶ <https://indicators.report/targets/16-4/>

and justice¹⁷, but they relate to many other targets that are central to the sustainable development agenda.

Illicit Financial Flows and the African continent extractives context

Numerous instruments have been adopted at the international, national and regional level targeting the extractive industries sector as well as addressing illicit financial flows. However, the effectiveness of the laid out instruments remains unresolved as revealed by recent scandals that have tarnished this sector¹⁸. Mining companies and government officials, are creative and innovative in playing with legislation combating these illicit practices.¹⁹ Manipulation of the rules in this sector is made possible not only through the support of the go-between but also the availability of legal systems²⁰.

About 80 countries have abundant prized natural resources such as oil, minerals, forests, or precious stones. These countries often base their economic development on the export of these resources, which represent significant revenues for their economies. In some countries, these resources may even account for more than 90% of total exports of oil, gas, and minerals, and 60% of total government revenue²¹. The extraction of natural resources may thus lead to exceptional profits. Well managed, these revenues could be a great opportunity for the economic and social development of producing countries. However, natural resources are often located in countries with a low human development index, a high level of corruption, and weak legal frameworks and law enforcement²². Revenues generated from mining rarely benefit the population, including indigenous people and local communities²³ and the exploitation of natural resources is often associated with illicit financial flows²⁴.

Illicit financial flows represent billions of dollars lost in revenues for countries all over the world. For Africa, lost revenue from IFFs has been estimated as equivalent to the average annual development aid and dedicated assistance budget each year²⁵. This level of lost revenue

¹⁷ https://www.oecd.org/gov/pcsd/IFFs%20thematic%20module%20v12cl_for%20web.pdf

¹⁸ Lemaitre, S. (2019). Illicit financial flows within the extractive industries sector: a glance at how legal requirements can be manipulated and diverted. *Crime, Law and Social Change*, 71(1), 107-128.

¹⁹ *Ibid*

²⁰ African Union Commission (2019). *Domestic Resource Mobilization: Fighting against Corruption and Illicit Financial Flows*. AUC Publishing, Addis Ababa.

²¹ IMF. (2012). *Macroeconomic Policy Frameworks for Resource-Rich Developing Countries*. Washington, DC: IMF

²² UNDP. (2015). *Human Development Report 2015 'Work for Human Development'*. New York: UNDP

²³ Oxfam International. (2009). *Lifting the Resource Curse How poor people can and should benefit from the revenues of extractive industries*. London: Oxfam.

²⁴ Williams, A., & Le Billon, P. (2017). *Corruption. Natural Resources and Development: From Resource Curse to Political Ecology*. Cheltenham and Northampton, MA: Edward Elgar Publishing

²⁵ UNECA. (2015). *Report of the High-Level Panel on Illicit Financial Flows from Africa - Track it! Stop it! Get it!*. Addis Ababa: UNECA

dramatically reduces the amount of resources available for essential public services such as education or health, which may undermine achievement of Sustainable Development Goals.

Illicit financial flows within the extractive sector can be explained by numerous factors: the involvement of multiple actors (public officials, national and multinational corporations, intermediaries, etc.), the exceptional profits generated, opacity and secrecy, weak governance, etc²⁶. In addition, these resources are located only in a few countries, while most economies heavily rely on oil, gas and mining products to function. For example, the European Union (EU) imports over 90% of its oil, 60% of its gas, and 40% of its uranium,²⁷ while China is the second world importer of oil²⁸. Therefore, these resources are instrumental for countries and a major strategic issue.

According to a study conducted in 2014 by the Organisation for Economic Co-operation and Development (OECD), the extractive industries (oil, gas, and minerals) sector is the one most prone to foreign bribery²⁹. Transparency International's corruption perception index (2017) seems to show a link between corruption and the extractive sector: numerous oil, gas and mineral producing countries are at the bottom of the ranking each year. In 2017, out of 180 countries, Angola ranked 167th, the Republic of the Congo 161st, Uganda 151st and Nigeria 148th.³⁰

Corruption in this sector takes the form of petty bribe, grand corruption, extortion, undue-influence, embezzlement, profiting from unclear rules, manipulating the law, or turning a blind eye on illegal activities. Corruption takes place at all stages of the value chain: from allocation of licences, negotiation of contracts or procurement of goods and services to revenue collection and monitoring of operations³¹. Tax evasion and tax avoidance in the oil, gas and mining sector are also prominent and constitute manipulation through transfer pricing, inflated costs of goods and services, under-reporting of production volumes, underestimation of the value, or treaty and law shopping³². For example, over the period 2000-2009, 56% of trade mispricing from Africa came from the extractive industries sector³³. Numerous mechanisms and systems, including the use of tax havens, secrecy jurisdictions and legal/regulatory havens, international financial systems, or corporate vehicles enable the hiding of proceeds from corruption and tax avoidance.

Multinational companies are arguably at the heart of cross-border capital movements, intending to conceal illegal activities or evade taxes. It has been estimated that over 60 percent of total illicit flows stem from legal commercial transactions³⁴. Motivation for IFFs may also be linked to a

²⁶ Kolstad, I., & Søreide, T. (2009). Corruption in natural resource management: Implications for policy makers. *Resources Policy*, 34(4), 214-226. <https://doi.org/10.1016/j.resourpol.2009.05.001>.

²⁷ European Commission. (2014). Communication from the Commission to the European Parliament and the Council European - Energy Security Strategy. COM (2014) 330 final.

²⁸ International Energy Agency. (2016). *Key world energy statistics*. Paris: International Energy Agency.

²⁹ OECD. (2014). OECD Foreign Bribery Report. Paris: OECD

³⁰ <https://www.transparency.org/en/news/corruption-perceptions-index-2017#>

³¹ OECD. (2015). *Corruption in the extractive value chain – Typology of risks, mitigation measures and incentives*. Paris: OECD.

³² Publish What You Pay Canada. (2017). *Many ways to lose a billion – How governments fail to secure a fair share of natural resource wealth*. Ottawa: Publish What You Pay Canada.

³³ UNECA. (2014). *Illicit financial flows - why Africa needs to “track it, stop it and get it”*. Addis Ababa: UNECA.

³⁴ Baker, R. (2005). *Capitalism's Achilles Heel: Dirty Money and How to Renew the Free Market System*.

country's own internal investment risks, such as the threat of expropriation or confiscation of private property, economic and political uncertainty, financial repression, or devaluation. However, given the volume, enormous capital outflows from Africa can no longer be explained solely by domestic risks factors³⁵. Besides, the local investment opportunities sufficiently outweigh the risks of doing business.

According to the Organization for Economic Co-operation and Development³⁶, in 2015, all the 54 African countries combined had a joint consolidated tax revenue to Gross Domestic Product ratio of about 19%, whereas Latin American and Asian countries had an average of about 22% and 15%, respectively. For example in OECD states, the average was 34%. Their report notes that a variety of factors affect the ability of countries to generate tax revenues- the presence of large informal and subsistence sectors, narrow tax bases, and dependence on volatile export commodities³⁷. Global Financial Integrity (GFI) estimated that in 2013, developing countries lost U.S. dollars \$1.1 trillion through IFFs³⁸. GFI noted that this estimate is highly conservative because it overlooks movements of bulk cash, the mispricing of services, and many types of money laundering³⁹. GFI states that about 45% of capital flight end up in secret financial jurisdictions, and 55% ends up in developed countries⁴⁰. The interconnectedness of IFFs from developing to developed countries, where most of the stolen funds and assets are hidden, demonstrates why this is a global concern that requires holistic global efforts and approaches.⁴¹ The promotion of a strong international architecture that is ready to combat and fully eliminate the problem is of prime importance.

African countries are yet to develop country-specific working definitions of IFFs with practical application in the mining sector. The High-Level Panel's definition provides a useful building block for the country- and sector-specific definitions of IFFs⁴². The report's emphasis on illegality along the leakage chain makes it highly focused, tracking flows that violate laws in the source countries through the transfer process, and their motivation and use.⁴³ The term illicit is flexible enough to accommodate strictly legal aspects and practices that go beyond established norms, including tax avoidance.

³⁵ United Nations Economic Commission for Africa (2018), A global study on the global governance architecture for combating illicit financial flows, Addis Ababa.

³⁶ Kulkarni, R. UNDP, (October 22, 2018). Taking global action against illicit financial flows, <https://www.undp.org/content/undp/en/home/blog/2018/takingglobal-action-against-illicit-financial-flows.html>

³⁷ Ibid

³⁸ Kar, D., Spanjers, J., (December 8, 2015), Illicit Financial Flows from Developing Countries: 2004- 2013, <https://gfintegrity.org/report/illicit-financialflows-from-developing-countries-2004-2013/>

³⁹ Kulkarni, R. UNDP, (October 22, 2018). Taking global action against illicit financial flows, <https://www.undp.org/content/undp/en/home/blog/2018/takingglobal-action-against-illicit-financial-flows.html>

⁴⁰ Ibid

⁴¹ https://www.policycenter.ma/sites/default/files/PB_20-20_Global%20Challenges%20of%20Illicit%20Financial%20Flows.pdf

⁴² https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf

⁴³ UNECA (2017). Impact of Illicit Financial Flows on DOMESTIC RESOURCE MOBILIZATION: Optimizing Revenues from the Mineral Sector in Africa

Impact of Illicit financial flows on the mining sector in Africa

Economic impact

The status of domestic resource mobilization in Africa is improving, albeit slowly. Owing to sustained economic growth, revenue collection has increased over the last ten years. Overall, public revenues mobilized internally grew from 17.5 per cent of Gross Domestic Product (GDP) in 1980 to 22.3 per cent in 2010⁴⁴. Africa produces more than \$520 Billion every year from domestic taxes⁴⁵. While an important share of tax revenues stemmed from the boom in natural resource prices, the average tax-to-GDP ratio increased to about 20.34 per cent, encompassing the mineral endowed states.

The progress has been underpinned by the improvement of institutions. According to the recent Mo Ibrahim Index of African Governance (2019), public management as an aggregate score increased over the last five years at 1.5 per cent. This progress, however, masks the damaging institutional impact of illicit financial flows. African economies bear a disproportionate brunt, with the highest illicit financial flows to GDP ratio, at 5.7 per cent, illicit activities grew from 3.9 per cent in 2002 to 7 per cent in 2011⁴⁶. Like a vicious cycle, illicit financial flows erode the tax base of most African countries, and in turn, weaken fiscal base further which accelerates illicit practices. Based on the actual per capita tax collection has diminished across the continent.⁴⁷ In the EAC and SACU, tax revenue to GDP increased steadily at a much faster pace in the latter group, largely a South Africa effect. The resource sector played a very minor role in this development, and none in EAC, which is the only group among the five not to report resource revenues⁴⁸.

While natural resource endowment affords opportunities for fiscal transformation, resource-rich Africa remain unable to take advantage of this wealth. In fact, resource-rich countries have not performed any better than their resource-poor counterparts with regard to revenue mobilization⁴⁹. Several reasons may account for this gap including, the damaging effects of illicit financial flows on institutions. Due to limited fiscal revenues, mineral-rich countries are unable to build the type of capacity necessary to negotiate IFF- adaptable contracts, formulate policies that are effective and create an efficient tax administration to mobilize fair tax collection from their natural resources.⁵⁰

Mineral-rich Africa is not only collecting less revenue from its natural resources but is also unable to reach out to other sectors of the economy effectively. A negative correlation is observed between resource revenues and non-resource (aid) revenues, even though increased resource revenues may

⁴⁴ UNECA (2017). Impact of Illicit Financial Flows on DOMESTIC RESOURCE MOBILIZATION: Optimizing Revenues from the Mineral Sector in Africa

⁴⁵ <https://www.un.org/en/africa/osaa/pdf/pubs/2017pensionfunds.pdf>

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ Mansour M (2014) A Tax Revenue Dataset for Sub-Saharan Africa: 1980-2010, FERDI Working Paper 116 pp.14

⁴⁹ Ndikumana et al (2010) Revenue Mobilization in African Countries: Does Natural Resource Endowment Matter? Africa n Development Review VOL. 22 No. 3

⁵⁰ UNECA (2017). Impact of Illicit Financial Flows on DOMESTIC RESOURCE MOBILIZATION: Optimizing Revenues from the Mineral Sector in Africa

outweigh the loss. For example, the Democratic Republic of the Congo, with an illicit outflow to tax revenue ratio of 373 per cent⁵¹, had an increase of resource revenue-to-GDP ratio from an average of 17 per cent in the early 1980s to 32 per cent in the late 2000s. During that period, the non-resource revenue ratio dropped from 15 per cent to 7 per cent⁵². During the same time in Equatorial Guinea, with a capital outflow to tax collection ratio of 138 per cent, the resource revenue-to-GDP ratio increased from zero to 35 per cent, while the non-resource revenue ratio dropped from 20 to less than 2 per cent.⁵³

In addition to efforts to curb the over \$50 Billion in Illicit financial flows leaving Africa, the continent can more than meet its infrastructure needs, a binding constraint to economic growth⁵⁴. McKinney projects that “by targeting readily attainable objectives in terms of modernizing tax administration, governments could generate an additional 50 Billion in tax revenues within the next five years alone”⁵⁵. All countries including African countries have no option but to look inward, making every effort to seal capital flight gaps as aid levels dwindle and become relatively marginal for meeting the seventeen Sustainable Development Goals. Notably, it will cost the world over \$4.5 trillion in state spending to meet the endorsed 169 targets⁵⁶. This adds up to 33 times more than the total overseas development assistance.⁵⁷

Political

The corresponding relationship between IFFs and governance is complex. Illicit financial flows have impact on both strong and weak states, albeit to a varying degree. However, there appears to be a weak correlation between degrees of illicit financial flows and common governance barometers, including the Fragile States and Corruption Perception Indexes, as well as the World Bank's Country Policy and Institutional Assessment (CPIA)⁵⁸. The ‘‘the paradox of plenty’’ - the great mineral wealth which exists side by side with pervasive poverty in Africa and the need to push for continent-wide legislation on access to data and statistics from revenue and profits analysis on this has been in discussion for a long time at the African Union level.

This suggests that illicit financial flows constitute an African and global problem. Illicit financial flows undermines political governance in African countries rich in natural resources as well as the destination countries. Capital flight from mineral-rich states provides an avenue to the breakdown of lawfulness and opens an enabling environment for corruption and its devastating impacts on

⁵¹ Spanjers J & Foss H (2015) Illicit Financial Flows and Development Indices: 2008-2012, Global Financial Integrity Report

⁵² Ndikumana et al (2010) Revenue Mobilization in African Countries: Does Natural Resource Endowment Matter? Africa n Development Review VOL. 22 No. 3

⁵³ UNECA (2017). Impact of Illicit Financial Flows on DOMESTIC RESOURCE MOBILIZATION: Optimizing Revenues from the Mineral Sector in Africa

⁵⁴ UNECA. (2014). *Illicit financial flows - why Africa needs to “track it, stop it and get it”*. Addis Ababa: UNECA.

⁵⁵ AU, AMDC and UNECA (2017) **Impact of Illicit Financial Flows on DOMESTIC RESOURCE MOBILIZATION: Optimizing Revenues from the Mineral Sector in Africa. AMDC**

⁵⁶ http://www.un.org/pga/wp-content/uploads/sites/3/2015/08/120815_outcome-document-of-Summit-for-adoption-of-the-post-2015-development-agenda.pdf

⁵⁷ UNECA (2017). Impact of Illicit Financial Flows on DOMESTIC RESOURCE MOBILIZATION: Optimizing Revenues from the Mineral Sector in Africa

⁵⁸ Spanjers J & Foss H (2015) Illicit Financial Flows and Development Indices: 2008-2012, Global Financial Integrity Report

domestic revenue collection institutions. Laundered money often reroutes its way back into the political system, eroding trust in the judicial system, as well as politics. Over 80 per cent of mineral-rich African countries associated with high Illicit financial flows underperformed in the areas of the rule of law and government effectiveness, according to the recent Natural Resource Governance Index (NRGI), an accountability and transparency tool for the mining sector.⁵⁹ More than 50 per cent of the poorly performing countries were from Africa.⁶⁰

Environmental

The boom in extractives and exploration of natural resources in Africa poses major risks of environmental degradation and a source of corrupt practices leading to lack of transparency, hence the increase in illicit financial flows.

The criminal component of illicit financial flows practices also results in widespread and systematic degradation of the environment. While it is difficult to establish clear causation, it is reasonable to assume that the under-pricing of African minerals will accelerate their depletion. Underreporting the timber exports of Africa from a country like the Democratic Republic of Congo⁶¹, for example, accelerates the deforestation of one of the world's critical ecosystems.⁶² Abusive transfer mispricing of minerals may also under-price the environmental cost of mine closures, leaving the state to assume the liability, with a lasting impact on the population's health and safety.⁶³

Conditions that enable the persistence of illicit financial flows in the extractives sector

Gaps and unintended consequences of legislation and policy on IFFs

In the last decade, innovative legislation has been introduced at the national, regional and international, level to reduce opacity, combat illicit financial flows and promote the sound management of the extractive industries sector. However, in some instances, legislation has been diverted or interpreted in a way that allows mining companies or governments to continue to perpetuate illicit financial flows as highlighted by recent scandals that tarnished the sector⁶⁴. Modifying the rules of the game is availed through the support of middlemen and the availability of legal systems and tools⁶⁵.

Most countries lack a whole-of-government policy consistency framework and while there is increasing awareness of multinational companies' practice of avoiding tax in the sector, no clear

⁵⁹ NRGI (2014) The 2015 Resource Governance Index

⁶⁰ UNECA (2017). Impact of Illicit Financial Flows on DOMESTIC RESOURCE MOBILIZATION: Optimizing Revenues from the Mineral Sector in Africa

⁶¹ Greenpeace, 2008, Conning Congo, Greenpeace: London,

<http://www.greenpeace.org/international/en/publications/reports/conning-the-congo>.

⁶² UNECA (2017). Impact of Illicit Financial Flows on DOMESTIC RESOURCE MOBILIZATION: Optimizing Revenues from the Mineral Sector in Africa

⁶³ Ibid

⁶⁴ Lemaitre, S. (2019). Illicit financial flows within the extractive industries sector: a glance at how legal requirements can be manipulated and diverted. *Crime, Law and Social Change*, 71(1), 107-128.

⁶⁵ African Union Commission (2019). *Domestic Resource Mobilization: Fighting against Corruption and Illicit Financial Flows*. AUC Publishing, Addis Ababa.

working definition of capital flight exists in any of the mineral systems⁶⁶. Some countries have incorporated various anti-avoidance measures into their policies, laws and regulations, targeting precise features of illicit financial flows including transparency and accountability, corruption, money laundering and financing of terrorism. In the meantime, business investment initiatives created to attract overseas direct investment in the sector are excessive and not aligned with domestic resource mobilization objectives. Due to tax exemptions in the sector, tax authorities in countries like Zambia are losing over \$1.6 billion annually in bygone tax revenue⁶⁷.

Beneficial ownership disclosure in the extractive sector- ‘a path fraught with pitfalls’

Knowing who really owns a company has been a key advocacy theme for civil society organisations combatting secrecy and opacity within the extractive industries sector (see for example, Publish What You Pay⁶⁸, Global Witness⁶⁹ or Natural Resources Governance Institute's campaign on beneficial ownership⁷⁰). Disclosing beneficial ownership is a great deterrent to illicit financial flows because knowing who really owns a company is important when for example when revenue collection authorities wish to check whether a company has paid its tax dues commensurate to earnings. Complex corporate structures have enabled both public and private actors to hide who directly or indirectly ultimately owns a company, which may contribute to concealing suspicious activities. Transparency of beneficial ownership makes it possible to determine whether the company is linked to politically exposed persons open to corruption.

In the last couple of years, the issue of beneficial ownership disclosure has been at the forefront of the Extractives Industry Transparency Initiative's (EITI) work to improve the transparency of the extractive industries sector. In 2013, the EITI Standard was revised, among other things, to include a provision on beneficial ownership (as required by the 2013 EITI Standard 3.11). The EITI also launched a pilot project that was conducted between 2013 and 2015 to assess the feasibility of requiring beneficial ownership disclosure. Eleven countries took part in the pilot project (Burkina Faso, the Democratic Republic of the Congo, Honduras, Kyrgyz Republic, Liberia, Niger, Nigeria, Tajikistan, Tanzania, Togo and Zambia). Lessons learned from the pilot project led to a series of recommendations to revise the EITI Standard⁷¹ which took place in February 2016 with the adoption of a requirement (Requirement 2.5.) From 1 January 2020, for implementing countries to disclose beneficial ownership information in their EITI report.

The Extractives Industry Transparency Initiative Standards defines a beneficial owner as "the natural person who solely owns or controls the business entity."⁷² Hence, a beneficial owner is never a corporation but always an individual.

Most implementing countries have not adopted legislation on beneficial ownership and this lack of legal instruments has made it difficult to enforce beneficial ownership requirements. For example, in the Democratic Republic of Congo (DRC), although Congolese law does not define beneficial ownership, a non-binding definition was designed by the national multi-stakeholder group in charge of the EITI⁷³ hence the reason BO is not fully effective on its own. However, as it

⁶⁶ UNECA. (2017). Impact of Illicit financial flows on Domestic Resource Mobilization: Optimizing Revenues from the Mineral Sector in Africa". Addis Ababa: UNECA.

⁶⁷ Ibid

⁶⁸ <https://www.pwyp.org/pwyp-news/pwyp-calls-for-commitments-on-beneficial-ownership-disclosure-and-protection-of-civic-space/>

⁶⁹ <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/5amld-patchy-progress/>

⁷⁰ <https://resourcegovernance.org/topics/beneficial-ownership>

⁷¹ EITI. (2015). Beneficial ownership pilot evaluation report. Oslo: EITI

⁷² EITI. (2016). Guidance Note 22: Developing A Roadmap For Beneficial Ownership Disclosure

⁷³ ITIE-RDC. (2015). Propriétaires réels des industries extractives – Rapport du projet pilote. Kinshasa. ITIE-RDC.

is not mandatory for companies to disclose beneficial ownership information, several extractive companies did not provide the information or partially responded to the questionnaire submitted by the multi-stakeholder group in charge of EITI⁷⁴. Some companies also made the choice of only disclosing the legal owner instead of the natural person arguing that, since Congolese law does not request the disclosure of natural persons, they were not obliged to comply with the request from the multi-stakeholder group in charge of EITI.⁷⁵

Another way in which the effectiveness of beneficial ownership is undermined relates to the establishment of an ownership threshold, i.e., a threshold from which extractive companies would be required to disclose their beneficial owners (EITI Requirement 2.5 f). In the DRC, a threshold of 25% was proposed while in Liberia the threshold is at 5%⁷⁶. Setting up a threshold means that natural persons under the agreed threshold will not be required to disclose their identity. This situation can undermine transparency efforts and provide an opportunity for opacity and concealing the identity of the ultimate owner. For example, in the DRC, the pilot project highlighted that an important number of beneficial owners of extractive companies held less than 25%, and thus were not required to disclose their identity⁷⁷. There is a significant risk that beneficial owners restructure their participation percentage to be below the threshold⁷⁸. To ensure full transparency of beneficial ownership, it would be best if no threshold were to be applied.

Despite the potential pitfalls, disclosure of beneficial ownership is an important instrument to improve transparency and deter corruption. More and more countries are establishing publicly available registries of beneficial ownership of companies including EU Member States through the effective use of the 4th anti-money laundering Directive.⁷⁹

Local content requirements: Current loopholes in a measure for curtailing IFFS ‘

Over the last few years, many resource-rich countries have introduced legislations or specific provisions known as "local content policies" or "local content requirements" into their regulatory frameworks. The objectives of these policies are to formulate jobs, promote enterprise development, and increase transfer of skills and technologies at the national and local level so that the country as a whole benefits from extractive activities.

Local contents can take various forms: they can be quantitative (i.e. when targets or quotas are set to be achieved by companies) and/or qualitative, i.e. when they require technology transfer, training of staff, etc.⁸⁰.

Although local content policies were designed to shape and strengthen economic development, they have been misused and manipulated to generate corruption, elite capture and rent seeking in various instances⁸¹. This led Jesse Ovidia to conclude that local content requirements have "a dual

⁷⁴ Plateforme des organisations de la société civile intervenant dans le secteur minier. (2016). Memorandum sur la mise en œuvre du processus ITIE-RDC: analyse des rapports 2013 et al 2014. Kinshasa: Plateforme des organisations de la société civile intervenant dans le secteur minier.

⁷⁵ ITIE-RDC. (2015). Propriétaires réels des industries extractives – Rapport du projet pilote. Kinshasa. ITIE-RDC.

⁷⁶ EITI. (2015). Beneficial ownership pilot evaluation report. Oslo: EITI

⁷⁷ Ibid

⁷⁸ NRGI. (2015). Owing Up: options for disclosing the identities of beneficial owners of extractive companies. Washington, DC: NRGI.

⁷⁹ Project to assess compliance of EU Member-States with the 4th EU Anti-Money Laundering Directive (4AML D Project).

<https://www.coe.int/en/web/corruption/projects/4amld>

⁸⁰ Ramdoo, I. (2016). Local content policies in mineral-rich countries – an overview. Discussion Paper n°193. European Centre for Development Policy Management. Retrieved from <http://ecdpm.org/wp-content/uploads/ECDPM-Discussion-Paper-193-Local-Content-PoliciesMineral-Rich-Countries-2016.pdf>. Accessed 28 August 2018.

⁸¹ OECD. (2015). Corruption in the extractive value chain – typology of risks, mitigation measures and incentives. Paris: OECD.

nature" with some business entities that "view local content policies as a means of appropriating rents⁸²". The literature highlights cases where public officials "encouraged" or even imposed on foreign companies to enter into partnerships with specifically designated local companies to operate in the country. These local companies were eventually revealed to be shell companies with disguised ownership or in which politically exposed persons and their proxies hold interests⁸³.

Other schemes include foreign companies establishing a consortium with local companies ultimately owned by government officials to win a bidding process for licenses. Local content legislation can also be drafted to favour legal entities with close connections to public officials. In that regard, the Republic of the Congo's local content provisions are interesting. The Republic of the Congo presented to parliament a revised Code on hydrocarbons in March 2015 with the objective of modernizing its oil and gas legal framework. In addition, extractive companies aiming to exploit oil and gas in the Republic of the Congo will have to partner with one or more "national private companies," i.e., a company incorporated and having its headquarters in Congo and of which more than half of the shares are either held by Congolese nationals or by legal entities of which more than half of the shares are owned by Congolese nationals. A minimum share of 15% in the oil contract must be granted to these national private companies when a contract is awarded after the entry into force of the revised Code. The share shall be up to 25% when an oil permit is renewed.

At first glance the requirements in the revised code in hydrocarbons adopted by the Congo seem to promote local content. Nevertheless, when one looks at the provisions in detail, it is striking to see how these rules could be diverted to perpetrate illicit financial flows. Indeed, the Code remains unclear in several places, opening a breach that could allow the government to impose local partners in which it has interests in extractive companies. If Article 143 states that each extractive company must select national private companies to conclude an oil contract, it does not specify how the national private companies should be selected, neither which procedure should be put into place, when it should take place nor on which ground. Depending on the answer given to these questions, it could lead the government to intervene in the selection process and have a say when the extractive company chooses its partner.

Local content policies are not the only breaches found by some extractive companies and governments to circumvent legislations and initiatives adopted to combat illicit practices. Other areas such as mandatory social contributions and subcontracting are more and more favoured by some companies and governments to preserve their interests. For example, suspicions of corruption were raised after Statoil disclosed in 2015, in Angola that it paid Sonangol EUR 6 million for the Sonangol Research and Technology Centre, a research centre that apparently "exists only on paper"⁸⁴. These payments were part of its mandatory social contributions included in its oil contract. Other extractive companies such as BP and Cobalt International Energy have also funded this mysterious research centre. In March 2017, the Securities and Exchange Commission (SEC) informed Cobalt International Energy that it had initiated an informal inquiry regarding the Sonangol Research and Technology Centre but in January 2018, it ended its investigation and did not bring an enforcement action against the company⁸⁵.

⁸² Ibid

⁸³ Martini, M. (2014). Local content policies and corruption in the oil and gas industry. U4 Expert Answer, 2014:15, 1-9.

⁸⁴ Statoil. (2016). 2015 Payments to governments. Oslo: Statoil

⁸⁵ Jaeger, J. (2018, 31 January). Cobalt: SEC ends second FCPA probe. Compliance Week. Retrieved from <https://www.complianceweek.com/blogs/enforcement-action/cobalt-sec-endssecond-fcpa-probe>. Accessed 28 August 2018.

Lack of Policy and legislative reform; a loophole along the entire mining value chains

Transfer mispricing is one of the sources of illicit financial flows from the extractive sector in Zambia for example, which is said to have lost nearly 10 per cent of its GDP every year as a result of corporate tax avoidance schemes, including transfer mispricing.⁸⁶ Since the extent and efficacy of policy and legislative systems differ from state to state.⁸⁷ All case-study countries have some sort of legislation in place to curb transfer mispricing, but many have yet to formulate specific complementary regulatory guidance documents. The Democratic Republic of the Congo introduced a provision on transfer pricing in its Law No. 004/2003 of 13 March 2003 reforming tax procedures, but no specific guidelines exist to date for determining the transfer pricing positions of multinational companies. Countries including South Africa, Tanzania and Zambia have created specific guidelines on transfer pricing.⁸⁸ The penalties levied by South Africa and Zambia are much lower than similar mining countries like Chile and Australia, whereby average fines are between 40 and 50 per cent including interest for transfer mispricing deals designed to evade or minimize tax liabilities⁸⁹.

Excessive leveraging conducted by mining companies is a pivotal source for the erosion of domestic tax base. The measures adopted on avoidance are ineffective and incorporate destructive seeds. Since interest gained from debt is to be deducted from tax liability, mining companies have a strong tendency to borrow internally from their allied companies, rather than increase their capital through selling their shares. In comparable advanced countries, like Canada and Australia, there are far fewer debt-to-equity ratios (1.5:1).⁹⁰ Except for South Africa, none of the countries have adopted the earnings stripping approach, which limits the sum deductible interest as a portion of earnings before taxable income.⁹¹

Regarding the tensions between national and global systems

Looking at the scope and detail of the structure of global standards appropriate to IFFs puts remarkable constraints on the extent countries have to make policy decisions that are independent. Countries can, in principle, choose not to become a party to the conventions, standards, and initiatives.⁹² Nevertheless, the costs of doing are high but non-participation may lead to non-reciprocation and potential blacklisting by other states, loss of access to global financial markets or credits, as well as sanctions and countermeasures.⁹³ Countries that do participate in the global framework to combat illicit financial flows have significant constraints on their discretion. International standard creating bodies undertake compliance, implementation and effectiveness, using peer review mechanisms to assess whether the standards are properly applied.⁹⁴ A certain capacity level that is required to comply with standards and to monitor implementation, can be burdensome and expensive, especially for poor countries.⁹⁵

The international community has made progress over the last decade in improving the way in which it evaluates application, in terms of threat and effectiveness. Both these approaches take a

⁸⁶ UNECA. (2017). Impact of Illicit financial flows on Domestic Resource Mobilization: Optimizing Revenues from the Mineral Sector in Africa". Addis Ababa: UNECA.

⁸⁷ Ibid

⁸⁸ Ibid

⁸⁹ Ibid

⁹⁰ Ibid

⁹¹ Akong, Charles & al, et. (2017).The Impact of Illicit Financial Outflows from the Mineral Sector in Africa.

⁹² https://www.oecd.org/gov/pcsd/IFFs%20thematic%20module%20v12cl_for%20web.pdf

⁹³ Ibid

⁹⁴ [https://www.oecd.org/gov/pcsd/ONLINE_Annotations_IFFs%20\(5\).pdf](https://www.oecd.org/gov/pcsd/ONLINE_Annotations_IFFs%20(5).pdf)

⁹⁵ Ibid

more meaningful view of implementation - placing more weight on how a country has practically addressed the IFF threats it faces, and minimized emphasis on steps which may not be appropriate, or on formal obligations that are not practiced. This has led to the development of much-needed elasticity into the assessments towards demonstrating different levels of assets and capacity.⁹⁶ The risk-based approach adopted by The Financial Action Task Force (FATF), on Money Laundering and countering the financing of terrorism is good example. This approach requires countries to assess their effectiveness and technical compliance through Mutual Evaluation and helps countries assess risks money laundering / terrorist financing and other risks they are exposed to apply proportionate measures to counter and mitigate them – including enhanced or simplified measures and exemptions from the requirements.⁹⁷

There is a wide policy space between the mandatory, universal global standards and their implementation in the unique context of each country. There are no global standards that can specify how every country is to implement the requirements, and each country must adapt the requirements into a form that is in alignment with their legal, administrative systems and policy aims.⁹⁸ This creates a pressing need FOR policy coherence at the national level – and to consider coherence in the context of implementation as well as of policy.

Measures to combat illicit financial flows

Strengthening legal and policy frameworks to promote transparency and mobilize domestic resources

Good governance is vital to raising adequate domestic resources and sealing gaps that allow illicit financial outflows. This involves the ability to develop and actualize effective strategies, policies, laws and regulations towards optimal revenue mobilization from the mineral sector. At the lowest level, this involves minimization of capital outflows and, at best, removing resource mobilization-impeding activities along the mineral value chain. Governance of domestic resource mobilization is also shaped by institutional and political economy factors, at both national and international levels. Incentives for illicit financial flows stem from policy and compliance loopholes, permitting endowed foreign and domestic interests to benefit from tax evasion and institutional weaknesses. Also, corrupt revenue administration undermines the enforcement of policies to hinder illicit financial flows.

To challenge and fight illicit financial flows within the extractive industries sector, the international community has undertaken various actions and initiatives over the last two decades. International instruments to combat corruption were adopted by the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention in 1997, the United Nations Convention against Corruption in 2003, the Bribery Act 2010 adopted by the United Kingdom and the Law on Transparency and Bribery in 2016 by France).

More and more extractive companies are putting in place compliance programmes to prevent corruption either through the development of their own programme or the implementation of anti-bribery standards such as ISO 37001:2016 (a standard adopted by the International Organization for Standardization in September 2016 that provides guidance for establishing, implementing,

⁹⁶ Barasa, T. (2018). Illicit Financial Flows in Kenya: Mapping of the Literature and Synthesis of the Evidence.

⁹⁷ <https://www.fatf-gafi.org/publications/mutualevaluations/documents/more-about-mutual-evaluations.html>

⁹⁸ Illicit financial flows from developing countries (OECD, 2014), available from: www.oecd.org/publications/measuring-oecd-responses-to-illicit-financial-flows-from-developing-countries-9789264203501-en.htm

reviewing, and improving a compliance programme). Along with the fight against corruption, commitments have been made to revise international taxation regulations, notably through the OECD Base Erosion and Profit Shifting Action Plan, also known as the BEPS Action Plan.

Some of the measures covered in the Action Plan include automatic exchange of tax information, international exchange of country-by-country reports between tax administrations, and modifications of tax treaties. Even though these measures do not specifically target the extractive industries sector, they do provide a response to the challenges encountered in this sector.

Instruments have also been designed to precisely combat illicit financial flows within the extractive industries sector. The Extractive Industry Transparency Initiative (EITI) was launched in 2003 to "promote the open and accountable management of natural resources" and improve transparency (EITI 2017). The EITI is composed of representatives from governments, the private sector and civil society organizations. More than 51 countries that are rich in oil, gas and minerals are presently complying with the "EITI Standard".

The Extractives Industry Transparency Initiative Standard demands that "implementing countries" that is countries that have joined the initiative to disclose a wide range of information such as companies' payments, government's revenues, revenue allocations, and social and economic spending (EITI Standard 2016). Voluntary in nature, EITI only applies to countries that have joined the initiative. Currently, several extractive countries such as Kenya and Angola, are not part of the EITI, which undermines transparency efforts undertaken throughout the sector. Thus the adoption of EITI by all extractives countries in Africa would strengthen the capacity of individual countries and the continent to combat illicit IFFs.

In addition to the EITI, home countries of extractive companies have adopted legislations that require extractive companies to both annually and publicly disclose payments made to governments in which they have extractive activities, on a country by country basis and on a project by project basis. This is, for example, the case for the European Union with the Accounting Directive (2013/34/EU) and the Transparency Directive (2013/50/EU). Similar legislations were adopted in the United States in 2010 in Norway in December 2013 and in Canada in December 2014⁹⁹.

Africa will have to mobilize more revenues in taxes than in aid, to achieve its development priorities, because great potential exists for sealing the revenue loopholes. The African Development Bank estimates that African governments can raise an additional \$300 billion in tax revenues yearly¹⁰⁰

Strengthening beneficial ownership requirements

Disclosure of beneficial ownership is an important instrument for curtailing IFFs but weak requirements in this area pose a major problem, and make it easier for criminals to misuse corporate vehicles and shell companies to hide ownership, to carry out transactions using illegal funds or to cover up illegal activities. All jurisdictions should require their financial institutions to determine the beneficial owner – and to ensure that this information is mandatorily available to relevant authorities and institutions. Without the need to gather, verify, keep and make available

⁹⁹ Under the Surface: Looking into payments by oil, gas and mining companies to governments http://transparency.eu/wp-content/uploads/2018/10/Under-the-Surface_Full_Report.pdf

¹⁰⁰ African Economic Outlook, World Bank and McKinsey [http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/C10%20Note%20%20English%20\(final\)_for%20posting%20.pdf](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/C10%20Note%20%20English%20(final)_for%20posting%20.pdf).

information on the real beneficial owners of corporate entities and legal structures, other actors including banks, trust and company service providers and law enforcement authorities-cannot comply with their requirements. This is also a G8 and G20 priority, therefore ownership thresholds should not be applied and disclosure of all beneficial owners should be mandatory.

The EITI's 2016 Standards recommends that implementing countries create a public registry of the beneficial owners of mining companies, "showing the real identity of the beneficial owners, the ownership proportion and details on how ownership and control is exercised. "According to Transparency International, secrecy jurisdictions have a crucial role in receiving IFFs¹⁰¹. Therefore, governments must establish mandatory, public registers that disclose the beneficial ownership of trust funds and companies to allow IFFS to be more easily traced and even harden it for individuals to benefit from the proceeds of corruption and crime. The importance of introducing registers to catalogue who the actual beneficiaries are from activities within a jurisdiction is to enable authorities to improve transparency of transactions as well as to appropriately conduct investigations in the instance of suspicion of criminality. Given the complexity and the multijurisdictional structure of businesses, determining who the real beneficial owner is can prove a challenge.

The concerns raised on the grey area between transparency and privacy are to be treated with care especially when considering developing country contexts where the political class tends to be both the lawmakers as well as the lawbreakers. To this end, appreciating the trade-offs associated with increasing transparency while at the same time maintaining levels of privacy are important if there are meaningful reforms in the offing.

The World Bank states that having beneficial ownership transparency provides that the hidden power, their associates and facilitators are not able to operate in secrecy and impede development¹⁰². Improving the environment by which business can be done in a transparent and legal manner is central to developing countries being able to overcome the vicious cycle of poverty, and dependency. Beneficial ownership registers are not the panacea for fighting IFFs however, they are the first step in right the direction.

Reform local content requirements breach to avoid perpetuating corruption

It is estimated that 90% of extractive countries are implementing local content requirements. Angola, Ghana and Nigeria, have adopted legislation entirely dedicated to local content issues and Uganda, the Republic of the Congo and Liberia have included local content provisions in their recent revision of their petroleum code. To that end, local content policies often require foreign extractive companies to employ local staff from the mining areas at varying levels of knowledge and stages of the extractive work. They can also include obligations to award a percentage of procurement of goods and services to local companies or enter into joint ventures with local partners to operate in the country. Local content requirements have the potential to promote economic development at national and local levels and to curtail IFFs. However, gaps in current legislations need to be addressed to avoid abuse and perpetuation of corruption.

¹⁰¹ Illicit financial flows the role of the international community 29.04.2014-Final

¹⁰² Beneficial Ownership Transparency

General anti-corruption mechanisms that have and can be adopted to prevent and curb corruption in local content requirements in the oil and gas sector include:

- (i) The adoption of anti-corruption clauses- Anti-corruption clauses seek to spell out the behaviour expected from the contracting partners and send a strong signal regarding the government's or company's commitment to fight corruption. The oil and gas sector, has created anti-corruption clauses in petroleum contracts between governments, international oil companies, joint ventures, and on agreements between international companies and local stakeholders.
- (ii) Creation of independent oversight bodies to assess and monitor local content implementation.
- (iii) Putting in place strict procurement rules that are transparent, guarantee fairness throughout the process and key to preventing corruption within the local content process. This should take account that the number of companies bidding in local content tenders is usually small and then create measures to avoid overpricing, bid rigging and cartels. In this framework, several countries included provisions restricting the procurement of local content. For example, Mozambique law requires that preferential treatment when buying local goods and services is given "when such goods and services are globally comparable in terms of standard, availability, and amount required and given at prices including taxes that are not more than ten percent of the available imported goods"¹⁰³.
- (iv) The requirement that contracts include information which regarding the implementation of local content rules for transparent reporting on local content covering the number of local community employed, goods and services that are procured by overseas and local companies, and beneficiaries of local policies are important; to assess whether local content rules are implemented in a way that supports the achievement of their objectives including publication of all contracts and licensing agreements awarded.
- (v) The creation of effective compliance systems by multinational corporations doing business in mineral-rich countries, including analysis and whistle-blower policies.

Additionally, in order to effectively stem corruption in local content in the oil and gas sector, precise steps should be executed to address the corruption threats identified in the previous section, including the creation of rules stipulating conflicts of interest, revolving door, gifts and entertainment; as well as requirement for government workers and senior executives of state-owned companies to declare their assets; access to information laws and creation of transparent decision-making process, ensuring civil society participation and oversight in the intercession of oil agreements.

Reforming taxation system and revenue transparency

Unless the underlying issue of taxing rights is addressed, African countries will remain to be susceptible to significant revenue losses. Therefore, African countries interests must be defended

¹⁰³ <https://www.transparency.org/files/content/corruptionqas/2014-15.pdf>

in spaces where their concerns are fully met and where alternative and substantiated views on global corporate taxation can be elaborated.

There is an urgent need to improve the quality of human resources and institutions of taxation offices to ensure optimization of tax revenue, as well as to control and monitor the taxation sector. Revenue transparency should be promoted, especially in mining production, trading, and export and in ensuring the readiness of monitoring processes and validation for tax and revenue calculation.¹⁰⁴ All case-study countries by UNECA (2017) have adopted a ratio-based approach, and pre-agreed share of equity to debt in the allowed finance mix as per thin capitalization concept. While the extractive industry is a small consumer of debt borrowing and as such countries have embraced average ratios in the range of 2:1 to 3:1, which are higher than the efficient level of debt bearable to the mining market¹⁰⁵.

African countries should focus on an intergovernmental position given the current momentum for global taxation reforms. The talks on the second wave of the OECD secretariat proposals on the BEPS initiative, labelled pillar one and pillar two, began in early 2019 and are planned to be held through multiple meetings until the end of 2020. The proposal for a holistic approach under pillar one mainly concentrates on the reallocation of taxing rights to market sovereignty. Regarding pillar two proposal, titled Global Anti-Base Erosion Proposal, whose focus is on tax challenges arising from the digitalization of the economy (OECD, 2019). As they stand, with their focus on tax and digitalization, these two proposals insufficiently deal with the specific gaps that limit the taxation rights of African states. This point is endorsed by the Independent Commission for the Reform of International Corporate Taxation for poor countries in general. The gaps in the OECD proposals underline the urgency of strong political leadership from Africa on international taxation reforms.

Furthermore, African countries should avoid signing tax treaties that impinge greatly on taxing rights for example, tax agreements that include anti-abuse clauses make avoiding tax through treaty shopping difficult. In addition, withholding taxes is a strong initial protection against profit-shifting for countries with weak administrative systems and capacity. Therefore, countries should not accept having them lowered to a very large extent by tax agreements. Correspondingly, tax agreements often absolved some types of income earned in the source State from taxation as a whole. Thus, countries should assess the costs of removing these taxing rights against the expected benefits in Foreign Direct Investment attraction.

African countries should also aim at defining ways to curtail tax competition. Related efforts should include context-based analytical assessments of the welfare effects of falling headline tax rates and the proliferation of tax incentives across the continent and leverage the African Continental Free Trade Area (AfCFTA) as a platform to avoid a race to the bottom. More critically, African countries should build on the formidable negotiations forum that the continent has established in the context of AfCFTA. For now, the governance mechanisms of negotiations include senior officials of trade ministries and ministers of trade. There should be mechanisms to bridge the gap between these trade-focused groups, ministers of finance and the High-Level Panel on Illicit Financial Flows, while considering negotiations.

¹⁰⁴ Kar, Dev & Joseph Spencer (2014). *Illicit Financial Flows from Developing Countries: 2003 – 2012*. Washington DC: Global Financial Integrity.

¹⁰⁵ Supra Note 72

Improving tax compliance and strengthening data integration

Compliance should be ensured from the beginning, which is the licensing process. The relevant license authority should ensure that a mining license is given to the company that has obtained a tax file number—in addition, imposing penalty to license holders who do not have one. Compliance also can be increased through improving internal control, enforcement and strengthening tax court.¹⁰⁶ Moreover, strengthening data integration is an essential requirement to ensure compliance, as it determines the role of open and big data to prevent gaps in tax revenue. Abusive transfer mispricing of minerals may under-price the environmental cost of mine closures, leaving the state to assume the liability, with a lasting impact on the population's health and safety.

Progressivity is a principle for designing optimal tax instruments but remains a major challenge. African governments incorporate a wide range of systems for effective revenue mobilization from the sector, including profit and production-based taxes. Nevertheless, efforts to ensure tax stability, efficient tax tools and implementation capacity remain weak. It is only South Africa which applies a profit-based structure for calculating royalty rates on different minerals¹⁰⁷. Most of the case-study countries by UNECA apply ad valorem or sales-based royalty mechanisms, which factor in evolving market prices. While resource rent taxes are generally recognized as having a neutral impact on investment decisions, none of the case-study countries apply an excess profit tax. Zambia has dithered with windfall tax changes, which were introduced in the 2008 Mineral and Mines Act and later voided in the face of opposition from the extractive industry¹⁰⁸.

Bridging information gaps regarding geology remains key to effective compliance and narrowing the tensions between national and international systems

Mineral-rich African countries are yet to leverage key information and knowledge of the sector in a forward-looking manner. All case-study countries by UNECA (2017) recognize the importance of geological information but fail to implement its investment and governance structures in ways that effectively mobilizes revenue collection and stems illicit financial flows. Mandatory submission of geoscience information by extractive companies to African governments is restricted by clauses requiring confidentiality thus stopping African states from keeping custody of geo-scientific data. This is further made difficult by the practice of incorporating geological information into legislation as records, rather than data could be aggregated and analysed for effective tracking and monitoring of illicit financial flows.' Except South Africa, there is no requirement for pre-competitive data submitted to the government to be digitalized. Data are often submitted in PDF format, which cannot be analysed. Consequently, African countries lose billions of dollars in undervalued assets as well as underutilizing a critical tool for attracting foreign investment¹⁰⁹. This lack of a data management technique extends along the value chain. None of the case study countries' regulations here include provisions for the tax administration to continuously review and renew benchmark for transfer pricing conditions, incorporating the documentation submitted to reflect the changing norms endorsed by mining companies. This implies that regulations are likely to lag behind mispricing practices, with the threat of serious leakages through information non-interchangeably. There is also need to ensure that financial institutions and all other designated non-financial institutions and professions including trust,

¹⁰⁶ Igbatayo, S. A. (2019). Combating Illicit Financial Flows from Africa's Extractive Industries and Implications for Good Governance. *Africa Development/Afrique et Développement*, 44(3), 55-86.

¹⁰⁷ Ibid

¹⁰⁸ Ibid

¹⁰⁹ Ibid

service providers conduct proper, threat-based, client earnestness procedures, both when starting a business relationship and throughout the relationship.

Building investigative capacities to tackle economic crime in the African countries is vital.

Combating illicit flows and corruption in all its forms must start in African countries. The weak capacity of law enforcement government departments to investigate and prosecute economic criminality is very limited. Building or making such capacity available to African countries is essential for engaging in mutual legal assistance with Organization of Economic Co-operation Development countries when investigating, prosecuting, and sanctioning, all forms of economic crimes such as tax evasion, money laundering or corruption. International development partners including the European Commission have a role to play if Africa is to make headway in the fight against tax fraud in the extractives sector, since in its report the Commission recognises that mining and extractive companies in Africa are responsible for 65% of tax fraud through complex tax avoidance, tax evasion and transfer pricing¹¹⁰.

¹¹⁰ José Luis Gutiérrez Aranda in; Corporate Justice, Illicit Financial Flows in the Mining sector in Africa: risks and opportunities, Feb 4, 2020 @<http://aefjn.org/en/illicit-financial-flows-in-the-mining-sector-in-africa-risks-and-opportunities/>

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