



*Promoting Transparency and Accountability of
Revenue of the Extractive Industries:*
A Meeting for Legislators of the East African Legislative
Assembly
February 27 – 29, 2008

About the Conference

The Critical Role of Legislatures

Natural resources have for decades been a source of wealth for many African ruling elites and multinational corporations, but less often for Africans themselves. Corruption and the consequent lack of transparency and accountability in the management of these revenues has exacerbated poor governance, fueling cycles of conflict and poverty, while undermining opportunities to spur economic growth and social development. Several international and local initiatives, such as the Extractive Industries Transparency Initiative (EITI) and the Publish What You Pay (PWYP) Campaign, have helped to increase awareness for the need to improve transparency and accountability in this sector, yet relatively little attention has been paid to the potential contributions of elected legislators. To bridge this gap, the National Democratic Institute (NDI) completed a comprehensive assessment of the mechanisms utilized by legislatures and civic groups in nine African countries to promote transparency in the extractive sector. The findings of the assessments were published in the NDI report *Transparency and Accountability in Africa's Extractive Industries: The Role of The Legislature*.

The assessment found that financial and institutional constraints undermine the ability of legislatures to play a more robust role in representing the interests of civil society and citizens from asserting community-level concerns on revenue allocation and disbursements. Some of these constraints include: limited financial resources, weak committee systems, a lack of capacity to conduct research and analysis, and sometimes a lack of knowledge about the extractive industries sector.

Developments in East Africa – including oil discoveries in Uganda, planned reforms to Tanzania's legal and regulatory mining framework, and the anticipated construction of an oil pipeline between Uganda and Kenya – have created a demand for transparency and accountability in the management of extractive industries within the region. Responding to this demand, the East African Legislative Assembly (EALA) is beginning to raise its profile as a champion for good governance in the management of extractive industries at a regional level. As the legislative arm of the East African Community (EAC), EALA was established to pass legislation directly relevant to the economic integration of the region. The EAC member states include Kenya, Tanzania, Uganda, Rwanda, and Burundi.

In collaboration with the East African Legislative Assembly, the Revenue Watch Institute (RWI), and the Parliamentarian Network on the World Bank (PNoWB), NDI held a two-day workshop from February 28 to 29, 2008, in Arusha, Tanzania, designed to assist these legislators in playing a more visible and active role in the management and oversight of extractive industry revenues at the national and regional levels. The workshop offered a platform for dialogue on ways parliaments and civil society organizations can engage on legal and regulatory issues surrounding the sector.

The workshop served as a primer, providing basic information on the following topics: Understanding the Demand for Transparency; Enhancing Knowledge of the Extractive Industries; Legal and Regulatory Frameworks; Encouraging Public Accountability and Transparency; and Promoting Legislative Engagement and Oversight. Gathering 50 participants, the workshop brought together EALA members from three of its member countries Tanzania, Uganda and Kenya; sitting members of the parliament of those countries, PNoWB parliamentarians from South Africa and the Democratic Republic of Congo; private industry representatives; international legal experts; a representative from the Extractive Industries Transparency Initiative (EITI) Secretariat; and civil society leaders. The major highlight of the workshop was the informal adoption of a draft resolution by EALA. Developed out of small working group discussions during the second day of the workshop, the resolution's 21 recommendations focus on investing in the governance of the extractive industry sector at the regional and national levels. EALA will debate and expects to formally adopt the resolution during its upcoming plenary session in Nairobi, Kenya, to be held from May 12 through 23, 2008. *Please visit www.ndi.org to view the entire draft resolution.*

Session I: Understanding the Demand for Transparency

The level of international political attention, tools and resources that are focused on promoting transparency in the extractive industries has increased dramatically over the last five years. In order to help legislators leverage this information and support, NDI opened the two-day workshop with an informational session designed to provide legislators with up-to-date knowledge of the Extractive Industries Transparency Initiative (EITI) and other international efforts promoting transparency in the extractive sector. The opening session gave the legislators an opportunity to learn about new global and regional initiatives; progress being made by EITI signatory countries; current research and data on transparency; and new tools and resources that can be used in their role as an oversight body.

Because Nigeria is the only African country that has passed legislation on its EITI process, it served as the major focus of discussion for this session. The discussion therefore centered on benefits derived at a national level through the EITI process. The Nigerian Extractive Industries Transparency Initiative (NEITI) or EITI process led to significant foreign direct investment in the country. Current numbers indicate the increase being well over \$1 billion. Additionally, the NEITI process has given Nigeria the status of a "model" EITI country that other African countries are looking to as they join EITI. The discussion on Nigeria prompted EALA to include a recommendation in its draft resolution that seeks to encourage member countries to join EITI.

Session II: Enhancing Knowledge of the Extractive Industries

In many countries, legislators, policy-makers, and civic activists are hamstrung in their efforts to evaluate, analyze and oversee issues related to the extractive industries because of the complicated nature and opacity of the industries. As a result, the lack of technical knowledge limits their ability to engage on these complex issues and creates a

psychological barrier that often discourages effective oversight. This session served as a basic primer for workshop participants, with one expert each from the mining and oil industries discussing the nature and composition of oil and mining deposits, and the processes of production, transportation, regulation, marketing and consumption. These educational sessions provided lawmakers a better understanding of the industries in their own country, as well as insights into the revenue arrangements and structures that apply to each industry. Panelists framed their discussion around the non-renewable nature of resources, recommending that oversight policymaking focus on the sustainability of revenue generation.

The realization that information provided to some of the participants over-estimated oil deposits in the region led to a lively discussion, concluding with recommendations focused on developing regional technical and parliamentary expertise on exploration and other aspects of the extractive sector's operations.

Session III: Legal and Regulatory Frameworks

Laws and regulations provide the framework for sustainable and accountable management of natural resources. In several African countries, groundbreaking laws have been adopted that create independent committee oversight of oil revenues; restrictions on borrowing against revenues; and mandatory spending on social development projects. From Botswana to Sao Tome and Principe, legislation and regulation have set the stage for improved accountability of extractive resources, and is helping to ensure the equitable distribution of those resources. By focusing on the structure, goals, and objectives of Norway's oil law, this session provided information to help legislators develop more specialized knowledge of their role in extractive industry management and become more aware of the resources available to them as they engage in policy development and legal reform.

Oil was discovered in Norway in 1963, at a time when Norway resembled a second or third world economy, and was experiencing some of the same economic and social challenges currently being faced by African nations. Norway's history notably resonated with the workshop participants, particularly in view of the success of Norway's oil industry. In thinking about policy considerations for the management of extractive industries within the region, the workshop participants sought additional information about Norway to expand their knowledge and learn about best practices that could lead to similar regional success.

Session IV: Encouraging Public Accountability and Transparency

Public dialogue on the management of national extractive industries stimulates improved transparency and oversight by governments. Yet in many African countries, public discussion of oil and mining revenues is sometimes considered taboo or is otherwise discouraged. Often, citizens and civil society organizations seeking accountability in the oil and mining sector have put their lives at risk by opposing the powerful vested interests of the government and its financial backers. This session focused on mechanisms that

improve public outreach to constituents on extractive industry issues and included examples of how such activities demonstrate legislative responsiveness to constituents and how public discourse can help stimulate transparency.

The discussion highlighted that some of the mechanisms that have been created by governments in Africa theoretically promote accountability, but in practice do not function effectively or efficiently. Nevertheless, the mere creation of them has begun to gradually stimulate transparency in public discourse and increase civil society engagement on issues surrounding extractive industries. Hindering effective civil society engagement is government's notable suspicion and mistrust of civil society organizations within African governments. This point stimulated a dynamic discussion where MPs, EALA members, and civil society representatives alike voiced their frustration with the level of civil society engagement at the national level on issues surrounding extractive industries. By voicing their views, both legislatures and civil society organizations took advantage of an opportunity to learn about each other's perspectives.

Session V: Promoting Legislative Engagement and Oversight

Legislative bodies provide the critical link between citizens and their elected governments and can serve as the catalyst for improved government accountability and transparency. Yet in many resource-rich countries legislators face a host of challenges in fulfilling their mandate. They are often sidelined by more powerful executives or lack the skills and information to fulfill their core functions. In some countries, legislatures lack the authority to amend or change the national budget; in other countries, legislators have personal or business ties to the extractive industry, presenting a conflict of interest in their oversight abilities.

The panelist(s) emphasized the importance of establishing a budget office, ethics rules and codes of conduct to prevent conflict of interests, sustaining parliamentary research and technical support to the oversight capacity of parliament. In East Africa, Tanzania's Parliament has been the most engaged on the management of its extractive industry—mining. Responding to the enormous losses incurred by the Tanzania mining sector, parliament called on the government to report to the relevant parliamentary committees on all aspects of the mining sector's operations. The Tanzania Parliament will also be undertaking a comprehensive audit of the mining sector revenue and costs. The losses incurred by Tanzania and concerns about oil contracts in Uganda and their impact on the region led EALA to include recommendations within its resolution that seek to strengthen laws within partner states to make agreements and contracts accessible to partner state parliaments and to develop regional model contract laws and clauses.

Conclusion

NDI's follow on support to the East African Legislative Assembly focuses on assisting it in launching a permanent extractive industries stakeholder forum as described by the draft resolution. The stakeholder's forum will include relevant EALA and member country committee members, executive branch representatives, regulatory bodies,

industry and legal experts, academics, and civil society organizations. The forum will be the vehicle for implementing various recommendations within the draft resolution.