Accountability
Conflict Minerals
Ethical Business
Good Governance
Human Rights
Physical Environment
Social Environment
Business Ethics: Challenges and Opportunities in the Mineral, Oil, and Gas Sector In West Africa
African Center for Economic Transformation (ACET) Policy Brief

Introduction
Sustainable development in Africa has increasingly become tied to the continent’s ability to compete in global markets, develop its internal resources, and grow local businesses that generate wealth, provide employment, and create economic opportunity. With natural resources extraction and processing driving this process in many countries, business ethics has become an important determinant of success of African ambitions for sustainable development, particularly surrounding project finance procurement and access to global markets.

Definitions
Business ethics are the moral and normative rules that frame ways of conducting business. These rules relate primarily to the internal governance of businesses, their responsiveness to broader societal concerns, engagements with employees, and willingness to contribute fairly to host societies and communities. This noted, while governments are responsible for creating a legal framework that encourages ethical business, operating ethically is not always synonymous with operating lawfully. Indeed businesses often seek loopholes that enable them to avoid ethical responsibilities without fear of legal sanction. High profile incidences of this include tax-off shoring and avoidance, limited transparency, and corruption. The primary focus of business ethics in the 21st century has been on corruption, taxation, revenue transparency, and illicit financial flows—the primary focus of this policy brief.

Contextualizing Business Ethics
Historically business ethics have been driven by moral rather than purely commercial imperatives. Recently however, it has become a potential tool for some businesses to gain competitive advantage over others. For one reason, ethics has become more important to consumers who will sometimes punish brands associated with unethical behavior and reward others for ethical behavior. Business ethics has also come to play a more important role for those businesses seeking competitive advantage in securing sustainable access to a supply of raw materials. And finally, business ethics standards have become an important factor in determining the ability of businesses to raise capital either through the banking system, international financial institutions like the World Bank, bond issues, or through the trade in publicly traded stocks.

Business Ethics Challenges in the ECOWAS Extractive Sector
Multinational extractive activities have been closely associated with the economic and sometimes political failures of resource-rich countries in Africa during the latter half of the 20th century. But ethical standards in the extractive sector have improved considerably over the last decade.

Corruption and Bribery
Effective governance varies tremendously across and within ECOWAS member states. However, corruption remains pervasive. While Ghana, Liberia, and Burkina Faso are significantly less corrupt than other ECOWAS members, Transparency International only classified Cape Verde as not having a “serious corruption problem”. Cote D’Ivoire, Nigeria, Guinea, and Guinea Bissau by contrast are rated as endemically corrupt, with corruption levels comparable to those of “failed and failing states” like Sudan and Somalia. Levels of corruption in ECOWAS states roughly correspond to the robustness of internal governance systems and institutions, which are generally at a low level. As such, businesses seeking to operate with high ethical standards can find themselves at a disadvantage against others willing to act with no similar constraints. Given that businesses operate in environments created, policed, and managed by governments, efforts within the private sector to curb corruption are ultimately subject to the determination of governments to do the same. Governments, in other words, set the tone for business ethics.

The relative failure of individual governments to curb corruption in several ECOWAS countries is one of the reasons for the development of aggressive transnational legislation by countries like the USA and UK to curb corruption as well as the genesis of programs like the Extractive Industries Transparency Initiative and the Natural Resources Charter discussed below.

Security, Conflict, and Business Ethics
The variable security situations across ECOWAS pose considerable challenges to businesses ethics. While various mechanisms exist to control the exploitation and trade in natural resources in conflict areas, the fact remains that this exploitation happens. State regulation is generally inversely proportional to security risk. For example, gold mining in Mali, Cote D’Ivoire, parts of Nigeria, Senegal, Ghana, and Guinea are highly unregulated, resulting in significant revenue loss to their respective governments, and missed opportunities to utilize those resources to drive sustainable development. Moreover, as instability continues, the interests of businesses and organizations profiting from unregulated trade becomes entrenched, and the revenues generated are reinvested into maintaining the status quo.
Artisanal and Small Scale Mining (ASM) Sector
The ASM sector is largely unregulated and as a result serves as a breeding ground for unethical business and illicit financial flows. ECOWAS is home to an estimated 2 million artisanal miners, primarily in the gold and diamond sectors. The scale of these operations is difficult to establish given the absence of regulation. But observers agree that values are significant. It also adds considerably to the case for large-scale government investment in the sector with a view to formalization as the value of an efficient and organized ASM sector that could contribute to the fiscus through taxation and royalties would easily outweigh the costs of effective intervention with a view to regulation. Just as important, the formalization of the sector would also likely realize improved working conditions and income for those working at the coalface thereby stimulating secondary economic growth in a more sustainable manner and considerably reducing net revenue outflows.

Illicit Financial Flows (IFF)
The African Development Bank has reported that over 30 years (1980–2009), close to US $1.4 trillion in value was lost to Africa through illicit capital flight. Most of those capital flights were illegal in nature and were due to corruption, kickbacks, tax evasion, and other illicit business activities across borders. West and Central Africa surpassed the other regions in its scale of illicit flows at US$494 billion (37%), followed by North Africa (US$415.6 billion or 31%) and Southern Africa (US$370 billion or 27%). These illicit financial flows can take a wide variety of forms, and in the context of the ECOWAS extractive sector, risk levels in terms of corruption, illegal exploitation, and tax evasion vary across different areas of the extractive sector. These risks are summarized in the tables below.

<table>
<thead>
<tr>
<th>SECTOR</th>
<th>RISK LEVEL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Corruption</td>
</tr>
<tr>
<td></td>
<td>Illegal Exploitation</td>
</tr>
<tr>
<td></td>
<td>Tax Evasion</td>
</tr>
<tr>
<td>Oil</td>
<td>High, due to confidentiality and concentration of decision making and monitoring</td>
</tr>
<tr>
<td>Gas</td>
<td>Medium, due to limited market options</td>
</tr>
<tr>
<td>Industrial Mining</td>
<td>High, due to confidentiality and concentration of decision making and monitoring</td>
</tr>
<tr>
<td>Artisanal Mining</td>
<td>Medium for grand corruption, but high for petty corruption, due to diffuse resource flows except at official export channels</td>
</tr>
</tbody>
</table>

2Ibid.
3Africa Progress Panel Report 2013
4See for example Action Aid’s recent report on Barclays Bank

Tax Avoidance and Evasion
The Africa Progress Panel estimates that lost taxation is costing sub-Saharan Africa US$63 billion per annum. Given the importance of the extractive sector as a contributor of revenue and its capital-intensive nature, it is the largest source of lost taxation in ECOWAS. The Africa Progress Panel argues that the scale of the problem is such that if revenues were captured, Africa as a whole would be able to meet all key millennium development goals targets. While numbers such as those produced by the Panel are speculative, it is clear that the problem is large scale and moreover that numerous western and non-western banks and advisory businesses are at least partially complicit in facilitating revenue outflows through offering tax-havens or providing advisory services to this end.

Business Ethics and Governance Standards
Governance standards can take the forms of international or local normative (but non-statutory) standards, statutory standards that operate at a national level, and internal governance standards within individual businesses (which in turn usually reflect external contexts). As noted in Section 2, national governance is critical to creating an environment conducive to good business ethics, and across ECOWAS these are typically weak. Noting these weaknesses, there have been a number of major international initiatives aimed at improving governance standards within countries by holding governments more accountable to their citizens, limiting opportunities for bureaucrats to abuse their office, and sanctioning businesses that operate unethically. Business ethics standards have evolved considerably since the conclusion of the Cold War as multinational firms have dramatically increased their global influence and with this their social and economic impacts. A range of initiatives aimed at preventing unethical conduct by businesses operating in emerging markets are subject to.
War as multinational firms have dramatically increased their global influence and with this their social and economic impacts. A range of initiatives aimed at preventing unethical conduct by businesses have now been developed. These include large-scale international initiatives aimed at maintaining ethical standards, regional and national governance and statutory initiatives, voluntary protocols that have gained increasing legitimacy, and the development of country specific statutes—like the UK’s bribery Act—which have international reach. Included among these standards and initiatives are:

- **Extractive Industries Transparency Initiative (EITI)**
- **OECD Guidelines**—Including OECD Guidelines for Multinational Enterprises, OECD Principles of Corporate Governance and Principles for Enhancing Integrity in Public Procurement.
- **International Chamber of Commerce (ICC) Rules of Conduct and Recommendations to Combat Extortion and Bribery**
- **World Economic Forum-Partnering Against Corruption Initiative (PACI)**
- **World Bank Stolen Asset Recovery (STAR) Initiative.**
- **UN Convention Against Corruption**
- **AU Convention on Preventing and Combating Corruption**
- **The ECOWAS Protocol on the Fight Against Corruption of the Economic Community of West African States**
- **Transparency International’s (TI) Business Principles for Countering Bribery**
- **The Bribery Act (UK)**
- **Foreign Corrupt Practices Act (USA)**
- **The Dodd Frank Act—Section 1504 (USA)**

**Corporate Governance**
Most large-scale multinationals have now implemented rigorous internal governance systems on business ethics. Driven primarily by the threat of legal sanction and the demands of investors, these systems focus particularly on corruption and illicit financial flows given that the potential legal sanction this exposes both senior executives and non-executive directors in certain jurisdictions. Be that as it may, there remains an unacceptably high degree of variance between the ethical standards of different businesses. Junior companies—even those subject to stock exchange regulations—are often small enough to avoid the same kind of critical scrutiny that larger businesses operating in emerging markets are subject to.

**Conclusions and Recommendations**
The broader benefits of ensuring higher standards of business ethics across the ECOWAS extractive sector are clear. Reducing illicit financial flows will contribute greatly to state resources and correspondingly the ability of member states to deploy additional capital to broader state-led development initiatives. It will similarly support private sector development by enabling a more transparent and lower risk operating environment, more conducive to attracting the kind of long term foreign direct investment likely to make the largest impact.

**Governance**
The single greatest obstacle to ensuring that business ethics issues do not undermine sustainable development is endemic corruption at the national and regional levels within ECOWAS. While sound corporate governance and international initiatives can have a bearing on this the potential success of such initiatives are ultimately contingent on the determination of ECOWAS governments to take the steps necessary to stamp out corruption. To this end it is recommended that the ECOWAS Protocol on the Fight Against Corruption of the Economic Community of West African States is ratified without further delay and that a clear timetable for its full implementation is developed and adopted.

**Regional Approaches**
With business ethics concerns manifesting mainly in illicit financial flows, it is clear that a coordinated regional approach is needed. Regulatory systems need to be harmonized and transnational policing and regulatory systems need to be developed. The WAUTI provides an infrastructure for this, and the process can easily be driven by ECOWAS. International cooperation however needs to extend beyond ECOWAS and into tax havens like Mauritius.

**Taxation**
Preventing tax avoidance is nearly impossible. However, concerted steps can be taken to make it more difficult to execute. In the ECOWAS context a harmonized approach to tax policy will assist greatly in achieving this, as would a dynamic policy review process aimed at cracking down on off shoring. With the majority of off shoring in the AU going through Mauritius, there is a clear opportunity for ECOWAS as an entity to negotiate a tax agreement with Mauritius through the AU, as Kenya has with some success.
Additionally, there is the option to develop specific protocols aimed at preventing off-shoring as part of the license to operate process for extractives and other industries of national interest. Similarly, opportunities exist to further regulate the roles of banks and other institutions involved in financing and processing extractive sector revenues.

**Revenue Transparency**
Revenue transparency is an important tool to assist in holding governments accountable to their citizens. While there is increasing pressure from both international organizations and multinationals exposed to both reputational and legal risk, proper transparency again is ultimately dependent upon governments’ willingness to make and honor commitments in this regard.

**Corporate Governance**
Although corporations have made considerable progress towards developing internal governance structures to address business ethics, governments can play a considerably more proactive role. ECOWAS has the opportunity to build on the internal governance framework developed through the King reports in South Africa and require their implementation across the region.

**Artisanal and Small Scale Mining**
The formalization of this sector offers a tremendous opportunity for redressing ongoing rights violations, generating revenues for the state, and assisting local sustainable development. The cost would be minimal relative to the potential value this process could generate. The nature of the ASM sector is such that it would benefit from a region-wide approach led by the ECOWAS Commission.