

CONCEPT NOTE

ADDRESSING IFFs AND ASSET RECOVERY IN THE EXTRACTIVE INDUSTRY

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13th & 14th June, 2023



Radisson Blu, Dakar,
Diamniadio



9 am - 5:30 pm



Co-Organized by:



Overview

Following the adoption of the African Union (AU) High Level Panel Report on Illicit Financial Flows, the African Union adopted a Special Declaration in Addis Ababa, Ethiopia in January 2015 (Assembly/AU/Decl.5 (XXIV) in which it called for all assets, including financial resources lost through illicit capital flight and illicit flows to be identified and returned to Africa to finance the continent's development Agenda. The declaration further directed the African Union Commission, supported by member states, to mount a diplomatic and media campaign for the return of assets illicitly acquired from Africa. Subsequently the 31st Summit of the African Union Assembly adopted the Nouakchott Declaration on the African Anti-Corruption Year (June, 2018) (Assembly/AU/Decl.1 (XXXI) in which it called upon international partners and allies to agree on a transparent and efficient timetable for the recovery and return of African assets that have been illicitly acquired and kept in various jurisdictions.

In response to these calls, and recognizing the efforts of the High-Level Panel on Illicit Financial Flows, the African Union Champion on Anti-Corruption, H.E Muhammadu Buhari, in his report reiterated the need to develop a Common African Position on Asset Recovery (CAPAR) as a priority in recognition of the adverse impact that the non-recovery and return of IFFs has on the enjoyment of human rights in the source countries. Further acknowledging that the efforts and strategies towards the recovery and return of African assets must be situated and contextualized in the broader historical, political, economic and social narrative of Africa (including the theft of items of African cultural heritage, slavery and colonization of Africa), the African Union accordingly requested its Commission, African Union Advisory Board on Corruption, African Development Bank, United Nations Economic Commission for Africa, Coalition for Dialogue on Africa and other stakeholders in the Consortium, to scale up their collaborative work on public awareness, tracing and recovery of assets illicitly acquired from Africa, in partnership with the National Anti-Corruption Agencies.

The CAPAR is a policy advocacy instrument aimed at assisting AU Member States to trace, identify, repatriate and effectively manage their assets, including items of cultural heritage, in a manner that respects their sovereignty and for the benefit of African peoples who are victims of illicit financial flows. Consequently, in February 2020, the CAPAR was presented to the 33rd Assembly of AU Heads of State and Governments and was adopted under AU Decision Assembly-AU-Dec.774 (XXXIII). The CAPAR now stands as the bedrock for our continent's legal and technical framework for tracing, identifying, recovering, and effectively managing the return of Africa's stolen assets, including through illicit capital flights, from whichever jurisdictions they may be held in to the rightful source countries.

With this landmark adoption, the next step is the sensitization of all continental and international stakeholders on the pillars and key components of the CAPAR as well as the holistic implementation of its proposed policy recommendations by AU Member States and their global partners. The Working Group on the implementation of the CAPAR was accordingly established to achieve this and to guide the national, regional, continental and global efforts to address Africa's global asset recovery agenda.

The extractive industry, which includes mining, oil, and gas sectors, has had a significant impact on illicit financial flows. Illicit financial flows refer to funds acquired, transferred, or utilized illicitly often for the purpose of tax evasion, money laundering, or financing criminal activities.

The extractive industry mostly contributes to illicit financial flows through transfer mispricing, where companies intentionally misrepresent the value of goods or services to relocate profits to jurisdictions with lower taxes. Companies may also engage in bribery or other corrupt activities to secure mining or drilling licenses, permits, or favorable tax treatment from government officials. Some foreign companies also undertake mass exports of mineral ores from African countries often disguising and grossly understating the true value of the minerals therein.

Additionally, the extractive industry may utilize tax havens to minimize tax obligations and evade scrutiny from regulatory bodies. Developing countries suffer billions of dollars in annual losses due to these activities. Addressing these concerns necessitates a combination of widespread public awareness on illicit transfer of Africa's assets, enhanced transparency, stricter regulations, and increased international cooperation.

The Glencore Corruption Scandal, which came to light in May 2022, exposed allegations of bribery and corruption involving Glencore, a Swiss multinational commodity trading and mining company. The allegations include bribery of foreign officials, tax evasion, sanctions evasion, and violations of environmental and labor standards. Multiple regulatory bodies and law enforcement agencies have launched investigations into these allegations. It is on public record that Glencore admitted wrongdoing and engaged in plea bargaining in British and USA justice systems where it paid significant fines that went to the public coffers of the two countries while the 6 victim countries in Africa have been left high and dry. The Glencore corruption scandal has raised global concerns regarding the lack of transparency and accountability in the commodities trading industry. It has underscored the urgent need for enhanced regulation and oversight to prevent similar incidents from occurring in the future.

The Extractive Industries Transparency Initiative (EITI) aims to promote accountable and transparent management of oil, gas, and mineral resources. Glencore is a supporting company of EITI, and among the 50 participating countries are DRC, Cameroon, Nigeria, and Ivory Coast, which were primary victims of the Glencore corruption scandal. Equatorial Guinea left, and South Sudan never joined. While the UK and the US have forced Glencore towards a review of practices and the renewal of its entire senior management, no action has been taken by the concerned victim African countries.

The EITI must hold the perpetrators and accomplices accountable and address the challenges faced by these victim nations. The Secretariat of the AU High Panel on Illicit Financial Flows (CoDA) and the CAPAR Working Group are orchestrating a collaborative effort that brings together groups from the countries affected by these illicit practices to devise effective strategies for addressing the challenges faced by these victim nations in addressing the losses and injustices visited upon them by the Glencore corruption scandal.

The AU High Panel on IFF and the CAPAR Working Group are organizing a side event at the EITI conference that will take place in Dakar, Senegal on the 13th and 14th June 2023. The theme of this side event is "Addressing Illicit Financial Flows in the Extractive Industry".

Objectives

The event aims to:

- Raise awareness of the impact of illicit financial flows in the extractive industry in Africa and the need for widespread public awareness, enhanced transparency, stricter regulations, and increased international cooperation with regard to investigations and recovery of assets through the promotion of CAPAR.
- Discuss the Glencore Corruption Scandal and its implications for the extractives and commodities trading industries and the 6 victim African countries.
- Remind the EITI of its role in promoting accountable and transparent management of oil, gas, and mineral resources.
- Identify effective strategies to address the challenges faced by victim nations and hold perpetrators and accomplices accountable.

Target Audience

The event targets policymakers, regulators, civil society organizations, industry stakeholders, and the media.

Format

The event will be a physical conference and virtual participation will be accommodated. It will feature keynote speeches, panel discussions, and interactive sessions. The conference will be held over two days, with each day focusing on specific sub-themes.

Day 1: The first day will focus on the CAPAR and the corruption in the extractive industry and the need for widespread public awareness, enhanced transparency, stricter regulations, and increased international cooperation. Keynote speeches and presentations will be delivered by experts in the field, followed by a panel discussion featuring policymakers, regulators, industry stakeholders, CSOs and media. Interactive sessions will allow participants to share their experiences and perspectives.

Day 2: The second day will focus on IFFs in the Extractive Industry and its implications for the communities and African States. Participants will be briefed by experts in the field, followed by a panel discussion featuring civil society organizations and the media. Interactive sessions will allow participants to identify effective strategies to address the challenges faced by victim nations and hold perpetrators and accomplices accountable.

Expected Outcomes

The event is expected to:

- Raise awareness on the impact of illicit financial flows in the extractive industry and the need for widespread public awareness, enhanced transparency, stricter regulations, increased international cooperation and the promotion of CAPAR
- Foster dialogue and collaboration among policymakers, regulators, civil society organizations, industry stakeholders, and the media.
- Identify effective strategies to address the challenges faced by victim nations and hold perpetrators and accomplices accountable.
- Generate recommendations for policymakers and regulators to enhance transparency and accountability in the extractive industry.

Follow-up

The event organizers will compile the recommendations generated from the event and present them to policymakers and regulators, publish a communique summarizing the key findings and recommendations. They will constitute a group to explore opportunities for future collaboration among participants to address the challenges faced by victim nations and hold perpetrators accountable.

AGENDA

Session 1

Addressing IFFs from Africa: The journey so far

Session 2

Introduction to the Common African Position on Asset Recovery

Session 3

Glencore Case:

- Laying out the facts and legal issues
- The need for an international criminal jurisdiction on corruption

Session 4

Compliance assessments for commodity trading companies

Session 5

Communiqué and way forward

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