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Conference report

Delivering sustainable economic development in resource-rich nations: beyond the EITI and international extractive industry transparency initiative

Wednesday 20 – Friday 22 March 2013 | WP1213

In association with:

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In October 2011, the European Commission proposed that EU-listed and large unlisted extractive and forestry companies should publicly disclose their revenue payments to governments worldwide – a revision of the EU Transparency and Accounting Directives mirroring the equivalent legislation of the US Dodd-Frank Act (section 1504) – designed to make business and government more accountable for the reporting and application of payments made and received in the process of fossil fuel, mineral and metal extraction.

With 'open economies, open governments and open societies' at the forefront of international thinking on how to foster prosperity in mature, emerging and developing markets alike, will these measures alone be an effective tool in unleashing the potential of natural resources to stimulate balanced and sustainable economic and social development in resource-rich nations, as well as promoting good governance and transparent institutions? How much should developing states with mineral wealth rely on the power of the private sector to drive economic activity and what impact does this have on the international donor and local civil society landscape? What other initiatives should be considered when seeking to deliver on these same objectives?

This Wilton Park conference offered participants the opportunity to debate the intention and potential effectiveness of the proposed legislation and other programmes in delivering economic prosperity and transparent governance from the perspectives of multinational extractive organisations, civil society and policymakers alike.

Key points

- Tax, trade and transparency are the tools needed to transform the revenues from mineral resources into sustainable development.
- How can resource-rich countries be encouraged to sign up to EITI? It is important for the G8 countries to act quickly and decisively. The G20 countries and BRICs (Brazil, Russia, India and China) also need to participate.
- Reports must be meaningful to all stakeholders (civil society, business and

government) but at the same time the obligations must make sense for business.

- On 15 June the Prime Minister, Deputy Prime Minister, Chancellor, and Business Secretary, will meet to decide how to frame the debate around national and international policy on tax, trade and transparency.

Introduction

"Transparency is a tool for negotiation between citizens and government."

1. The 'Dutch Disease' and the 'resource curse' are both well-known phenomena arising from mineral extraction in developing countries. The resource curse is prevalent when there is a rapid acceleration in economic output followed by a subsequent deceleration. The phenomenon occurs when there a lack of political will to manage boom industry revenues in the long term. In other words, developing country governments are content to live in the here-and-now with little regard for the future of the country. Corruption, conflict and bad governance can be prevalent in countries affected by the resource curse. There also tends to be political, economic and geological fragility.
2. Substantial investment will be needed if international transparency legislation is to have a significant and long-term impact on sustainable development, including building the capacity of institutions in developing countries, strengthening civil society organisations, regulating bureaucracy and reforming judicial processes. Access to information is required in order to generate and inform the debate. Active participation in procurement is also important.

International transparency legislation: a powerful force to drive accountability measures and economic growth?

" The amount of data gathered is of less importance than how the data is used to achieve outcomes. Transparency is the right place to start but the wrong place to stop."

3. Is the expense of producing reports for Dodd-Frank or the Extractives Industry Reporting Initiative (EITI) justified by the usefulness of the information provided? The information must be useable and the important facts must not get lost in a deluge of data. Reports need to move beyond a simple compilation of numbers. Disclosure must include contracts and licences as most corruption risks occur at the contract stage (environmental issues have come to light as a result of contract disclosure).
4. The risk levels of contracts are influenced by the strength of whichever legal framework has been used. A robust legislative framework probably means there are fewer loopholes and therefore fewer risks. Model contracts are optimum. Brazil has open contracting but has little interest in the EITI.
5. The challenge is defining the components that everyone agrees should be disclosed. Having an open dataset is important - information must be accessible and user-friendly if it is to improve government and business practice. Those who produce the data should not try and guess how it will be used; the data should be left raw. There are concerns around the implications of aggregating data.
6. Countries have implemented the EITI in different ways and therefore the reporting requirements can differ in terms of thresholds and standards. International businesses must contend with global reporting requirements which can mean they must produce two or more reports in different formats, but which essentially include the same information. This duplication might mean that fewer companies voluntarily choose to comply with EITI. Dodd-Frank and the EU Directives also require different datasets.
7. Rio Tinto (RT) has voluntarily expanded its reporting to include tax payments for all its activities, not just those which are extractive related. As RT only wanted to produce one report for US & EU legislation they opted not to fully comply with Dodd-Frank regulations whilst awaiting final approval of the EU Directives. RT's reporting costs $200,000, but subsidiary companies can be utilised to collect and collate data. This helps reduce the overall costs and ensures that all information is captured. This raises the broader question of who should pay for transparency and data generation.

“Should a modality be added to the EITI requirements, rather than trying to make the EITI fit all of the reporting requirements.”

8. The extractives companies perceive the EITI as the "gold standard" due to its clarity, consistency and comparability. Producing reports does not require companies to undertake extra research and the "answers" are found in one document. Having said that data provokes questions as well as providing answers.
9. Dodd-Frank is less easy. Potential problems with Dodd-Frank include not requiring government-to-company money transfers (typically tax breaks) to be disclosed. For banks, 'projects' tends to mean loans, but the problem is that maximum investments may not be measurable. Other sectors can struggle with interpreting 'project' in their business context; although there is a view that whenever there is a contract there is a project.
10. The perspective of the giant oil companies is that conducting business in an open manner is good for business, so compliance with EITI, Dodd-Frank and EU Directives sets a normative standard. However having several different sets of rules and regulations is wasteful so there must be a concerted effort to agree on one global standard. On the other hand, businesses agree that as different types of data are needed by different processes a "one size fits all" approach would fail.
11. The mantra should be to keep it simple and use one methodology - the EITI. EITI should have a similar status to the unique status of the Global Compact as regards corporations and human rights.
12. Project-by-project reporting is only effective if duplicate reporting is avoided and it is made clear what datasets will be used and by whom. It was suggested that it might be preferable to dispense with project reporting because taxes are levied at the entity level so do not fall under any of the current reporting processes. On the other hand a project-by-project approach differentiates between minerals and locations - should different reporting methods apply to different sectors?
13. There is also the issue that applies to all voluntary initiatives, which is that those who comply may suffer a competitive disadvantage. This disadvantage is more acutely felt before the voluntary initiative (in this case EITI) has reached critical mass. The EITI applies differently in every country, ranging from mandated (Liberia), to redacted (Brazil) and voluntary (Azerbaijan). Companies can be affected very differently dependent on where they are operating. It is also impossible to make country comparisons. Businesses and countries are very concerned about the lack of a level playing field, but this reflects that it can be easier to negotiate bilateral rather than multilateral solutions. Should companies who do not fully disclose their payments and contracts be subject to penalties? Should countries that do the maximum get some kind of special recognition?
14. The Dutch coal companies operating in Columbia set a threshold to avoid "blood" coal. This should lead to better competitiveness and accountability, however what, if any, consequences are there for those companies who do not adhere to the initiative?

“The Dutch coal companies operating in Columbia set a threshold so that none of the coal mined was ‘blood’ coal.”

15. One of the weaknesses of the EITI is its voluntary nature whereas the EU Directives and Dodd-Frank are legally binding. However there is a move to try and make EITI mandatory as well. There should be a review about what is and is not working in different countries.
16. The EU Directives may cover both extractive and logging sectors (the proposal to require all payments of €100,000 or more to be disclosed still needs approval). The comprehensive nature of the EU legislation is welcomed. Unlike the US legislation, the EU has a built-in review after three years and this includes a review of country-by-country reporting. There is pressure to be able to prove that reporting is useful by the time of the review.
17. In addition to EITI and the US & EU legislation, the Natural Resources Charter has been established to try to close the gap between transparency for its own sake and transparency leading to better accountability. However more is needed.

18. It can be counter-productive to single out industries- it is probably better to take a more comprehensive approach. The role of China cannot be overlooked, particularly with regard to China's growing influence in Africa. China has been known to swap resources for infrastructure.
19. One of the big challenges is the lack of a single effective tool to drive transparency but this may be due to the complexity of the issue. The Open Government Partnership, for example, uses general principles of transparency but applies them at a localised country level in order to improve the local situation.

Beyond reporting I: can innovation in aid and partnerships drive extractive sector growth and transparency?

20. The development community and the international finance institutions have explored ways of using their influence to improve governance and reduce poverty. According to civil society, the power of aid is still with the traditional donors but the discovery of mineral wealth in developing countries, as well as the financial crisis, has shifted the balance. For example, Turkey and BRICs have been increasing their exploration and exploitation of mineral resources.
21. It is important to remember that the extractives companies have a legitimate voice as they are one of the main stakeholders. Extractive companies view revenue transparency positively but not as a necessity to achieving 85% of their goals in emerging markets. Transparency projects tend to be the responsibility of Corporate Social Responsibility (CSR) departments but CSR does not usually fall within the main business structure which is a fundamental problem and concern. Unlike donor aid, company taxes are mandatory and must be paid to the state, therefore companies are unable to use the threat of withholding taxes in order to force host states to take measures to combat corruption or improve governance.
22. Revenue transparency tends to not be high on the agenda of most host countries and this puts companies in a potential dilemma with their primary contractual partners. However companies acknowledge that civil society organisations and the general populations of host countries value transparency. Their interest may flow from concerns about corruption or the environment, even when private investment is delivering in terms of infrastructure and jobs.
23. Information is an important tool for negotiation between citizens and governments but there is a challenge in how translate information into action. The G8 hackathon will deal with how to translate trade data into use. The public needs to know how to contextualise the data - what does a good regime look like and is it possible to read between the lines? That being said, it is important to bear in mind that transparency legislation has a deterrent effect, even if that effect is unquantifiable.

Beyond reporting II: institutional reform at a local level that makes a difference

24. Local legislators may not understand international objectives; in fact localised politics can be volatile.
25. Indonesian politics are challenging. There have been four years of multi stakeholder dialogue over the problem of licensing. There are 10,200 locally issued mining licences and these companies are only being held accountable to specific districts or provinces.
26. The aim of the provision of information is to enable citizens to approach their local government officials and hold them to account in terms of how and where the taxes that were earned from extraction in their area are spent. Transparency is the means to this end, but functioning rules and institutions are also needed in order to get there.
27. Nearly 90% of socio-economic projects are carried out at the local level and include supply chain, employment, capacity-building projects for local civil society, welfare

(education and health) and enterprise development. In fact welfare projects are particularly important if the jobs that are being created are unsuited to locals because they are so specialised. Companies are cognisant of local needs and so employ a structured approach to local procurement of goods and services. They can also work at a micro level, e.g. in Mozambique road deaths were reduced from 3 per day to zero on a specific highway, and there has also been good work around increasing the lifespan of tyres in order to decrease water pollution. It can be in companies' own interests to reduce diseases like malaria in order to reduce the impact on productivity of their workforce getting sick.

28. In many countries access to key information by civil society and the general population is highly restricted by the government. However in Mozambique, for example, lack of access cannot be blamed on the state as computer terminals are made publicly available but are not used. Having said that in some countries low levels of literacy can be a barrier.

29. Where local civil society is weak this will limit use of reports. In fact it may unrealistic to rely upon mobilisation of civil society. The capacity of local government must be improved to help ensure that the revenues allocated are used effectively, and to prevent leakage. Corruption tends to be linked with low salaries and old laws. Institutional training is important for all stakeholders, but especially at the local level. This leads to the regulation of business norms and practices and increases social strength. However the cycle of elections can be challenging; when people move in and out of roles the continuity of discussions between stakeholders can break down.

30. The Targeted Transparency programme in Mexico works to increase partnerships between the state, civil society and citizens, by providing useful tools to help citizens access and use report data effectively. Predictably, implementation of this programme has not been easy and has required a modification of the culture of government. So far the programme has led to an amelioration of quality of life for the general population which is a step towards the ultimate goal of sustainable development.

31. There can be discrepancies between money reported as paid to the state by companies, and the amount of money that is actually received by the state. When millions of dollars "disappear" it can affect the country's credit rating. Budget transparency is not enough and does not tell the whole story. Open contracting and contract transparency are required.

32. One way to improve local capacity is to create capacity-building toolkits, tailored to target audiences and the local situation. This will allow local civil society organisations to focus on the impact of the extractive sector on the local population. Capacity building must be government-led but there is also a role for companies.

33. Transparency processes are not just a technical exercise; it is important not to lose sight of the power of politics in the revenue transparency debate.

Beyond reporting III: how can better fiscal transparency and governance be leveraged to enable resource-rich markets to attract more development capital and expand multilateral trade?

34. When it comes to investment and development of extractives there is a coalition of the willing whose primary challenge can be to overcome the restrictions imposed by dependency on outside funding. One of the problems that host countries have is that they are starting from a position of weakness. There may not be a long-term investment strategy and negotiating capacity may be weak. The Natural Resources Charter takes a scorecard approach and seeks to provide the necessary tools to government and civil society to help them avoid mismanagement.

35. Companies need to take care not to become complicit with corrupt governments. On the other hand it should not be companies' responsibility to monitor or justify how the taxes they have paid have been used, and companies are not responsible for

developing national infrastructure plans.

36. Investors can take a very different attitude towards transparency due to the nature of their role and interests. The bottom line is that investors can be solely driven by profit. Transparency and opacity of accounting can be unattractive to them if their priority is obtaining the least risk possible. Disclosure of contracts risks those contracts being renegotiated. On the other hand reporting can be seen as reducing risk, e.g. it helps avoid dual taxation. Many investors see Dodd-Frank as a positive, so investor needs and transparency are not necessarily incompatible. Investors are coming under increasing pressure to look at issues like environment management, health and safety, community engagement, etc.

37. EITI compliance can lead to better credit ratings, which means easier borrowing. There is an incentive for resource-rich countries to improve their sovereign debt rating. Credit ratings agencies can give ratings that don't fully capture conditions in a given country, e.g. Russia gets high ratings because it pays its debts, but the ratings don't reflect corruption levels in Russia

Making transparency work to deliver development

“ Will transparency become the new norm?”

38. As one of the leading agencies in extractive industry investment, the World Bank has the advantage of being an investor, stakeholder and process developer for the extractive industries. The African Development Bank is also demanding better management in extractives. They believe that good management leads to better development outcomes and transparency is one of the facilitators. However the fear is that transparency will make life even harder for those who are negotiating on behalf of the developing world. Anglo American and other big companies tend not to invest in countries which are being observed by Global Witness. Another major concern is that alternative funders may not share the same priorities.

39. The Financial Action Task Force (FATF) is tackling transparency in tax, beneficial ownership, aggressive tax avoidance and tax evasion. Tackling these issues is fast becoming 'the new normal'.

40. Up to 25 countries could implement petroleum contract disclosure legislation, including Nigeria which is one of the most important resource-rich developing countries. Countries need help understanding these contracts and with monitoring their performance over time. In fact openness of contracting may make it difficult for countries (and companies) to negotiate subsequent contracts, which can lead to reluctance to disclose.

41. Will better transparency lead to a reduction in corruption? This will depend on the level of transparency. To have the best chance of achieving this outcome there must be contract transparency, as well as transparency of country-to-company and company-to-country payments. It is also queried as to whether the unregulated stock exchanges will grow in importance and whether they will implement transparency requirements.

42. It is important to keep in mind that all extractive sector stakeholders seem to want the same overlaying features but views about the practicalities of how to achieve this often significantly differ. When it comes to the detail should governments, corporates or NGOs hold the pen?

43. There is concern about how smaller companies are able to comply given their lower capacity. So should the data requirements be proportional to size? Most are willing to comply with full disclosure if a partner government requests it, as long as the information disclosed is high level However, gaps appear when small companies sell their rights to larger ones and the difference in the concessions received are not captured - also known as "flipping". There are examples of legislation effectively tackling "flipping" in the context of land deals.

Conclusion

44. The conference was able to start chipping away at some of the ideological differences between governments, civil society and business, by realising that individual views become strategic actions when they are put together.

45. It is too early to predict the impact of the US Court of Appeals case involving the American Petroleum Institute's challenge to Dodd-Frank. In fact, in only one year's time, the global extractive transparency landscape will be very different due to the lawsuits, the implementation of the EU Directives and the new EITI standards. In fact, political interest generated by coverage of the G8 and G20 agendas in that regard may further extend global transparency standards. However, there is a need to better understand what the EITI and other transparency initiatives are achieving before expanding them. One of the EITI's current strengths is that its reporting captures vital information on countries which have not signed-up to EITI - but will this continue? How will the new EITI standards impact the other processes?

"EITI reporting will capture vital information on countries which are not signed-up to EITI. Will this continue?"

46. Transparency is particularly relevant to the oil, gas and mineral extraction sectors, where resources are finite. It would be excellent if transparency concerning ownership of land could also be prioritised and enhanced.

47. The overall goal of transparency is to improve governance and accountability on a sustained level, which will in turn support international achievement of the Millennium Development Goals and their successors and may ultimately justify the creation of a new goal specifically related to transparency and governance.…

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