Transparency & ACCOUNTABILITY Initiative

Extractive industries

A guide to best practice in transparency, accountability and civic engagement across the public sector

The Transparency and Accountability Initiative is a donor collaborative that includes the Ford Foundation, Hivos, the International Budget Partnership, the Omidyar Network, the Open Society Foundations, the Revenue Watch Institute, the United Kingdom Department for International Development (DFID) and the William and Flora Hewlett Foundation.

The collaborative aims to expand the impact, scale and coordination of funding and activity in the transparency and accountability field, as well as explore applications of this work in new areas.

The views expressed in the illustrative commitments are attributable to contributing experts and not to the Transparency and Accountability Initiative. The Transparency and Accountability Initiative members do not officially endorse the open government recommendations mentioned in this publication.

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Extractive industries (oil, gas and mining)

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'Breakdowns in governance are generally recognized as the principal reason why natural resource wealth does not generate more sustainable development.' – IMF, 2009

More than 50 countries depend on oil, gas and hard minerals as their most important sources of government and export revenues. Large-scale fisheries and leasing of agricultural lands are also becoming important sources of revenue. Perhaps in no other sectors are economic outcomes and the openness of government more closely linked.

Sub-soil minerals are deemed to be public assets in most parts of the world. Fisheries, lands and forests can also be public assets. As the government is managing such resources in trust for the people, the people have a right to know what is being done with their natural wealth.

Establishing clear transparency and accountability requirements will increase policy efficiency, reduce opportunities for self-dealing and diversion of revenues for personal gain, raise the level of public trust and reduce the risk of social conflict. An informed and engaged public can hold the government to account, but will also help ensure that complex, large-scale projects meet government standards for environmental and social protection as well as revenue generation.

The overarching goal is comprehensive transparency and accountability in the governance of natural resources, from the decision to extract to the granting of concessions, the collection of revenues and the management of resource revenues. Producing, importing and investing countries have a shared interest in advancing open government in natural resource management.

Resource-producing countries

Initial steps

Goal

To establish openness in granting access to natural resources and in the fiscal returns for the state.

Justification

Fiscal policies and contractual terms should ensure that the country gets full benefit from the resource, subject to attracting the investment necessary to realise that benefit. Governments and investors are generally better served if there are clear rules applicable to all investors in similar circumstances. Transparency and uniform rules help ensure that operators know that treatment is non-discriminatory, reduce opportunities for corruption and may reduce demands from individual investors for special treatment. More broadly, resource decisions involve long-term commitments. These will be more credible and less subject to abuse if citizens understand their rationale. Citizens can only be confident about the integrity of the resource extraction process if they know about it.

Recommendations

1. *Make all rules and regulations for natural resource licences and concessions available in a public database, with clear definitions and explanations.* Countries could publish all rules and requirements for resource development, including fiscal terms, property rights and social and environmental protections, to give citizens a baseline against which to monitor and measure government policies, as well as levelling the playing field for investors. In addition to oil, gas, mining, forestry and fisheries, there is an acute need for disclosure of rules and regulations around the leasing of agricultural lands.
2. *Make public the terms of each concession the state has granted to exploit a natural resource.* Countries could disclose the terms and counterparties of all natural resource deals to allow legislators and citizens to monitor whether the laws and regulations are being followed and to assess the quality of deals being made on their behalf. The IMF 'Guide on Resource Revenue Transparency' and the Natural Resource Charter consider publication of contracts to be best practice. The fullest possible information could be disclosed to the public relating to the granting of each concession, including public offering documents, lists of pre-qualified companies, successful and unsuccessful bids, contracts and other agreements signed with extractive companies, including the identity of the beneficial owners. The independent public agency that has oversight of the rights and the implementation of contracts could make regular and timely public reports on any anticipated and concluded allocation of natural resources licences.
3. *Issue regular and detailed reports of resource-related revenues in the public domain.* Countries could voluntarily publish all natural resource-related revenues – including signature bonuses, royalties, taxes, payments in kind and transit revenues – in a central location for public consumption. Countries could do this by joining and implementing the Extractive Industries Transparency Initiative (EITI), and/or by independently undertaking to publish resource revenue information in a proactive, timely and comprehensive manner. All operating resource companies can be required to disclose project by project production volumes, costs, revenues and payments to the state. Revenue transparency is essential to ensure public accountability for both income and spending. Resource-related payments are often generated outside normal budgetary processes, so a dedicated disclosure procedure may be needed to capture these flows in public data.

Country examples

For the 41 resource-rich countries surveyed in the Revenue Watch Index 2010, the average score for transparency on access to resources was only 44 out of 100. The Revenue Watch Index finds that 22 countries disclose information regarding licensing procedures. Colombia, Liberia, Peru, Timor-Leste and the USA publish minerals contracts/leases on public lands in full. Afghanistan's new minerals policy calls for public tenders and publication of bids as well as resulting contracts. Ghana's 2011 Petroleum Revenue Management Bill requires the government to publish information on receipts from petroleum companies – online and in national newspapers – on a quarterly basis. In addition, audited statements of Ghana's oil accounts will be made public this year. Thirty-three mineral-rich countries, ranging from Azerbaijan to Norway and Peru, are implementing EITI, which requires dual disclosure by companies and the government of resource-related payments and receipts. A national multi-stakeholder committee of government, companies and civil society, creating an automatic public oversight mechanism, oversees the process. Liberia, Mongolia, Nigeria and Norway are considered to provide the most comprehensive information in a clear form through EITI.

More substantial steps

Goal 1

Goal

To make available more detailed information to allow the public to better assess and influence the quality of public natural resource management.

Justification

Successful natural resource management requires government accountability to an informed public. Resource projects can have significant positive or negative local economic, environmental and social effects, which should be identified, explored, accounted for, mitigated or compensated for at all stages of the project cycle. Alongside disclosure of information, governments should adopt transparent processes for taxing, collecting and managing revenues and for taking spending decisions. Transparency can improve the efficiency and effectiveness of government policies. Public disclosure requirements can improve the quality of data the government gathers and maintains. This makes it easier for relevant bodies such as financial, energy and mining ministries, as well as environmental and regulatory agencies, to do their jobs. Reliable and frequent data can make it easier for governments to plan and manage their budgets and long-term development plans. Transparency also reduces the cost of capital.

Recommendations

1. Publish environmental and economic impact studies for all natural resource projects. Such reports will help the public assess the costs and benefits of resource development.
2. Publish regular reports on the contribution of resource sectors (hydrocarbons, mining, forestry, etc.) to the budget and other allocations. Countries could regularly publish all revenue streams derived from the natural resource sector that contribute to the government's budget in a timely and comprehensive manner. Not all resource revenues go into the budget. Some may be reinvested by a state-owned company, distributed directly to citizens or put in a natural resource fund.
3. Publish resource-related revenue transfers to sub-national governments. Countries could regularly publish all fiscal transfers to the sub-national level that relate to natural resource revenues or extractive activity. In a number of countries, sub-national units get a defined share of resource revenues, and these transfers may be very large and not be part of the national budget. Direct distributions to citizens should also be disclosed.

Country examples

The Revenue Watch Index found that only 15 of 41 leading minerals-producing countries publish impact reports. These include Botswana, Brazil, Chile and Tanzania. Until 2010, Russia published the contribution of its resource sectors to the budget. In 2003, the Nigerian Ministry of Finance began publishing monthly in newspapers how much oil money was being transferred to each governor and, eventually, to each municipal authority. This was the first time that the public had had access to this information. Ghana and Indonesia have included sub-national transfers in their EITI templates.

Goal 2

Goal

To extend transparency and accountability rules to state institutions with important operational responsibilities in resource management.

Justification

The effectiveness of sovereign wealth/stabilisation funds will be enhanced if there are transparent rules or guidelines for triggering asset accumulation and withdrawals, with any deviations subject to public debate and formal procedures. Reliable and frequent data can make it easier for governments to plan and manage their budgets and long-term development plans. Similarly, state-owned enterprises are more efficient when decisions are transparent and subject to market tests. Public oversight can help protect against the entrenchment of bad practice leading to poor outcomes. Citizens are best able to hold governments and companies to account where they, their parliamentary representatives and civil society organisations are well informed and have the capacity and freedom to act on information they obtain. It is increasingly accepted that citizens have a basic right to information about government activities and use of public assets.

Recommendations

1. *Publish all data related to sovereign wealth/stabilisation fund holdings and management.* Countries could publish (a) regular reports showing contributions to the fund, earnings, holdings and withdrawals/distributions, including to the budget; (b) investment rules for the fund; and (c) regular independent financial audits. A growing number of resource-rich countries are creating such funds to manage part of the revenues generated by resource sectors, and many manage hundreds of billions of dollars. Some funds are extremely opaque, others fully transparent. As such large sums of public monies may be transferred and invested by these funds, they should be as transparent as the national budget.
2. *Publish audited accounts for all state-owned extractive companies based on internationally recognised accounting standards.* Countries could regularly publish independent audit reports for all state-owned companies involved in natural resource exploitation at home or abroad. Of 41 countries in the Revenue Watch Index, 35 have a state-owned company (SOC). As their operations directly affect the success and impact of public resource development, their operations should also be open to public scrutiny. More transparent SOCs also tend to be more successful and profitable for the state.
3. *List all state-owned extractive companies on a stock exchange.* Even if the state retains the majority of shares, listing will give both investors and the public (who are also shareholders) access to a regular and detailed flow of information on the company.
4. *Ensure regular and free participation of parliamentarians, civil society and the media in the oversight of the natural resource sector.* Countries could guarantee systematic legislative and public hearings around licensing rounds and all major concessions to ensure that they align with the development aspirations of the country and to minimise risks of corruption. Countries could create platforms for engaging civil society in the monitoring of contracts (particularly environmental and social aspects) and the oversight of revenues from the natural resource sector, including through initiatives such as the EITI.

Country examples

Timor-Leste and Norway have transparent resource funds. All of these recommendations are consistent with the Santiago Principles, a set of 24 voluntary principles and practices agreed by major sovereign wealth fund owners to ensure an open international investment environment. Norway's Statoil and Brazil's Petrobras are publicly listed and publish their audits.

Transparency International's report on the transparency of companies in the extractive industries – which assesses 44 major oil and gas producers (20 international and 24 national oil companies) – finds that non-listed SOCs are less transparent than peers that are listed on a stock exchange. For example, Petronas and Sinopec (listed SOCs) disclose more information on their anti-corruption programmes, their organisation and country operations than their unlisted peers Sonangol, PDVSA and Sonatrach. Norway's parliament has played a central role in policy discussion regarding oil licences and the role of the petroleum sector in the country's development strategy. In Sierra Leone, the access of both public and parliament to the agreement offered to London Mining by the government led to the review of the contract. In Brazil, the NGO IBASE has developed a sophisticated scorecard to monitor the social and environmental practices of extractive companies. The inclusion of civil society in the policy dialogue around the extractive sector is one of the most remarkable accomplishments of the EITI in the 33 countries in which it is implemented.

Most ambitious steps

Resource-producing countries

Goal

To allow continuous public monitoring of natural resource development projects around the country.

Justification

The development of a country's natural resources should be designed to secure the greatest social and economic benefit for its people. Extractive resources are public assets and decisions concerning their exploitation and use should be a matter for public debate. Resource governance is strengthened when those decisions are subject to well-informed public scrutiny and when decision-makers are held to account.

Recommendations

1. *Create a national public web registry of all natural resource concessions.* Countries could create a national online registry that includes physical demarcation, identity of leaseholders, production volumes, costs and revenues for each lease.
2. *Create national policy and performance benchmarks and monitoring.* Countries could create a national policy on natural resources that (1) identifies a long-term strategy for how the sector fits into national development; (2) sets clear economic, social and environmental performance benchmarks for the sector; and (3) identifies a scheme for monitoring the country's progress.

Country examples

Angola has begun to do this with its oil blocks, updating monthly. South Africa has launched a web platform that will enable greater openness on licensing and concessions in its mining sector. Ghana is establishing a Public Interest and Accountability Committee with civil society participation to oversee the petroleum sector. The New Partnership for Africa's Development (NEPAD) has committed to develop a self-monitoring and peer review process to benchmark extractive resource management, using the Natural Resource Charter as a platform.

Capital-providing countries

Goal

To have the home regulator of resource companies and/or providers of capital for the natural resource sectors observe and promote high standards of openness.

Justification

Some argue that applying strict standards of openness will reduce a resource-rich country's ability to attract necessary investment to the sector. If capital-exporting countries adopt high transparency standards, that concern (or excuse) disappears. Transparency also reduces financial risk for investors and enhances security of supply for consumers.

Recommendations

1. *Require that all listed companies in the jurisdiction disclose their resource-related payments to governments, country by country and project by project.* Payments, with underlying cost and revenue data, will enable citizens to know how much public value is being derived from national resource wealth and assess how economic rents are being shared between the state and the investor.
2. *Apply International Finance Corporation (IFC) transparency requirements to all export credits, political risk guarantees and other forms of support to extractive projects.* Countries could require all export credit agencies, multilateral investment guarantee and other sovereign lending and insurance arms for natural resource projects abroad to publish information on extraction projects. These projects are highly dependent on such official support, so transparency standards by export credit agencies and other sources of project finance and investment guarantees can help to increase openness and accountability globally.
3. *As part of aid transparency, report in detail and in one place all foreign aid funding for extractives-related projects.* Transparency in overseas development assistance (ODA) flows (in cash and in kind) provided by bilateral and multilateral agencies would strengthen aid effectiveness in the sector, increase openness and accountability and complement transparency from lending institutions.

Country examples

The 2010 Dodd-Frank Act requires, inter alia, all companies listed in the USA to publish the details of payments relating to resource extraction made to governments, country by country and project by project. Similar legislation is under consideration in the EU and Canada. Many companies, including Newmont and Talisman, publish some country-by-country payment information voluntarily. Congress has required the US government's political risk insurance agency Overseas Private Investment Corporation (OPIC) to follow IFC transparency standards for extractive projects. The World Bank recently began to map and disclose its support in the natural resource sector and beyond on a project-by-project basis. The practice could be universalised to other donors following IATI principles.

Learn more about best practice in natural resource governance at: http://www.naturalresourcecharter.org/

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