BOOM, BUST AND BETTER POLICY: CRISIS LESSONS FOR RESOURCE RICH COUNTRIES

Advocacy Knocks: Transparency Reform Opportunities Post-Financial Crisis

Julie McCarthy and Sarah Pray

Abstract

The devastation wrought by the global economic crisis has drawn new international attention to the importance of transparency. In this paper, former Publish What You Pay US coordinator Sarah Pray and Revenue Watch Institute advisor Julie McCarthy argue that the new attention creates an opportunity for advocates to exercise new leverage and seek untraditional partners in the effort to promote openness and accountability in resource rich countries. The authors examine current efforts to promote good extractive industry governance within and between G20 governments, including the promulgation of new international accounting standards and requirements that companies listed on public stock exchanges publish their payments to extractive rich governments. The paper details new openings for advocates to work with private extractive companies and state-owned oil companies to examine the mutual benefits that citizens and investors can obtain from better financial reporting. With the crisis increasing the leverage of International Financial Institutions, the authors advise citizens and civil society groups to encourage IFIs to require borrowing governments to commit to transparency. The paper also examines the roles that lenders, credit rating agencies, investors and export credit agencies can play in promotiing more detailed disclosures of financial transactions between international companies and resource rich governments.

"A crisis is a terrible thing to waste."
— Paul Romer, economist

I. Introduction

The financial crisis has opened a transitory window of opportunity for the revenue transparency movement to push for mandatory reforms. During the recent commodities boom, revenue transparency activists seeking to move resource rich countries have spoken from a position of relative weakness, as have oil companies, consuming countries and international financial institutions. Accordingly, most advocacy efforts were focused on countries where the political will was strongest, emphasizing voluntary good governance efforts like the EITI.[1]

The global financial crisis that began in mid-2008 reversed the fortunes of many countries. It is important for activists to pause and appreciate the implications of this climate shift for advocacy efforts. Multi-lateral lenders, key G20 members and investors—who together would bear the standard of new mandatory transparency measures—are already engaged in intense debates over regulatory fixes for a broken financial system. Though the importance of continued civil society engagement in the EITI process has not diminished, the changed environment calls for a major reprioritization of mandatory options, while transparency has new momentum. Policymaker rhetoric since the crisis has been laden with references to transparency and accountability in the financial sector. U.S. President Barack Obama has said, "We ought to set clear rules of the road that promote transparency and accountability. That's how we'll make certain that markets foster responsibility, not recklessness."[2] U.K. Prime Minister Gordon Brown echoed, "…we must now reform the international financial system around the agreed principles of transparency, integrity, responsibility, good housekeeping and co-operation across borders."[3]

Undoubtedly, the crisis has also created challenges to leadership and reform on extractive transparency. The US and the UK—two countries that have played a leading role to date—were severely weakened by the crisis. Other G20 countries like China and Brazil, which have historically been more reluctant to support transparency efforts, have seen their strength and influence grow. And as the economy slowly picks up, public outrage and calls for global financial reform will recede, returning the transparency campaign to its all too familiar uphill struggle.

Despite these challenges, the crisis has brought home the real-world value of transparency for average people more powerfully than any campaign or brochure ever could. Advocates can now point to the global meltdown as authoritative empirical evidence of the hazards of opacity. Balance of payment crises and changes to financial arrangements present more and more urgent openings than we have seen in years. By targeting lenders, specifically the international financial institutions (IFIs), advocates may now be able to more directly influence the behavior of both governments and

[1] The views expressed in this paper do not reflect the position of the institution. The authors are responsible for all errors and omissions.

[2] http://www.whitehouse.gov/blog/Normalcy-Cannot-Lead-to-Complacency.

[3] http://www.telegraph.co.uk/finance/financetopics/financialcrisis/3189517/Financial-Crisis-Gordon-Brown-calls-for-new-Bretton-Woods.html

companies. Likewise, the Publish What You Pay campaign has laid strong groundwork with historically neglected actors like accounting and credit regulatory bodies, private banks and export credit agencies, which have now gained prominence in the post-crisis landscape. Overall, the current level of international attention on fiscal transparency and accountability is unprecedented in the history of the revenue transparency movement and cries out for a strategic reassessment of campaign targets and approaches.

This six-part paper aims to provide the beginnings of campaign strategy for a "renaissance" within the Publish What You Pay movement. Each section concludes with concrete recommendations for campaigners on how to take advantage of post-crisis developments to push mandatory measures. The first section provides background on the changing international context for resource rich countries and key stakeholders who have recently risen to prominence. Section 2 looks at international political efforts under the G20 umbrella, including regulatory prospects. Section 3 assesses opportunities for advocacy with companies, both private multinationals and national oil companies. Section 4 examines the revived influence of multi-lateral lending institutions and suggests that activists focus on promoting and monitoring new governance commitments within producing countries. Section 5 looks at new, or newly-prominent, alignment between investor interest and the agenda of the revenue transparency movement, and identifies openings for engagement. Finally, Section 6 highlights key risks that the financial crisis presents for the movement and makes recommendations on how to mitigate these risks in the near term.

Summary of Recommendations:

- Advocates in G20 countries should urge policymakers to include natural resource revenue transparency in the broader post-crisis regulatory reform framework.

- Activists should organize a global campaign starting in 2010 to rally support for an international accounting standard of country-by-country disaggregated disclosure of natural resource payments. This includes increased networking between NGOs promoting listing requirements and investors and legislators interested in regulatory reform.

- Activists should organize domestic campaigns that monitor and publicly report on Sovereign Wealth Funds' implementation of the Santiago Principles. International partners should assist in these efforts, including collating and presenting the results of civil society SWF monitoring to key international partners and at relevant global forums.

- Activists should take a long-term approach in their dialogues with international oil, gas and mining companies, cultivating their support for mandatory disclosure reforms as a way to improve investment stability. Investment risk is of particular concern during commodity downturns, when governance and development-related tensions tend to rise in producing countries.

- Activists should incorporate companies and governments from emerging markets including China, Russia, Brazil and India into strategic advocacy planning. Openings include outreach from home governments and NGOs, multi-lateral

approaches such as EITI, and direct engagement through requests to meet with diplomats and company representatives at the national level.

- Activists should engage with companies entering into lending arrangements with governments and National Oil Companies, encouraging disclosure of contracts, revenues and expenditures.

- Activists should request meetings with their country IFI and Ministry of Finance representatives, and demand that extractive sector transparency conditions are included in their countries' loan agreements.

- Activists should examine relevant clauses and Development Policy Notes/Letters of Intent appended to IFI loan agreements for government commitments on extractive and fiscal transparency. They should conduct outreach with IFIs, companies and the media, to ensure that governments know they are being monitored. [4]

- Activists should push IFIs to include policy support for the development and implementation of long-term diversification strategies in post-crisis loan agreements.

- Activists should work with major shareholders like pension funds and even individual investors to introduce shareholder resolutions on mandatory country-by-country payment disclosure and company support for new accounting standards and listing requirements that incorporate this disaggregated standard.

- Activists should use the failure of the credit rating agencies to adequately assess risk as evidence for the need for mandatory disclosure requirements, and advocate for the integration of disclosure requirements into agency reforms.

- Activists should monitor companies that are looking to sell debt, and advocate with lending institutions, such as private banks, that transparency be part of financial agreements.

- Activists should launch a campaign to include governance guidelines in the Equator Principles, using the IFC's revised guidelines around project finance and contract disclosure as the baseline standard.

- As Export Credit Agencies get more involved in financing extractive projects, activists should push for a uniform transparency standard in these lending arrangements, and should focus the argument on the corporate interest in such a standard.

[4] These documents are typically included as appendices to the loans agreement documents.

I. A Changing Scene for Extractive Industries and Advocates

Producing Countries

The global economic downturn impacted oil, gas, and mineral-producing countries via both the bursting of financial-market bubbles and declines in natural resource prices and production. The crisis has forced nearly all governments to reevaluate their economic and investment policies, and some oil, gas and mineral-producing countries have had to slash government spending.[5] From Kazakhstan and Iraq to Venezuela and Papua New Guinea, price declines and the global recession have forced dramatic belt-tightening measures that have cut into investment budgets as well as public wage bills ramped up during boom times. Africa has suffered disproportionately, given its heavy reliance on primary commodity exports and the arrival of the 2008 financial crisis on the heels of major food and energy crises.

In Botswana, the economic crisis has weakened demand and lowered prices for diamonds, and the country is seeing a substantial decline in mineral revenues. In Ghana, despite the discovery of oil and relatively strong growth rates, the fiscal situation deteriorated rapidly in 2008, due to the double shock of energy and food crises, and an irresponsible pre-election spending spree. In DRC, demand for minerals, oil and diamonds has slumped since mid-2008. Before the IMF intervened with $600 million in May 2009, Congo's foreign reserves had fallen to nearly nothing. Some African countries are delaying implementation of new tax laws and signing more concessionary investment agreements. In February 2009, South Africa proposed delaying the May implementation of a long-planned mineral and mining royalties law until at least March 2010.

Activists should be particularly vigilant about countries falling back into the 'bust cycle' pattern of giving away their precious assets on overly generous terms that will require lengthy, expensive and not always successful renegotiation once boom times come around again. For example, Mongolia's parliament recently voted to approve amendments to tax laws passed in boom time that would eliminate the country's windfall profits tax in 2011, relax corporate income tax requirements, and reduce reliance on public sector management of relevant infrastructure in order to conclude the major Oyu Tolgoi Investment Agreement between the Government and Ivanhoe Mines/Rio Tinto.[6] Countries may also be more prone to signing long-term resource export contracts on overly concessionary terms in return for large up-front tax gains to help ease their funding crunch.

Likewise, it is important to realize that the investment context for resource rich countries is changing rapidly, especially for regions like Asia and MENA where investors are piling back into emerging markets in search of higher returns. Some economists are warning of a new asset bubble in real estate, stock and currency markets that could wreak inflationary havoc on oil, gas and mineral-producing countries.[7]

---

[5] For a more detailed analysis of the economic impacts of the crisis on resource-rich countries, see Akram Esanov and Patrick Heller, *Broken Boom: The Impact of the Economic Downturn on Resource Dependent Countries*, Revenue Watch Institute, March 2010.

[6] Mongolia Civil Society Coalition for Extractive Industries Transparency, Oyu Tolgoi Investment Agreement, September 10, 2009, http://www.eiti.mn/eng/content/view/127/16/.

[7] See Alex Frangos and Bob Davis, "Fears of a New Bubble as Cash Pours In," *Wall Street Journal*,

The Extractive Industries

One major change that that advocates may encounter among companies post crisis is a decreased willingness to proactively engage in the transparency movement. When oil prices were high and resources abundant, companies were more willing to dedicate time and attention to the longer-term concerns of governance and stability in resource-rich countries. In a bust, the hierarchy of needs may make transparency a "luxury" issue to be put on the proverbial back burner.

Over time, access to petroleum and mineral resources is shrinking as demand will likely continue to grow. Despite unpredictable prices and profits, oil companies need to continue exploring for new resources to meet future demand, and the costs associated with exploration (construction, infrastructure, etc.) have never been higher. In several countries where international oil companies used to operate (Mexico, Saudi Arabia, Bolivia, Venezuela, among others), international oil companies' participation has been marginalized and exploration and production is now done mostly by the state-run NOC. There is also increasing competition from larger NOCs that operate more like IOCs (such as PetroChina, Petrobras, Petronas, etc.).

IOCs are also facing a battle on climate change, and many of the oil executives who would be tasked with the transparency portfolio (such CSR or government relations staffs) are preoccupied with cap and trade, emissions regulations and the like. All these factors combine to create fewer incentives for companies to take the lead in promoting transparency. Advocates will need to fine tune their arguments by emphasizing the "level playing field" that mandatory measures can create, particularly as international oil companies are increasingly wary of competition from emerging markets. If a preponderance of companies, including these new competitors, are subject to the requirement, just as they are to international accounting standards, stock market regulations, and other mandatory measures, they will not have to fear any competitive disadvantages from improved transparency.

G20

The G20, comprising finance ministers and central bankers from the world's major economic powers, has now replaced the G8 as the primary international forum addressing global financial reform, which means for the first time the major producing and consuming countries are sitting at the same table for most major multi-lateral economic discussions. At the height of the financial crisis, in November 2008, the G20 countries pledged to work together to increase global financial transparency, implement stricter regulations in the financial markets, and enhance international cooperation. In their principles for reform, the G20 leaders began their communiqué by citing increased transparency and accountability. They stated, "We will strengthen financial market transparency, including by enhancing required disclosure on complex financial products…"[8]

November 4, 2009, http://online.wsj.com/article/SB125729703390626817.html; GCC's 2008 Haseeb Haider, "Current Account Surpluses Dn by $50b," *Khaleej Times*, November 24, 2009, http://www.khaleejtimes.com/DisplayArticle.asp?xfile=data/business/2009/November/business_November554.xml&section=business&col= ; Uta Harnischfeger and Tom Arnold, "UAE faces new hot money threat," *The National*, November 23, 2009, http://www.thenational.ae/apps/pbcs.dll/article?AID=/20091123/BUSINESS/711239916/1005.

[8] http://www.g20.org/Documents/g20_summit_declaration.pdf.

Though the commitment to reform was declared at the G20 level, practically speaking these reforms must take place at the country level, and there are advocacy opportunities to be found with national regulators and the institutions responsible for implementing reform. Advocates may find that policymakers see resource revenue disclosure as too specific an issue amid broader and more sweeping post-crisis reforms. However, advocates can still capitalize on the general appetite for increased regulation and corporate disclosure. The primary areas for potential G20 action are in accounting standards, listing requirements and home-country regulation of national and international oil, gas and mining companies.

International Financial Institutions (IFIs)

IFI influence has always been cyclical, and 2008 marks a dramatic transition from an almost decade-long downswing to a new—likely short-lived—era of influence. During the 1990s, the World Bank and IMF were active lenders to many oil, gas and mineral producing countries across Africa, Latin America and Asia. These largely low-income countries depended on IFI budget support and project financing to help them weather low commodity prices and attract foreign investment to their risky markets.

Around 2003 things started to change. High commodity prices began generating massive new revenues in countries where the WB and IMF had previously played a major role. New lenders, particularly from China, allowed countries seeking capital free from pesky governance conditions to opt out of IFI financing. Over the past six years the IMF and World Bank saw a rapid loss of influence over policy in resource-rich nations. The IMF's loan portfolio shrank by $100 billion from 2003 to 2007.[9] Buoyed by a swell of resource revenues and Chinese loans, Angola turned away billions of dollars in financing for post-conflict reconstruction in 2005, refusing to accept the condition of an IMF staff-monitored program.[10] In 2007, Hugo Chavez threatened to withdraw Venezuela from the World Bank and IMF and began using the country's soaring oil and gas revenues to help finance debt repayments and development spending.[11] In 2007 Ecuador's President Rafael Correa announced that he was kicking the World Bank representative out of the country, claiming that the Bank had cancelled a $100 million loan in 2005 simply because Ecuador sought to use more of its oil revenues for social spending.[12] More recently, in 2008, emboldened by soaring mineral prices, the government of Ghana went against the IMF's advice and undertook a $750 billion bond sale to finance a government spending spree just prior to its presidential elections. [13]

The financial crisis of late 2008 and the attendant commodities bust have once again shifted influence squarely back to the IFIs. Since the onset of the crisis resource-rich countries have turned to the World Bank, IMF and regional development banks en

[9] "As developing countries prosper, IMF influence wanes," Bank Information Center, May 28, 2008, http://www.bicusa.org/en/Article.3783.aspx.

[10] Iley, Karin, "Angola's IMF Deal Slips Away," Reuters, August 13, 2005, http://www.dailynews.co.za/index.php?fSectionId=3532&fArticleId=qw1123927381912B225.

[11] Crowe, Darcy, "Venezuela's Central Bank Reserves Boosted By IMF Infusion," Dow Jones Newswire, September 15, 2009, http://online.wsj.com/article/BT-CO-20090915-711387.html, and "Venezuelan funding to Latin America," Bank Information Center, August 27, 2007, http://www.bicusa.org/en/Article.10380.aspx.

[12] "How Ecuador's Correa got tough on foreign interests," Reuters, Feb 14, 2009, http://www.reuters.com/article/rbssEnergyNews/idUSN1425815520090214.

[13] Faiola, Anthony, "As Global Wealth Spreads, the IMF Recedes," *Washington Post*, May 24, 2008, http://www.washingtonpost.com/wp-dyn/content/article/2008/05/23/AR2008052303187_pf.html.

masse to obtain emergency financing for everything from plugging budgets deficits to salvaging development and investment projects. Newly broke oil heavyweights like Angola and Venezuela have come rushing back to the IMF for multi-billion-dollar cash injections. Since the start of the financial crisis, the IMF, WB and regional development banks have fattened their "war chests" to increase concessionary lending.[14] In April 2009 the G-20 countries agreed to a four-fold increase in IMF resources, up to $1 trillion from the previous $250 billion level.[15] This is a particularly striking reversal for the IMF, which had seen its resources and influence dwindling in recent years. As recently as 2007, the IMF cut its staff by 15 percent. It is no coincidence that in press briefing after the 2009 G-20 summit, IMF Managing Director Dominique Strauss-Kahn used the phrase "the IMF is back" six times.[16] The World Bank has developed a raft of crisis-specific financing facilities and monitoring programs focused on helping the most vulnerable countries weather the storm.[17] African country requests for IFI assistance have been particularly abundant, due to their already weakened financial standing after the food and energy crises of 2008.

This IFI 'renaissance' represents an important—and temporary—opening for renewed influence on governance policies. Not only are the World Bank and IMF active players once more, but regional development banks—particularly in Africa and Asia—have had a burst of lending in resource rich countries since September 2008, signing several dozen fast-track agreements. In August 2009, the IMF finally succeeded in getting DRC to amend a multi-billion-dollar loan with China to remove guarantees in mining projects that might have favored repayments to China over those to the IMF, which would continue to plunge the country deeper into debt and delay forgiveness of most of Congo's $10 billion in outstanding international loans.

IFI loan agreements frequently stipulate all manner of conditions regarding reporting, restructuring of oversight institutions, and adoption of new governance initiatives, management practices and public participation policies. The menu of possible policies includes EITI implementation for all extractive commodities; regular publication of revenue and expenditure data at the national and sub-national level; contract transparency; introduction of stabilization funds to reduce the severity of pro-cyclical swings; diversification efforts to reduce dependency on extractive revenues; and improved fiscal discipline to control the wage bill and public investment and to avoid the pay-as-you-go budgeting so common in oil-producing countries. Unfortunately, many of the loan agreements signed since the crisis have not capitalized on the IFIs' negotiating strength to push for such reforms. The internal incentives at IFIs tend to prioritize getting a lot of money out the door as quickly as possible, which can impede the rigorous conditions that create thoughtful linkage between policy reforms and long-term governance improvements. Like the global recession and the commodities bust, the upswing in IFI influence is only temporary. Without substantial civil society pressure on IFIs to protect and promote revenue transparency concerns in their new loan agreements, a huge opportunity will be lost.

---

[14] "IMF Moves to Boost Resources to Combat Global Crisis," IMF Survey, July 6, 2009, http://www.imf.org/external/pubs/ft/survey/so/2009/NEW070609A.htm.
[15] Ibid.
[16] Davis, Bob, "Along with New Money, IMF Gets Politically Perilous Tasks," *Wall Street Journal*, April 27, 2009, http://online.wsj.com/article/SB124078041608357051.html, "Strauss-Kahn Seeks to Quickly Refocus IMF," IMF Survey, December 7, 2007, http://www.imf.org/external/pubs/ft/survey/so/2007/NEW127A.htm.
[17] *Financial Crisis: What the World Bank is Doing*, http://www.worldbank.org/financialcrisis/.

Investors

Garnering the support of the investor community has been essential to the success of voluntary initiatives such as the EITI and will be even more critical if advocates are to succeed in the campaign for mandatory disclosure requirements. Many advocacy targets–stock market regulators, the International Accounting Standards Board, credit rating agencies, etc.–have investor protection at the heart of their mission. Advocates must galvanize investors' support in their efforts, basing their arguments on the failure of voluntary measures and current disclosure standards to adequately equip investors with the necessary information for assessing risk and making good business decisions. Inadequate corporate governance regulations were at the heart of the financial crisis, and the investment community's claim that transparency is essential to their interests has never been as salient as it is now in the cash-strapped post-crisis environment. Investors also have a new-found leverage with a new class of borrowers, companies and governments from emerging market countries hit hardest by the crisis.

II. Engaging with G20 Governments and Inter-Governmental Forums

In September 2009, world leaders agreed that the G20 would take over the role of the G8 in international economic issues.[18] This shift is particularly interesting for advocates given that the expansion brings in several key players from the extractive sectors, namely Brazil, China, India, Saudi Arabia and South Africa. Most of the major energy consumers and producers are now sitting at the same table. The emerging economies will be critical, as both energy producers and consumers, to the long-term viability of transparency advocacy.

For advocates looking to influence G20 policy, there are several inroads, none of which is sufficient on its own. The international accounting standards are rules for company reporting already adopted by many G20 countries that could be revised to include country-by-country resource revenue reporting. All G20 countries have national stock exchanges listing extractive companies, and listing requirements are another important forum for a push for mandatory revenue reporting. Lastly, many of the largest international extractive companies are headquartered in G20 countries and are responsive to pressure from the NGO community, to voluntarily adopt transparent practices, and also to support the push for mandatory disclosure.

Accounting Standards

The world's capital markets are more interconnected than ever before. Investors have money tied up in countries across the world. This has led to an increasing call by investors for a single set of high-quality standards for reporting. Accounting standards include rules for company disclosure set by national regulators to ensure that all registered companies in a country report business information in a similar way, giving investors the reliable and consistent information needed to make informed decisions. The International Accounting Standards Board (IASB) produces standards (International Financial Reporting Standards and International Accounting Standards) that are used by these national regulators in more than 100 countries around the world, including the

[18] "Obama: Global economy 'back from the brink,'" Associated Press, September 25, 2009, http://www.msnbc.msn.com/id/33004755/.

European Union, Russia, South Africa, Hong Kong and Australia.[19] A country can allow companies to report using the standards, or they can require it. The U.S. Financial Accounting Standards Board is currently taking steps to harmonize its standards where possible with those of the IASB.

International Accounting Standards have an important role to play in the push for reform. The G20 views accounting standards as critical in the global push for more consistency and accuracy in accounting.[20] Advocates may be able to capitalize on this relationship between the G20 and the IASB by incorporating accounting standards recommendations into their G20 advocacy.

Many of the traditional national oil companies (NOCs), including Saudi Aramco, Qatar Petroleum, and other major Middle Eastern producers, operate primarily within their domestic markets, and these domestic activities would not be directly impacted by IASB standards.[21] These activities, however, would be covered if the companies' respective governments recommend or require companies to meet the international standards in their domestic activities. The first step in a country-level campaign should thus be to advocate for the adoption of such international standards for reporting, on a mandatory basis. This country-level advocacy should occur in tandem with the international effort to adopt an accounting standard specific to the extractive industries.

There is a history of dialogue between the IASB and Publish What You Pay. In September 2006, the IASB began the process of developing an International Financial Reporting Standard (IFRS) on accounting for extractive activities.[22] An IASB project team has published a draft of a discussion paper including recommendations for a single financial reporting model available to all oil, gas and mining companies, and for significantly more detailed disclosures.[23]

One of the concerns the IASB has expressed is that the Publish What You Pay proposals for country-by-country disaggregated revenue reporting would establish new accounting standards primarily for social purposes and that end users of the information would largely be citizens of developing countries, and only secondarily investors. However, in the working draft of the discussion paper, it states, "consultations with investors on the PWYP proposals indicated that the disclosure of payments to governments would be useful in making investment decisions. This information could be useful in assessing the likelihood of a country-specific investment risk occurring and the entity's exposure to reputation risk."[24] This is significant because it buttresses advocates' argument that transparency, particularly relating to tax and royalty revenues, is in investors' best interest.

---

[19] http://www.iasb.org/About+Us/About+the+IASB/About+the+IASB.htm.

[20] http://www.londonsummit.gov.uk/resources/en/PDF/annex-strengthening-fin-sysm.

[21] Again, it is important to distinguish these "traditional" NOCs from the newer breed of NOCs from China, Russia, Brazil, Malaysia, etc., that do operate internationally and are often publicly traded. Petrobras, the Brazilian national oil company, is listed on the New York stock exchange, as are subsidiaries of China National Petroleum Company, China National Offshore Oil Company and PetroChina. Gazprom, the Russian oil company, is listed on the London Stock Exchange. If a company is publicly traded, then it is subjected to stock exchange listing requirements.

[22] This IFRS would supersede IFRS 6 *Exploration for and Evaluation of Mineral Resources.*

[23] http://www.iasb.org/Current+Projects/IASB+Projects/Extractive+Activities/Summary.htm.

[24] Ibid.

Recent work by the G20 and the OECD to crack down on tax havens will also inform advocacy for accounting standards. In the spring of 2009, the G20, together with the OECD, laid out a "black list" of sorts, placing countries into four categories, based on their compliance with international tax standards.[25] The initiative to require country-by-country reporting of company payments to monitor compliance with tax standards will be important groundwork for similar standards for country-by-country reporting by extractive companies.

Beginning in early 2010, the IASB discussion paper will be opened up for consultation, which will be a major advocacy opportunity for Publish What You Pay and the broader transparency movement. New accounting standards, which could include country-by-country disaggregated revenue reporting, would not be adopted until September 2013. Considering the substantive work already carried out on this topic, advocates are arguing for an accelerated timeline that would put a new standard in force by February 2012. There is precedent suggesting that the IASB will respond to a strong push by activists. In 2006, Publish What You Pay organized a letter-writing campaign in response to an IASB-proposed standard, prompting a sea change in the IASB dialogue with PWYP.[26] In November 2007 resource revenue transparency advocates were instrumental in lobbying the European Parliament to adopt a resolution calling for an appropriate accounting standard that required country-by-country extractive industry reporting.[27]

There is clearly room to influence such standards, and advocates will again need to rally as much support as possible, from within the PWYP network, from the larger NGO community and in particular from the investor community. At the country level, advocates should generate letters from local NGOs, investors, and local regulators if possible, referencing G20 promises to increase financial transparency and accountability. Campaigners can increase attention from journalists, politicians and the public by framing accounting standards reform as a logical extension of the G20's larger suite of promised financial transparency reforms. The PWYP International coalition will be available to help with drafting these messages, which should focus on the value of this information not only for development purposes, but also for investor protection.

Listings Requirements

As the G20 examines how lack of information helped fuel the financial crisis, much of its attention will be on reforming the disclosure policies of entities on their stock exchanges. This is the best mechanism a government has to regulate company behavior, and it has historically been an important tool for this purpose.[28] Stock exchange regulations will only apply to entities listed on each exchange, and while they provide an important piece of the transparency advocacy framework, these regulations will by nature have limited reach, which is why other initiatives such as those for accounting standards and company advocacy remain crucial.

---

[25] http://www.guardian.co.uk/world/2009/apr/02/g20-summit-tax-havens.

[26] 80 letters of support were sent, which accounted for 54 percent of all submissions.

[27] European Parliament resolution of 14 November 2007 on International Financial Reporting Standard (IFRS) 8, concerning disclosure of operating segments. See: http://www.publishwhatyoupay.org/sites/pwypdev.gn.apc.org/files/EP%20resolution%20accounting%20standards%20141107.pdf.

[28] Two examples of this would be the Foreign Corrupt Practices Act and the Sarbanes-Oxley Act.

One G20 country that is expected to pass sweeping regulatory reforms in 2010 is the United States. These may include stricter controls on banking, insurance, securities and investment communities.[29] The U.S. Senate introduced a separate piece of legislation promoting extractive industry transparency rather than rolling it into the broader reform package. The Energy Security Through Transparency Act of 2009 was introduced by a bi-partisan coalition of Senators and would require all issuers registered with the Securities and Exchange Commission to publish their natural resource revenue payments to foreign governments every year. If passed, this stock exchange regulation would apply to most of the major internationally operating oil, gas and mining companies in the world: American, European, and several from the emerging market countries. Subsidiaries of the major Chinese companies CNPC, CNOOC, and PetroChina are listed on the New York Stock Exchange and would thereby be subject to the new rules, though their parent companies would not. Advocates working in countries with major stock exchanges should use the U.S. legislation as a springboard for opening a dialogue with regulators. Many other exchanges are hesitant to step out in front of others, fearful that less scrupulous companies will flee to other jurisdictions. The U.S. is in a unique position as one of the largest exchanges in the world, and has the opportunity to create a race to the top rather than a race to the bottom.

Advocates at the European level are focused on regional accounting rules, in addition to their country-level work. Europe campaigners have met with some success in the past, including an amendment to the Transparency Obligations Directive (TOD),[30] an EC initiative that defines the minimum transparency requirements for companies listed in EU member states. The amended Directive "encourage[s] issuers whose shares are admitted to trading on a regulated market and whose principal activities lie in the extractive industry to disclose payments to governments in their annual financial report." However, this provision only appears as a recital paragraph, rather than in the main body of the text, and is rather weak as it only "encourages" disclosure.

In 2010 the European Commission is required to submit a report on the application of this Directive. With the new impetus for financial transparency, advocates should seize the opportunity to campaign for stronger language in the Directive, to make country-by-country reporting mandatory for all EU-listed extractive companies. The push will have to be directed at the European Commission, since it would need to initiate any amendment to the Transparency Obligations Directive, and the amendment itself would need to be approved through a "co-decision" process between the European Council and European Parliament. As of November 2009, a new European Commission is in place. Therefore pressure for reform of the Transparency Obligations Directive is needed on both the President of the European Commission, Manuel Barroso, and the individual who succeeds the current Commissioner for Internal Market and Financial Services, Charlie McCreevy. Equal pressure will need to be placed on European Member States which have the major extractive companies listed on their stock exchanges, and on relevant members of the newly formed European Parliament.

[29] US and Global Regulatory Responses to the Financial Crisis, Squire Sanders, March 2009.
[30] http://www.publishwhatyoupay.org/en/resources/european-parliament-takes-historic-step-oil-and-mining-transparency.

Sovereign Wealth Funds

There are presently around 55 Sovereign Wealth Funds (SWFs) globally, the vast majority of which emanate from oil, gas and mineral producing countries.[31] The governments of Scotland, Ghana and Brazil are all currently debating the creation of new sovereign wealth funds for oil and gas revenues.[32]

Middle East/North Africa region (MENA) oil and gas producers have weathered the economic crisis relatively well to date despite a substantial loss in assets.[33] Gulf Cooperation Council countries have even been called upon to help support international bailout efforts via the G20; for example, in November 2008 on a visit to the MENA region, British Prime Minister Gordon Brown asked if countries running a budget surplus could advance $250 billion to the IMF to support the new crisis lending facility.[34] GCC countries are also turning to each other to help weather the crisis, for example in the loan by Abu Dhabi of $20 billion to Dubai for rescuing its real estate and financial sectors.[35] The accumulation of reserves in resource rich countries from the Middle East is a result of the sheer size of the resource rent compared to population, rather than a prudent, rules-based fiscal policy. Furthermore the lack of transparency and accountability in the management of natural resource funds from the Middle East leads to discretionary policies that offer no guidance or actionable conclusions for other resource rich developing countries.

SWFs gained global attention in late 2007 when they amassed more than $60 billion worth of equity in major global financial firms and Western countries became concerned about their acquisition of "strategic assets." The ensuing debate about SWF governance and transparency led SWFs to form their own body, the International Working Group of SWFs (IWG), that with IMF support quickly hammered out a set of voluntary good governance principles and investment practices in October 2008. A subsequent 2009 meeting reportedly left unclear the exact IWG follow-up on Santiago Principle implementation. An October 2009 report found that low levels of disclosure among the ten largest SWFs persist and there is little evidence that environmental, social and

---

[31] See "List of Sovereign Wealth Funds" on the Sovereign Wealth Fund Institute homepage, http://www.swfinstitute.org/.

[32] Government of Scotland, *An Oil Fund for Scotland: Taking forward our National Conversation*, http://www.scotland.gov.uk/Publications/2009/07/28112701; "Irin, Ghana: Government prepares to battle the 'oil curse,'" http://www.irinnews.org/Report.aspx?ReportId=77851 and Froymich, Riva, "Brazil Sovereign Wealth Fund More than a Pipe Dream," Dow Jones Newswires, October 19, 2009, http://online.wsj.com/article/BT-CO-20091019-706006.html.

[33] Financial markets plummeted throughout MENA, with estimated average losses of more than 50 percent of their 2007 value. Many Arab sovereign wealth funds were invested in troubled financial assets abroad in the US and elsewhere, and GCC countries suffered doubly with the dramatic decline in oil and gas prices. See Dr. Zlatica (ZK) Kraljevic, "Middle East Advisory Committee: Chair's Comment," *World Energy Magazine*, Vol 12, No. 1, 2009, http://www.worldenergysource.com/wes/stores/1/Middle-East-Advisory-Committee-Chairs-Comment-P1306C110.aspx.

[34] Behrendt, Sven and Kodmani, Bassma (editors), *Managing Arab Sovereign Wealth Funds in Turbulent Times—and Beyond*, Carnegie Endowment for International Peace and the Arab Reform Initiative, April 2009, http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=23044 and Oxford Analytica, "Middle East: Arab economies to grow despite setbacks," November 27 2008, http://www.oxan.com/display.aspx?ItemID=DB147295.

[35] Cummins, Chip, "Dubai Gets $10 Billion Bailout to Ease Debt," *Wall Street Journal*, February 23, 2009, http://online.wsj.com/article/SB123532630416442781.html.

governance considerations are gaining traction in SWF investment strategies.[36] Given that a large number of SWFs are effectively oil revenue management funds, activists have an enormous stake in seeing the Santiago Principles implemented. Though they are voluntary, they can and should be integrated into national law, and this prospect is a promising new front for civil society activists seeking to embed good practice in extractive revenue management for the long term. For countries with large SWFs in particular, a focus on the Santiago Principles and governance reforms fits neatly within the broader post-crisis agenda of improving the transparency of global capital flows. Activists would do well to organize a concerted campaign in 2010 in relevant producing countries.

G20 Government and Inter-Governmental Forum Recommendations:

- Advocates in G20 countries should urge policymakers to include natural resource revenue transparency in the broader post-crisis regulatory reform framework.

- Activists should organize a global campaign during 2010 to rally support for an international accounting standard of country-by-country disaggregated disclosure of natural resource revenue payments. This includes increased networking between NGOs promoting mandatory listings requirements and investors and legislators interested in financial regulatory reform post-crisis.

- Activists should organize domestic campaigns that monitor and publicly report on local SWF implementation of the Santiago Principles. International partners should assist in these efforts, by collating and presenting the results of civil society SWF monitoring to key international partners and in relevant global forums.

III. Oil, Gas and Mining Companies

International Companies

Advocates should initiate dialogue with companies based in G20 countries, leading with the post-crisis message that transparency can offer a competitive advantage, potentially leading to heightened investor confidence, better community relationships, and improved public image. Alan Detheridge, former Senior Vice President of External Affairs at Royal Dutch Shell, testified before the U.S. Congress in 2008 that country-by-country revenue disclosure is in the long-term best interest of companies because it focuses the attention and the demand for accountability on governments rather than on companies.[37] Without this transparency, he said, dissatisfaction in communities can lead to attacks on infrastructure, to instability and to open conflict, all of which raise costs for companies and reduce return for investors.

---

[36] Kropp, Robert, "Sovereign Wealth Funds Are Slow to Adopt Santiago Principles," *Sustainability Investment News*, October 13, 2009, http://www.socialfunds.com/news/article.cgi/2801.html and see copy of report referred to in article, *An Analysis of Proxy Voting and Engagement Policies and Practices of the Sovereign Wealth Funds,* by Afshin Mehrpouya, Chaoni Huang and Timothy Barnett, IRRCI SWF Report October 2009 at http://www.irrcinstitute.org/pdf/Sovereign_Wealth_Funds_Report-October_2009.pdf.

[37] http://www.publishwhatyoupayusa.org/clientimages/39924/hr6066_hearing_report.pdf.

Advocates should continue to press for companies to publish what they pay to governments for oil, gas and minerals, as several companies now do, including Statoil, Talisman, Newmont Mining, and Rio Tinto. The more companies that voluntarily disclose, the less revolutionary the idea of mandatory measures becomes. Newmont Mining also publicly endorsed the Energy Security through Transparency Act in the United States in September 2009.[38] Advocates should use this endorsement to try to encourage other mining companies to support similar legislation in G20 countries and the broader goal of disclosure requirements. Advocates should also urge companies to support the push for mandatory reporting, emphasizing that the breadth of coverage for such rules means that businesses can do the right thing without facing potential competitive disadvantages. Stock market regulations will cover many internationally-operating National Oil Companies, and accounting standards will cover even those companies that are not listed on any stock exchange. There is a common interest between multi-national corporations and the NGO community: Both want to see as many entities covered as possible. These entities can never be wholly captured by voluntary measures, so regulation is necessary if we want equal transparency and a level playing field.

On the mining front, one entry point for advocacy with companies from G20 countries is the International Council on Mining & Metals, an industry organization that endeavors to encourage a responsible approach to mining.[39] Such an approach will weather the financial crisis according to ICMM, which explained that "in the context of financial uncertainty, there was a widespread consensus among mining companies that sustainability is a strategic, long-term priority that no knee-jerk reactions to a crisis should derail."[40]

The ICMM supports the EITI, but has yet to endorse mandatory measures such as listing requirements or international accounting standards. Industry associations can be useful advocacy targets, because their policy decisions affect many companies, but they can also quickly become a source of frustration, as the lowest common denominator (i.e., the companies that are hesitant to change) often dictates their policy. However, there may be more of an opening with ICMM than with other industry associations, given their record of proactive attempts to link mining to sustainable development.[41] Furthermore, even associations that are unwilling to publicly support any national level legislation or even new accounting standards, due to the consensus-oriented nature of their structures, can still be useful allies as interlocutors with the companies.

Overall the mining industry has been severely affected by the global recession. Production costs and capital commitments that made sense in a high price environment no longer hold, and companies have had to cut back on local employment in many producing countries. At the country level, mining companies in particularly hard-hit countries may now be more willing to undertake unilateral revenue transparency efforts where poverty and social tensions have increased post-crisis.

---

[38] PWYP US, "Bipartisan bill proposes simple SEC rule change to help stabilize U.S. energy sources and raw materials," Press release, September 23, 2009.

[39] http://www.icmm.com/our-work.

[40] http://www.icmm.com/page/11207/icmm-at-the-annual-business-for-social-responsibility-conference.

[41] http://www.icmm.com/our-work/sustainable-development-framework.

The financial crisis has in many cases shifted the balance of power between cash-strapped governments and the international companies that extract their resources. In February 2009, Shell loaned Nigeria a staggering $3.1 billion dollars to keep oil production going after the Nigerian government was unable to fund its share of a project.[42] Though the boom-era realities that tipped the scales heavily in favor of the government have dissipated, the scales have not gone completely in the companies' favor. There are more companies competing for fewer resources. Shell needs Nigeria, to be sure, or else they wouldn't be lending such a massive sum, but Nigeria needs Shell, too.

The Nigerian scenario isn't limited to developing countries or even to governments. A similar situation is playing out in Russia. The export sales of Russian state oil and gas company Gazprom were expected to fall 36 percent in 2009 due to the sharp decline in European gas demand.[43] Although a year ago the Russians were talking about financing the exploration and production of offshore oil themselves, it has become clear that they simply cannot afford to do so. Shell and Total are both in deals with Russia to develop offshore oil and gas reserves, and several nationally-sponsored projects that were in development prior to the financial crisis are now on hold or expecting partial financing by foreign partners. The United States also plays an important role in the lending game as well. In July 2009, for example, the U.S. Export-Import Bank agreed to loan Petrobras, the Brazilian state-owned oil company, $2 billion for offshore exploration.[44]

New arrangements like these offer advocates opportunities to urge companies and governments each to enter into their new deals as transparently as possible. This would not necessarily qualify as conditionality, since no company is going to interfere with the sovereignty of nations, but a company's money naturally provides a certain amount of leverage. Advocates should encourage companies to call for the disclosure of contracts, revenues and expenditures stemming from their lending agreements. While this still may be a losing battle in this tight climate, it is one worth pursuing in conjunction with other efforts for broader regulatory and institutional reforms.

National Oil Companies

The term "National Oil Company" is used for any oil company that is owned by a government. It is overly general, though, given the vast differences between such companies. For the purposes of this paper, National Oil Companies will be grouped into two categories—the more traditional NOCs that operate exclusively or overwhelmingly within their own borders, where they are not required to compete with international companies (Saudi Aramco, National Iranian Oil Company, etc.), and companies with large-scale international operations, which themselves compete for access to resources in oil-producing countries. Among this second group are several companies from emerging markets, including China, Brazil, India, and Russia. Due to their parastatal nature, these NOCs are subject to more direct day-to-day control and oversight by home governments than their IOC counterparts.

---

[42] www.ft.com/cms/s/0/d7677978-ffb8-11dd-b3f8-000077b07658.html.

[43] upstreamonline, "Shtokman timing 'down to demand,'" by Upstream staff, September 11, 2009.

[44] http://www.exim.gov/pressrelease.cfm/C862E339-D537-79E7-A58FCF6AAEFF8902/.

Among the NOCs that have generated the most international attention are the Chinese companies. One of the oft-heard arguments against mandatory transparency requirements in the extractive industries is that resource-rich countries will turn to Chinese or other non-Western companies over their Western counterparts, seeking no-strings contracts and no interference from home governments.

Chinese companies' investment in Africa is still relatively small compared to other multi-nationals.[45] Chinese companies have devoted heavy emphasis on lower quality reserves and politically risky regions that were passed up by or off limits to the major international oil companies. In many cases, Chinese companies have invested assets as non-operators buying into existing blocks, as a means of increasing both their asset base and their capacity to manage technically complex projects such as deep water drilling. There is reportedly an increasing willingness among Chinese companies to partner with IOCs on more remote projects, suggesting an opportunity to bring Chinese companies into the transparency fold by association, if the IOCs are willing.[46]

There are a few significant advantages the Chinese companies have that the IOCs do not: access to additional markets and liquidity. China is welcome in countries where IOCs are forbidden from operating, due to home country regulations, as with Burma, Iran and Sudan, or to host country politics, as with Venezuela.[47]

China has taken advantage of the financial crisis by scooping up as many assets as possible, particularly in the natural resources sector.[48] It has not faced the same capital crunch as many other countries, and has capitalized on this by buying up tens of billions of dollars in assets in Iran, Brazil, Russia, Venezuela, Australia and France. In September 2009, the state run China Development Bank loaned China National Petroleum Corp $30 billion for overseas acquisitions, to further expand their global presence.[49] The state-run China Offshore Oil Company recently made a bid for more than 20 oil blocks in Nigeria, where expiring contracts are held by Western companies including Shell and Chevron.[50]

Angola recently secured a new billion dollar Chinese loan, although this money is notorious for limitations that effectively dictate it be used to procure Chinese labor, goods and services, a requirement that will not salve local social and economic woes as well as such a large loan might. Civil society pressure on governments will be crucial, to make sure that these loans include targeted economic stimuli and protections—especially around employment and training—and to ensure that crisis financing helps resource rich countries rebound quickly. The urgency of these loans makes the argument for transparency in these deals all the more compelling. Governments, activists, trade unions and industry must work together to help producing countries recover as quickly as possible, and such efforts demand open processes and multi-stakeholder debate.

---

[45] Hoyos, Carola, "Burning Ambition," *Financial Times*, Nov 3, 2009.
[46] Ibid.
[47] http://www.derechos.org/nizkor/venezuela/doc/chnven2.html.
[48] http://www.washingtonpost.com/wp-dyn/content/article/2009/03/16/AR2009031603293.html.
[49] Nicholson, Chris, "Chinese Oil Company gets $30 billion loan for acquisitions," *The New York Times*, 9/9/09, http://www.nytimes.com/2009/09/10/business/global/10oil.html.
[50] http://www.rfi.fr/actuen/articles/117/article_5282.asp.

In October, Tullow oil announced that China National Offshore Oil Corp (CNOOC) had expressed interest in joining the development of oil discoveries in Uganda. In 2006 Chinese oil companies announced plans to spend at least $16 billion in coming years to gain access to Africa's energy assets to meet rising fuel demand at home. A Ugandan deal would mark the first investment there by China's big oil companies. In October, China Investment Corp. (China's sovereign wealth fund) announced that it had purchased 11 percent of the London-listed shares of JSC KazMunaiGas Exploration Production for $939 million.[51] The deal increases China's already substantial investment in Kazakhstan, following the China national petroleum corporation's April deal to lend $5 billion to KazMunaiGas and jointly acquire Kazakh oil and gas producer MangistauMunaiGas.[52] China is also reportedly in talks to buy stakes in several major Nigerian oil blocks.[53]

But Chinese loans, especially in the form of infrastructure development rather than cash, are not the only source of international support that most countries need in order to advance their agendas. In Angola, for example, the IMF announced in late September that it had reached preliminary agreement with the Government of Angola on the terms of a 27-month, 1.4 billion dollar loan to help the country weather the economic crisis and low oil prices. IMF mission chief Lamin Leigh said the loan was designed to alleviate immediate liquidity pressures.[54] The IMF, which has been critical in the past of how Angola manages its oil revenues, approved the landmark agreement in November, 2009. Angola depends on oil for almost 90 percent of its income, and has revised its GDP growth forecast down from 11.8 to 6.2 percent, although some are predicting growth of only .4 percent for 2009.[55] Global Witness has called on the IMF to insist that, in return for any loan, the Angolan government publishes fully audited and credible oil revenue data, publishes Sonangol's accounts, and stops granting private companies of questionable ownership access to oil rights. The IMF/Angola agreement is a perfect example of occasions when IFIs should take advantage of increased leverage in a notoriously opaque oil-producing country to demand strict extractive governance conditions as part of any loan agreement.[56] IFIs may be initially reluctant to push too hard on revenue transparency concerns in countries like Angola where they have had trouble in the past, but they nevertheless have the upper hand.

All signs indicate that Chinese companies and their influence will continue to grow; advocates must incorporate this reality into their strategic planning. The question, of course, is how, given the lack of national civil society actors within China. Pressure will likely have to come from the outside, whether through international NGOs, multi-lateral initiatives such as the EITI, or other governments.

---

[51] Carew, Rick and Chazan, Guy, "China Makes Big New Bet on Kazakhstan's Oil," *Wall Street Journal*, October 1, 2009, http://online.wsj.com/article_email/SB125428493302451733-lMyQjAxMDI5NTA0NzIwODc0Wj.html.

[52] Ibid.

[53] Burgis, Tom, "China seeks big stake in Nigerian oil," *Financial Times*, September 28, 2009, http://www.ft.com/cms/s/0/9d714f96-ac60-11de-a754-00144feabdc0.html.

[54] *Statement by an IMF Mission to Angola*, Press Release No. 09/339, September 30, 2009, http://www.imf.org/external/np/sec/pr/2009/pr09339.htm.

[55] Ibid.

[56] Global Witness, "IMF risks condoning corruption with new loan to Angola," Press Release, October 5, 2009.

Although Chinese companies have been reporting revenue payments under the Extractive Industries Transparency Initiative in Mauritania and Mongolia, Chinese oil companies have yet to engage meaningfully in the global transparency movement. Among the 42 oil, gas and mining companies that have publicly supported the EITI, every American and European super-major, most of the second-tier companies and a handful of state-owned oil companies from emerging markets are represented, but there is not a single Chinese company among them.[57] The EITI Board and Secretariat continually struggle with the question of how to further engage China in the EITI, and advocates should seek to join in EITI efforts as an entrée into dialogue with Chinese companies and government.

The lack of proactive EITI engagement may indicate that Chinese companies are less likely to voluntarily engage in the transparency movement; however, these companies will comply with mandatory requirements, whether it is at the host country or home country level. All of the major Chinese oil (and mining) companies have subsidiaries that are registered in the United States with the Securities and Exchange Commission. Reporting on assets held by these subsidiaries is thus subject to disclosure rules that are much more stringent than is provided for by Chinese regulations. When the U.S. Sarbanes-Oxley Act reformed securities regulations in 2002 following the Enron scandal, many analysts speculated that "onerous" regulations would cause scores of companies to "de-list" and move to other exchanges.[58] This didn't happen. Chinese companies clearly see the value of listing in the United States, and that may be the best opening for advocates.

A last opportunity advocates may find with Chinese governments is through their own governments. For instance, advocates within the United States have been asking for years that the State Department integrate resource revenue transparency into its bilateral talks with China. This has been successful to some degree, but the conversations have focused solely on the EITI, which is useful, but does not encompass the important issues of stock exchange listing regulations and international accounting standards. One argument to consider is that the Chinese government would benefit from requiring company revenue disclosure, as they are a major recipient of the payments. All countries conduct bilateral diplomacy with China, and if advocates around the world could all push for governments to deliver similar messages, it would be powerful indeed.

Company Recommendations:

- Activists should take a long-term approach in dialogues with international oil, gas and mining companies, asking their support for mandatory disclosure reforms to improve investment stability. Investment risk is of particular concern during commodity downturns, when governance and development-related tensions tend to rise in producing countries.

- Activists should incorporate companies and governments from emerging markets into strategic advocacy planning, including China, Russia, Brazil and India. Openings for advocacy include diplomatic outreach from home governments,

[57] http://www.eitransparency.org/supporters/companies.

[58] http://www.accountingweb.com/item/101993.

multi-lateral approaches (like the EITI) and direct engagement through requests to meet with government diplomats and company representatives at the national level.

- Activists should seek to engage directly with companies entering into lending arrangements with governments and NOCs, encouraging disclosure of contracts, revenues and expenditures.

IV. International Financial Institutions

An initial examination of several post-crisis loan agreements to resource rich countries paints a mixed picture. Many of the agreements contain voluntary extractive governance pledges that, while not binding, embody clear policy commitments that activists can use as leverage. Yet none of the examined agreements contain mandatory conditions on revenue transparency, despite including mandatory requirements in other areas such as private sector development. Loan conditionality has been a source of tremendous controversy in development debates and it is important to distinguish the governance conditions that we are broadly advocating—transparency, disclosure, participation—from macroeconomic conditions such as inflation targets, privatization, subsidies, etc. Moreover, the specific conditions we are recommending should only seek greater checks and balances and public accountability at the producing-country level.

Activists in producing countries and internationally should begin monitoring IFI negotiations agreements, request meetings with their country representatives and demand that proper governance conditions and fiscal reforms are included in their countries' loan agreements. For countries that have already signed agreements, activists should examine the documents, in particular their governments' accompanying Development Policy Notes, for specific commitments on the EITI and other transparency reforms.

After years of declining influence in resource rich countries, international financial institutions have reemerged with new influence. Since the crisis reached its peak in fall 2008, IFIs (including, for the purposes of this paper, the World Bank, the International Monetary Fund and Regional Development Banks) cannot ramp up lending fast enough to meet demand from resource rich countries large and small, rich and poor. Even darlings of extractive revenue management like Botswana, and longtime IFI antagonists like Venezuela and Angola, are reaching out for an economic lifeline as reserves dwindle.

This renewed IFI influence presents an enormous opportunity for the revenue transparency movement to promote extractive governance reforms across a wide spectrum of countries.

All donors appear to be making a concerted effort to deliver crisis-financing packages through regional development banks, particularly in Africa through the AfDB and in Asia through the ADB. The AfDB has doubled its investments since 2008, with commitments growing from $5.8 billion to $11 billion in 2009. In May AfDB President Donald Kaburuka announced ambitious plans to triple the Bank's general capital to $100 billion in order to help Africa cope with the crisis. All of this financing is going toward budget support, liquidity programs, trade and infrastructure finance, and according to one senior official,

"most of the recent emergency policy based loans to help mitigate the impact of the financial crisis have a strong focus on governance (notably public financial management, fiscal management and economic governance/diversification) to help strengthen the management of public resources."

Since the crisis hit, many extractive projects on the African continent have lost not only general budget support but their original financial backers, and they may increasingly look to the AfDB and the IFC, among others, to provide funding. Some observers have expressed concern about an increased AfDB role in project financing, based on concerns about performance on environmental and social issues in some of the AfDB's other investments. For example, revenue transparency activists should note that Ethiopia's Gibe Dam started construction without an environmental or social impact assessment—a risk that also confronts extractive projects, such as Ghana's IFC-supported Jubilee oil project. As IFI project funding increases, activists must ask whether lenders are following standard due diligence procedures for the extractive industries. This includes the World Bank, which, through its loan guarantee facility, can technically support a project without abiding by its own procurement policies and due diligence norms.[59]

Development Banks are missing huge opportunities for reform by pushing crisis loans out the door without intensive governance conditions. The fast-track nature of increased IFI lending is one obvious reason for concern, given the possible lost opportunities for influence over governance reforms. For example, in May 2009 the IMF approved a $336 million loan to **Tanzania** under the new Exogenous Shocks Facility. Two thirds of this was made available immediately, and the remainder will be transferred without any reference to policy performance on governance improvements that have already been suggested by the Tanzanian Government, such as EITI implementation. The IMF press release notes that strong public financial management "will be critical to ensuring value for money" but no policy measures have been required to incentivize improved government performance.

In the AfDB's $1.5 billion loan to **Botswana**, there are no specific governance requirements such as EITI endorsement/implementation attached to the government's funding, nor is there a focus on improving extractive sector governance.[60] This is a huge missed opportunity, especially given Botswana's good performance on extractive governance to date. Incorporating the country into the EITI fold to institutionalize an open and multi-stakeholder reporting process should be an easy "win." The lack of extractive governance benchmarks in loan agreements is all the more frustrating given that the AfDB has already shown a willingness to attach political conditions to their post-crisis loans. For example, in order to receive its first tranche of funding, the Botswanan

[59] "AfDB doubles lending in response to financial crisis," Bank Information Center, IFIs in Africa News Briefing, Issue #34, September 08, 2009.

[60] *Program: Economic Diversification Support Loan: Botswana*, African Development Bank, Draft Appraisal Report, May 8, 2009. It should be noted that Botswana performs consistently well on relevant governance indices including the OBI among top 25 countries in FY 2008) and the TI Corruption Perceptions Index (least corrupt country in Africa for five years running). The recently passed Financial Intelligence Law, which was a precondition for AfDB financing, includes a focus on anti- money laundering. It is worth noting that a great deal of useful information on Botswana's mineral and other revenues—as well as expenditures—over the past seven years can be found in the new loan document. There is a requirement that the GoB submit an audit report of the transfers and uses of loan funds at the end of the financial year, around the time when the AfDB will make its second and final transfer of funds.

Government was required to submit a public/private partnership framework to the cabinet, obtain cabinet approval for a competition law to curb unfair and restrictive practices, and enact a financial intelligence law in parliament.

While the IMF staff appraisal of **Ghana** connects the country's current challenges to poor economic management and the expectation that "oil revenues would create new fiscal space but on a relatively modest scale and for a fairly short period," no governance conditions were included in the loan to ensure the government does not become complacent in its fiscal outlook. The IMF Board's loan approval welcomed "authorities' intention to extend Ghana's participation in the Extractive Industries Transparency Initiative to the oil sector" and stated that throughout the course of the loan period, "high priority should be given to strengthening public financial management, enhancing the efficiency of public spending, and strengthening domestic revenue mobilization." Yet there are no measurable benchmarks to incentivize government action on commitments that could facilitate better economic management.

The new World Bank agreement with **Nigeria** contains some of the strongest policy conditions for loan disbursement among all those surveyed. The first tranche of funds cannot be released unless, among other steps, the Government of Nigeria has:

- Enacted its 2009 budget using a conservative oil price of US $45 per barrel
- Continued to implement a policy under which the Excess Crude Account (ECA) is credited with excess oil revenue (after compensating for shortfalls in revenue)
- Enacted its 2009 budget containing recurrent spending to N1.6273 trillion (61.4 percent) and increasing capital spending to N1.0223 trillion (38.6 percent) of its budget (excluding statutory transfers and debt service)
- Enacted and made operational the Public Procurement Act and implementation regulations consistent with international best practices, and made the regulations available to the public
- Published on a bi-monthly basis public procurement contract awards in the National Procurement Journal and on the BPP website

The condition for the Excess Crude Account is particularly important, as states have regularly charged that the federal government refuses to contribute the monies realized from signature bonus, dividends from Nigeria Liquefied Natural Gas, sales of government properties, privatization proceeds, cost of collection from Revenue Agencies, education tax proceeds, revenues from state owned company dividends and a host of other revenue sources legally designated for deposit in the ECA.[61] The agreement does not require any concrete progress on the EITI, which after a long delay has made recent progress with the publication of their 2007 report.

Another country that could benefit from similarly strict governance conditions is **Iraq**, which was granted a $3.6 billion loan by the IMF in early 2010 to cope with the financial

[61] Abubakar, Mohammed and Ogbodo, John-Abba, "Audit exposes excess crude account fraud, indicts NNPC," *The Guardian*, August 18, 2009.

crisis.[62] The loan agreement would help to plug Iraq's $19 billion budget deficit and support investment projects. Iraq has been rocked by massive corruption scandals in recent years, from the Trade Ministry to the oil sector, and ranks third from the bottom on Transparency International's Corruption Perceptions Index, just above Burma and Somalia.[63] In January 2010, Iraq announced its plans to become a formal EITI candidate. The country does not have an oil revenue stabilization fund, continues to live "hand-to-mouth" on increasingly volatile oil revenues, and as of summer 2009 its credit rating was so low that U.S. Defense Department contractors will only accept cash advances for the $5 billion worth of weapons ordered by the nation.[64]

Many loan agreements do include new national commitments on extractive transparency and public participation. In **Indonesia**, in the Development Policy Letter and Matrix submitted to the ADB and other donors, Finance Minister Sri Mulyani notes that Indonesia is focused on taking advantage of its substantial oil, gas and mineral reserves when prices eventually bounce back.[65] She says that "to further improve certainty, we are placing an increased emphasis on transparency in the extractive industries ... with improved transparency for national and regional governments as well as mining and oil companies we hope to reduce the uncertainty around investments and therefore increase demand. To reinforce the benefits the Government has submitted a request to begin the process of joining the Extractive Industries Transparency Initiative." As mentioned previously, similar language in countries such as Ghana declares actual or anticipated government commitments to implement EITI in development policy notes accompanying numerous crisis loan agreements. These commitments represent a strong foothold for civil society activists seeking to hold governments to their promises and ensure concrete steps are taken to implement the initiative. In the policy matrix that accompanies Indonesia's Development Policy Letter, it states that the government already signed on to the EITI in a December 2008 letter to the EITI secretariat. While the nature of that letter's commitment to implementation is a matter of contention within and outside of Indonesia, the Government did make an official announcement in March 2009 that it would implement an extractive revenue transparency program based on international best practice, including the EITI. Activists should read these agreements and verify that the government has in fact undertaken the measures it claims to have completed.

The Government of **Ghana** made a raft of relevant commitments of interest to civil society throughout its loan document and appendices.[66] While there are no governance criteria in the memorandum of understanding between the government and the IMF that will guide assessment, the government did submit a memorandum of economic and

---

[62] "Iraq Gets its Largest Loan to Date from IMF," BBC News, February 25, 2010, http://news.bbc.co.uk/2/hi/8536034.stm.

[63] Williams, Timothy and Mohammed, Abeer, "Trade Official Quits as Iraq Continues Investigations," *The New York Times*, May 25, 2009, http://www.nytimes.com/2009/05/26/world/middleeast/26iraq.html and Cocks, Tim, "*Graft main worry for investors in Iraq Kurdistan*," Reuters, September 25, 2009, http://www.reuters.com/article/latestCrisis/idUSCOC463119.

[64] "*Iraq's credit rating holding up military deliveries*," *World Tribune*, July 22, 2009, http://www.worldtribune.com/worldtribune/WTARC/2009/me_iraq0586_07_22.asp.

[65] Proposed Loan Republic of Indonesia: Public Expenditure Support Program, Asian Development Bank, Project Number 43009, April 2009.

[66] Ghana: 2009 Article IV Consultation and Request for a Three-Year Arrangement Under the Poverty Reduction and Growth Facility, IMF, August 2009.

financial policies for 2009-2012 which lays out key policy targets and structural reforms to be undertaken during the loan period. These non-binding commitments include introducing the EITI in the oil sector and strengthening overall public financial management.[67] The government also promised to develop new rules to introduce greater fiscal discipline after a pre-election spending spree in 2008, all in anticipation of oil windfalls expected in 2011. The government has also noted that it is working on bills for petroleum regulation and oil revenue management, and has made an explicit commitment to holding "public consultations on the allocation of petroleum revenues and on the guidelines for the management of the funds" prior to passage of the legislation.[68] Despite these declarations, specific conditions from the IFIs may lead to conflicting incentives and induce governments to rush the new resource legislation and short-circuit meaningful public consultation and debate.

In March 2009, the IMF signed a $565 million loan agreement with **Cote D'Ivoire** under its Poverty Reduction and Growth (PRG) Facility. The agreement sets out some of the most rigorous conditions of any of the loans analyzed for this paper. Cote D'Ivoire's recent emergence from civil conflict has led to a heavy donor focus on public financial management reform, improved transparency and institution-building, which may explain why funding is tied to such specific governance benchmarks. It is also notable that the agreement was signed under the PRG, a concessional lending pool, rather than as part of the IMF's economic crisis emergency lending facility. The loan agreement requires the government to submit quarterly reports to the IMF within 45 days of each financial quarter's end, detailing information on the country's budget, energy sector and cocoa/coffee sector. The information required includes the budget execution position (revenues and expenditures) with expenditure classified by type; volumes, prices, and financial flows for all oil and gas (indicating specifically "the sharing conditions among the government, PETROCI, and the private operators, and the resulting financial flows, in particular for the government and PETROCI"), and all information on the collection and use of earnings from the coffee/'cocoa sector. Clearly, this kind of information would be tremendously useful to civil society activists in monitoring extractive and broader public financial management. Knowing that the government prepares these reports regularly for the IMF, activists are well positioned to advocate public disclosure of this information as well.

In Asia, **Mongolia** has been one of the resource-rich countries hardest hit by the economic crisis, due to a plunge in the prices of key export minerals including copper, coal and zinc. Between April 2008 and March 2009, the price of copper fell 65 percent from $8700 to $3000 per ton. Mongolia had been running modest surpluses in recent years; at their peak in 2007, mineral revenues contributed 40 percent of total Mongolian revenue.[69] Certain key social spending programs such as the Child Money Transfer Program relied almost exclusively on mineral revenues, and wage and salaries increased dramatically in recent years. Not surprisingly, the government had to take an axe to expenditures in the FY 2009 budget, including a government wage and hiring freeze. Social transfers have been protected so far, thanks in large part to the

[67] Ibid. Specifically, the government states that "to further ensure the transparent treatment of oil and gas revenues, the government intends to extend Ghana's participation in the Extractive Industry Transparency Initiative (EITI) to cover this sector, as well as fishing."
[68] Ibid.
[69] Mongolia Monthly Economic Update, September 8, 2009, http://ubpost.mongolnews.mn/index.php?option=com_content&task=view&id=3603.

intervention of international donors including the IMF, the World Bank, Japan and the ADB with budget support and development policy credits.

The IMF increased financial support to **Zambia** in May 2009 with an agreement under its poverty reduction support facility, adding an additional $256.4 million in response to the financial crisis. The nation suffered severe inflation from food and fuel shocks in 2008, followed by a dramatic fall in copper prices in 2009. In the agreement, the IMF scales back investment and recurrent spending while protecting "priority" social spending. There is also an emphasis on diversifying revenue sources away from copper.

IFI Recommendations:

- Activists should request meetings with their country's IFI and Ministry of Finance representatives, and demand that proper extractive governance conditions and fiscal reforms, including EITI implementation, are included in loan agreements.

- Activists should examine relevant IFI loan agreement clauses and Development Policy Notes/Letters of Intent that append government commitments on extractive and fiscal transparency. They should conduct outreach with government, IFIs, companies and the media to ensure that governments are aware they are being monitored. [70]

- Activists should push IFIs to include policy support for the development and implementation of long-term diversification strategies in post-crisis loan agreements.

V. Investors

Financing expensive oil, gas and mining projects is often contingent upon the loans or political support of multilateral lenders. The scarcity of capital following the financial crisis has served to increase the potential influence of these lenders on the behaviors of companies and governments. Some companies also find themselves in the position of lenders, as cash-starved governments are desperate to raise capital. Potential lenders include export credit agencies that provide coverage for risky projects, and international financial institutions that provide direct financing for these projects or political insurance.

Advocates often face resistance to mandatory disclosure requirements, as many seem not to believe that the public interest (i.e., citizens' need for information in order to push for government accountability) is itself enough to justify such requirements. Advocates should build arguments for disclosure that highlight investor protection and business interests in addition to the public interest argument, and should cultivate alliances with investors. There has never been a better time to work with investors than the current aftermath of the financial crisis.

In an interview, an executive from a large institutional investment firm described an enormous surge in interest in governance and transparency following the financial crisis,

[70] These documents are typically included as appendices to the loans agreement documents.

and a new level of shareholder willingness to be more proactive on these issues. The investor attributed this shift in part to the fact that the link between governance and the cost of capital has now been made clear. The crash in liquidity refocused attention on the fact that systematic issues, if ignored, can cause upheavals such as those that occurred in Fall 2008. Adding to the shareholder interest is the emphasis on governance and transparency by U.S. President Obama.

Indeed, investor support for resource revenue transparency continues to be critical to the success of the Extractive Industries Transparency Initiative and the push for mandatory disclosure requirements. More than 80 institutional investors, who manage a combined $16 trillion in investments, signed a statement, originally in 2003 and last updated in August 2009, supporting increased transparency in the extractive industries, stating, "We believe it is in the interest of the companies in which we invest to operate in a business environment that is characterized by stability, transparency and respect for the rule of law." [71] In 2008, UK-based F&C Asset Management testified before the U.S. Congress in support of the Extractive Industries Transparency Disclosure (EITD) Act, a bill to change SEC regulations and mandate country-by-country reporting of natural resource revenues. F&C Asset Management has also been a key ally in the push to require disaggregated reporting in the EITI process. One of the largest socially responsible investment (SRI) firms in the United States, Calvert Asset Management, has been leading the call for both SRI and mainstream investment firms to support the 2009 ESTT Act, the U.S. Senate counterpart to EITD.

Now is the time for the Publish What You Pay campaign to engage with investors, and move beyond the SRI community to mainstream pension funds and other institutional investors, to solicit their support for mandatory measures and recruit new allies to the cause of revenue transparency. Though the SRI community may be well acquainted with resource management issues and the need for transparency, these other investors are unlikely to be, so the first step will be outreach and education. The investor statement has been a key tool in demonstrating support for the issue more generally and EITI, but it would be useful to have a letter that more directly endorses mandatory measures like the U.S. bills.

Another important strategy is to identify high-profile individual shareholders in extractive companies who can speak out on behalf of revenue transparency concerns and introduce shareholder resolutions demanding voluntary country-by-country reporting of company payments to host governments. There are several organizations that may be willing to introduce such resolutions, including faith-based institutional investor groups and those that have focused on extractive company issues in the past. Additional possibilities for shareholder resolutions include targeting company activities in a particular country or general company operations, or drafting resolutions requiring that multinationals examine how their resource revenues have or have not impacted the development and poverty reduction in countries of operation. A group of shareholders waged a successful campaign to require Newmont Mining to publish the worldwide impacts of their operations on communities, an effort that led to a large-scale consultative process.[72]

---

[71] http://eiti.org/files/Investors'Statement%202009-08-25.pdf.

[72] http://www.cbisonline.com/page.asp?id=873.

Credit Rating Agencies

Investors evaluating risk have traditionally relied on information from credit rating agencies, which score the credit worthiness of companies, governments and other organizations. One consequence of the financial crisis is that these agencies have come under intense scrutiny, particularly in the United States following a Securities and Exchange Commission report that cited conflicts of interest, lack of transparency and questioned the integrity of many agencies.[73] Advocates may find openings with policymakers who have demonstrated an interest in credit rating reforms similar to the opportunities among proponents of broader regulatory reform. Revenue transparency is another benchmark indicator that can be used when rating agency analyses, including a country's implementation of EITI or the adoption of mandatory regulations.

Advocates can also use the failure of credit rating agencies as evidence that mandatory reform is needed, including in resource revenue transparency. These agencies have failed spectacularly at their job of determining risk.[74] Investors need unfiltered, reliable and consistent information mandated by law, such as the kind provided by stock exchange regulations or international accounting standards, to be able to make the best business decisions.

In the turmoil created by the financial crisis, producing countries are struggling to balance short-term market concerns with longer term social and development concerns. In Mexico, soaring budget deficits and a dramatic drop in oil revenues are threatening the country's hard-won investment-grade credit rating. Despite anticipated deficit spending of only 2.3 percent of GDP (as compared to Russia's 8.4 percent or Britain's 13 percent), Mexico depends on oil for almost 40 percent of its revenues, and reserves are declining. The downturn is expected to cause Mexico's economy to shrink 7.7 percent this year, and pressure for stimulus spending and larger deficit spending is enormous. The opposition party claims that President Felipe Calderon's recent austerity measures—large tax increases, government hiring and salary freezes, elimination of three government ministries (including tourism), and $16.2 billion in spending cuts—cater to the short-term concerns of ratings agencies at the expense of development and the country's poorest population amid a historic crisis. Mexico nearly drained its stabilization fund during the commodities boom by channeling surplus revenues into state and local governments, who spent the cash on political handouts and vanity projects rather than on growth and diversification. As part of the austerity program, state-owned oil company Pemex will reduce spending by $19.5 billion, a move that many oil and gas producing countries with state-owned enterprises may follow as lower production and prices wreak havoc on their finances.[75]

Debt Markets

In the emerging debt market, companies selling debt hope to make themselves more attractive to lenders and are willing to address issues that they may not have been willing to take on before the crisis, when capital was free-flowing. Mexico's Pemex is a perfect example of this: The state-owned company has over $50 billion in debt, making

---

[73] http://www.huffingtonpost.com/2009/09/17/credit-ratings-agencies-s_n_290603.html.

[74] http://www.usnews.com/articles/news/2008/10/23/hot-docs-credit-rating-agencies-a-colossal-failure-us-economic-recovery-in-late-2009.html.

[75] Smith, Geri, "Mexico Scrambles to Save its Credit Rating," *Business Week*, 9/9/2009, and Gould, Jens and Martinez, Andres, "Pemex Cuts 2010 Investments 4.7% to 250 Billion Pesos," http://www.bloomberg.com/apps/news?pid=email_en&sid=aQ2qt6VeWrqo.

it, not surprisingly, the most indebted oil company in the world.[76] Part of its debt-reduction strategy is tapping into overseas credit markets.[77] In January , Pemex sold $2 billion in debt, and it also recently sold $1.5 billion in bonds to help finance future investment deals.[78] These sales involve deals with large investment institutions like Citigroup and HSBC, Western firms that can be advocacy targets, given the leverage they could exert in negotiations with Mexico. Transparency is particularly relevant in the case of Pemex, which pays over 60 percent of its revenues in royalties and taxes to the Mexican government. Investors seeking assurance of their return on investment should push for revenue information disaggregated by payment type, e.g., royalties, taxes, bonuses, fees, etc.[79]

The Equator Principles

The Equator Principles (EPs) are an important rallying point for post-crisis civil society advocacy. Based on the IFC's own project finance guidelines, they are a set of voluntary guidelines for banks to manage social and environmental risk in project finance. Even though the EPs are voluntary, all financial institutions that adopt them are then required to put in place internal processes and controls to ensure their full implementation. Given the intense focus of the G20 on increased banking sector transparency and risk mitigation, 2010 is an ideal time to launch a public/private sector campaign around improving the content and the implementation of the Equator Principles.

Since their launch in 2003, the EPs have quickly become the banking industry's seal of approval for mitigating environmental and social risk, with most major international banks participating; IFC estimates claim that the EPs cover approximately 90 percent of global, cross-border project financing.[80] Progress on implementation remains uncertain, however, although a new implementation monitoring principle (Principle 10: EPFI Reporting) was recently added, requiring each signatory bank to report on its implementation processes and experiences no less than annually. Civil society actors have voiced serious concerns in the past that major banks are simply paying lip service to the requirements for community consultation and social and environmental due diligence. The principles do not currently contain specific requirements around financial disclosure, whether for the general terms of agreements or for the contracts themselves, as the IFC requires.[81]

One key opening for advocacy on the Equator Principles (as well as on IFI practices) is the new round of civil society consultations, launched at the 2009 WB/IMF annual meetings, to review and update IFC Policy and Performance Standards on Social and Environmental Sustainability. These standards include stipulations on information to be publicly disclosed prior to, during and after implementation of IFC-funded projects, and

[76] http://www.reuters.com/article/bondsNews/idUSN0828840520070508.

[77] http://www.bloomberg.com/apps/news?pid=20601086&sid=auB0HSWU5S7o.

[78] http://www.reuters.com/article/newIssuesNews/idUSN2734944620090127.

[79] http://www.businessweek.com/magazine/content/04_50/b3912084_mz058.htm.

[80] See list of institutions that have signed on at the Equator Principles website, http://www.equator-principles.com/index.shtml.

[81] Equator Principles, http://www.equator-principles.com/documents/Equator_Principles.pdf.

also form the basis for the Equator Principles.[82] Key civil society demands during the 2009 meetings included lowering the materiality standard for contract disclosure, which currently kicks in only if a project generates 10 percent or more of government revenues. No project contract has qualified for disclosure under this standard since it came into effect. A targeted advocacy effort to improve the IFC disclosure and development impact reporting standards will have important repercussions at the IFI project finance level, and can also be linked to a campaign to expand the EPs to include IFC governance requirements for project finance.

Export Credit Agencies

Export Credit Agencies (ECAs) are quasi-governmental institutions that provide insurance, loans and guarantees to locally-based companies that are doing business overseas, often in developing countries. Taken collectively, ECAs comprise the largest financial institution in the world and they fund twice as many extractive industry projects than all the multilateral development banks, including the entire World Bank Group.[83] Given the risky nature of oil, gas and mining projects, such projects usually cannot proceed without ECA backing.

The ECAs will play a major role in the push for increased trade and investment financing post-crisis.[84] Thirty-six countries are coordinating their ECAs to stimulate this international money flow. The G20 countries agreed to provide $250 billion over the next two years to support trade finance through export credit and investment agencies. In light of this commitment, the need to push for ECA practices that implement transparency and accountability principles has never been greater.

The OECD has a Working Party on Export Credits and has adopted a "Common Approach" to environmental standards for the projects they finance. However, there are no agreed-upon guidelines for community consultation, social standards, or transparency for the project or the resulting revenues. Unlike the World Bank and other development banks, the Export Credit Agencies' mandate is not to promote development, but rather to enhance the ability of corporations to do business in developing countries. Advocacy arguments for transparency at the ECA level must therefore be framed around the corporate interest and should push for a standard relating to transparency specifically. Advocates should work at both country level and the multi-lateral level, through the OECD Working Party.

For example, in the United States, the official ECA is the Export-Import Bank, and in the UK, it is the Export Credits Guarantee Department. These entities need to adopt a standard whereby an ECA evaluating insurance or loans will look at the revenue transparency practices of the applicant company and the project country, giving preference to those projects that have contract and revenue transparency.

---

[82] Dobson, Chad and Harris, Rebecca, "Civil Society Sounds Off on IFC Policies in Istanbul," *Huffington Post*, October 28, 2009, http://www.huffingtonpost.com/chad-dobson/civil-society-sounds-off_b_335208.html.

[83] http://www.eca-watch.org/eca.

[84] http://www.oecd.org/document/19/0,3343,en_2649_34169_42396243_1_1_1_37431,00.html.

Investor Recommendations:

- Activists should seek to directly engage with companies entering into lending arrangements with governments and NOCs, encouraging disclosure of contracts, revenues and expenditures.

- Activists should work with major shareholders like pension funds and even individual investors to introduce shareholder resolutions on mandatory country-by-country payment disclosure and company support for new accounting standards and listing requirements that incorporate this disclosure standard.

- Activists should use the failure of the credit rating agencies as evidence for the need for mandatory disclosure requirements, and advocate the integration of disclosure requirements into agency reforms.

- Activists should monitor companies that are looking to sell debt, and advocate with lending institutions such as private banks that transparency be part of the financial agreement.

- Activists should launch a campaign for the inclusion of governance guidelines in the Equator Principles, using the IFC's revised guidelines on project finance and contract disclosure as the baseline standard.

- As the Export Credit Agencies get more involved in financing extractive projects, activists should push for a uniform transparency standard to be used in these lending arrangements, and should focus their arguments on the corporate interest in such a standard.

VI. Conclusion

As the revenue transparency movement ramps up advocacy efforts for mandatory disclosures, there are several areas where activists should remain especially vigilant. Fast action is essential, as governments, IFIs and regulatory agencies are signing deals, pushing money out the door and drafting reforms at a breakneck pace.

Accounting standards, listings requirements and ratings agency reforms are all squarely on the G20 policy agenda for 2010. With a draft international accounting standard up for consultation, listings requirement bills working their way through the U.S. Congress, the Santiago Principles scrambling for a foothold, and ratings agency standards under more scrutiny than ever, the time is ripe for a more public and more aggressive civil society campaign. The groundswell of post-crisis calls for financial sector transparency will only help to reinforce civil society efforts over the coming year.

Activists should scrutinize IFI loan agreements for government commitments to extractive sector and broader fiscal transparency measures, and should work to ensure that these commitments are honored. International NGOs should ramp up pressure on IFIs in Washington, D.C., to ensure that they are aware of civil society extractive governance concerns and expectations at the country level. International activists must also work with local actors to ensure that civil society in producing countries is privy to new loan negotiations and receives timely access to all agreements.

Activists should closely monitor Chinese and other BRIC investments as they will remain a major source of financing for extractive projects and broader government investment expenditures. Activists should continue to reach out to international partners for the economic and legal expertise that will help them analyze pending deals and assess whether these deals are in a country's best interests. Companies, BRIC-based or otherwise, will be bargaining from a position of renewed strength during 2010, since the downturn has left many countries desperate for investment. Indeed, without proper vigilance the bust-era pattern of giving away the store to secure investors is bound to re-emerge. IFIs have also regained ground and must be pushed to apply pressure on governance while they retain influence, in particular in countries like Angola and DRC.

While no one expects a speedy or smooth recovery from the 2008 financial crisis, as of October 2009 there are already indications that the market is slowly recovering. Both the U.S. and the E.U. revised their 2009 economic growth forecasts upward and have said they expect to be out of recession and on an upward trend by 2010. Lingering unemployment and reduced consumer spending will continue to keep consumption in OECD countries depressed below historical rates, and it will take time for resource-dependent countries to feel the trickle-down effects of a receding recession in their own economies. Nevertheless, as of fourth quarter 2009, the IMF expected the average price of oil to rise from around $61 a barrel in 2009 to $76 in 2010.[85] Countries like Nigeria and Iraq that have cautiously based their budgets on far lower prices may find themselves with more fiscal freedom sooner than they expected.

For the revenue transparency movement, these circumstances mean that the current receptivity of producing countries, investors and the G20 to more stringent fiscal transparency requirements is likely to be short-lived. 2010 provides a fleeting but promising window for activists to make substantial inroads on new reporting and disclosure standards at both the international and country level. As Paul Romer reminds us, no crisis should go to waste. 2010 could not be a more opportune or urgent moment for revenue transparency advocates to launch a targeted and across-the-board campaign on stock exchanges and lending, rating, export credit and accounting regulation agencies. Activists at the producing-country and international levels should develop specific strategies for each of these fronts, articulating specific "asks" for each group, clear targets, areas requiring for further research and the names of the key civil society stakeholders who are willing to take the lead.

[85] *Regional Economic Outlook: Middle East and Central Asia*, October 2009, http://www.imf.org/external/pubs/ft/reo/2009/MCD/eng/mreo1009.pdf.