

Transparency Mechanisms and Movements

Tools to Foster Openness and Accountability

KEY MESSAGES

- Transparency is a fundamental tool to promote efficiency and accountability in converting natural resource wealth into long-term social and economic development.
- For transparency to be effective, information disclosures must be *relevant, accessible, timely and accurate*.
- Transparency is the root of many campaigns to reform the management of extractive industries.
- There are numerous mechanisms and movements for transparency that often have overlapping and mutually reinforcing aims.

TRANSPARENCY AND ITS IMPORTANCE

Transparency is central to the aim of transforming natural resource wealth into sustainable economic and social development. Relevant, timely, accessible information sharing can bolster oversight, improve trust between multiple actors and mitigate waste. This reader defines transparency and gives a brief overview of different transparency movements and mechanisms. Other readers in this set provide more detail on specific movements and mechanisms (e.g., Publish What You Pay and the Extractive Industries Transparency Initiative).

Transparency is not just about making information publicly available. Large disclosures of old information in inaccessible formats cannot promote accountability or improve performance. For transparency to have impact, information disclosures must be relevant, accessible, timely and accurate. To be *relevant and accessible*, the information should be presented in plain language and in formats appropriate for multiple stakeholders. For example, PDFs filled with tables of numbers and acronyms are not useful for either lay or expert analysis. Lay readers would need a summarized description of what the figures mean, while the expert analyst needs data in a file format they can sort and manipulate (i.e., in what is often referred to as *open data format*). In the extractive industries field, discussions about transparency often revolve around whether the information is *disaggregated*. Information about revenues, for example, can be disaggregated on a project-by-project, company-by-company or state-by-state basis. Whether and how the information is broken down into different categories

“Governments, international organizations and other actors can improve transparency by establishing and enforcing a set of international standards for financial and accounting records, as well by disclosing contractual terms. Public disclosure of information throughout an extractive project, from exploration licensing to project clean-up, is a vital mechanism for helping citizens and investors to hold governments and companies to account.”

-Natural Resource Charter, Precept 12

This primer is intended for use in conjunction with Precepts 2, 11 and 12 of the Natural Resource Charter.

makes the data more useful and relevant to different actors. The highest possible level of disaggregation is often a precondition for a meaningful analysis of data.

To be *timely and accurate*, the information must be provided in a manner that allows stakeholders to analyze and respond to the data to inform relevant decisions or advocacy. The level of detail of information can impact its accuracy. For example, it is not uncommon for shell companies to be at the forefront of bidding in a licensing process. When there is no information on beneficial ownership, that is, who has paid to own and operate the bidding company, it is difficult for governments and oversight actors to know who is actually going to be implementing and benefiting from a project.

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Advocates throughout the transparency movement have emphasized that transparency is not an end in and of itself. Instead, advocates have often framed transparency as a means to achieve *accountability*, ensuring that public, private and voluntary sector organizations are answerable for their actions and there is redress when duties and commitments are not met.

THE ORIGIN OF TRANSPARENCY MOVEMENTS AND MECHANISMS IN NATURAL RESOURCE GOVERNANCE

The movement for increasing the benefits that communities realize from extractive industries has long been rooted in transparency. In 2002, a small group of activists launched the Publish What You Pay coalition with the aim of avoiding the resource curse through promoting transparency. The campaign was developed, at least in part, around the idea that if citizens had access to information about what governments received in natural resource revenues, they could ask better questions about how those revenues are spent. The group was reacting to particularly egregious examples of resource mismanagement and corruption. Transparency was seen as a means to greater accountability and increased performance. For example, transparency about mineral opportunities has been linked with improved performance during open bidding auctions. Extractive industry investors benefit from more information about the operating environment in different countries and the risk associated with their investment.

WHAT ARE SOME TRANSPARENCY MECHANISMS AND MOVEMENTS?

There are many tools, coalitions and mechanisms that can be and are used to promote transparency in the extractive industries. The list below, which is not exhaustive, provides a brief summary of some of these mechanisms.

International initiatives

- **Publish What You Pay** (www.publishwhatyoupay.org). PWYP is a global coalition of civil organizations seeking transparency in the extractive industries. It has three major pillars of advocacy: publish why you pay and how you extract, publish what you pay, and publish what you earn and how you spend (for more information, see the primer on PWYP).

- **Extractive Industries Transparency Initiative** (eiti.org). EITI is a multi-stakeholder initiative that aims to promote openness and accountability in the management of natural resources throughout the decision-making chain. Each country that implements the EITI has a multi-stakeholder group that publishes information from government and extractive companies throughout the decision-making chain. The process of creating these reports must meet a set of standards, which are checked through a process of validation (for more information, see the primer on EITI).
- **Open Government Partnership** (www.opengovpartnership.org). The OGP is a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption and harness new technologies to strengthen governance. Governments that have committed to the OGP create action plans in consultation with civil society groups that set forth goals for transparency and accountability.
- **Natural Resource Charter** (naturalresourcecharter.org). The Natural Resource Charter is a set of principles, including policy options and practical advice, for governments, societies and the international community on how to best manage resource wealth. The second precept calls for transparency of information throughout the decision-making chain to be a foundation of resource management. Through a benchmarking methodology, countries can assess how their resource governance practices measure up against the charter's prescriptions. (For more information, see the primers on Measurement and Assessment of Natural Resource Governance and the Natural Resource Charter Decision Chain.)
- **Accounting standards.** Similar to some of the national disclosure rules listed below, accounting standards create requirements for companies to disclose information if they are to be in compliance with certain business standards. For example, the International Financial Reporting Standards (IFRS) set the requirements for accounting practices, and therefore disclosure requirements, in many countries. They could have a strong influence on the transparency of information related to natural resources if they adjusted their requirements to include disaggregated public disclosure of resource related payments.

National initiatives

Many countries can pass laws or begin transparency initiatives that go beyond what is called for with the international mechanisms. Some of these national initiatives may have standard-setting power or apply to multiple jurisdictions, de facto giving them the reach of international initiatives. Here are a few examples:

- **Freedom of information laws.** National freedom of information laws provide citizens with a mechanism to ask for information from the government and require governments to provide justification when it fails to provide that information. Though the scope of these laws vary from country to country, they are often a strong tool for civil society activists and journalists to gain insight into government processes and decisions.

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- **Mandatory payment disclosure rules.** Mandatory payment disclosure rules are legal requirements for companies to systematically disclose the payments they make to governments. Some countries make disclosure rules for companies involved in a contractual relationship with the government. Other countries require disclosure for all companies that are listed on stock exchanges or incorporated within their country. For example:
 - o Section 1504 of the Dodd-Frank Act passed by the United States Congress in 2010 requires all extractive companies listed on U.S stock exchanges to disclose project-level payments made to governments to the U.S. Securities and Exchange Commission. An implementing rule for this law is still pending.
 - o Canada’s Extractive Sector Transparency Measures Act requires has similar requirements for listed and large private companies.
 - o The European Union’s Accounting and Transparency Directives (Chapter 10 and Article 6 respectively) have similar requirements for listed and large private companies.
 - o Norway’s regulations on country-by-country reporting have similar requirements for listed and large private companies, as well as disclosure requirements related to a company’s subsidiaries, revenues, costs and investments on a country-by-country basis.

ResourceProjects.org contains a compilation of company reporting under the laws above.

- **Contract transparency.** Many countries have adopted a policy to publish some or all of the contracts signed between the host government and the extractive company. For instance, Article 150 of the constitution in Niger requires the government to publish all new extractive contracts. The availability of contracts, even if they are not confidential per se, varies from country to country. ResourceContracts.org makes hundreds of resource contracts available to the public (see the reader on Contract Transparency) and the Open Contracting Data Standard creates a common contract data model to enable disclosure at all stages of the contracting process.
- **National transparency initiatives.** Many countries have created extractive-related transparency processes that go beyond what may be required for compliance with international standards, such as EITI. In Ghana, for example, the Petroleum Revenue Management Act (PRMA) created a Public Interest and Accountability Committee (piacghana.org). This independent multi-stakeholder group is charged with monitoring and enforcing government compliance with revenue management regulations.
- **Beneficial ownership.** A beneficial owner is a person who, directly or indirectly, controls a legal entity or has a substantial economic interest in, or benefit from, such legal entity. The involvement of these people in extractives is not always clear just from a list of companies operating in a country. As a result, many countries have committed to creating public registers or beneficial ownership, which could include ownership information for companies involved in extractives. The United Kingdom’s People with Significant Control (PSC) register is an early example. Countries like Ghana and Tanzania have already indicated that their registers will

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include extractive companies and more could follow, especially those countries looking to meet requirements under the Extractive Industries Transparency Initiative (EITI) on disclosure of ownership data for the sector.

- **Commodity trading.** Countries like Switzerland and the United Kingdom, as well as the European Commission, have committed to enhancing payment disclosure on the sale of oil, gas and minerals. This will significantly reduce the secrecy that prevails in commodity trading since jurisdictions like these have a large market share of companies involved in this corner of the natural resource sector. Resource-rich countries that sell commodities, like Ghana and Nigeria, have also committed to pursue greater transparency in this area and EITI now includes related disclosure requirements on commodity trading.

QUESTIONS TO ASK

- What transparency mechanisms and movements exist in my country?
- If I don't think there is sufficient transparency, which of these movements best corresponds with the area where more information and disclosures are needed?
- When information is made available in my country, is it accessible, relevant, timely and accurate?
- What information is available in other countries about companies operating in my country?

ADDITIONAL RESOURCES

Natural Resource Charter, Precept 2 and 11, available at: http://www.resourcegovernance.org/sites/default/files/NRCJ1193_natural_resource_charter_19.6.14.pdf.

Darby, Sefton, *Natural Resource Governance: New Frontiers in Transparency and Accountability* (Transparency and Accountability Initiative, 2011), available at: <http://www.transparency-initiative.org/reports/natural-resource-governance-new-frontiers-in-transparency-and-accountability>.

PWYP Canada, *An Eye on Disclosure: The PWYP-Canada Guide to Finding information on Public Mining Companies in Canada*, available at: http://www.pwyp.ca/images/stories/2012-03_Eye-on_Disclosure-Eng.pdf

Iwerks, Rebecca and Varsha Venugopal, *It takes a village: Routes to local-level extractive transparency* (NRGI 2016), available at: <https://resourcegovernance.org/analysis-tools/publications/it-takes-village-routes-local-level-extractives-transparency>

Jia, Suzhe et al., *Closing the Gap: Strengthening Development and the Implementation of Natural Resource Commitments in the Open Government Partnership* (NRGI 2017), available at: <https://resourcegovernance.org/analysis-tools/publications/closing-gap-strengthening-development-and-implementation-natural>

NRGI primers on EITI, PWYP, Contract Transparency, Measurement and Assessment of Natural Resource Governance, and the Natural Resource Charter Decision Chain.

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