

**14th INTERNATIONAL ANTI-CORRUPTION CONFERENCE
RESTORING TRUST: GLOBAL ACTION FOR TRANSPARENCY**

Long plenary report

***Fuelling Transparency and Accountability in the
Natural Resources and Energy Markets***

Date and time: 11 November 2010, 12:00 – 13:30

Moderator: Michael Peel, the Financial Times

Panellists:

- Peter Eigen Chairman of Extractive Industries Transparency Initiative
- Arvind Ganesan Director, Business and Human Rights, Human Rights Watch
- Ashok Khosla President of the International Union for Conservation of Nature
- Karin Lissakers Director General, Revenue Watch Institute

Rapporteur: Craig Fagan, Senior Policy Coordinator, Transparency International

From Azerbaijan to Venezuela, resource-rich countries have faced challenges to make sure that their extractive industries benefit their citizens and generate wealth beyond what is under or above the ground. This has not always been an easy aim to achieve. For example, Nigeria, a country that is the world's 10th largest petroleum producer, is estimated to have received oil revenues over the last 25 years worth US\$300 billion, although 90 per cent of its more than 150 million citizens are estimated to live on less than \$2 a day.¹

Corruption is often blamed as the source of the gap that has too often emerged between a country's natural wealth and the social and economic benefits it actually yields for people. Corruption can prevent a large portion of the revenues generated from oil, mining, gas and forests (among other natural resources) from going into government coffers. This is particularly challenging since in many developing countries with extractive industries, the revenue flows generated dwarf the money entering from other sources, such as through taxes or aid. In the case of Africa, according to Karen Lissakers of RWI, the continent exports US\$ 400 billion in mineral resources each year and receives US\$ 25 billion in aid (Sub-Saharan Africa). Unfortunately, the value of the export has not always translated into resources for development.

Corruption can happen at all levels and involve different actors, both from the public and private sector. It can take place at a high level of government, distorting the contacts that are signed with extractive industry companies and the terms of agreement for revenues to be

¹ See: www.publications.parliament.uk/pa/cm200809/cmselect/cmintdev/840/84008.htm.

paid. Corruption can also occur even when appropriate royalties and payments are agreed and disbursed, leading to the monies going into personal bank accounts rather than the state's treasury. Finally, corruption can result in any instance where natural resources are captured by private interests and not used for the public good, leading to distorted contracting processes and other inefficiencies for the sector and a country's economy.

The plenary panel "Fuelling transparency and accountability in natural resource and energy markets" attempted to tackle dimensions of each of these problems by looking at how changes in levels of transparency, accountability and citizen engagement can positively shift the rules of the game and the development results.

Previous advances on transparency are credited to joint work led by civil society and done in collaboration with governments and the private sector. For Karen Lissakers of RWI, transparency must be secured along all parts of the supply chain for the sector, including revenue streams, budgets and government spending of the money received.

Work on transparency in the extractive industries started in the 1990s when Transparency International, Oxfam, Global Witness and others formed a coalition of organisations to lobby companies to publish what they pay to governments. The movement, known as Publish What You Pay, has continually argued for the need for companies to be transparent on taxes, revenues, royalties and other payments. At that time, companies' data on revenues paid to governments were not made available yet through advocacy and allegiances, this situation has changed.

It also has helped lead to the launch of the Extractive Industries Transparency Initiative (EITI), which has been part of the shift by setting a standard for transparent reporting and involving the three stakeholder groups (e.g. the "magic partnership" among governments, companies and citizens). As Peter Eigen, chairman of EITI, explained, the initiative was launched in 2002 and has grown to include 33 countries. Of this total, five countries are in full-compliance with the standard (Azerbaijan, Ghana, Liberia, Mongolia and Timor-Leste). Even non EITI countries are being pressured for greater revenue transparency.

There has been tremendous progress in last decade on revenue transparency. It is no longer an issue just for civil society organisations; it is being accepted by governments and recognised by donor agencies as a critical. While increased transparency in itself will not end poverty or corruption, it provides a tool for transforming *governance, accountability and citizen engagement*. Each of these areas have become the new frontier for work in natural resources.

On the issue of *governance*, pushes for greater transparency have been embraced by governments and used to change the rules of the game. The recent passages of legislation to regulate transparent reporting are a signal of this sea change. In the US, this has occurred through the Dodd-Frank Act that was passed in 2010. Under the law, which will go into affect in 2011, all companies listed on US stock exchanges are mandated to report their revenues on a country-by-country basis. The act will cover 29 of the 30 largest oil companies (and 8 of the 10 largest mining companies in the world). Similar measures on company reporting guidelines for listed companies have been passed for the Hong Kong stock exchange. There also is currently a discussion in the UK Parliament on passing such legislation. Using legislative measures, transparency has been used to help improve the governance of companies and the sector.

On the issue of *accountability*, Arvind Ganesan of HRW noted that here also needs to be an increased focus on accountability within countries to make governments accountable for their expenditures and accountable for when they misspend them. For this change to happen, he argued, there needs to be changes in broader accountability frameworks. If a leader is going to steal money, he or she will spend it on luxury items likely bought outside their own country (such as Paris, London or New York). The unfolding case in France against heads of state from Gabon, Equatorial Guinea and the Republic of Congo for allegedly using stolen revenues from their resource wealth to buy properties and other goods in Paris is just one

example of the chain involved from taking resource wealth (captured from international companies) and placing it abroad (in the home countries of many of these same companies).

Changing where accountability lies involves employing mechanisms that extend the responsibility to other actors apart from those involved in the extractive industry. This means making the governments of countries where the money is spent accountable rather than complicit. It includes making the judiciary accountable (e.g. the use of law suits). It also means denying entry visas to government officials accused of corruption. And finally it requires enacting and enforcing anti-money laundering initiatives and anti-corruption laws that allow third-party governments to go after officials and the intermediaries that help them (i.e. lawyers, banks, real estate agents, etc.).

Finally, on the issue of *citizen engagement*, the role of empowering individuals can go a long way in changing how natural resource wealth is better used for people's development. For Ashok Khosla of the IUCN, "it is the micro-level that accounts for something in the lives of real people and we have to see how to empower people". For example, in India, a champion in government has taken on the companies and even the government. His complaint is about how the mining company in his community and the government have hijacked the system and the resources being used by it. Making these changes at the micro-level requires having information that is transparent, open and easy to understand.

The issue of engagement also has taken on new dimensions given the evolving context of world powers. A broader group of actors must be targeted and need to be involved to convert natural resources into an engine for sustainable growth and development. The rise of new powers — from Brazil and China, to India and South Africa — requires that there is a move away from piecemeal efforts and a move towards recognising how to collectively address the different nexuses that create a "place for corruption" to take root in the extractive industries. While this could happen through global-level initiatives and tools, such as EITI and the UN Convention against Corruption (UNCAC), it also must take place on the ground through citizen-led initiatives. The use of information technologies is an important ally in this fight. By citizens knowing what is their fair share of the revenues (as agreed in a contract), there is an oversight mechanism that can be put in place when these do not arrive, such as in the form of new schools, stocked clinics and paved roads. Using mobile technology to report problems can be one feed-back channel.

Concrete recommendations and follow-up actions

There must be a collective reframing of how business is done in the extractive industries. As Ashok Khosla of IUCN observed, "there does not seem to be any limit to greed" despite the limits of nature.

An important step forward has occurred through the general consensus that more transparency is needed on the part of companies. Now the benefits of transparency have to be harvested and used to pressure stakeholders also on questions of governance, accountability and citizen engagement.

Anti-corruption legislation, both nationally and internationally, exists that can be used to take transparency to the next step. For example, the UNCAC and the OECD anti-bribery convention have served to re-set the bar on levels of transparency and accountability for companies and governments. They also provide for sanctions for violations as well as oversight mechanisms to monitor levels of compliance on the part of governments and companies.

Other changes have happened by shifting the practices of companies by agreeing on a common standard on transparency in the sector, namely through EITI. It has set a bar for what is expected from companies and countries in terms of transparency and the expected results of improved governance, accountability and citizen engagement. It also has tried to formalise a tripartite partnership – between governments, companies and civil society – to make this change happen.

However, as noted by the panellists, legislation and standard setting initiatives still unfortunately do not go far enough. The OECD Convention does not include new emerging powers such as China and India and is often viewed as a “rich man’s club”. Even EITI, which has broad support, is still in the learning phase. In the case of national legislation, while it is on the books, is not always enforced. For example, the vice minister of Supervision in China has been quoted as saying that Chinese companies are under the national anti-bribery law and are not allowed to bribe abroad; however, the measure is not being enforced outside the country.

This underscores the problem that countries have applied legal frameworks using a double standard when it comes to the behaviour of their businesses abroad. There needs to be an end to this impunity if the inequities caused by corruption in the sector are to end. If we know where the money is that has been stolen and where it is outside the country (such as in Geneva or London), it should be made known and returned to the citizens. In this sense, what is the next step to deal with the problem, as Arvind Ganesan of HRW noted, is “the globalisation of enforcement”.

The solutions for change, as agreed by the panellists, must be bottom-up (grassroots demands) and top-down (effective frameworks that are implemented). In terms of top-down, this can happen in different ways. Karen Lissakers of RWI explained that policies mandating the disclosure of conflicts of interest and personal assets have proven an effective tool for combating corruption by public servants. Another important part is disclosure of the beneficial ownership of companies, particularly beneficiary companies that get concessions without carrying out the work (as shams or fronts for funnelling money). At the global level, getting the Group of 20 countries to discuss common standards of good practice in the extractive industries is an important step.

While these top-down efforts play an important part in change and opening the path for actions, “it is not only sanctions that are needed”. Real action on the ground must complement it. Measures need to be innovative, such as going after stolen assets in the jurisdictions of where they were spent (such as through trials). And efforts must be targeted at preventing the money from getting spent to begin with (i.e. travel and visa bans, “know-your-customer” laws for bankers, lawyers and real estate agents, etc.). This can also be done through the use of new technologies – such as Wikileaks, websites, geographic information tracking and satellite systems and other information tools – along all the steps on the value chain.

As Arvind Ganesan of HRW explained, “Going after people after they spend money is working”. One clear example comes from Equatorial Guinea. It has faced an enormous amount of stigmatisation because of corruption. A proposed award that the government was to fund through UNESCO was abandoned after wide-scale, international public protest. The main message sent was that an illegitimate and allegedly corrupt state can not buy itself legitimacy.

Interesting quotes

One of the main aims of ending corruption is to turn natural resource wealth from a curse into a blessing.

As Karen Lissakers underscored, “Transparency is a critical component in getting the resources right”. While there have been important advances on this front, such as through new legislation and multi-stakeholder initiatives, it still falls short in practice. The Revenue Watch Index, released in 2010, helped to underscore this problem. The index covers 41 major resource producing countries and information made public by these countries. Of those assessed, two-thirds produce limited or no information. Five of 41 countries publish contracts made for concessions. As Lissakers finished her comments, she noted that “there is indeed a very long way to go” on transparency in the sector.

This sentiment was also echoed by Arvind Ganesan, but on the issue of accountability. The mechanisms that are being used for stealing and spending the money need to end and the stakeholders that form this triangular partnership of (civil society, governments and companies) need to “make the next decade the decade of accountability”.

There also need to be channels that can be used for pressure points. As Ganesan pointed out, Azerbaijan did not have the same pressure to deal with corruption and human rights that was there for the government to comply with EITI. While the country is EITI compliant, its human rights record is nowhere near the same standard.