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Generating Government Revenue from the Sale of Oil and Gas: New Data and the Case for Improved Commodity Trading Transparency

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SUMMARY

This briefing uses newly released data on in-kind payments made to governments by oil and gas companies for the right to extract natural resources. The briefing reveals that in-kind payments made to national oil companies (NOCs) in the form of physical oil and gas can account for the majority of the overall payments that these companies make to governments in order to extract resources. While these in-kind payments received by NOCs are large, the Resource Governance Index (RGI) shows that many NOCs in oil-producing countries score poorly in indicators that assess their governance and disclosure practices in relation to the sale of these important state assets of oil and gas.

Responsible trading companies that purchase oil and gas from NOCs can help to improve transparency and mitigate corruption risks in this area by disclosing the payments they make to purchase these resources. To date only one company proactively provides some of this information. Switzerland, the United Kingdom and other major trading hubs should include these transactions within their own payments to governments (PtG) laws in order to shed light on these economically important yet corruption-prone financial flows, and to improve the ability of citizens to hold NOCs to account for the revenues they generate when selling the state's oil and gas.

The Resource Governance Index shows that many national oil companies in oil-producing countries score poorly in indicators that assess their governance and disclosure practices in relation to the sale of these important state assets of oil and gas.

INTRODUCTION

In many oil-producing countries, the national oil company (NOC) sells vast quantities of physical oil and gas. These physical assets are available to sell by NOCs as a result of: the NOC's upstream activities; the oil and gas resulting from the government's equity share in operating joint ventures and participation in production sharing contracts; and the oil and gas received as in-kind payments made by private companies. The revenue generated from the sale of this oil and gas, often referred to as commodity trading, is a significant revenue stream for certain oil-producing countries, and in some cases, constitutes a country's largest source of income.[1] Despite the economic importance of the sale of oil and gas for oil-producing countries, this form of physical commodity trading is currently subject to limited scrutiny or regulation, and is open to abuse.[2]

1 Alexandra Gillies, Marc Guéniat and Lorenz Kummer, *Big Spenders: Swiss Trading Companies, African Oil and the Risks of Opacity* (Natural Resource Governance Institute, 2015), https://resourcegovernance.org/sites/default/files/documents/bigspenders_20141014.pdf.

2 See Aaron Sayne and Alexandra Gillies, *Initial Evidence of Corruption Risks in Government Oil and Gas Sales* (Natural Resource Governance Institute, 2016), https://resourcegovernance.org/sites/default/files/documents/nrgi_trading-corruption-risk.pdf.

While revenue generated from the sale of the government's share of oil and gas remains an opaque economic activity, "payments to governments" (PtG) laws in Europe and Canada require companies to publish annual PtG reports focused on their "extractive activities" (the payments they make for the right to *extract* resources). The resulting data enable citizens in resource-rich countries to scrutinize certain tax, royalty and other payments made to government entities by companies engaged in the exploration and extraction of natural resources. At the time of writing, a website maintained by NRGI that compiles data from these PtG reports in a central location, ResourceProjects.org, included over USD 292 billion in company payments to government entities in 138 countries.[3] These PtG laws have brought unprecedented levels of recent payment data into the public domain, as a complement to voluntary disclosures under the Extractive Industries Transparency Initiative (EITI).[4]

These PtG reports often include in-kind payments made in the form of physical oil and gas, which are transferred to an NOC. These in-kind payments can arise both when a company makes a production entitlement payment, often paid to the government as part of a production sharing contract, and when it makes in-kind payments to meet royalty and tax obligations. In order to transform production entitlements or other in-kind payments into revenue that can be transferred to the national treasury and used to fund national priorities such as health and education, the NOC engages in commodity trading activities, marketing and selling this oil to domestic and foreign buyers. This briefing uses this in-kind payment disclosure data for extractive activities to identify countries that receive a significant percentage of their payments in the form of physical oil and gas from companies covered by PtG laws, thereby indicating a potential reliance on the sale of oil and gas as a significant government revenue stream.

Resource Governance Index data demonstrate how poorly national oil companies perform in providing their own citizens with information on the buyers of the state's oil and gas, the volume of oil and gas sold to those buyers and the amount received for such sales.

One of the central motivations behind the push for greater commodity trading transparency is to address the governance and corruption risks brought about by these activities.[5] Using NRGI's 2017 Resource Governance Index (RGI), this briefing examines how oil-producing countries perform in indicators that assess governance and corruption risks that arise from commodity trading and the conduct of NOCs, namely: the NOC's selection of buyers; determining the price, value and volume sold; and the transfer of revenues by the NOC to other parts of government, such as the treasury.

RGI data demonstrate how poorly NOCs perform in providing their own citizens with information on the buyers of the state's oil and gas, the volume of oil and gas sold to those buyers and the amount received for such sales.

Given the governance challenges identified by the RGI in terms of the performance of NOCs in relation to commodity trading, as well as the large amount of physical oil and gas that NOCs have available to sell, there is a clear rationale for the companies that purchase these physical commodities to improve the transparency of these transactions. Currently only one commodity trading company, Trafigura, proactively provides some of this information. The inclusion of these transactions in PtG laws would fill a major gap in these regulations and enable commodity trading hubs such as the United Kingdom and Switzerland to fulfill commitments that they have made to enhance transparency in this area.[6]

3 "ResourcesProjects.org," Natural Resource Governance Institute, accessed 11 January 2018, http://resourceprojects.org.

4 For more on the role of the EITI in addressing commodity trading transparency, see 'The role of the Extractive Industries Transparency Initiative' section of this briefing.

5 For this briefing, corruption is defined as the use of public office for private gain. It can, therefore, include both activities that are technically legal and activities that are illegal.

6 UK Cabinet Office, *Anti-Corruption Summit: country statements*, 2016: https://www.gov.uk/government/publications/anti-corruption-summit-country-statements

SCALE OF PRODUCTION ENTITLEMENTS AND IN-KIND PAYMENTS

While the trading of physical oil and gas remains an opaque economic activity in oil-producing countries, the payments made in relation to the upstream exploration and extraction of these resources are subject to greater transparency and oversight. This increased scrutiny has come about predominately from the development of the EITI and the introduction of PtG laws in over 30 countries globally. Initiated in the U.S. with the development of Section 1504 of the Dodd-Frank Act, and more recently with laws passed in EU, Norway and Canada, oil, gas and mining companies are now required to disclose the payments they make to government entities, including to state-owned enterprises (SOEs), for their extractive activities, and break down this data on a project-by-project basis.[7]

We use this new data to determine how much production (in the form of in-kind payments received) NOCs have available to sell. The analysis covers the PtG disclosures of 502 companies, valued at USD 292 billion made to government entities in 138 countries. From this data, we estimate the percentage of total payments disclosed by companies for each country that is made in the form of production entitlements and other oil and gas in-kind payments. The analysis focuses on transfers of physical oil and gas from companies to governments in 2016, and excludes instances where the in-kind payment was made in another form (i.e., solid mineral commodities, infrastructure, construction or technical services, or the transfer of shares). In order to transform in-kind payments into revenue that can be transferred to the national treasury to fund national priorities such as health and education, the NOC will engage in commodity trading activities, marketing and selling this oil and gas to domestic and foreign buyers.

In order to transform in-kind payments into revenue that can be transferred to the national treasury to fund national priorities such as health and education, the national oil company will engage in commodity trading activities, marketing and selling this oil and gas to domestic and foreign buyers.

The findings presented come with several important caveats:

- **Production entitlements.** Production entitlements are one of the seven payment types included in the PtG regulations, and represent a payment of the government's share of the oil or gas production of a project. For this analysis, these payments are considered as a transfer of physical oil and gas; however, not all production entitlements are necessarily paid in-kind. While this payment type represents the government's share of production, it may in limited instances be paid in cash rather than in-kind.

  Reporting from major oil companies backs up this assumption. Eni, Glencore, BP and Shell all differentiate between in-kind and in-cash production entitlement payments, and the vast majority are made in-kind. Similarly, Total SA, which does not specify whether a payment was paid in-kind on a payment-by-payment level, does state that its production entitlements are "generally paid in-kind."[8]

- **Inconsistent reporting of in-kind payments.** Where specified, we have included other types of oil and gas in-kind payments in the analysis, along with production entitlements. However, the analysis may underrepresent the total amount of revenue received in physical oil and gas. In certain reporting jurisdictions, most notably in France, the law does not currently require companies to state if a payment was made in-kind or to provide the volume of any in-kind payments. As a result, certain in-kind payments that were not identified as such in the PtG reports will not be included in the total "percentage in-kind" figure used below. Due to inconsistent approaches to reporting in

7 The original mandatory payment disclosure law, Section 1504 of the 2010 U.S. Dodd-Frank Act, has yet to be implemented.

8 Total SA, *Registration Document: 2016 Edition* (2017), https://www.total.com/sites/default/files/atoms/files/ddr2016_va_web.pdf#page=333.

relation to joint ventures (JVs), the analysis also includes an overestimation of in-kind revenue received in cases where an operator of the JV has reported on behalf of all partners, and a partner has additionally reported its proportionate share of in-kind payments.

- **Other sources and uses of oil and gas.** Production entitlements and other in-kind payments are not the only ways an NOC may accrue physical oil and gas. Most notably, the oil produced from the NOC's upstream activities is not included in this analysis. Furthermore, oil resulting from the government's equity share in a JV is only reported in instances where the operating company includes this figure as a production entitlement. For example, Shell includes as a production entitlement a government's share of production resulting from its participation as an equity or interest holder in a project, but this approach is less common. For some countries, these other sources may constitute enormous volumes of oil and gas.

- **In-kind payments made by other companies.** The analysis uses only the available PtG data, and as such will not include payments to governments from companies that are not currently required to disclose payment data, including a range of internationally operating oil and gas companies incorporated or listed in countries that do not currently implement a PtG law such as Australia, Brazil, China, Russia, South Africa and the United States. In-kind payments reported under EITI processes are also not included, partly because 2016 data is generally not yet available.

- **Not all in-kind payments are sold.** NOCs do not necessarily sell all their production entitlements and other in-kind payments, and often allocate a share to their domestic refineries or other downstream subsidiaries.

In 2016, 32 countries received a significant portion of these payments in the form of physical oil and gas.

As a result of these caveats, the analysis in this briefing provides an estimate of *a portion of* the oil and gas available to NOCs to sell, rather than a complete picture.

Analysis

At the time of publication, government entities in 138 countries have received payments disclosed under PtG regulations in Europe and Canada. Of these, in 2016, 32 countries received a significant portion of these payments in the form of physical oil and gas (see Figure 1).[9]

For 27 out of the 32 countries, the majority of in-kind payments received are in the form of production entitlements. For Libya, Chad, the Republic of Congo, Colombia and Egypt, the majority of in-kind payments received come from taxes and royalties paid in amounts of oil and gas.

In terms of individual companies' PtG reports in 2016, 80 percent of Eni's total payments to governments were production entitlements and other in-kind payments. These payments totaled USD 4.4 billion and were made in the form of 147 million barrels of oil equivalent. BP paid USD 8 billion in the form of oil and gas, representing 65 percent of its payments to all government entities. These payments included 188 million barrels of oil. Finally, 67 percent of Shell's USD 15 billion total payments to governments was comprised of production entitlements and other in-kind payments, paid in the form of 347 million barrels of oil equivalent. The largest revenue stream accruing to governments by these companies for the right to extract natural resources is in the form of oil and gas, rather than cash.

9 For this briefing, "significant portion" is defined as a country that receives more than 25 percent of their revenue from PtG companies in the form of oil and gas.

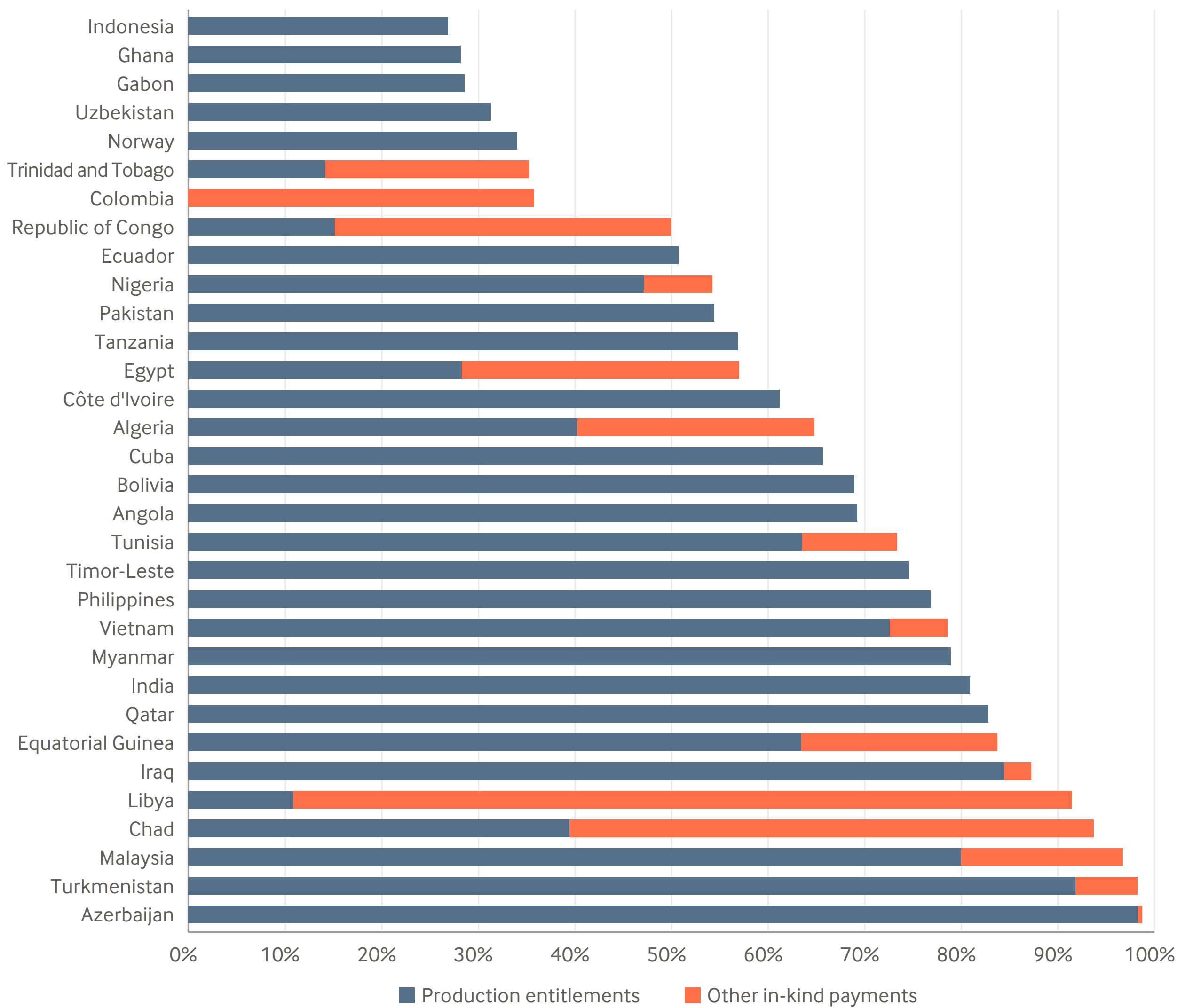

Figure 1. In-kind 2016 payments disclosed by companies covered by payments-to-governments laws, as a percentage of all disclosed payments

As these figures reflect only the payments made to NOCs from EU, Canadian and Norwegian listed and incorporated oil and gas companies, including Shell, BP, Eni, Total and Glencore, it is important to re-emphasize that certain NOCs may generate vast sums of government revenue from the sale of oil and gas from other sources. One example of a country that does not feature in this list is Russia, which only received 1 percent of PtG report payments in-kind. Yet Rosneft, a Russian NOC that conducts upstream operations, sold USD 38 billion in crude in 2016, and a further USD 42 billion in petroleum product sales.[10]

10 Rosneft, *Annual Report 2016* (2017), 23, https://www.rosneft.com/upload/site2/document_file/a_report_2016_eng.pdf.

Country	Total disclosed payment value, USD million	Production entitlements value, USD million	Other in-kind payments value, USD million	Total in-kind payments, USD million	In-kind payments as a percentage of total
Azerbaijan	6,789.59	6,678.56	3.88	6,682.43	98%
Turkmenistan	79.69	73.12	5.02	78.14	98%
Malaysia	3,218.23	2,581.74	530.59	3,112.32	97%
Chad	48.34	19.00	26.30	45.30	94%
Libya	1,953.36	212.31	1,576.27	1,788.57	92%
Iraq	2,037.74	1,718.52	59.46	1,777.98	87%
Equatorial Guinea	95.82	60.77	19.40	80.17	84%
Qatar	3,716.65	3,077.48		3,077.48	83%
India	529.33	428.17		428.17	81%
Myanmar	112.80	89.00		89.00	79%
Vietnam	617.58	449.28	35.84	485.12	79%
Philippines	467.82	359.08		359.08	77%
Timor-Leste	34.47	25.66		25.66	74%
Tunisia	173.91	109.95	17.61	127.56	73%
Angola	6,013.26	4,166.16		4,166.16	69%
Bolivia	701.22	482.98		482.98	69%
Cuba	65.92	43.23		43.23	66%
Algeria	893.77	359.30	220.12	579.43	65%
Côte d'Ivoire	167.51	102.47		102.47	61%
Egypt	522.85	147.56	150.44	297.99	57%
Tanzania	36.96	21.00		21.00	57%
Pakistan	1,428.17	776.52		776.52	54%
Nigeria	6,615.81	3,120.04	469.87	3,589.90	54%
Ecuador	128.06	65.04		65.04	51%
Republic of Congo	725.34	109.20	253.31	362.51	50%
Colombia	776.19	0.65	276.15	276.80	36%
Trinidad and Tobago	199.86	28.19	42.08	70.27	35%
Norway	7,282.92	2,465.05		2,465.05	34%
Uzbekistan	281.82	88.00		88.00	31%
Gabon	527.28	150.39		150.39	29%
Ghana	131.49	37.02		37.02	28%
Indonesia	3,595.29	964.57		964.57	27%

Table 1. 2016 payments disclosed by companies covered by payments-to-governments laws

RESOURCE GOVERNANCE SCORES

Thirty-one of the 32 countries that received a significant portion of PtG payments in the form of oil and gas from disclosing companies feature in the 2017 Resource Governance Index. The RGI assesses how 81 resource-rich countries govern their oil, gas and mineral wealth (see Box 1).

Box 1. What is the 2017 Resource Governance Index?

The 2017 RGI assesses how 81 resource-rich countries govern their oil, gas and mineral wealth. The index composite score is made up of three components. Two measure transparency and accountability characteristics of the extractive sector and the third captures the broader context of governance:

1. Value realization. Informed by primary data, assesses governance of licensing, taxation, state-owned enterprises and environmental and social impacts
2. Revenue management. Informed by primary data, assesses governance of extractive revenue in the national budget process, subnational resource revenue sharing and sovereign wealth funds.
3. Enabling environment. Using secondary governance data, assesses the general governance environment, such as rule of law, control of corruption, voice and accountability and open data.

These three overarching dimensions of governance consist of 14 subcomponents, which comprise 54 indicators calculated by aggregating 133 questions and external data. Independent researchers, overseen by NRGI, in each of the 81 countries completed a questionnaire to gather primary data on value realization and revenue management. For the third component, the RGI draws on external data from over 20 international organizations. The assessment covers the period 2015–2016. For more information on the index, how it was constructed and to access the full dataset, visit www.resourcegovernanceindex.org.

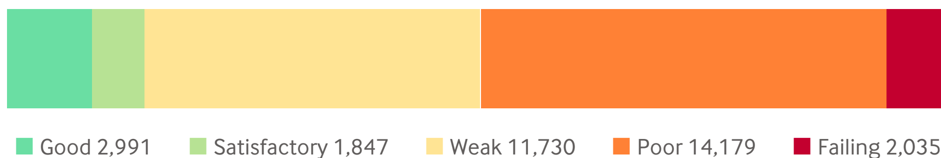

Figure 2. In-kind 2016 payments disclosed by companies covered by payments-to-governments laws, by Resource Governance Index score of recipient countries (USD millions)

Figure 2 shows the total PtG payments made in the form of physical oil and gas in relation to the RGI governance score of the recipient country. Eighty-five percent of these payments, or USD 28 billion, are received by countries with "weak," "poor" or "failing" governance systems. This finding suggests that many of the countries with NOCs that receive a physical share of production, and are thus likely to engage in commodity trading activity to transform this payment into revenue transferable to the national treasury, score poorly in their ability to manage their resource wealth. Examples include:

- In 2016, Turkmenistan, which has the lowest score of any oil and gas country assessed in the RGI, received 98 percent of the USD 79.7 million payment made by Eni, the only European or Canadian company that disclosed payments to the country, in the form of 2,178 thousand barrels of oil equivalent (kboe).
- Libya, which also scored "failing" in the RGI, received USD 1.8 billion in production entitlements and in-kind payments from Eni, Total and Basf in 2016. This includes a tax payment of USD 1.4 billion by Eni to the National Oil Corporation in the form of 46,959 kboe.
- In 2016, BP paid a total of USD 6.3 billion to Azerbaijan, which scored "weak" in the RGI. Of this, USD 5.8 billion was paid in the form of 141 million barrels of oil (bbls) and 2.7 billion cubic meters of gas to the State Oil Company of Azerbaijan Republic (SOCAR).

This finding highlights the responsibility of companies operating in this industry to disclose the payments they make to governments in these countries. As it stands, the commodity trading sector's opacity results in citizens in the poorest governance environments being unable to hold their governments accountable for the revenue generated from these high value transactions.

The corruption risks associated with NOCs selling the state's oil and gas can be grouped into three categories: the selection of buyers; establishing the value and volume sold; and collection and transfer of revenues to the national treasury. The following section examines how oil-producing states assessed within the RGI scored against specific indicators that address these commodity trading corruption risks. All of the data, and links to the government documents underlying these assessments, were taken from the RGI data explorer.[11]

Given the size and economic importance of the revenue generated from the sale of oil and gas, it is crucial that buyers are selected using a clear, transparent, competitive and rule-bound procedure.

Selection of buyers

The corruption risks associated with the sale of the state's oil and gas begin with the process by which the government or NOC selects the buyers for this physical asset. Given the size and economic importance of the revenue generated from the sale of oil and gas, it is crucial that buyers are selected using a clear, transparent, competitive and rule-bound procedure. The absence of such procedures can leave the selection of buyers susceptible to corruption in the form of bribery conducted to secure buying rights or the selection of buyers with politically exposed persons as beneficial owners.[12]

Table 2. Question 1.4.7a: Are there rules that govern how the national oil company should select the buyers of its production?

Good	Satisfactory	Weak	Poor	Failing		No data/Not applicable
Argentina	None	None	None	Algeria	Kazakhstan	Canada (Alberta)
Iraq				Angola	Kuwait	Iran
Mozambique				Azerbaijan	Libya	United Kingdom
Oman				Bahrain	Malaysia	United States (Gulf of Mexico)
Tunisia				Bangladesh	Mexico	
Ukraine				Bolivia	Myanmar	
Uzbekistan				Brazil	Nigeria	
Yemen				Cameroon	Norway	
				Chad	Qatar	
				China	Russia	
				Colombia	Saudi Arabia	
				Republic of Congo	South Sudan	
				Côte d'Ivoire	Sudan	
				Cuba	Tanzania	
				DRC	Timor-Leste	
				Ecuador	Trinidad and Tobago	
				Egypt	Turkmenistan	
				Equatorial Guinea	Uganda	
				Gabon	United Arab Emirates	
				Ghana	Venezuela	
				India	Vietnam	
				Indonesia		

Two questions within the RGI deal directly with this form of corruption risk (see Table 2 and Table 3). Question 1.4.7a assesses whether there are rules that govern how the NOC should select the buyers of its production (see Table 2). Forty-three out of the 55

11 Natural Resource Governance Institute, *2017 Resource Governance Index* (2017), http://www.resourcegovernanceindex.org.

12 Corruption cases related to the selection of buyers have arisen in Indonesia, the Republic of Congo and Angola. See Sayne and Gillies, *Initial Evidence of Corruption Risks.*

oil and gas producing countries assessed in the RGI received a "failing" score for this indicator. The majority of these, including Egypt, Libya and Algeria, have no identifiable relevant provisions within their petroleum law, or other relevant statutes, relating to the procedure for selecting a buyer. Others have inadequate rules. The buyer selection process is mentioned in Nigeria's NNPC Act of 1990, permitting the Nigerian National Petroleum Corporation (NNPC), Nigeria's NOC, to "enter into contracts or partnerships with any company, firm or person which in the opinion of the Corporation will facilitate the discharge of the said duties."[13] However, this provision does not prescribe a clear procedure for selecting a buyer, instead leaving it up to NNPC's discretion. This in turn increases the risk of corruption and the country not receiving the optimal price for its oil and gas.

Conversely, eight of the countries assessed scored "good" on this indicator, showing that they have clear and competitive procedures in place for selecting who is allowed to buy the state's oil and gas. One example of this is Tunisia, which, in decree 89-877 dated 05/07/1989, specifies the procedures that must be followed to sell its share of production. These rules state that contracts must be awarded on a competitive basis and that buyers are to be selected by a multiparty commission. The establishment and adherence to rules when selecting buyers addressed in 1.4.7a reduces the risk of corruption based on a company engaging in bribery to secure a purchasing contract.

Table 3. Question 1.4.8d: Does the national oil company or government publicly disclose the names of the companies that bought the production sold by the NOC?

Good	Satisfactory	Weak	Poor	Failing		No data/Not applicable
Yemen	None	Azerbaijan	None	Algeria	Kazakhstan	Canada (Alberta)
		Bangladesh		Angola	Kuwait	Cuba
		Iraq		Argentina	Libya	DRC
		Mozambique		Bahrain	Malaysia	India
		Qatar		Bolivia	Mexico	South Sudan
		Tanzania		Brazil	Myanmar	Timor-Leste
		Ukraine		Cameroon	Nigeria	Uganda
				Chad	Norway	United Kingdom
				China	Oman	United States (Gulf of Mexico)
				Colombia	Russia	Vietnam
				Côte d'Ivoire	Saudi Arabia	
				Republic of Congo	Sudan	
				Ecuador	Trinidad and Tobago	
				Egypt	Tunisia	
				Equatorial Guinea	Turkmenistan	
				Gabon	United Arab Emirates	
				Ghana	Uzbekistan	
				Indonesia	Venezuela	
				Iran		

NOCs rarely disclose the identity of their buyers, even though these companies are crucial partners that transform production into cash. The country scores on question 1.4.8d illustrate this information gap. On this question of whether the government or NOC publicly discloses the names of the companies that bought the production sold by the NOC, 44 countries scored either "weak" or "failing." The countries that scored "weak," including Azerbaijan, Qatar and Tanzania, disclose the names of the companies that purchase the government's share of production, but only aggregated at an annual level, not on a sale-by-sale basis. Azerbaijan's governance performance in

13 Government of Nigeria, *Nigerian National Petroleum Corporation Act* (1990), http://www.nigeria-law.org/Nigerian National Petroleum Corporation Act.htm.

this area may weaken further as this disclosure came about from their EITI reports.[14] Azerbaijan withdrew from the EITI in early 2017, and information on buyers in 2016 and 2017 could not be found following a review in early 2018.

Countries that scored "failing" on this indicator, including Ecuador, Indonesia and Chad, do not systematically disclose the buyers of the government's share of production. In these countries, companies buy hundreds of millions of dollars worth of oil from the state, yet their identity remains unknown, leaving citizens unable to ask basic questions about who they are and whether they pose corruption risks, such as through an affiliation with a politically exposed person. A country that discloses buyers on a sale-by-sale basis would achieve a "good" score on this indicator.

Republic of Congo: Gunvor case study

The ongoing bribery allegations against Gunvor's activities in the Republic of Congo illustrate the lengths companies may go to in order to secure the right to purchase the government's share of oil and gas. A 2017 report by the Swiss organization Public Eye detailed the accusations against Gunvor for how it secured the contract to export 22 tanker loads of crude oil valued at USD 2.2 billion between 2010 and 2012.[15]

In order to secure this business, Public Eye claims that Gunvor used its geopolitical connections with the Kremlin, the promise of Russian economic and political support for the Republic of Congo, and the offer of a USD 750 million oil-backed loan. Gunvor's executives also hired a number of intermediaries with close political connections to help broker the deal, and paid them handsomely. These suspicious payments triggered antibribery investigations in Switzerland. Gunvor denies any corrupt behavior, stating that the company was unaware of the inappropriate actions taken by individual employees in the Republic of Congo. They have committed to revamping their compliance systems.[16]

This case demonstrates how the lack of clear and competitive selection procedures can potentially limit the benefit a country's citizens reap from the sale of this state asset. The Public Eye report states that Gunvor's earned an unusually high margin on the oil purchased from the Congolese government, around USD 0.8–1.5 per barrel. When compared to the standard margin for a deal of this nature, around USD 0.3–0.4 per barrel, the report suggests that this deal was favorable for Gunvor. If true, this means that the use of an open and competitive selection process may have delivered a better deal for Congolese citizens for the sale of this state asset. However, the total opacity of Gunvors oil trading payments, and the payments made by other trading companies to the Congolese government, make it extremely difficult to fully ascertain whether this and other deals serve the public interest – leaving this and other crucial deals subject to controversy and speculation.

Value and volume

When an NOC sells the state's oil and gas, a well-structured deal can ensure a country receives the best possible value for the sale of its mineral endowment. Conversely, a bad deal can cost the government vast sums in lost resource revenue and potentially adversely affect the macroeconomic health of the country.

There are multiple reasons why a country may end up with suboptimal sales terms, including: weak technical capacity; the prioritization of short-term gains over longer-term benefits; and corruption. Disclosure by both the NOCs, and the companies they

14 Azerbaijan EITI, *Azerbaijan EITI Annual Report 2015* (2016), https://s3.amazonaws.com/rgi-documents/a79b374f513a89c35626ce53808c87ce5ba96592.pdf.

15 Public Eye, *Gunvor in Congo* (2017), https://www.publiceye.ch/fileadmin/files/documents/Rohstoffe/PublicEye_Gunvor-in-Congo_report_2017_68p.pdf.

16 Neil Hume, *Swiss AG widens probe into former Gunvor trader's activities,* Financial Times, 2017: https://www.ft.com/content/5cb3802c-cbdf-342d-8598-d5970e1d3c50

sell to, of the value and volume sold would enable oversight actors to analyze whether the country is receiving a reasonable return for its oil and gas and to identify purchases with terms that appear abnormal and require further inquiry.

While many companies disclosing in-kind payments under PtG laws are required to report the value and volume of such payments in-kind, citizens do not have access to the value and volume of payments made for the sale of these government assets. Without this information, oversight actors cannot determine whether such sales deals are reasonable or not.

There are four questions in the RGI that relate to the price, volume and value of the state's oil and gas sold by the NOC.

Table 4. Question 1.4.7b: Are there rules that determine the prices at which the national oil company should sell its production?

Good	Satisfactory	Weak	Poor	Failing		No data/Not applicable
Argentina	None	None	None	Algeria	Libya	Canada (Alberta)
Bangladesh				Angola	Malaysia	Iran
Bolivia				Azerbaijan	Myanmar	United Kingdom
Republic of Congo				Bahrain	Nigeria	United States (Gulf of Mexico)
Ecuador				Brazil	Norway	
Equatorial Guinea				Cameroon	Qatar	
India				Chad	Russia	
Iraq				China	Saudi Arabia	
Kuwait				Colombia	South Sudan	
Mexico				Côte d'Ivoire	Sudan	
Mozambique				Cuba	Tanzania	
Oman				DRC	Trinidad and Tobago	
Timor-Leste				Egypt	Turkmenistan	
Tunisia				Gabon	Uganda	
Ukraine				Ghana	United Arab Emirates	
Uzbekistan				Indonesia	Venezuela	
Vietnam				Kazakhstan		
Yemen						

Question 1.4.7b assesses whether a country has rules in place for determining the price at which the NOC sells its production (see Table 4). The existence of such rules can reduce the corruption risk that a company may receive preferential terms when purchasing the state's oil and gas. The majority of countries (33 out of 55) "failed" in this area, with no such rule identifiable, suggesting that NOCs may enjoy too much discretion in determining the sale price.

Eighteen of the countries assessed do have a rule for determining the selling price of the state's oil and gas. One example of a country with a rule for determining the selling price is Iraq, where the State Organization for Marketing of Oil (SOMO), the country's oil marketing company, released a public policy document detailing how the selling price, which is applied to all buyers, is determined.[17]

The three remaining questions all evaluate what information the NOC or government actually discloses on the sales. When available, this information can be used by oversight actors to assess whether the government has secured a reasonable deal for the sale of the state's physical assets. These actors can also use information on the date, value and volume of oil and gas sold to identify deals that deviate significantly from what would be expected, and thus may require further investigation to identify if the purchasing company received preferential terms.

17 Government of Iraq, Ministry of Oil, *SOMO Crude Export Rules and Procedures* (2016), https://s3.amazonaws.com/rgi-documents/f78dac7efe5f4d0c9994e2199a06d9fd1093d99e.pdf.

Table 5. National oil company disclosure of volume, value and sale date of production sold

Question	Good	Weak	Failing	No data/Not applicable
1.4.8a) Disclosure of volume of production sold by NOC	Bolivia Ghana	Algeria Angola Argentina Azerbaijan Bahrain Bangladesh Brazil Cameroon Chad China Côte d'Ivoire Ecuador Indonesia Iraq Kazakhstan Malaysia Myanmar Nigeria Norway Russia Saudi Arabia Trinidad and Tobago Ukraine United Arab Emirates Venezuela Yemen	Colombia Congo DRC Egypt Equatorial Guinea Gabon Iran Kuwait Libya Mexico Mozambique Oman Qatar Sudan Tanzania Turkmenistan Uzbekistan	Canada (Alberta) Cuba India South Sudan Timor-Leste Tunisia Uganda United Kingdom United States (Gulf of Mexico) Vietnam
1.4.8b) Disclosure of value of production sold by NOC	Chad Ghana	Algeria Angola Argentina Azerbaijan Bahrain Bangladesh Bolivia Brazil Cameroon Congo Côte d'Ivoire Indonesia Iraq Kazakhstan Kuwait Malaysia Mexico Mozambique Myanmar Nigeria Norway Qatar Russia Sudan Tanzania Trinidad and Tobago Ukraine Yemen	China Colombia Ecuador Egypt Equatorial Guinea Gabon Iran Libya Oman Saudi Arabia Turkmenistan United Arab Emirates Uzbekistan Venezuela	Canada (Alberta) Cuba DRC India South Sudan Timor-Leste Tunisia Uganda United Kingdom United States (Gulf of Mexico) Vietnam
1.4.8c) Disclosure of sale date of production sold by NOC	Chad Yemen	Angola Cameroon Iraq Nigeria	Algeria Argentina Azerbaijan Bahrain Bangladesh Bolivia Brazil China Colombia Congo Côte d'Ivoire Ecuador Egypt Equatorial Guinea Gabon Ghana Indonesia Iran Kazakhstan Kuwait Libya Malaysia Mexico Mozambique Myanmar Norway Oman Qatar Russia Saudi Arabia Sudan Tanzania Trinidad and Tobago Tunisia Turkmenistan Ukraine United Arab Emirates Uzbekistan Venezuela	Canada (Alberta) Cuba DRC India South Sudan Timor-Leste Uganda United Kingdom United States (Gulf of Mexico) Vietnam

Table 5 shows the scores of the countries in this assessment for questions 1.4.8a–c. Almost all countries do not disclose the volume, value or date of the sale of the government's production on a sale-by-sale basis. The poor performance of most countries in these indicators reinforces the need for commodity trading companies to disclose information on the payments they make to NOCs for the purchase of the state's oil and gas, as well as the volumes received.

Transfer and use of revenue

The third category of corruption risks associated with commodity trading activities relates to how the NOC transfers revenue generated from the sale of the state's oil and gas to the national treasury. As the government body generally responsible for receiving, marketing and selling the state's oil and gas, the NOC often also collects the sales revenue. As noted above, payments generated from commodity trading activity often remain secret. A lack of scrutiny of these high value transactions poses a corruption risk that the resulting revenue will not be transferred to the national treasury in its entirety. Previous NRGI research has documented several case studies of NOCs retaining billions of dollars in sales revenue and using this on "off-budget" expenditures.[18]

This corruption risk related to transfer of revenues could be mitigated by the establishment of clear rules governing how the revenue generated from these sales is transferred to the national treasury. In the absence of such rules, transparency takes on an added importance. The risk posed in relation to the transfer of revenues can, in part, be addressed by the NOC disclosing how much they have collected and transferred to the government. Similarly, the government agency responsible for receiving this revenue should disclose how much they have received from the NOC.

Commodity trading company disclosures would help mitigate this corruption risk by disclosing how much is paid to the NOC for the purchase of oil and gas. These company disclosures could be used by oversight actors to ensure the NOC is held accountable for the proceeds from the sale of these valuable state assets.

Table 6. Question 1.4.7c: Are there rules that govern how the proceeds from the sale of the national oil company's production should be transferred to the government?

Good	Satisfactory	Weak	Poor	Failing		No data/Not applicable
Angola Argentina Cameroon Republic of Congo Côte d'Ivoire Ghana Iraq Kuwait Libya Mozambique Oman South Sudan Tanzania Tunisia Yemen	None	None	None	Algeria Azerbaijan Bahrain Bangladesh Brazil Chad China Cuba DRC Ecuador Egypt Equatorial Guinea Gabon India Indonesia Kazakhstan Malaysia	Mexico Myanmar Nigeria Norway Qatar Russia Saudi Arabia Sudan Timor-Leste Trinidad and Tobago Turkmenistan Uganda United Arab Emirates Uzbekistan Venezuela Vietnam	Bolivia Canada (Alberta) Colombia Iran Ukraine United Kingdom United States (Gulf of Mexico)

18 Aaron Sayne and Alexandra Gillies, *Initial Evidence of Corruption Risks in Government Oil and Gas Sales* (Natural Resource Governance Institute, 2016), https://resourcegovernance.org/sites/default/files/documents/nrgi_trading-corruption-risk.pdf.

Question 1.4.7c assesses whether there is a rule in place stipulating precisely how sales revenue is passed from the NOC to the government (see Table 6). For the majority of countries (33 out of 55) in this assessment, no defined procedure for how these revenues are transferred from the NOC to the government could be identified. Ghana is one of the fifteen countries that received a "good" score. Under Section 3 of Ghana's Petroleum Revenue Management Law, all revenue generated by the sale of oil and gas is to be transferred to the Petroleum Holding Fund within 60 days of the transaction.[19] This law reduces the risk that the NOC could use revenue received on spending not agreed upon by the government.

The "failing" performance of most countries in this assessment highlights the importance of transparency in addressing the corruption risk posed by the transfer of sales revenues. Given the lack of well-defined transfer processes, detailed and timely disclosures are required to help media and civil society stakeholders hold the NOC accountable for the sales revenue generated. The findings outlined in Table 6 underscore the need for company disclosures, which can help oversight actors verify the amount an NOC states it has received and subsequently transfers to the government.

Table 7, based on question 1.4.2, shows that the majority of oil-producing countries (29 out of 55) have a system in place for disclosing how much revenue has been transferred from the NOC to the government. One example of this is Indonesia, where information on how much the NOC has transferred to the government is available in the country's Supreme Audit Agency's "Report Over the Government Budget."[20]

Given the relative strength of transparency in transfers from NOC to the government across the countries assessed, company disclosures of the amount they pay to the NOC could be a powerful accountability tool, enabling oversight actors to follow the oil and gas sales revenue from payment by the company to the NOC and into the national treasury.

Table 7. Question 1.4.2: national oil company–government transfer of revenue disclosure

Good		Satisfactory	Weak	Poor	Failing	No data/Not applicable
Angola	Indonesia	None	Bahrain	Algeria	Cuba	Canada (Alberta)
Argentina	Kazakhstan		Brazil	Equatorial Guinea	Gabon	Iraq
Azerbaijan	Kuwait		China		Iran	Timor-Leste
Bangladesh	Malaysia		Libya		Oman	Uganda
Bolivia	Mexico		Russia		Saudi Arabia	United Kingdom
Cameroon	Mozambique		Tunisia		South Sudan	United States (Gulf of Mexico)
Chad	Myanmar		Vietnam		Sudan	
Colombia	Nigeria				Turkmenistan	
Republic of Congo	Norway				United Arab Emirates	
Côte d'Ivoire	Qatar				Uzbekistan	
DRC	Tanzania				Yemen	
Ecuador	Trinidad and Tobago					
Egypt	Ukraine					
Ghana	Venezuela					
India						

19 Parliament of Ghana, *Petroleum Revenue Management Law* (2016), https://www.resourcegovernanceindex.org/document/rgi-petroleum-revenue-management-law

20 Indonesian Supreme Audit Agency, *Report Over the 2015 Government Budget* (2015), https://www.resourcedata.org/dataset/rgi-supreme-audit-agency-s-report-over-the-2015-government-budget/resource/ddf83d1d-b724-45d4-a35e-a17bacae77e3.

Nigeria: NNPC unremitted funds case study

In Nigeria, NNPC has been accused of failing to transfer over USD 21 billion to the Federation Account. Early in 2014, then-governor of the central bank, Lamido Sanusi, alleged that NNPC had failed to remit this oil sales revenue to the treasury over a 19-month period. A PriceWaterhouseCooper's inquiry into the matter underscored the severity of this issue, stating that nearly half of Nigeria's proceeds from crude oil sales were spent by the NOC before they reached the national treasury.[21]

In the short term, recovery of these funds could improve Nigeria's poor fiscal position following the fall in oil prices in mid-2015. As a 2017 Nigerian Extractives Industries Transparency Initiative (NEITI) policy brief stated, in the longer term, greater transparency and accountability in the management of revenue received by NNPC could significantly improve Nigeria's ability to "put the economy on a solid and sustainable footing."[22]

THE ROLE OF THE EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE

The Extractive Industries Transparency Initiative (EITI) has played an important role in the pursuit of greater commodity trading transparency. The EITI's Requirement 4.2 relates to reporting on the sale of the state's share of production or other revenues collected in-kind. The EITI has had a requirement of this nature in place since 2013.[23]

The Extractive Industries Transparency Initiative continues to play an important role in the development of an international commodity trading reporting standard and is sensitizing a wide range of actors to the importance of transparency in this area.

In 2015, the EITI established a multi-stakeholder working group, including NOCs, non-governmental organisations and commodity trading companies to look at improving EITI reporting on the purchase of the state's oil and gas. In 2017, this working group produced a guidance note on reporting on first trades in oil, including a reporting template for how to disclose these payments on a cargo-by-cargo basis.[24]

The EITI continues to play an important role in the development of an international commodity trading reporting standard and is sensitizing a wide range of actors to the importance of transparency in this area. A number of EITI implementing countries have integrated the reporting of oil and gas sales into their reporting framework, at least to some extent.[25] For example, Iraq has disclosed oil sales figures on a company-by-company basis annually, although at the time of writing the most recent data related to 2015.[26] A number of EITI implementing countries have agreed to be part of a "targeted effort" in this area of reporting and are engaging with the 2017 guidance note.

However, disclosure of commodity trading payments to governments should not be limited to EITI countries. Many of the countries for which oil and gas sales are an important source of government revenue do not engage in the EITI. As Figure 3 shows, the majority (36 out of 55) of oil and gas countries assessed in the RGI do not engage in the EITI. Of these non-EITI countries, 89 percent scored "weak" or worse in their overall governance score.

21 William Wallis, "Nigeria audit: state oil company siphoning oil revenues," *Financial Times*, 28 April 2015, https://www.ft.com/content/5ebb5f3c-edb2-11e4-987e-00144feab7de.
22 Nigeria EITI, *Unremitted Funds, Economic Recovery, and Oil Sector Reform* (2017), http://neiti.gov.ng/phocadownload/NEITI-PB3-280317.pdf.
23 EITI Standard, Requirement 4.2, 2016, https://eiti.org/document/standard#r4-2
24 EITI, *Guidance Note 26 – Reporting on first trades in oil* (2017), https://eiti.org/GN26.
25 "Commodity Trading," EITI, accessed 11 January 2018, https://eiti.org/commodity-trading.
26 Iraq EITI, *Extractive Activities in Iraq 2015* (December 2016), 64–66, https://eiti.org/sites/default/files/documents/2015_iraq_eiti_report.pdf. (The most recent data are from 2015.)

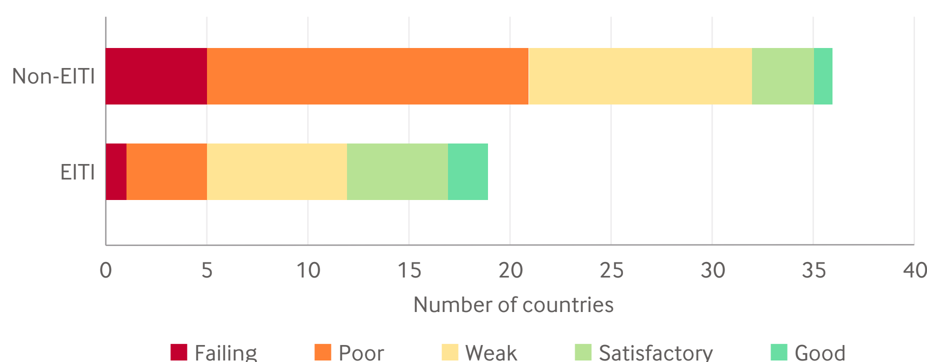

Figure 3. Engagement in EITI by oil and gas countries assessed in the Resource Governance Index

Box 2. Company case study: Trafigura

Proactive company reporting in the commodity trading sector is currently severely limited with only Trafigura, a Swiss commodity trader, voluntarily reporting the payments it makes to government entities for the purchase of the state's oil and gas in certain countries. Trafigura's precedent-setting disclosures demonstrate the feasibility of reporting in this way.

Trafigura, the first independent commodity trader to support the EITI, has voluntarily reported payments to NOCs for the purchase of oil and gas in EITI countries for 2013–2016 and has provided an aggregate payment figure for non-EITI countries for 2014–2016. During this period Trafigura has a disclosed a total of USD 57.15 billion in payments to NOCs for oil and gas, including so-called swap deals where crude oil is generally exchanged for refined products. Trafigura also revealed that in 2016 it entered into spot "pre-payment" arrangements with Trinidad and Tobago's NOC, which provided a useful additional insight.

Trafigura's disclosures underline the major contribution that these transactions make to government revenues. In 2016 Trafigura's total payments of USD 21.2 billion were greater than the payments (including payments in-kind) that major European international oil companies made to governments for the right to extract oil and gas in the same year. BP made total payments for "extractive activities" to governments of USD 12.9 billion; Shell's total was USD 15.1 billion and Total's was USD 9 billion.

While Trafigura's voluntary reporting is a strong demonstration of the magnitude and feasibility of company reporting on payments to governments related to commodity trading activities, there are some ways in which the company could improve its reporting:

Include a breakdown for non-EITI countries. Trafigura currently only provides payment data on a country-by-country basis for EITI implementing countries. However, beginning with its reports for the 2014 calendar year, the company has disclosed an aggregate figure for its payments to non-EITI countries.[28] For example, the company disclosed that in 2016 it paid USD 20.1 billion to NOCs in non-EITI countries. When compared to the USD 1.1 billion they paid to all EITI countries in the same year, this demonstrates that confining commodity trading transparency to just EITI countries misses vast payments to NOCs in non-EITI countries, where governance challenges facing those NOCs are often similar.[29]

Provide sale-by-sale data. Trafigura discloses the total annual value of its purchases by country in USD. In order to maximize the utility of this data as an accountability tool for citizens in resource-rich countries, it is important that it is provided on a sale-by-sale basis, including providing the date the sale was made. The fluctuation of oil and gas prices in a given year means it is important to know under what market conditions a purchase was made. Trafigura's current reporting demonstrates the feasibility of sale-by-sale reporting in instances where the company only makes one purchase from a country in a given year. One example of this was Trafigura's 2015 disclosure for payments to the Ghana National Petroleum Corporation (GNPC).[30] When combined with data disclosed by the Ghanaian government, we identified that Trafigura was the buyer of a cargo worth USD 35.736 million lifted on 8 December 2015.[31]

27 Trafigura, *2017 Trafigura Responsibility Report* (2017), https://www.trafigura.com/media/364861/2017-trafigura-responsibility-report.pdf.
28 Trafigura, *2017 Trafigura Responsibility Report.*
29 *Ibid.*
30 Government of Ghana, Ministry of Finance, *Petroleum Receipts and Distribution Report for 1st Quarter of 2016* (2016), http://www.mofep.gov.gh/sites/default/files/reports/petroleum/Petroleum-Receipts-Q1-2016.pdf.

OTHER TRADING COMPANIES ARE LAGGING BEHIND

While Trafigura has distinguished itself through its disclosures on purchases of oil and gas from governments, and demonstrated beyond any doubt the magnitude of these payments, other major companies involved in these transactions have yet to proactively disclose such information.[31] This is particularly surprising given that a number of these companies are officially EITI "supporting companies,"[32] some of which occupy a seat on the the EITI International Board.[33]

Major international oil companies with significant oil and gas trading divisions and which occupy full or alternate seats on the EITI international board include BP, Shell and Total. These companies are yet to follow Trafigura's example.

Other major commodity traders such as Switzerland-based Glencore and Italy's Eni are listed as EITI supporting companies yet do not choose to proactively disclose the payments they make to governments to purchase oil and gas.

Although 2015 is the most recent year for which data were available, rare disclosures by companies can be found in Iraq's EITI reporting. However, the payments made by companies to purchase crude oil from Iraq's State Organization for Marketing of Oil (SOMO) only help to demonstrate the major anomaly in reporting practices by companies on their payments to governments globally, and the need for PtG laws to integrate such transactions within their reporting frameworks as a matter of urgency:

- In 2015, the French company Total's tax and license fee payments to the Iraqi government for the right to extract natural resources amounted to USD 4.5 million. Total included this information in line with France's PtG law in its annual report to shareholders and other stakeholders.[34] However, the company did not choose to disclose the additional fact that in the same year it purchased crude oil from SOMO worth USD 1.4 billion despite the vastly larger (more than 300 times) amount of revenue this represents to the citizens of Iraq.

- Vitol, the world's largest independent oil trader, disclosed USD 3.1 million in payments related to its upstream extractive activities to governments in Ghana, Ivory Coast and Kazakhstan in 2016 under Luxembourg's PtG law.[35] However, this amount only represents a small fraction of the payments it makes to governments. In 2015, Vitol made payments of almost 100 times this amount (USD 292 million) to Iraq alone.

- Cepsa, a Spanish company, disclosed payments of EUR 178 million (USD 195 million) to government entities in six countries in 2016 under the PtG law in place in Spain.[36] By comparison, the company paid more than two times that amount (USD 433 million) to a single country, Iraq, in 2015 for the purchase of crude oil.

Major international oil companies with significant oil and gas trading divisions and which occupy full or alternate seats on the EITI international board include BP, Shell and Total. These companies are yet to follow Trafigura's example.

31 Only in Iraq and as part of an EITI reporting process have companies provided a figure for the value and volume of oil purchased from an NOC. NOCs or other government entities rather than companies have carried out limited reporting of such transactions in other EITI countries.

32 "Why companies support the EITI," EITI, accessed 11 January 2018, https://eiti.org/supporters/companies.

33 "The EITI board," EITI, https://eiti.org/about/board.

34 Total, *Registration Document: 2015 Edition* (2016), 311, https://www.total.com/sites/default/files/atoms/files/registration_document_2015_0.pdf.

35 Vitol Holding II SA, *Consolidated report on payments to governments for the year ended 31 December 2016* (2017), http://www.vitol.com/wp-content/uploads/2017/12/VHII-payment-to-governments-2016.pdf.

36 Compañía Española de Petróleos, SAU (Cepsa), *Consolidated Report on Payments to Governments 2016* (2017), https://www.cepsa.com/stfls/CepsaCom/coorp_comp/ficheros_corporativo/pago_admin_publicas_2016_eng.pdf.

Translating commitments to action: Recommendations for governments with hubs where companies purchasing oil and gas from NOCs are registered or listed

In 2016, a number of countries made encouraging commitments to "enhance company disclosure regarding payments to government for the sale of oil, gas and minerals" at the London Anti-Corruption Summit.[37] Among the countries that made these commitments were trading hubs where companies that purchase oil and gas from NOCs are registered or listed. These countries included Switzerland, the United Kingdom, the Netherlands and Italy. The European Commission, which was responsible for proposing the original PtG legislation in the European Union, also made a similar commitment.

At the time, the United Kingdom provided the following rationale for its own commitment:

We recognize the economic significance of these payments to governments. The U.K. has an important role to play as one of the world's largest commodity trading hubs, to ensure that these sales become transparent, in order to prevent corruption, provide accountability, and ensure that the extracted wealth of nations benefits their populations, not corrupt elites. (Rt Hon Justine Greening MP, former Secretary of State for International Development, 27 May 2016)[38]

Over the last decade, the U.K. has led the way in encouraging the extractive sector to be more transparent, notably through a combination of voluntary reporting under the EITI and mandatory disclosure rules now present in the EU, Canada, the U.S. and other countries. But despite this progress, a significant gap still exists. Payments from physical commodity trading companies to governments and state-owned enterprises for the sale of oil, gas and minerals—which account for the majority of total government revenues in countries such as Iraq, Libya, Angola and Nigeria—remain largely opaque. Whereas taxes, royalties and other payments are included within existing disclosure rules, payments from oil traders to governments (often USD billions/year) are not. (U.K. Open Government National Action Plan 2016–2018)[39]

The new data provided in this briefing provide a compelling reason for leading commodity trading hubs to translate these commitments into concrete action by including payments related to the purchase of these physical commodities from governments in payments-to-governments laws.

In late 2017, the United Kingdom reaffirmed its commitment in this area, stating that it will work with partners to "strengthen transparency in the sale by producer governments of oil, gas and minerals by the end of 2018,"[40] and announced that it was exploring whether its PtG laws could be amended to include these important transactions. The U.K. has also been instrumental in the launch of an international dialogue on trading transparency at the Organisation for Economic Co-operation and Development (OECD).

The new data provided in this briefing provide a compelling reason for leading commodity trading hubs to translate these commitments into concrete action by including payments related to the purchase of these physical commodities from governments in PtG laws.

37 UK Cabinet Office, *Anti-Corruption Summit: country statements*, 2016: https://www.gov.uk/government/publications/anti-corruption-summit-country-statements

38 UK Department for International Development, *Letter from Secretary of State Justine Greening to PWYP UK*, May 2016

39 UK Cabinet Office, *UK Government National Action Plan 2016 – 2018*, 2016: https://www.gov.uk/government/publications/uk-open-government-national-action-plan-2016-18/uk-open-government-national-action-plan-2016-18#commitment-2-natural-resource-transparency

40 UK Government, *UK anti-corruption strategy 2017 to 2022*, December 2017, page 59: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/667221/6_3323_Anti-Corruption_Strategy_WEB.pdf

The year 2018 presents a unique opportunity to transform these commitments into action:

- In early 2018, the Swiss parliament will consider the details of a draft PtG law. Swiss lawmakers should insist that payments related to trading are included in the scope of the final law.
- In early 2018, the United Kingdom will publish the results of a statutory review of its PtG laws. This review should conclude that the U.K.'s PtG regime should be amended to include payments related to trading.
- In mid-2018, the European Commission is due to publish a review of the European Union's PtG requirements. Given its prior commitment on this issue, the European Commission should conclude that the EU's PtG regime should be amended to include payments related to trading. Italy and the Netherlands should champion these changes, given their prior commitments in this area.
- In early 2018, the U.S. Securities and Exchange Commission (SEC) is required to adopt new rules to implement its own PtG law (Section 1504 of the Dodd Frank Act). An earlier rule adopted by the SEC in 2016 which was subsequently repealed acknowledged "that significant payments may be made by buying/trading companies and others to purchase the commodities covered by the final rules [oil, gas and minerals]"[41] and required that a company should disclose the actual cost price for any in-kind production entitlement payments made to a government which it subsequently repurchases.[42] In its 2018 rule, the SEC should require disclosure of all trading payments made to purchase oil, gas or minerals from governments by all companies.
- Other leading commodity trading hubs, such as Singapore, should adopt their own PtG laws and include transactions related to trading.
- The OECD's international dialogue on commodity trading transparency will hold its initial plenary session on 31 January 2018. This forum offers an important opportunity to expand, enhance and accelerate company reporting on oil, gas and minerals sales and for other participant countries to make commitments in this area.

PtG laws should require companies to disclose the following minimum information in relation to the purchase of oil, gas and minerals:

- Government recipient entity (e.g., name of NOC)
- Disaggregation by individual project/contract/sale
- Currency used
- Type of commodity purchased
- Payment amount (including in-kind exchanges for swap deals)
- Volume
- Volume unit

41 U.S. Securities and Exchange Commission, *Final rule on Disclosure of Payments by Resource Extraction Issuers*, 27 June 2016, page 58, https://www.sec.gov/rules/final/2016/34-78167.pdf. This rule was disapproved under the Congressional Review Act in February 2017.

42 Ibid. Instruction 11 to Item 2.01 of Form SD, page 267.

CONCLUSION

This briefing has demonstrated that many oil-producing states receive a significant portion of their payments from extractive companies in-kind in the form of physical oil and gas. To transform these physical assets into revenue that can be transferred to the national treasury, the NOC will market and sell this physical asset.

The findings of the RGI demonstrate that many of these oil-producing countries are failing to adequately govern the sales of these assets, which can constitute some countries' most valuable revenue source, leaving them susceptible to corruption risks. Greater transparency on oil and gas sales would begin to mitigate risks related to the selection of buyers; establishment of value and volume of oil and gas sold; and the transfer of revenues from the NOC to the government.

Responsible trading companies that purchase oil and gas from NOCs should help to improve transparency and mitigate corruption risks in this area by disclosing the payments they make to purchase these resources.

Switzerland, the United Kingdom and other major trading hubs such as Singapore, the Netherlands and the United States should include these transactions within PtG laws in order to shed light on these economically important yet corruption-prone financial flows. Taking this step will improve the ability of citizens to hold NOCs to account for the revenues they generate when selling the state's oil and gas.

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