

It Takes a Village: Routes to Local-Level Extractives Transparency

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SUMMARY

In many countries, there is a stark contrast between the wealth emerging from an extractive project and the resources held by the people living closest to the site. When the new industry fails to alleviate poverty and disrupts pre-existing livelihoods, the potential for discontent and conflict is high. Extractive companies are also affected as such tensions can delay projects and there is significant risk for profit loss due to conflict.¹ This happens in the midst of power asymmetries where local actors may be excluded from national-level decisions that impact their daily lives. Local stakeholders' responses to potential benefits and impacts are often hampered by low capacities and different incentives for reporting parties to share information. Different local policies and systems can make it difficult for affected communities to replicate interventions in other areas. Easy access to relevant information can be a key first step for communities striving towards creating better opportunities for local social and economic development.

Mechanisms for subnational transparency

Though the subnational transparency movement is still in its early stages, a variety of mechanisms have been deployed to increase access to information at the local level. Many countries have used the Extractive Industries Transparency Initiative (EITI) as a tool to improve subnational transparency. The most common manner in which countries use EITI, in compliance with the 2013 EITI Standard, is by including information about payments to subnational governments in the national EITI report. Innovative EITI reports have also included information about how many of the people employed by extractive companies come from local communities, as well as the beneficial ownership of those companies participating in extraction. In order to increase the use and usefulness of this information, some EITI secretariats and civil society groups have reformatted national EITI reports into smaller reports tailored to the needs of subnational communities.

Beyond the reports themselves, countries can also use the multi-stakeholder structure of the EITI to inform subnational transparency. Some countries seek the participation of subnational actors in their national multi-stakeholder group and provide them with

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¹ Daniel M. Franks et al., "Conflict translates social and environmental risk into business costs," *Proceedings of the National Academy of Sciences* 111 (2014): doi:10.1073/pnas.1405135111.

travel costs so they can participate in a meaningful way. Other countries have created subnational multi-stakeholder groups that meet in resource-rich regions and set their own agenda. In the Philippines and Peru these subnational groups have been a source of innovation for the national EITI.

In addition, many countries create national laws or policies that require the disclosure of, or access to, information about extractive industries. The impact of these laws seems to vary depending on the format and location of the information. The most transparent countries publish information in an open data format online and in the town squares of resource-rich communities. Often, local communities have taken the initiative to create local transparency mechanisms when national frameworks are not sufficient.

A number of countries with internationally operating extractive companies registered in their territory or listed on their stock exchanges have also introduced laws requiring the disclosure of payments, broken down to the project level, made to subnational governments around the world.

Finally, a number of companies have improved their voluntary disclosure of information at the subnational level. This includes, for example, payments made to towns and municipalities where the companies operate.

Information to improve governance

The type of information that different actors should disclose and use differs from the local to the national levels. The table below summarizes the information to be disclosed and its potential use across the extractive decision making chain. This chain represents a series of decisions, defined in the Natural Resource Charter,² that government officials in resource-rich countries make in their efforts to transform natural resource wealth into development outcomes. For each area of extractive governance, it is necessary for companies and governments to ensure that information is available to the communities closest to the extractive site. Many communities have found that multi-stakeholder dialogue platforms help companies, as well as national and local governments, better understand and conform to the transparency needs of subnational communities. Communities and local governments in many countries have taken initial steps to use available data to facilitate better planning and monitoring of local extractive activities.

2 NRGI, *Natural Resource Charter: Second Edition* (London: Natural Resource Governance Institute, 2014), <http://www.resourcegovernance.org/publications/natural-resource-charter-second-edition>.

Land rights and licensing	Revenue collection	Social expenditures	Local content	Social and environmental impact	Local government spending
<ul style="list-style-type: none"> Map of spectrum of land rights for entire community around the extractive area Land associated with all extraction licenses Compensation given to those needing resettlement and explanations about resettlement requirements and decisions Licensing or contracting process Contracts 	<p><i>Direct payments</i></p> <ul style="list-style-type: none"> Taxes and levies – rates, reconciled amounts, basis for calculation, land areas Equity shares – percentage of equity, total equity, reconciled amount received, loan provider and payments Social payments – basis for payments, reconciled amounts, earmark requirements <p><i>Indirect payments (Transfers)</i></p> <ul style="list-style-type: none"> Non-resource specific – total government revenues, revenue shared with each subnational government, sharing formula, time table Resource specific – reconciled revenues by project, cost recovery, 	<p><i>Before social projects</i></p> <ul style="list-style-type: none"> Company social priority areas Baseline social impact and needs assessments Plans for social investments, including timeline and budget <p><i>During social projects</i></p> <ul style="list-style-type: none"> For each project – nature of project, amount spent by company, reconciled receipt when necessary, number of locals employed <p><i>After social projects</i></p> <ul style="list-style-type: none"> Impact assessment or evaluation Recommendations to meet social need 	<p><i>Overall</i></p> <ul style="list-style-type: none"> National or local requirements for local content Contract or other agreement of project specific local content obligations <p><i>Direct employment</i></p> <ul style="list-style-type: none"> Number of employees at each project site disaggregated by share of national versus foreign and regional versus national affiliation Health and safety record for employees Types of jobs that will become available over the life cycle of the project and the training necessary for those tasks Pay scale Hiring practices Company spending on training programs <p><i>Indirect economic development</i></p> <ul style="list-style-type: none"> Needs of goods and services Recipients of contracts broken down by locally versus foreign sourced Procurement process and qualifications Participation/equity share 	<p><i>Before extraction</i></p> <ul style="list-style-type: none"> National and local obligations for social and environmental management Social and environmental impact assessments Funds available for restoration Plans for infrastructure development and use Process for reviewing impacts and qualifications of persons involved <p><i>During extraction</i></p> <ul style="list-style-type: none"> Actual environmental and social impacts monitored by companies and government Actions taken by companies Costs of actions taken Fines or citations Plan for closure Actual infrastructure use <p><i>After project completion</i></p> <ul style="list-style-type: none"> Closure process Funds spent on closure and restoration Remaining environmental risks in the area Status of infrastructure 	<ul style="list-style-type: none"> Basic budget documents, including the pre-budget statement, executive's budget proposal, enacted budget, citizen's budget, in-year report, mid-year report, year-end report and audit report Basic planning documents Expenditures for revenues not recorded in the budget, such as savings/stabilization and state owned enterprises
<p>What should be disclosed</p>					
<p>How this information could be used</p>	<ul style="list-style-type: none"> Better short and long term local planning Local forecasting of revenues Monitoring of payments and receipts Monitoring corporate obligations Improved social license to operate through understanding of payments 	<ul style="list-style-type: none"> Coordinating better service delivery (government and company projects) Long and short term government planning Monitoring corporate obligations and impacts 	<ul style="list-style-type: none"> Monitoring company obligations Training relevant workforce Fostering relevant local businesses Local economic planning Local government entitlement to corporate profits Monitoring actual economic beneficiaries of extraction projects 	<ul style="list-style-type: none"> Understanding potential environmental impact Monitoring actual impacts and ensuring agreed compensation Preparing restoration/mitigation Preparing for shared use or alternative resource needs (ie local water use plan) Preparing for potential shared infrastructure 	<ul style="list-style-type: none"> Monitoring actual spending Connecting development impacts to resource revenues Short and long term planning Coordination between company and government projects Backstop against corruption

INTRODUCTION

The past decade has brought a burst of national transparency initiatives, but access to information has not always increased at the same pace at the local level. In the 2013 Resource Governance Index, NRGI found that only 10 out of 30 resource-rich countries with subnational revenue transfers published a detailed breakdown of the local revenue transfers.³ Even when information, such as environmental impact assessments in many countries, is publicly available by law, the costs of obtaining the documents is often prohibitively high for those in resource-rich communities.⁴

The question remains as to which types of information to make public—and in which format—in order for the communities closest to extractive sites to use them. This paper is written for national and subnational policy makers and civil society organizations trying to improve transparency and governance of the extractive sector at the local level. It compiles experiences from many resource-rich countries making efforts towards subnational transparency and provides practical suggestions on what information should be disclosed. Section I explains how subnational needs and challenges are different from those at the national level. Section II explores different mechanisms that are used to improve local transparency. Section III details the different types of information needed at the local level along with examples from different countries on their availability and use.

The paper was drafted based on interviews with more than twenty individuals directly involved in creating transparency projects at the subnational level. In addition, we conducted a literature review of case studies about subnational transparency in the extractive and budget sectors. We also thoroughly reviewed EITI reports and supporting documentation from resource-rich countries where there are payments to subnational governments. As a compilation of early lessons for the subnational transparency movement, this paper serves as a launching point for more robust research.

I. THE DISTINCT NATURE OF SUBNATIONAL TRANSPARENCY

The impacts of natural resource extraction at local level are more specific and tangible than those at the national level.⁵ With the arrival of an extractive company, individual and community rights to own or access land may change. Large projects often attract significant groups of people from outside the region and country. This can complicate land rights, create stress on limited resources and increase the chances for conflict. Expectations can be high that the community will receive many jobs and a large share of the revenues. This is particularly true as communities can physically see the valuable resources being taken from the land that they used to consider part of their community. While many countries theoretically provide some proceeds from extraction to subnational governments, the amounts and timing of transfers are often misunderstood.

As resources are removed, the communities surrounding an extractive site often experience a negative environmental impact from landscape changes, tailings and decreased access to water. These environmental effects can result in increased health risks

While many countries theoretically provide some proceeds from extraction to subnational governments, the amounts and timing of transfers are often misunderstood.

3 NRGI, "Resource Governance Index: Subnational Transfers," <http://www.resourcegovernance.org/rgi/snt>.

4 Joseph Foti and Lalanath de Silva, *A Seat at the Table: Including the Poor in Decisions for Development and Environment* (World Resource Institute, 2010), http://www.wri.org/sites/default/files/pdf/a_seat_at_the_table.pdf; World Resources Institute. "Environmental Democracy Index." <http://www.environmentaldemocracyindex.org/map#1/1/1587/Law>.

5 Sefton Darby, *Natural Resource Governance: New Frontiers in Transparency and Accountability* (Transparency & Accountability Initiative, 2010), http://www.transparency-initiative.org/wp-content/uploads/2011/05/natural_resources_final1.pdf.

and force a change in livelihoods. The impacts of extraction can not only foment discord within the community, but also between the community and the extractive company or national government. In their 2014-2015 analysis of the mining industry, Ernst & Young found that ensuring a social license to operate was the third-largest risk facing the mining industry – well ahead of price volatility and finding appropriate talent.⁶ Research from the Harvard Kennedy School found that community conflicts over environmental and social concerns can cost up to \$20 million a week in lost value for large-scale operating mines.⁷

As communities navigate these challenges and seek to create the best social and economic outcomes, communication and access to information can be an important component. The International Council on Mining and Metals (ICMM) explains, “As companies integrate sustainability across their business, strategically and tactically, communication success is key.”⁸ When Publish What You Pay (PWYP), a national civil society group in Côte d’Ivoire started facilitating the exchange of information between companies and communities at the local level, they saw a decrease in conflict between the community and the company, resulting in fewer work-stoppages.⁹ In Nigeria, the NRCI-funded Bayelsa Expenditure and Income Transparency Initiative (BEITI) helped support local civil society groups analyzing budgets and spending, and actively disseminating their analyses to citizens to encourage greater accountability.¹⁰ In Ghana, increased transparency of local revenues led to better understanding of local entitlements by the district government and the collection of unclaimed taxes.¹¹

As the impacts of extraction are distinct at the local level, so too are the needs for information. Big picture figures, like national production and overall economic growth, do little to assuage the questions and mistrust that can easily grow at the local level. Similarly, corporate disclosure in the form of thick environmental reports and aggregated financial figures often does little to help the local community understand the intentions and impact of the company. Timeliness becomes more crucial at the subnational level, as local stakeholders are preoccupied with relatively immediate concerns such as local spending, execution of investment projects and employment. Early research shows that information that is timely, disaggregated and relevant to subnational actors can result in positive impacts, be it a social license to operate for companies, improved civil society monitoring of governments and companies, better local revenue collection for governments or decreased conflict. Increased subnational transparency has the potential to benefit all stakeholders.

Early research shows that information that is timely, disaggregated and relevant to subnational actors can result in positive impacts.

- 6 EY, *Business risks facing mining and metals 2014-2015* (Ernst & Young, 2014), [http://www.ey.com/Publication/vwLUAssets/EY-Business-risks-facing-mining-and-metals-2014%E2%80%932015/\\$FILE/EY-Business-risks-facing-mining-and-metals-2014%E2%80%932015.pdf](http://www.ey.com/Publication/vwLUAssets/EY-Business-risks-facing-mining-and-metals-2014%E2%80%932015/$FILE/EY-Business-risks-facing-mining-and-metals-2014%E2%80%932015.pdf).
- 7 Rachel Davis and Daniel Franks, *Costs of Company Community Conflicts in the Extractive Sector* (Corporate Social Responsibility Initiative, 2014), http://www.hks.harvard.edu/m-rcbg/CSRI/research/Costs%20of%20Conflict_Davis%20%20Franks.pdf.
- 8 Josef Skolderberg et al., *Changing the Game: Communications & Sustainability in the Mining Industry* (International Council on Mining and Metals, 2013), <http://www.icmm.com/changing-the-game>.
- 9 Alice Powell, *Information is Power; Or how PWYP Côte d’Ivoire took Good Governance to the Local Level* (Publish What You Pay, 2014), <http://www.publishwhatyoupay.org/wp-content/uploads/2014/11/localgovernancePWYP.pdf>.
- 10 NDCBP, “*Carry Go*”: *2008 Citizens’ Report on State and Local Government Budgets in the Niger Delta* (Niger Delta Citizens and Budget Platform, 2009), http://www.citizensbudget.org/citizens_image/carry_go.pdf; NDCBP, *Beyond Amnesty: 2009 Citizens’ Report on State and Local Government Budgets in the Niger Delta* (2010), http://www.citizensbudget.org/citizens_image/citizens_report_2009.pdf; NDCBP, *Spend and Borrow: 2010 Citizens’ Report on State and Local Government Budgets in the Niger Delta* (2011), http://www.citizensbudget.org/citizens_image/Spend_and_Borrow_2011.pdf.
- 11 Owusu Boampong, *Ghana’s Golden Opportunity: A District Struggles with Striking it Rich* (NRGI, 2012), <http://www.resourcegovernance.org/sites/default/files/GhanaCaseStudy7.10.12.pdf>.

Local governance challenges

In addition to facing different impacts from extraction than at the national level, subnational communities also face different challenges that influence their needs for how information is shared.

- **Capacity of local stakeholders.** Policy analysts are often quick to point out that local civil society, government officials, and administrators usually have less technical understanding and fewer management resources than those at the national level. In line with this reasoning, many recent EITI reports that include information about subnational revenues provide only one-sided disclosure, relating national or corporate payments without reconciliation from the local governments.¹² The Philippines' experience of EITI reporting belies this trend and shows that local capacity need not be a barrier to local transparency. Before the commissioning of the first EITI report, members of the secretariat traveled to eight provinces and 21 municipalities to educate local revenue collection and accounting agencies about the EITI templates.¹³ During the roadshows, local government officials acknowledged that they lacked basic understanding of the mining laws, including on their rights to collect taxes and receive transfers.¹⁴ However, they also showed their ability to learn how to use a new system when it was relevant to their needs. When the EITI report was published the local officials' figures of direct payment receipts proved to have the smallest percentage of discrepancies, compared with all the other government entities that participated in the EITI report.¹⁵
- **Private interests.** At times, what may look like a lack of capacity is in fact stakeholders protecting their private interests. In Ghana, for example, NRG's project developed templates for local chiefs to report receipts and expenditures of mining royalties.¹⁶ Because the chiefs regarded royalties as money for their personal upkeep and the maintenance of their palaces, they feared disclosure and the project did not succeed. In light of the examples of success at subnational transparency, we can see that subnational actors can learn to disclose and use extractive information, but the process must be one that takes into account the interests of local parties.
- **Power asymmetries.** Local leaders are often put in the position of responding to issues with an extractive company whose presence they did not have a meaningful role in accepting or rejecting. They also have the challenge of navigating traditional laws and leaders while trying to provide formal accountability. In addition, national government officials often have priorities that compete with those of local leaders and little incentive to respond to their needs. This power imbalance between the local and national level can result in disruptions to the flow of governance decisions and information at the local level. For example, the national governments in Zambia and Malaysia have failed to clarify resource revenue transfer rules, leaving local governments in the dark about how much resource revenues they should expect.¹⁷ Many national governments have long delays in providing required revenue transfers. The 2014 EITI report in the Philippines showed that 82 percent of local governments received their income with a delay of between one and six months, while the other 18 percent did not receive their payment until more than 17 months after it was due.¹⁸
- **Different systems.** Promoting subnational transparency can be complicated by the different systems that exist within and between subnational jurisdictions within the same country. For example, many subnational governments use cash accounting systems while national governments use accrual accounting. A cash accounting system notes deposits and withdrawals when the money goes in and out of the account, while an accrual system notes the changes when the promise is made for that amount. The result is that if a road has been built but the construction has not been paid for, an accrual accounting system would show that money as paid, while it would in fact still be in the coffers of a cash accounting system. To complicate matters further, subnational governments within the same country often use different record management systems ranging from pen and paper to complex software developed by donors. This can make it difficult for subnational actors to share the same data with the national government on a consistent basis. A standard for regular disclosure could help streamline these systems and make it easier for local government officials to collaborate across districts and across levels of government. What size payments are important to track, or the materiality of payments, also differs greatly at the subnational level - payments from companies to local governments may be a small share of their overall tax burden in the country, but represent a high percentage of the local budget. In Zambia, for example, the EITI asks companies to report on local surface taxes even if it is below the national materiality amount because of their high relevance to local governments.¹⁹ Some EITI implementing countries conducted extensive scoping missions before deciding what and how to include information in their report.

12 NRG "Using EITI for Policy Reform: Natural Resource Governance Institute Guide to the EITI Standard," <http://www.revenuewatch.org/eitiguide/>.

13 PH-EITI, PH-EITI Roadshow and LGU Outreach, available at: <http://www.ph-eiti.org/#/Activities/LGU-Roadshow/view>.

14 PH-EITI Road Show, 3.

15 PH-EITI, Philippines Extractive Industries Transparency Initiative Report 2014: Contextual Information. Volume 1. (PH-EITI, 2014), http://www.ph-eiti.org/document/EITI-Report/First-Country-Report/PH-EITI_Report_Volume_1_Contextual_Info_final.pdf

16 Boampong, Ghana's Golden Opportunity: A District Struggles with Striking it Rich.

17 NRG, The 2013 Resource Governance Index: A Measure of Transparency and Accountability in the Oil, Gas and Mining Sector (NRG, 2013), <http://www.resourcegovernance.org/rgi/report>.

18 Flow chart of timing of transfer process on p 113 of EITI vol 1

19 ZEITI, Zambia Reconciliation Report for the Year 2013 (Zambia EITI, 2014). <http://zambiaeiti.org/index.php/ct-menu-item-13/zeiti-2013-reconciliation-final-report-18-12-2014>.

II. MECHANISMS TO IMPROVE SUBNATIONAL TRANSPARENCY

This section discusses different mechanisms that can be used to foster disclosure of information relevant to local stakeholders. We describe each mechanism and provide examples of how it has been used to promote subnational transparency.

The Extractive Industries Transparency Initiative

In 2013, the EITI international board approved an EITI Standard that requires national reports to include information about direct and indirect payments to subnational governments.²⁰ Provision §4.2(d) of the EITI Standard mandates national multi-stakeholder groups to ensure that direct payments from companies to local governments are disclosed and reconciled when material (that is, large enough to be relevant). Provision §4.2I requires that multi-stakeholder groups consider whether legally mandated transfers from the national government to the subnational government related to extractives are material. Where they are material, the EITI Standard requires that they be disclosed, along with the revenue sharing formula and any discrepancies between the calculated transfer amount and the amount that was actually transferred. The EITI Standard also encourages the disclosure and reconciliation of any discretionary or ad hoc transfers.

There are several ways that countries have used the EITI to promote subnational transparency:

Publishing information in the national EITI report

Several countries are using national EITI reports as a means of publishing information related to subnational governance. Sixty-three percent of countries that have published reports since the 2013 EITI Standard included information about direct company payments to subnational governments and 69 percent included information about national transfers to subnational governments.²¹ In many of these countries, the multi-stakeholder group defined materiality in light of what was relevant in the subnational context, even if that appeared to be a small amount at the national level.²² In addition to information about revenues, EITI reports are also used to share data about local content and licensing. Burkina Faso included local content data that disaggregated employees by whether they were from the country and whether they were from the same region as the mine site.²³

The EITI report can be a particularly useful tool when the national legal framework does not require access to information on subnational budgets or revenues. In 2013, Mozambique began transferring 2.75 percent of the royalties collected by the national government to the district where the resources were extracted. There is no national budget transparency law and the Freedom of Information Act can be cumbersome and difficult to use. As a result, subnational governments and civil society actors had little understanding of what revenues they were owed and in many cases could not verify

Sixty-three percent of countries that have published reports since the 2013 EITI Standard included information about direct company payments to subnational governments and 69 percent included information about national transfers to subnational governments.

20 The EITI is an international transparency mechanism that promotes disclosure from resource-rich governments to be compared and reconciled with disclosures from extractive companies in a nationally led multi-stakeholder overseen process.

21 Erica Westenberg and Max George-Wagner, *EITI Briefing: From Reporting to Reform* (NRGI 2015), 21.

22 E.g. ZEITI, Zambia: Reconciliation Report 2013; PH-EITI, *Philippines: Report 2012*, <https://eiti.org/report/philippines/2012>.

23 BF-EITI, *Burkina Faso: Rapport de conciliation des paiements des sociétés minières à l'état et des recettes perçues par l'état des dites sociétés pour l'exercice 2012* (BF-EITI, 2014), 29, <https://eiti.org/files/2012%20Burkina%20Faso%20EITI%20Report%20Final.pdf>.

whether they had received these special revenues. In 2015, the national EITI multi-stakeholder group decided to include reconciliation of subnational transfers in the upcoming EITI report to provide an avenue for this information to be available.²⁴

Subnational EITI reports and communication

The use and usefulness of a national EITI report in a subnational area can depend in large part on how the information is drafted and disseminated. In the Philippines, both the EITI Secretariat and a civil society coalition (Bantay Kita) are creating communication tools for subnational governments. The civil society coalition is creating short brochures summarizing data for each resource-rich area. Meanwhile, the EITI national secretariat is creating sub-reports on issues that resource-rich communities have identified as important, and is following the publication of reports with a “roadshow” in resource-rich regions.²⁵ Of course, these additional communication activities are not without cost; the national EITI secretariat in the Philippines estimates that their next round of subnational road shows will cost over USD \$100,000.

Including subnational stakeholders in the multi-stakeholder group

One way to facilitate communication and information to resource-rich regions is to include stakeholders from those regions in the national EITI multi-stakeholder group. Inclusion in the national MSG will increase the opportunity for the national report to reflect the needs of local communities and create a representative tasked with transmitting information back to the local community.²⁶ Though some countries have explicitly set out to include subnational actors in their MSG terms of reference or legal framework²⁷ the overall inclusion of subnational stakeholders is sparse. The Institute for Multi-Stakeholder Initiative Integrity found that only 4 of the 15 MSGs they assessed had a policy of encouraging inclusion of representatives from resource rich regions.²⁸ Further, the study found that participation in the national MSG can be prohibitively expensive for those from resource-rich regions unless there are clear guidelines for compensation.²⁹

Subnational EITI multi-stakeholder groups

Some EITI implementing countries have chosen to create multi-stakeholder groups at the subnational level. In these countries, a group of civil society, company, and government representatives meet in a resource-rich region to create a report that includes data from companies and the local government. The extent of information included in these local reports and whether that information is audited differs from country to country and region to region. In many countries these subnational groups can serve as an opportunity to pilot new ideas that are later incorporated in the national EITI. For example, the subnational EITI in Piura, Peru was able to extend the reporting beyond revenue information by including data about the local budget and expenditures.³⁰ Subnational

24 Interview with GIZ Mozambique.

25 Interview with Cielo Magno and Alessandra Ordenes.

26 MSI-Integrity, *Protecting the Cornerstone: Assessing the Governance of Extractive Industries Transparency Initiative Multi-Stakeholder Groups*, (Institute for Multi-Stakeholder Initiative Integrity, 2015), 60, <http://www.msi-integrity.org/assessing-eiti-msg-governance/>.

27 E.g. Nigeria, which requires by law representation from each of the six geopolitical zones of Nigeria. Nigeria EITI Board Charter (2012).

28 MSI Integrity, *Protecting the Cornerstone*

29 MSI Integrity, *Protecting the Cornerstone*, ix.

30 EITI, February 13, 2015 “Peru: Bringing transparency closer to people,” <http://progrep.eiti.org/2015/country-focus/peru-story>.

groups in the Philippines have included information about environmental and mercury effects with the hopes of raising these issues at a national level.³¹

Mandatory reporting requirements

A growing number of governments have passed laws obligating extractive companies registered or listed in their country to publish the payments they make to countries where they operate. Laws have been passed in the United States under Section 1504 of the Dodd-Frank Act (2010);³² the European Union under chapter 10 of the EU Accounting and Transparency Directives (2013); Canada under the Extractive Sector Transparency Measures Act (2014); and Norway which is analogous to the EU Accounting and Transparency Directives.³³ In addition, stock exchange reports often include environmental impact assessments, production estimates and revenue projections.

The UK Reports on Payments to Governments Regulations 2014,³⁴ which serve to implement chapter 10 of the EU Accounting Directive, require disclosure of payments by companies registered in the UK to all levels of government disaggregated by national, regional or local authority of a country, including government departments, government agencies and state-owned companies. Oil company Statoil, reporting under a similar Norwegian law, has reported its royalty payments to subnational governments in the United States with populations as small as 4,000 people.³⁵

The fact that these new corporate disclosure requirements mandate project-level reporting is important for subnational transparency for two reasons. First, the legal and fiscal terms for extraction can vary greatly between projects. Project-level data enables civil society, communities and government officials to begin assessing whether companies are paying correctly and fairly for each project. Second, when there are provisions for revenues to be shared with communities from the producing region, project-level data helps communities in the vicinity of an oil or mining project understand the economic contribution a company is making in relation to the project. When communities can analyze this information along with the underlying contract, production data, cost data and intragroup sales data, they will be able to better monitor whether they are receiving the proper revenue payments from the national government or company.

When communities can analyze project-level data along with the underlying contract, production data, cost data and intragroup sales data, they will be able to better monitor whether they are receiving the proper revenue payments from the national government or company.

31 Efforts at subnational EITI initiatives in Mongolia have not included audited reports because of the related costs.

32 The US Securities and Exchange Commission issued rules implementing Dodd Frank Section 1504 in 2012. However, these rules were vacated in 2013 following a lawsuit led by the American Petroleum Institute. New rules are expected to be reissued in 2016. The US law only applies to companies listed on US stock exchanges.

33 The Norwegian regulation regarding 'Report on Payments to Governments' ('Lov om rapportering om betalinger til myndigheter mv') applies to companies involved in extractive and logging activities. The transparency requirements are included in the Norwegian Accounting Act ('Regnskapsloven') § 3-3d, § 3-5 and § 8-2 and the Norwegian Securities Act ('Verdipapirhandelloven') § 5-5a, § 5-12 and § 5-13.

34 National Archives, *Reports on Payments to Governments Regulations 2014*, <http://www.legislation.gov.uk/uksi/2014/3209/made>.

35 Statoil, *Payments to Governments 2014* (Statoil, 2015), http://www.statoil.com/no/InvestorCentre/AnnualReport/AnnualReport2014/Documents/DownloadCentreFiles/01_KeyDownloads/2014%20Payments%20to%20governments.pdf. For example, royalties of NOK 1 million were reported to the City of Kenedy, Texas (population 3,487 in 2000) for the 2014 financial year.

Voluntary company reporting

In line with an international trend towards transparency, a number of extractive companies have voluntarily included extra information relevant to subnational communities in their regular shareholder reporting. In its recent Taxes Paid 2014 report meant for its shareholders and the broader community and disclosed on its website,³⁶ mining giant Rio Tinto provided disaggregated information about the taxes and fees it paid at the municipal level. This elective disclosure allowed 19 Canadian municipalities to verify the amount they received, including the small district of Kitimat (population 9,009) that received CAD\$ 16 million. Traditionally, company reports aggregate this information at the country or regional level. When the information is aggregated, a community like Kitimat might know that Rio Tinto paid a certain total revenue to Canadian governments, but would not be able to see how much to expect in its district. Because of its voluntary nature, corporate reporting that includes disaggregated information is currently uneven both in terms of format and uptake.

National legal requirements

Many countries create national laws or regulations that require transparency from government entities and companies in a manner that is useful at the subnational level. For example, Peru has a transparency law that requires all levels of government to publish their legal frameworks, budgets, activities and acquisition of goods and services.³⁷ The implementation of this law results in regular budget reporting in each municipality—in semi-annual speeches, on local bulletin boards, and websites—and a national web portal with accounting of transfers to local governments in an open-data format.³⁸ Mongolia recently created a similar national requirement that all government agencies publish their budgets and procurement processes.³⁹ It also paid to build a citizen's hall in each municipality so that there is a physical space for local information exchanges and debates about public policy.⁴⁰

National laws usually dictate when company reports, such as environmental impact assessments, should be made accessible to government officials and whether those must be made publicly available. Some countries use specific laws to make other industry related documents, like contracts, available to the public. Ghana's Exploration and Production Bill requires maintenance of a registry of petroleum agreements.

Freedom of information laws that make most government documents publicly available upon request, can be strong tools for subnational transparency. In Ecuador, citizens were able to use such a law to gain access to extractive industry contracts, which include the terms for the revenues, local content, and project timeline for an individual mine.⁴¹ Similarly, locally based civil society groups in Indonesia have sought information about production from local mines by using the freedom of information act.⁴² However,



Figure 1. Mayor of Sechura, Peru providing citizens with semi-annual reading of the local budget

36 Rio Tinto, *Taxes Paid in 2014: a report on the contribution made by Rio Tinto to public finances* (Rio Tinto, 2015), http://www.riotinto.com/documents/RT_taxes_paid_in_2014.pdf.

37 Law of Transparency and Access to Public Information, Amendment to Law No 27806, February 4, 2003.

38 Peru Ministerio de Economía y Finanzas, "Portal de Transparencia Economica," http://www.mef.gob.pe/index.php?option=com_content&view=article&id=457%3Aique-y-como-muestra-la-consulta&catid=270%3Atransf-a-gobiernos-nacional-regionales-y-locales&Itemid=100957&lang=es.

39 InfoMongolia.com, "Parliament of Mongolia passes the Law on Glass Account," July 2, 2014, <http://www.infomongolia.com/ct/ci/8077>.

40 Interview with Dorjdari Namkhajantsan.

41 Mabel Andrade et al., *Transparency In Petroleum Contracts. A Comparative Study of Ecuador and Bolivia*, (PWYP, 2011) 11, http://www.publishwhatyoupay.no/sites/all/files/PWYP%20Norway_Article%201_ENGLISH%20WEB.pdf

42 Interview with Maryati Abdulla, PWYP Indonesia.

freedom of information laws require those interested in information to make formal requests for documents. If the documents are initially denied, a lengthy court process can ensue. Also sometimes governments make use of legal exceptions to not provide information about the industry.

Local arrangements

Local transparency models can vary from formal regulations to informal customs.

Local law, regulation or ordinance

A local law, regulation or ordinance is a rule that can only be applied within the jurisdiction of the granting government body. For example the legislative assembly in the Filipino province of Compostela Valley considered and approved an ordinance to increase transparency of the revenues and payments of large and small-scale mines in their province. This ordinance does not have any power to compel miners in other provinces to disclose the same information. The type of legal mechanism available for local transparency rules varies by country.

Local memorandum of understanding

A terms of reference (TOR) or memorandum of understanding (MOU) is a formal agreement between stakeholders to perform a specific task or set of tasks.⁴³ The scope and the binding nature of these agreements can be determined by the parties and the legal framework in the country. In the copper-rich district of Solwezi, Zambia, the district council drafted an MOU for a multi-stakeholder management board to respond to the challenges of providing basic services in the landscape of a quickly changing district.⁴⁴ The government in the oil-rich Bayelsa state in Nigeria, also faced challenges turning its natural resource wealth into better development for its people. It used an MOU to form a multi-stakeholder group and bring transparency to the local government's revenues and expenditures. Because of the multiple parties involved, these arrangements often mirror the format of a subnational EITI group but lack the connection to international standards or accountability.

Informal meetings or initiatives

An opportunity for subnational transparency can come from informal meetings or initiatives. While these efforts may not last beyond the term of the innovator, they can be strong catalysts for communities to consider other transparency mechanisms. In Côte d'Ivoire, Publish What You Pay, a national civil society coalition, decided to pursue transparency in the resource-rich region of Jacqueline where frequent marches and blockades were slowing oil and gas production. The coalition formed a local committee designed to respond to situations related to the project and facilitated communication between the extractive company, the national government, and the community.⁴⁵ Similarly, Kalia Modogazieva, a community activist in Kyrgyzstan, travels to resource-rich regions to train local stakeholders to ask how resource revenues are being used and

43 In some countries TORs and MOUs may have different legal effects. In this document the terms are used interchangeably to refer to a formal agreement that sets out rights and responsibilities between different parties.

44 GIZ, *Establishing Management Boards in Solwezi District* (2015).

45 Alice Powell, *Information is power*.

monitor any changes in public services.⁴⁶ The success of these initiatives often relies heavily on the political will of key actors and the availability of a charismatic leader that can build trust between multiple actors.

Some civil society groups have worked to foster incentives for local leadership by creating competition across different subnational government bodies. The Instituto Brasileiro de Análises Sociais e Econômicas (IBASE) in Brazil wanted to generate more transparency of social expenditures by extractive companies in their country. In addition to creating a template for social audits that companies could use, it created an annual award for companies that were in compliance with its reporting standard. Fifteen years after the project began, more than 305 companies in Brazil publish their expenditures using the IBASE audit process.⁴⁷ Such civil society led initiatives may not result in institutionalized changes but they provide additional incentives for subnational governments and companies to disclose information.

46 PWYP, From Kyrgyzstan with Love [short documentary about Kalia Modogazieva's work], <http://www.publishwhatyoupay.org/pwyp-resources/from-kyrgyzstan-with-love-a-documentary-on-communities-and-mining/>.

47 Rocio Moreno Lopez, Corporate Direct Social Expenditures: A Monitoring Guide for Civil Society Organizations (NRGI, 2013), 18-19, <http://www.resourcegovernance.org/sites/default/files/Subnational-SocialExpenditures9.10.13.pdf>.

From translucent to transparent: the important role of data formats

The format and location of shared data can greatly impact its use and usefulness. There are key principles that can improve the usefulness of publicly disclosed data:

- 1 Store data in a centralized location/repository where possible. If public data at the subnational level is located across different repositories, company websites and government agencies, it can be difficult to piece together the information for accountability purposes. Local government portals or access centers may be useful.
- 2 Use an open and machine-readable format for reporting such as CSV or XML. The raw data should be made available in an electronic, open data format rather than locked PDF files which are difficult to access.
- 3 Use standardized/common reporting templates where possible.
- 4 Use standardized reporting categories for comparability and to ensure there is a common understanding and definition for each type of disclosure required by the legislation. For example, this should include standardized categories of payment types, government entities/levels of government, and a clear understanding of the definition of a “project.”
- 5 Ensure free access to data. The data should be free to access, use and redistribute.

Open data publishing – that is publishing of data in a format that is machine readable and free to access, use and redistribute – has become a recognized principle among governments, civil society groups, and companies. A review of subnational government data in Brazil showed that while data is complete on most government websites it is neither published in a timely fashion nor is it machine-readable.⁴⁸ For years, EITI reports were only published in PDF documents. As more and more reports are published in machine readable formats, oversight actors can more easily analyze and compare the data. Further, when open data is used, the tech community can be leveraged to create tools to facilitate analyzing and using data. The Publish What You Pay coalition in Indonesia has responded to the availability of open data by hosting a hackathon with hopes that new tools for data analysis will emerge. NREGI and partners are building an open repository of project level information⁴⁹ including on location, relevant contracts and legal agreements and project level payments.

The relevance of formats can be seen in an example from the US state of Alaska. A mining company in Alaska sought a license to begin extracting for what would be one of the largest open pit copper mines in the world. The license application created great controversy at the state and national level because of the mine’s location in a unique ecological area that could have great impact on salmon fishing. When the company released its environmental impact statement, it received strong criticism from Alaskan scientists who complained that they could not verify the scientific conclusions because the data was not provided in a machine-readable format. They stated that scientific standards should compel the company to release the data so it can be properly analyzed and modeled by other scientists.⁵⁰ The scientific questions of the potential environmental impact were so profound that the national Environmental Protection Agency took steps to delay the license approval.

48 INESC, *Measuring open data’s impact of Brazilian National and Sub-National budget transparency websites and its impacts on people’s rights* (Instituto de Estudos Socioeconômicos, 2014), <http://www.inesc.org.br/biblioteca/publicacoes/outras-publicacoes/publicacoes-em-ingles/open-data>.

49 <https://github.com/NREGI/resource-projects-etl>.

50 Kenneth Levis, “Alaska Gold” *Frontline*, 53:44. July 24, 2012, <http://www.pbs.org/wgbh/pages/frontline/alaska-gold/>.

Gender lens in subnational transparency

Natural resource extraction affects people differently based on their gender and these impacts can have long-term developmental effects. (See, e.g., Scott et al, *Extracting Lessons on Gender in the Oil and Gas Sector* (World Bank 2013).) At the same time, access to information is often different across gender lines. Women often have more restrictions on mobility than men because of cultural constraints, safety concerns, or household obligations. As a result, meetings or information that are only available at the national or regional level may be less accessible to women. Similarly, women often have additional time and financial constraints, making access to distant meetings or analyzing complicated materials less feasible. Lastly, because of decades of educational oppression, women are often at an educational disadvantage to their male counterparts. Women could therefore benefit more from communication that is simplified, available offline and made relevant to their needs. In the other direction, women's views need to be relayed accurately and adequately to decision-makers.⁵¹ Subnational transparency can be a tool to break down information gaps between genders, ensuring women receive credible, useful information and in turn have their voices reflected in decisions affecting them.

It follows that priorities about what information is shared subnationally, and in which format, may differ by gender. The first step towards addressing this difference is to ensure that women are adequately represented in the bodies that make decisions about transparency, including EITI MSGs, local community boards, civil society coalitions and national parliaments. In an analysis of 23 EITI MSGs, MSI Integrity found that the majority of MSGs had fewer than 25 percent female representatives.⁵² Government institutions at the community level should be aware of how gender equality laws affect representation on local government boards and have procedures in place to report grievances.

Decision makers can require that information be disaggregated in a gender-sensitive manner. For example, publications that include figures on local employment can be disaggregated not only by region but also by gender. None of the EITI reports analyzed for this research included such figures. Similarly, those who do outreach to subnational groups should track the gender balance of their programs.⁵³ Companies should take particular care when conducting community consultations and social impact studies that their analysis includes a cross-section of the populations' men and women.⁵⁴ During resettlement or compensation for partial loss of land, companies can improve their potential for sustainable development after compensation by ensuring that men and women in each household have access to information and actual informed consent. Making available gender analysis of budget and planning options can help ensure that all involved can make an informed decision.⁵⁵ Last, as environmental impacts, particularly of small-scale mining, tend to disproportionately impact women, greater efforts should be made to ensure women are informed of these impacts.

51 Gender Action, *Gender Action Link: Gender, IFIs & Transparency* (Gender Action, 2011), <http://www.genderaction.org/publications/links/transparency.pdf>.

52 MSI-Integrity, *Protecting the Cornerstone*, xi.

53 John Strongman, *Empowering Women through EITI*, *EITI blog*, July 27, 2010, <https://eiti.org/blog/empowering-women-through-eiti>.

54 Yasap Popoitai et al., *Negotiating with the PNG Mining Industry for Women's Access to Resources and Voice: The Ok Tedi Mine Life Extension Negotiations for Mine Benefit Packages* (World Bank, 2013), <http://documents.worldbank.org/curated/en/2013/12/19072941/negotiating-png-mining-industry-womens-access-resources-voice-ok-tedi-mine-life-extension-negotiations-mine-benefit-packages-vol-2-2-main-report>.

55 E.g. Karen Judd, ed., *Gender Initiatives: Strategies, Concepts and Experiences* (UNIFEM, 2002), <http://www.unwomen.org/en/digital-library/publications/2002/1/gender-budget-initiatives-strategies-concepts-and-experiences>.

III. INFORMATION NEEDED TO IMPROVE SECTOR GOVERNANCE

This section discusses what types of information can and should be made available subnationally for different areas of extractive governance. For each topic, we outline what forms of data can be made available, provide examples of successful transparency initiatives, and discuss how information in that topic can be used to improve sector governance.

Land rights and licenses

In most countries, the national government is the owner of all resources below the surface. Rights to extract natural resources from the ground are usually given through a contracting or licensing process that either takes the form of an auction or direct negotiations. However, the rights to the land above the surface, which may be important for extraction or bringing resources to market, can be held by a variety of actors. When a new extractive right is given there must be a process to check whether others already have rights to that land and, if so, whether they have been fairly compensated to give up that right.⁵⁶ In communities surrounding an extractive site, understanding who has access to what land and how that access will change is of paramount importance. Once the land rights are identified they may be transferred to the extractive company as part of an extractive license or contract, or in a separate legal document such as a title.

What information should be publicly disclosed?

In developed countries, ownership and access rights to land are recorded and tracked in national registers called cadasters. In many developing countries, however, the vast majority of land rights, also called tenure rights, have not been formally recorded or acknowledged. Instead, the majority of communities have operated for generations with a system of informally recognized land rights. International human rights law provides specific protections, including just compensation, when transfer of ownership is required, whether the land was formally registered or is informally recognized.⁵⁷ A significant lack of formalized rights can create challenges for companies wanting to obtain land ownership, fomenting conflict. For example, in Myanmar tenure insecurity is high due to the lack of a formal tenure system. This is further exacerbated by decades of civil war resulting in massive displacement. As a gas pipeline was built from the sea in the southwest to China in the northeast, local communities reported having little information about the project and no process to respond to land disputes.⁵⁸ Despite

Recommended disclosures: land rights

- Map of spectrum of land rights for entire community around the mining area
- Land associated with all extraction licenses
- Compensation given to those needing resettlement and explanations about resettlement requirements and decisions

56 NRGI, Natural Resource Charter, Precept 5 (“The government should appropriately remediate impacted areas in a swift, credible and transparent manner compatible with accepted human rights standards.”); IFC, Performance Standard 5: Land Acquisition and Involuntary Resettlement (International Finance Corporation, 2012), http://www.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MOD=AJPERES.

57 For example, The International Convention on Economic, Social, and Cultural Rights (ICESCR) art. 11 guarantees a right to housing while the International Covenant on Civil and Political Rights art. 17 protects individuals against arbitrary interference of their homes. The Committee on Economic, Social, and Cultural Rights has interpreted the ICESCR in General Comment 4 & 7 as conferring a right to tenure security and creating a responsibility for the state to protect legal security of tenure. Some international treaties and conferences have further articulated rights for displaced people and against displacement, such as the United Nations Guiding Principles on Internal Displacement, affirming that “no one shall be arbitrarily deprived of property and possessions” and UN Food’s Voluntary Guidelines on the Responsible Governance of Tenure. Some regional human rights bodies, such as the American Convention on Human Rights protect tenure security explicitly. See ACHR art. 21 “No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest...”

58 E.g. Min Thein Aung and Kyaw Thu, “Myanmar Rights Groups to Monitor Effects of Controversial China Petroleum Pipeline,” *Radio Free Asia*, September 24, 2013, <http://www.rfa.org/english/news/myanmar/pipeline-09242013163443.html>.

appealing to the national government, hundreds of villagers were forced off their land with no compensation and little communication from the government or companies involved. Adding to the challenge was that wealthy or elite actors formally registered tracts of land just before the pipeline was constructed, taking compensation from the pipeline company without ever acknowledging the informal rights of the previous owners.⁵⁹

The process of transferring ownership can be less fraught if there is a better understanding of informal claims. In order for these informal rights to be recognized and given authority against formal land claims, governments must do a careful mapping before exploration for extraction projects begin. The Global Land Tool Network is developing and testing a new tool for land use planning for tenure security, which will enable communities to more easily and quickly create a map of these tenure claims.⁶⁰ Governments should also provide a clear path to resolve disputes about land rights should they arise.⁶¹

The process of transferring land ownership can be less fraught if there is a better understanding of informal claims.

It is important to acknowledge and discuss other rights to land that exist beyond ownership. For example, a village may not have ownership over a parcel of land but may use it to collect firewood or to hunt. Conflicts can easily arise if the changes in access rights are not properly explained to community members. Many mine sites have ongoing security concerns because local villagers continue to use land to collect firewood or for artisanal mining. When mapping land rights, therefore, governments, companies and communities should take care to assess a full spectrum of rights, including traditional access for hunting, artisanal mining, or firewood.

For each right awarded to an extractive company, local communities should be able to easily access information about the geographical boundaries of the company's extractive license and land ownership. A mining cadaster registry that provides geographic boundaries of licenses is required under the 2013 EITI Standard. Many countries have started including this information in their EITI reports or in national GIS (geographical information system) online mining cadasters. For example, the national government of Mozambique created an online GIS mineral cadaster showing all of the mineral concessions and prospecting licenses. When a user clicks on a parcel of land, they can see the license number, the name of the license holder, the acreage of the plot and the timespan of the agreement.⁶² Such cadastral information allows local governments and citizens to ensure there are no overlaps in land use or mining areas.

In addition to the implications for land rights, extractive licenses and contracts contain a plethora of information relevant to local communities, including fiscal terms, environmental obligations, project obligations, health and safety provisions, and local content requirements. A strong international movement calling for the transparency of these agreements has gained traction in recent years.⁶³ As more governments and extractive companies are making these contracts publicly available, local communities

59 SGM, *Drawing the line: the case against China's Shwe Gas project, for better extractive industries in Burma* (Shwe Gas Movement, 2013), http://www.shwe.org/wp-content/uploads/2013/09/DrawingTheLine_For-Web.pdf.

60 "Global Land Tool Network" <http://www.gltn.net/>.

61 MCRB, IHRB and DIHR, "Part 4.3 Land," in *Myanmar Oil & Gas Sector-Wide Impact Assessment (SWIA)* (2014), <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/Oil-Gas/09-Land.pdf> (noting how a lack of clear legal regime in Myanmar can exacerbate land related challenges).

62 Mozambique Ministry of Mineral Resources and Spatial Dimension, "Mozambique Mining Cadastre Portal," <http://portals.flexicadastre.com/Mozambique/EN/>.

63 PWYP "Contract Transparency," <http://www.publishwhatyoupay.org/our-campaigns/contract-transparency/>.

are using them to be able to better understand the financial, environmental, and social terms of the agreement. In order to be effective in building trust with the communities, it is in the best interest of the companies and governments to make these agreements publicly available as soon as they are finalized.

How can this information be used to improve sector governance?

For companies entering a community, clear communication about land rights and access will improve their social license to operate. Media headlines are often filled with stories of rural communities displaced without proper compensation by large extractive projects.⁶⁴ These stories, some of which may not be fully accurate assessments of the industry's activities, can harm a company's reputation at the project site and internationally.⁶⁵ ICMM's Overview of Human Rights in the Mining and Metal's Industry emphasizes the importance of complying with the International Finance Corporation (IFC) standard 5 and engaging in strong communication with local communities to maintain consistent business operations.⁶⁶

Clear information can help communities plan for the changes that come with extractive projects. Often, extractive projects attract large migrant communities from other parts of the country or the world. When land rights are not clarified, conflicts can arise as the influx of newcomers attempt to find land for their own use. In contrast, a clear understanding of land use can help local governments and communities plan for more efficient service delivery systems and take advantage of new economic opportunities.

Because agreements with extractive companies are usually signed at the national level, some local governments do not have a complete understanding of all the extractive actors operating or exploring in their jurisdiction. In countries where taxation or monitoring rights are decentralized (such as in Indonesia or Philippines), incomplete understanding of ownership boundaries can hinder the local government's collection of taxes and fees.

When license boundaries are publicly available, oversight actors can verify whether the listed rights by mining companies geographically coincide with the rights of others. As discussed in the box below, civil society groups that were part of PWYP coalition in Indonesia used licensing data from the EITI report and found that many mineral claims overlapped with palm oil and timber claims. From talking with local communities, they also found that the new land use of mineral extraction resulted in a loss of non-ownership uses of that land, including access to firewood, medicines and hunting. As communities were not properly compensated for their land, they reported decreased productivity and increased conflict with the local extractive companies.

When license boundaries are publicly available, oversight actors can verify whether the listed rights by mining companies geographically coincide with the rights of others.

64 E.g. HRW, What is a House without Food? Mozambique's Coal Mining Boom and Resettlement (Human Rights Watch, 2013), <http://www.hrw.org/node/115535> (describing how a poor resettlement process left communities near a mine without access to water or livelihoods); Ben Hallman and Roxana Olivera, Gold Rush: How the World Bank is Financing Environmental Destruction (April 16, 2015), <http://projects.huffingtonpost.com/worldbank-evicted-abandoned/how-worldbank-finances-environmental-destruction-peru> (describing impact of mine tailing on shared water access for local herders).

65 Increasingly, there are also potential legal implications.

66 ICMM, Human Rights in the Mining and Metals Industry: Overview, Management Approach and Issues (International Council on Mining & Metals, 2009), <http://www.icmm.com/document/8331>.

Revenue collection

The common ways for resource-rich subnational governments to receive revenues from extractive industries include: payments from companies to local governments such as local taxes or fees; required payments from companies to local governments as part of social responsibility; transfers from the national government based on status as a resource-producing area; and national transfers that are independent of status as a resource-producing area. (See figure 2.) This section discusses what types of information should be made available in order for local communities to be confident that they are receiving the agreed and mandated revenue from extraction.

What information should be publicly disclosed?

Direct payments: Many resource-rich countries have used the EITI as a platform to promote disclosure of direct payments from companies to subnational governments. In Zambia, the national EITI report includes a reconciliation of payments from mining companies to district councils for property taxes and annual business fees disaggregated by company and district.⁶⁷ It also includes the acreage for each of the licenses, which can be used to calculate the property tax.⁶⁸ The EITI can also be useful where local government or land owners have rights to a share of equity, such as in Papua New Guinea (PNG). Communities near extractive sites in PNG have long raised questions about the management of revenues by landowner associations that receive 2.5 percent equity shares in the mining operations. Civil society groups hope that Papua New Guinea’s joining of the EITI as a candidate in 2014 will “empower[] people with information to enable them to question the leaders, in terms of how the money has been spent at every government level. ...[and] open up a lot more discussions.”⁶⁹

In addition, some local governments receive payments called “social payments” directly from companies. The terminology in these matters can be confusing as social payments are often viewed as part of corporate social expenditures (discussed in the next section), which often is not paid to local governments. In Mongolia, for example, extractive companies pay “mandatory social payments” directly to the local government. Reconciled data about these payments appears in the Mongolian EITI report, though there are large discrepancies.⁷⁰ Similarly, the EITI report from Burkina Faso includes both “voluntary” and “non-voluntary” social payments.⁷¹ Without publication of the contract, a community development agreement, or some other document that shows how the amount of these contributions is calculated, it is difficult for local communities to assess whether they are receiving their due or whether this is truly a voluntary action by the companies. As a result, governments and companies must make contracts publicly available for local governments and local oversight actors to properly track revenue obligations.

Recommended disclosures: subnational revenues

Direct payments

- Taxes and levies – rates, reconciled amounts, basis for calculation, land areas
- Equity shares – percentage of equity, total equity, reconciled amount received, loan provider and payments
- Social payments – basis for payments, reconciled amounts, earmark requirements

Indirect payments (Transfers)

- Non-resource specific – total government revenues, revenue shared with each subnational government, sharing formula, time table
- Resource specific – reconciled revenues by project, cost recovery, contracts, sharing formula, time table

67 ZEITI, *Zambia Reconciliation Report for the Year 2013*, 56.

68 E.g. ZEITI, *Zambia Reconciliation Report for the Year 2013*, 43.

69 Quote from Jerry Baguita of PNG Transparency International, in Asmara Klein, “What can transparency bring to Papua New Guinea,” *EITI blog*, April 11, 2014, <https://eiti.org/blog/what-can-transparency-bring-papua-new-guinea>.

70 MEITI, *Mongolia Eighth EITI Reconciliation Report 2013* (Mongolia EITI, 2014), 106. <https://eiti.org/report/mongolia/2013>. Note this is in addition to funding to social funds.

71 BBF-EITI, *Burkina Faso: Rapport de conciliation 2012*, 55-56. Note the BF EITI process does not even attempt to reconcile the payments citing low local government capacity.

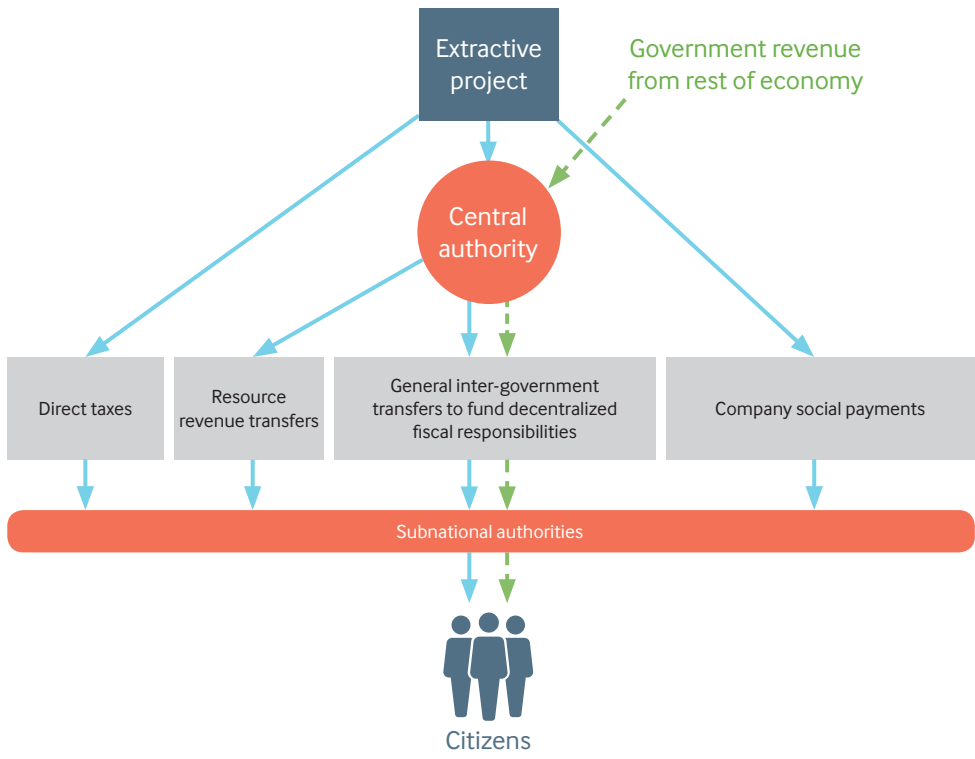


Figure 2. Revenue flows from extractive projects to subnational authorities



Figure 3. EITI multi-stakeholder group meeting in Umnugovi province, Mongolia

Indirect payments (national transfers)

For local actors to be able to predict and manage resource revenues, the funds transferred from national governments and received by subnational governments must be published and reconciled. Some countries, like Indonesia, have published this data in national EITI reports, while others with strong national transparency laws, such as Colombia, make the figures available on local and national websites. This information is often only useful to local actors when it is disaggregated by company, government agency, revenue stream, region and project. The revenue scheme in Cameroon gives an example of why such disaggregation is necessary. The Cameroon Mining Code states that the local council and local communities are entitled to 15 and 10 percent respectively of the Ad Valorem Tax paid by companies for projects in their jurisdiction. These payments are collected by the central tax authorities and then transferred to the local governments.⁷² Without project-level fiscal data, civil society organization RELUFA has noted how local populations have not been able to cross-check whether they are receiving their share of revenues.

When national governments share resource revenues with subnational governments, subnational governments and oversight actors must be able to understand the revenue sharing formula to be able to track whether they are receiving the expected payments. Some governments make this information clear by defining the formula in national legislation or regulation, and publishing the document on the relevant ministry website. It is not uncommon, however, for this formula to be secret or left undefined. Zambia, for example, passed a mining code in 2008 that requires the Ministry of Finance to establish a mineral sharing mechanism, but it has yet to do so.⁷³ Laws 11/2007 and 12/2007 in Mozambique mandated that a percentage of resource royalties be shared with subnational communities where the extractive project is located, however it was not until 2013 that the parliament of Mozambique first clarified the percentage amount and allocated 2.75 percent of royalty receipts from mining to the producing districts.⁷⁴ In addition to the formula itself, government regulation should clarify the expected timing of transfers so that local governments can prepare accordingly.

In order for local governments to understand the revenues they are receiving, and the trends associated with those revenues, they must also have information about the revenues collected at the national level, including the tax base and tax rate used to calculate those revenues. To understand these terms, subnational governments usually need access to the contract signed between the national government and the extractive company, production rates, valuation of production, and cost recovery amounts claimed by the companies. When all of this information is disclosed, along with information on the amount of the revenue transfers, local governments can understand how the transferred amount was calculated. Because this information may be available with different government agencies, national government agencies may need to coordinate in order to facilitate useful information for subnational governments.

For local actors to be able to predict and manage resource revenues, the funds transferred from national governments and received by subnational governments must be published and reconciled.

72 Valery Nodem, Jaff Napoleon Bamenjo and Brendan Schwartz, *Subnational Natural Resource Revenue Management in Cameroon. Forest and Mining Royalties in Yokadouma, East Cameroon* (RELUFA, 2012), <http://www.reluфа.org/documents/subnationalrevenuestudy.pdf>.

73 Zambia 2008 Mining and Mineral Code, section 136; ZEITI, *Zambia Reconciliation Report for the Year 2013*, 26, 34.

74 Dionisio Nombora, *Sharing Natural Resource Revenues with Affected Communities: Policy Options for Mozambique* (Washington, DC: World Bank, 2014), <https://openknowledge.worldbank.org/bitstream/handle/10986/20264/ACS10342Final.pdf?sequence=4>.

How can this information be used to improve sector governance?

The revenues received by subnational governments, and the data that underlies their justification, can greatly improve subnational financial planning and management. For many years in Peru, districts and provinces would receive natural resource revenues shares without understanding the amounts they received or what to expect in upcoming years. Because of the great availability of information in Peru on revenue transfers and the underlying formula and production values, the regional government in Piura was able, with training from NREGI, to understand the revenues it receives and create revenue projections for future years. Accurate information about the timing of revenue transfers can also significantly improve local government's ability to plan and execute their budgets. In Niger, subnational governments were experiencing long delays in receiving their revenue shares, making it difficult to proceed with enacting their budgets. In response, ROTAB and other civil society groups advocated for the national government and parliament to set and stick to a clear timeframe for subnational transfers.

Access to all of the figures that go into calculating revenues can help oversight actors pinpoint where governance breakdowns might exist. In the nickel-rich province of Sulawesi, Indonesia, the number of licenses issued increased dramatically once the district governments obtained the authority to issue licenses. Yet local activists noticed that the revenues received by the district governments were not increasing. In an effort to understand whether and how much production was increasing, local civil society groups used the Freedom of Information Act to obtain data about the amount of product loaded in the port and compared that with data from the EITI report about royalties paid to the central government and transfers to the local government. In their analysis, advocates found many fundamental discrepancies between the local and national government figures, including on the number of companies operating in a district. The group called for the national government to publish production figures with its royalty figures so that they can ask better questions of the corporate production figures and local revenues. That way, if the low local revenues are due to malfeasance or corruption, the civil society groups can better understand how to advocate towards justice.

Social expenditures

Extractive companies allocate social expenditures to enhance their social license to operate and make development improvements in the communities where they operate. Company spending can take many different forms, including but not limited to: paying local governments or leaders, creating local funds or trusts, contracting NGO or other service providers, or providing in-kind donations. While the amount of social expenditures usually pales in comparison to other revenue streams to the national government, these expenditures are often of primary concern to local communities.

These payments are also notoriously prone to corruption. In some communities, social payments are viewed as an opportunity for companies to pay off local leaders and obtain their consent for the extractive project. Because they are outside the governance process, they are often not subject to the same form of oversight as other government spending. Similarly, because they are often deducted from tax payments, shareholders have less incentive to verify whether these expenditures are having the intended impact.

Recommended disclosures: social expenditures

Before social projects

- Company social priority areas
- Baseline social impact and needs assessments
- Plans for social investments, including timeline and budget

During social projects

- For each project – nature of project, amount spent by company, reconciled receipt when necessary, number of locals employed

After social projects

- Impact assessment or evaluation
- Recommendations to meet social need

What information should be publicly disclosed?

Many countries now include corporate social responsibility or voluntary social payments in their national EITI reports.⁷⁵ But lump sums of corporate social spending, even when disaggregated by project, do not provide communities with sufficient understanding of what to expect from the company in terms of actual projects or potential development outcomes. When companies publish lists of social spending projects, line items of each social project's purpose, monetary recipient and beneficiary, it can help communities better understand the social expenditure footprint of companies. AngloGold Ashanti, for example, published a detailed report of its corporate social responsibility spending in relation to the operations of the Obuasi mine in Ghana. The report compares company spending for community health; social infrastructure; education, youth & sports; and arts, culture & heritage between 2004 and 2013. It also provides a detailed account of the impacts of some of these projects, including a reduction of malaria by 74 percent.⁷⁶

To support development planning by local and national authorities, and reduce citizen dependency on services provided by extractive company projects, detailed information about project plans and purposes must be available before and during project implementation. In addition, when social expenditures involve service delivery programs, such as health care clinics, companies need to share evaluations about the impact and efficiency of the project, so that the local government and community can understand the potential costs of taking on that service delivery provision in the future. When social expenditures are made directly to the local government, the company and local community should insist that the expenditure of these funds be reported, whether through the normal budget process or a special account. Similarly, in order for communities to be able to monitor the progress of these corporate social funds, the payments to the fund, the management of the fund, any income generated by the fund and expenditures made by the fund must be regularly reported.

How can this information be used to improve sector governance?

When expenditures are outside the normal budget process, such as with corporate social expenditures, traditional local oversight bodies cannot properly monitor how they are spent or whether the community is benefiting as a whole. Moreover, lack of information about company plans can often result in duplicated or unsustainable interventions. Images of new clinics with no staff to operate them and large football stadiums in communities with few schools have become symbols of the challenges of corporate social expenditures. Sharing information on corporate social projects and plans for such projects can go a long way towards mitigating these challenges.

The example of Solwezi, Zambia, shows how coordinated, proactive sharing of information on social expenditures can go beyond just managing community discontent and preventing misappropriation, to potentially improving the efficiency and effectiveness of social expenditure funds. The district of Solwezi is home to

To support development planning by local and national authorities, and reduce citizen dependency on services provided by extractive company projects, detailed information about project plans and purposes must be available before and during project implementation.

75 E.g. Kazakhstan EITI, *The 9th National Report on Implementation of the Extractive Industries Transparency Initiative in the Republic of Kazakhstan for 2013* (Kazakhstan EITI, 2014), 201 <https://eiti.org/report/kazakhstan/2013>. (reporting local infrastructure development and social development spending by companies to each oblast); Liberia EITI, *5th EITI Report for Liberia 2011-2012* (Liberia EITI, 2014), 79, <https://eiti.org/report/liberia/2012>. (listing in kind contributions by company).

76 AngloGold Ashanti. "Creating a sustainable solution for malaria in Continental Africa Region." May 7, 2013, <http://www.anglogoldashanti.com/en/Media/Our-Stories/Pages/Creating-a-sustainable-solution-for-malaria-in-Continental-Africa-Region.aspx>

the Lumwana mine, Africa’s largest copper mine.⁷⁷ The area around the mine grew from a population of 2,000 to 35,000 in just 14 years, straining the ability of the local government to provide public services.⁷⁸ Barrick Gold, the main operator of the Lumwana mine, created a social development survey and a plan for improving service delivery in some areas. In order to ensure that the community received the best outcomes from the inputs of Barrick Gold and the local government, the district council of Solwezi, with technical support from GIZ (German Corporation for International Co-operation), created a multi-stakeholder management board to discuss community needs and coordinate service delivery.⁷⁹ By bringing together local government officials, village chiefs, extractive company officials, civil society groups and representatives from the provincial government, the district council hopes to improve the opportunity for the community in Lumwana to have long term growth from the mine while responding to the immediate needs of the increase in population.

Both government and mining officials were quick to acknowledge the potential benefits of this information-sharing and dialogue. “The mine should be involved in development outside its footprint, but should not become a de-facto government. Yes we may still provide resources, but don’t want to own the development process. A stakeholder forum needs to be established to ensure ownership,” explained Richard Savage, Regional Manager CSR Barrick Gold. Ronald Daka, the former Town Clerk of Solwezi agreed, “Whatever happens in the town, for example a cholera outbreak, will also affect the companies. Thus there is incentive to work together.”⁸⁰

Local content

One of the first questions communities often ask when a new extractive operation begins is how many jobs will be available. How an extractive project impacts the local economy is referred to as *local content*. Local content often includes three categories: local jobs directly created by the extractive company; jobs created as a result of services to the extraction company, such as catering; and participation by a local company in the extractive project. The actual impact of local content provisions, beyond benefits for a few elites, is not always clear. There is often a debate in countries about whether local content provisions should apply to the country as a whole or to the areas closest to the extractive operation. This section discusses what forms of information would be most helpful to those closest to the extractive operation, but does not take a position on whether their interests are more important than those in other areas of the country.

What information should be publicly disclosed?

Many governments have explicit national or local laws or policies regarding local content. Contract agreements between the extractive company and the government can also include provisions for local content. Many governments also require an employment plan or annual work plan at the onset of the extractive project. These plans are particularly helpful if they include information about the exact job types throughout the lifetime of the mine, as well as the training necessary for those jobs. Access to the above information can help communities have a realistic expectation about their potential benefits.

Recommended disclosures: local content

Overall

- National or local requirements for local content
- Contract or other agreement of project specific local content obligations

Direct employment

- Number of employees at each project site disaggregated by share of national versus foreign and regional versus national affiliation
- Health and safety record for employees
- Types of jobs that will become available over the life cycle of the project and the training necessary for those tasks
- Pay scale
- Hiring practices
- Company spending on training programs

Indirect economic development

- Needs of goods and services
- Recipients of contracts broken down by locally versus foreign sourced
- Procurement process and qualifications

Participation/equity share

77 GIZ, *Establishing Management Boards in Solwezi District* (2015), 1.

78 GIZ, *Establishing Management Boards in Solwezi District* (2015), 2.

79 The management board is a legally created entity pursuant to section 3 of the Local Gov Act Cap 281.

80 Quotes from GIZ, *Establishing Management Boards in Solwezi District*, Final report of the Technical Mission, April 2015, Bonn. p.19.

When employees are hired by extractive companies, communities benefit from knowing the total number of employees broken down by the share of national versus foreign employees and local versus national. In response to the new EITI Standard, many countries have included employment information in their reports. A survey of reports published after the new EITI standard (conducted as part of the research for this paper) found that two countries, Burkina Faso and Mozambique, also included figures that were disaggregated by locally based employees.⁸¹ Similarly, transparent information about the pay scale, number of jobs available at each pay scale, and hiring practices of the mine helps the communities better understand how to engage with the companies.

Because mining operations can be dangerous, publishing information on the health and safety record of a mine and the health implications for employees, helps potential employees make an informed choice. This can be monitored and reported by national and local health and safety ministries in addition to the companies themselves. Companies are also often involved in creating a training program or financially supporting such a program. In addition to notifying the local community about how to participate in this, notifying the community about expenditures related to the program can help build trust and goodwill.

Extractive projects often have very specific needs in terms of goods and services, with high standards for uniformity and dependability. Subnational companies and community economies often find it difficult to meet these standards and can miss out on the potential economic gains of extraction. In order to help improve opportunities for local companies, extractive companies can be transparent about their needs for goods and services. In Burkina Faso, civil society groups and the chamber of mines have organized an annual discussion between mining companies and local businesses. During these meetings, the mining companies share their projected needs for goods and services so that local companies can better understand upcoming opportunities.⁸² In addition, whether by national mandate or corporate initiative, a transparent procurement process can further the opportunities for local participation and oversight. This includes clear notices about needs and criteria for bids, clear process for submitting bids and clear statements about which bids are selected.

In some countries, local companies or companies owned by state-owned entities have the opportunity to participate as an equity partner in extractive projects. At times, there are obligations that foreign companies must have a locally-owned partner participating at a certain equity. In order to properly monitor these provisions, it is imperative for the beneficial ownership of each participating company to be disclosed. This type of information is beginning to be available through some EITI reports. When the equity partner is a local government authority (for example, Umnugovi province in Mongolia holds a 51 percent stake in a coal mine, Tavan Tolgoi) it is necessary to have clear information about the terms of the equity agreement and the potential revenues from that agreement. Because local governments usually lack the funds to participate upfront, information about loans or other arrangements made to purchase the equity are also necessary for proper monitoring.

When employees are hired by extractive companies, communities benefit from knowing the total number of employees broken down by the share of national versus foreign employees and local versus national.

81 BF-EITI, *Burkina Faso: Rapport de conciliation 2012*, 29; MEITI, *Mozambique Reconciliation Report 2012*, 63.

82 Interview with Saidou Arji, PWYP International.

How can this information be used to improve sector governance?

As stated above, one of the biggest challenges facing extractive companies is managing expectations related to local content. Disclosure of employment plans, and goods and service needs, can build trust between stakeholders and help communities respond appropriately. Information that is disaggregated by region and job type can also help government officials respond with appropriately targeted training programs, facilitating a long term transfer of technology and skills to local actors.

In addition, when special opportunities are created for new economic ventures, elites with access to political information or corporate connections are often in a position of potential advantage. Even details as simple as who gets a job at a mine site can be influenced by bribes and family connections. Companies often find it politically difficult to differentiate between corrupt and genuine actors and they see their social license diminish as the economic benefits of extraction are captured by an elite few. Wide publication of the rules for local content, opportunities for participation, and accounts of who has been able to take advantage of these opportunities can diminish the opportunity for corruption.

Social and environmental impacts

The social and environmental impacts of extractive projects are of paramount importance to local stakeholders. A seasoned activist in Mongolia reported that when convening multi-stakeholder forums about extractive revenues, eventually the conversation always turns to social and environmental impacts.⁸³

What information should be publicly disclosed?

Many countries have laws or regulations requiring that environmental impact assessments (EIAs) be approved before extraction, and that impact reports be published during the project. Local communities often do not understand the procedures or potential protections that are available. The revolving door of personnel between government and companies that exists in many countries can further erode trust. Dissemination to local communities of environmental protection provisions can foster trust and reduce anxiety. In addition, as each impact report is submitted and reviewed, the information could be made available at the local level. Companies often submit environmental impact assessments in shareholder reporting or include them on their website, but this type of transparency does not inherently mean that these long and technical reports are accessible at the local level.

In the initial EIA, companies usually make commitments about what actions they will take to prevent, mitigate, restore, or compensate for environmental damage. A government agency, sometimes national and sometimes local, is usually charged with ensuring that the company follows up with these commitments. Because many of these commitments cannot be physically assessed by untrained observers, it is important for monitoring reports to be available to local communities. Civil society groups in Colombia have asked as a condition of their participation in the EITI process that company environmental actions and their associated costs be included in EITI reports. In Peru, where environmental impact has a history of causing civil unrest, civil society is asking for links to the reports on the company's actions and the government monitoring of those actions to be provided for each mine in the EITI report. They argue that even

Recommended disclosures: social and environmental impacts

Before extraction

- National and local obligations for social and environmental management
- Social and environmental impact assessments
- Funds available for restoration
- Process for reviewing impacts and qualifications of persons involved
- Plans for infrastructure development and use

During extraction

- Actual environmental and social impacts monitored by companies and government
- Actions taken by companies
- Costs of actions taken
- Fines or citations
- Plan for closure
- Actual infrastructure use

After project completion

- Closure process
- Funds spent on closure and restoration
- Remaining environmental risks in the area
- Status of infrastructure

83 Interview with Dorjdari Namkhajin, NRG.

when such information is legally available at government offices, there is little access at the local level unless information is provided in this sort of summary format.

The environmental impact of small-scale mines can be particularly concerning. Small-scale mines often use older equipment and less safe chemical combinations, and have fewer safety checks. Because of the sheer number of operations, national governments are often less vigilant in monitoring impacts of small-scale mines. At the same time, small-scale mining often accounts for a large amount of production. In Ghana, small-scale mining accounts for at least 34 percent of the production of gold.⁸⁴ Local communities need accurate information about their rights in monitoring and submitting grievances about small-scale mining operations.

In addition to understanding the risks, early reporting can be used to understand areas of potential collaboration. Companies should be required to include detailed information about their infrastructure needs in publicly disclosed feasibility studies and EIA reports. The companies' need for transportation, power, telecommunications, and water are an integral part of the project's success and may also create opportunities for shared use or multi-purpose infrastructure.

How can this information be used to improve sector governance?

Transparency on information related to environmental and social effects can provide credibility to companies and governments acting well and oversight on those who are not meeting their obligations.

In larger-scale projects, ongoing information about the environmental impact allows community members to make informed decisions about their use of shared resources, such as rivers and contaminated soil. By having information about potential risks, the community can plan how to optimize other resources. When reports are available about actual effects, communities can make more informed decisions about what actions are necessary to recuperate the lost value of land.

Some of the benefits of transparency and dialogue around environmental impacts can also be seen in recent projects involving small-scale mining. In the province of South Cotabato in the Philippines, a group of civil society actors led by Bantay Kita created a multi-stakeholder group aimed at improving the regulation of small-scale mining in the area. The multi-stakeholder group began by drafting a local ordinance, which was then approved by the municipal and provincial legislative bodies. The ordinance required small-scale miners to disclose commercial agreements, mineral outputs, revenues paid to the government, and environmental and social programs. As the dialogue continued, another key output was the agreement between miners and an environmental group to train small-scale miners on an alternative gold refining method that would reduce the use of mercury. Similarly, in Madagascar, GIZ is organizing small-scale miners to participate in district level multi-stakeholder dialogues with the hopes of creating a better understanding of the social, economic, and environmental effects of small-scale mining. In both cases, these projects work on the premise that promoting dialogue about social and environmental impacts with small-scale miners can lead to greater social and environmental protections for the communities.

When multiple levels of government have information about potential infrastructure projects, they can plan how to best optimize these projects. Local communities may benefit from extending the reach of a road to another village or sharing the output of a new power plant for a mine with the surrounding community. Often multiple levels of government have the power to be involved in infrastructure projects and thus it is necessary for the company plans to be equally available to all these levels of government.

Local government spending

“Companies reported about a lot of money they have paid. What is being done with that money? Our living conditions are not improving.”[sic] – a citizen asking a question of local officials at a district level public meeting on mining organized by the Open Society Forum and PWYP Mongolia.⁸⁵

This question is at the heart of subnational spending transparency. As subnational communities begin to receive revenues from extraction, communities often wonder when and where they will see improvements in social outcomes.

What information should be publicly disclosed?

The International Budget Partnership (IBP) has created a guide for concerned groups to monitor public expenditures⁸⁶ as well as a list of the minimum types of documents governments should disclose so that citizens can properly monitor and participate in the budget process. The recommended documents include the pre-budget statement, executive’s budget proposal, enacted budget, citizen’s budget, in-year report, mid-year report, year-end report and audit report. For these documents to be meaningful, local communities must also have information about the budget process so that they can understand when their participation is possible.

As mentioned earlier, some countries with strong national transparency laws have extensive information available online with regards to the budget. In Colombia, for example, the government has created a powerful transparency portal that enables users to find information about the spending of different levels of government by clicking on a map and then selecting the appropriate documents.⁸⁷ This user-friendly site includes a disaggregation of expenditures that are from natural resource royalty shares.

When revenues are not recorded in the subnational budget, the allocation of these revenues must be explained, with links provided to relevant financial reports as applicable. Examples of extra budgetary spending include sovereign wealth and development funds, state-owned enterprises, sharing revenue with other subnational governments, indigenous groups and universities and other extra-budgetary entities. In order to ensure proper oversight when subnational savings or stabilization funds are created, the government should comply with basic good practice reporting, including: the amount of deposits, withdrawals, principal and returns during the accounting period in question; the rules which govern fund deposits, investments and withdrawals; the formula(s) for determining deposits and withdrawals; and disaggregated data on specific investments.

Recommended disclosures: local government spending

- Basic budget documents, including the pre-budget statement, executive’s budget proposal, enacted budget, citizen’s budget, in-year report, mid-year report, year-end report and audit report
- Basic planning documents
- Expenditures for revenues not recorded in the budget, such as savings/stabilization and state owned enterprises

85 Dorjdari Namkhajianstan, “Mongolians Demand – and Receive – More Information About Their Natural Resources,” NRG blog, July 9, 2014, <http://www.resourcegovernance.org/news/blog/mongolians-demand-and-receive-more-information-about-their-natural-resources>.

86 Vivek Ramkumar, *Our Money Our Responsibility* (International Budget Partnership, 2008) <http://internationalbudget.org/wp-content/uploads/Our-Money-Our-Responsibility-A-Citizens-Guide-to-Monitoring-Government-Expenditures-English.pdf>.

87 “Mapa Regalías,” Departamento Nacional de Planeación, <http://maparegalias.sgr.gov.co/#/>.

Governments can build trust with and manage expectations of their citizens by providing timely information around issues of revenue sustainability and resource dependence. This may include the assumptions underpinning forthcoming years in the budget cycle and relating to projected production, commodity prices and revenue forecasts arising from the extractive industries and the proportion of future fiscal revenues expected to come from the extractive sector.

How can this information be used to improve sector governance?

Easy access to subnational budget information allows oversight bodies, such as civil society groups, to compare how and whether resource revenues are contributing to better development. Indonesian PWYP civil society groups are comparing the spending of resource revenues in multiple districts and examining these in light of human development indicators. The hope is that this access to information will foster more efficient and effective spending while making misappropriation more difficult.

Indonesia: Using subnational transparency throughout the decision making chain

Since 2004, Indonesia has quickly become a highly politically and fiscally decentralized country⁸⁸. Resource-rich districts and provinces receive shares of the national government's take of revenues, which they may spend without restriction. In 2009, the parliament also decentralized mining licensing responsibilities to the district level, though a 2015 law moved these up to the provincial level.⁸⁹ Since the beginning of the extractive transparency movement in Indonesia, advocates have worked to include subnational representatives in the conversation and create opportunities for information to be shared in a manner that is accessible and relevant locally. Here are a few examples of use and impact of subnational transparency in Indonesia throughout the decision making chain:

Land and licensing rights

As mining licenses were issued at the local level the Swandiri Institute and PWYP Indonesia collaborated to investigate the extent to which mineral licenses overlapped with each other, and with land designated for forest conservation. They did this by cross-checking mineral license data from the national EITI report with actual land use and operations on the ground. Through spatial analysis in West Kalimantan province, the groups found that more than 134,000 hectares of mining concessions overlapped with protected forest areas, while nearly two million hectares of mining concessions overlapped with areas where palm oil, forestry, or timber concessions had been given. The groups then shared their research with local communities through multi-stakeholder dialogues at the village level and created an online GIS map that visualises the overlapping concessions.⁹⁰

Revenue transfers and receipts

The national EITI report in Indonesia includes information on subnational revenue transfers. With funding from the EITI Multi-Donor Trust Fund, PWYP civil society groups in the resource-rich province of Papua took to disseminating information from the EITI report through newsletters, interactive local television and radio broadcasts, informal dialogues with local media, and an SMS gateway facility.⁹¹

Availability of data at multiple levels of government allows advocates to cross-check and verify accuracy. Data on oil production in oil-rich Riau is available from the national Directorate General of Oil and Gas website as part of a real-time monitoring system and the national EITI report. Both sources publish the data disaggregated by district and company. When comparing figures, advocates found discrepancies of more than 1,500,000 barrels per year which had implications on revenues owed at the subnational level.

Local content

When oil was discovered in the Cepu Block of Bojonegoro, the district mayor, (called a bupati in Indonesia), decided to become a champion of subnational transparency. Through consultation with a multi-stakeholder group, he promulgated a local regulation for transparency that included the disclosure of company CSR spending. In 2015, as the oil block reaches peak revenue, the district seeks to improve the transparency and revenue management of the receipts received from a locally-owned company participating in the extraction. By creating a transparently operated fund, the local government hopes to improve the long term impacts of these local participation revenues.

Local planning and spending

District level budgets and planning documents are available on local and national websites in Indonesia. Civil society groups have used this easily available information to cross-check revenues reported in local budgets with transfers in the EITI report. They also are analyzing budgets in resource rich districts in terms of pro-poor spending choices and tracking them against the human development index in each district.



Figure 4. Multi-stakeholder development planning workshop in East Java, Indonesia

88 Indonesian Law No. 32/2004

89 Indonesian Law No. 4/2009.

90 Swandiri Institute and PWYP Indonesia <http://editor.giscloud.com/map/230430/eispataltranparency>.

91 <http://ajipapua.org/eiti>.

The Piura regional department in Peru and Santa Cruz province in Bolivia provide easy access through websites and local bulletin boards to both expenditure information and project plans. In Piura, if a government entity is building a road, it must publish not only how much it has spent but also how much of the road it has built. Local civil society groups in resource-rich communities in Peru are using this data to check whether the reported spending matches the reported results. In addition to measuring the actual infrastructure that has been completed, in this example, they are also making calculations about how much it should cost to finish that amount of road. This form of analysis is only made possible by the detailed information provided to the local communities on expenditures and project implementation.

CONCLUSION

The diversity of needs and challenges at the local level has encouraged a range of traditional and innovative transparency mechanisms ranging from application of global standards to local laws and informal agreements on information disclosure.

Global trends also reflect a growing awareness and demand for increased transparency in resource governance at the subnational level. There is a movement towards increased levels of disaggregation in extractives reporting, making internationally disclosed data more relevant to the local level. Open data portals such as resourceprojects.org aim to provide one stop shop for all extractive project related information including on local payments and impacts.

While emerging examples are encouraging, most of the efforts still seem to be at the nascent stage of trying to obtain relevant information, rather than at the stage of using the information to inform decisions. In other words, a large part of the efforts of local stakeholders is still on improving transparency and not particularly on increasing accountability. More research is necessary to assess the impact of different subnational transparency mechanisms and content streams and how they link to better accountability as well as better development outcomes.

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