



global witness

Extractive sector transparency: Why the EU needs a strong set of rules

WHO WE ARE

For 17 years, Global Witness has run pioneering campaigns against natural resource-related conflict and corruption and associated environmental and human rights abuses. It was one of the co-founders of the Publish What You Pay coalition of civil society groups from around fifty countries.

THE PROBLEM:

In 2009, Africa's oil, gas and minerals exports were worth roughly five times the value of international aid to the continent (\$246 billion vs \$49 billion). However, instead of their wealth being used as a building block for development, countries rich in natural resources, such as oil, gas, timber or minerals frequently end up blighted by inequality and bad governance. In spite of increasing international recognition of this phenomenon – often referred to as 'the resource curse' – governments, multilateral institutions and companies have all failed to do enough to tackle it.

One way of ensuring that countries rich in natural resources can benefit from the development of their resource wealth is through the transparency of financial flows from extractive industries. Disclosure of key information can discourage corruption, reduce conflict and improve stability in resource-rich countries – benefits that pay dividends to both investors and citizens alike.

THE SOLUTION:

In October 2011, the European Commission proposed that EU-listed and large unlisted extractive and timber companies should publicly disclose their revenue payments to governments worldwide. Global Witness welcomed the proposals to revise the existing EU Transparency and Accounting Directives so as to provide citizens of resource-rich but poor countries, investors and civil society with accurate information about the flow of oil, gas, mining and logging revenues to governments.

WHAT NEEDS TO BE DONE:

The EU and its Member States have a unique opportunity to set the benchmark for global standards on revenue transparency and ensure that all citizens in resource rich countries across the world benefit from their natural resources.

In order for the revised EU legislation to be fully effective, it is important that the European Council and European Parliament resist industry pressure to water down such proposals and push for robust rules.

EXEMPTIONS – the EU must not cave in to industry pressure to include a loophole in the law

In the draft proposal, the European Commission has provided an exemption from reporting where public disclosure is prohibited by the criminal legislation in the host country. There is however no evidence to suggest that such legislation currently exists. Retaining this clause will only create an incentive for corrupt dictators around the world to pass legislation, continuing to keep some of the most vulnerable citizens in the dark. Global Witness therefore strongly recommends that the EU legislation allow no country exemptions of any kind.

PROJECT-BY-PROJECT REPORTING - the EU must enable citizens to track the sources of revenue to a particular region within a country

In proposing transparency regulations for the extractive and timber industries, the European Commission has rightly recognised that disclosure by companies needs to take place at a project by project level.

This form of reporting will allow for much better tracking of revenue flows to the government as a deterrent to corruption and allow civil society, academics and citizens to publicly view this information. Extractive and timber companies around the world typically acquire rights to exploit natural resources within a defined geographical area of a country which is governed by a legal agreement such as a license, lease, production-sharing agreement or concession agreement.

Terms such as “oil block” or “concession area” are well understood by extractive companies and commonly used by them as a reference point for describing their activities to their investors. This form of reporting would enable citizens to track the sources of revenue to a particular region within a country and would be consistent with the way that government divide up a country’s territory for resource extraction purposes.

Global Witness therefore recommends that “project” be defined as **“equivalent to activities governed by a licence, concession or similar legal agreement. Where any payment liabilities are incurred on a different basis, reporting shall be on that basis.”**

MATERIALITY – the financial threshold at which reporting begins must be low enough to capture payments that are significant for the local population

The EU should define materiality as an absolute figure within the legislative text. This figure should be based on a realistic assessment of payment levels that are important to national and local governments and reasonable in relation to the level of tax payments made by extractive companies. Payments that are relatively small for a multinational company may be very significant for a poor developing country, especially at regional or local government level.

WHY TRANSPARENCY WILL NOT HARM EUROPEAN BUSINESS

Companies are reluctant to support the proposed revisions stating that such transparency will hurt their ability to compete. They argue that multinational companies subject to disclosure requirements will have a harder time than other companies in striking deals with governments – either because resource-rich countries will be wary of doing business with them, or because access to payment data will enable competitors, particularly Chinese state-owned companies, to undercut their negotiating positions. However:

- There is no evidence that transparency legislation harms competitiveness. Since the passage of U.S. transparency provisions under Dodd Frank in 2010, there is no evidence that any company covered has lost business to competitors or been barred from certain countries. In fact, since the passing of Dodd Frank, U.S. listed BP has been authorised by the Chinese government to explore for gas in the South China Sea, international oil companies have won oil blocks in Iraq and Indonesia in competition with Chinese or other Asian companies (and sometimes in partnership with them, such as BP’s partnership with China National Petroleum Corporation to exploit Iraq’s giant Rumaila field).
- Competition over access to energy or minerals is a complex process, encompassing company efforts to identify resources and secure capital and culminating in the award process by which host countries choose partners and negotiate deals. When governments award concessions and contracts to companies, they take into account a wide array of factors, including technological assets and expertise, capital requirements and the fiscal terms that companies offer.
- The reason that Chinese extractive companies have made inroads into Africa and other developing regions in recent years is due to the fact that they are willing to offer very generous terms to break into new markets and are enabled by cheap financing from Chinese state banks. Whilst the above-market offers and resources-for-infrastructure deals can be hard to turn down for cash-strapped governments, they have nothing to do with transparency requirements.