

## 9

## **Publish What You Pay – Extractive Industries Transparency is in Everyone’s Best Interests**

By Henry Parham

### **1. Background to Publish What You Pay**

Foreign investment in the oil, gas and mining industries is a significant source of revenue for governments of over 50 developing countries. The combined population of these countries amounts to approximately 3.5 billion people, of which 1.5 billion represent over two-thirds of the world’s poorest people. These citizens should be benefiting from the financial windfall of natural resource extraction. However, it is a sad fact that natural resource wealth has not translated into economic wealth and prosperity for many of these countries. Instead, it has plunged millions of people into poverty, thrown economies into crisis, and drawn many communities into conflict. This trend has come to be known as the “paradox of plenty” and in some cases the “resource curse”.

With investments in the extractive industries of developing countries set to escalate over the course of the coming decades, the importance of transparent and accountable management of natural resource revenues injected into these poor countries will become even more critical. As industrialised countries search for more secure and plentiful sources, such as the Gulf of Guinea in West Africa, the international community has two choices. The first is to implement immediate and effective measures to ensure that revenues from the extractive industries are used for human and economic development. The second is to continue to sit back and watch as the political, economic and social conditions deteriorate in these countries, exacerbating poverty, threatening business operations and the long-term interests of company investments.

Transparency in the extractive industries is in the enlightened self-interests of all concerned. It is about building trust between companies, governments and citizens for long-term gains. There is a very clear moral case for citizens of resource-rich-but-poor countries to have access to information on company payments for access to their natural resources. This will allow them to lobby for a democratic debate over revenue management necessary and hold governments accountable

for revenues received. Without revenue transparency, companies can be perceived to be complicit in worsening corruption and social conditions even though they are conducting legitimate business transactions with these governments.

At present there are no feasible means to know precisely the amount of revenues provided by extractive companies to producer countries in the developing world. Companies registered in the North are not required by law to provide a country-by-country breakdown of payments made. Producer country governments in the South also do not require public disclosure of companies' financial transactions with the government and government-linked entities for access to natural resources. Whilst companies, in particular multinational corporations, should not tell governments what to do with the revenues they provide, they should make available payments information that is routinely disclosed in the North, especially when there are so many millions of people dependent on these revenues for their welfare.

In not being transparent about their financial dealings with the government, companies shore up corruption and poverty in the developing countries where they operate. International Financial Institutions, (e.g. World Bank, IMF and other lending agencies) have a similar impact when they provide crucial financing and loans for extractive industry investments and projects without enforcing adequate disclosure of payment and revenue information. Civil society, therefore, has no chance to monitor its government's handling of the income made from its country's natural resources. Other international bodies such as the UN, EU and G8 have not done enough to prevent the corruption and mismanagement that is bad for development and bad for business.

Nigeria, sub-Saharan Africa's largest oil producer, is a classic illustration of the "paradox of plenty". Rich in proven resources (approximately 30 billion barrels of oil) and having earned an estimated \$340 billion over the past 40 years, Nigeria's oil exports ranks only behind Saudi Arabia, Venezuela, Iran and United Arab Emirates. Oil dependence account for over 83% of federal government revenue, more than 95% of export earnings, and approximately 40% of GDP. Yet, oil wealth has done little to change the situation of the poor. More than 70% of Nigerians live on less than one dollar per day, 43% lack sanitation and clean water, and infant mortality is among the highest in the world.

The situation in Nigeria, and in many other African countries, shows that governments that are highly dependent on natural resource revenues for income, combined with the lack of government infrastructure and fundamental poor governance, may allow revenues to be embezzled for private gain by ruling elites to the detriment of human and economic development efforts. The corrupt are protected by deficient budgetary transparency, the lack of capacity of civil society

to monitor income and expenditure, and in many cases, by the absence of democratic space. The revenues that companies provide can therefore be misappropriated and any benefits for the people as a whole are lost, causing mass resentment of the companies operating in those territories in the eyes of the local populations. This all amounts to an increasingly pressing call for companies to “publish what you pay” and for governments to “publish what you earn”.

The Publish What You Pay (PWYP) campaign, backed by a worldwide coalition of NGOs, civil society organisations and financier George Soros, was launched in 2002 with a call to extractive companies to disclose the net amount of payments (taxes, fees, royalties and other transactions) made to national governments on a disaggregated basis for all countries of operation. The goals of the campaign are in line with and a stepping-stone towards internationally agreed objectives of promoting accountable government, corporate social responsibility, a democratic debate over resource management, and energy security through a more sustainable operating environment.

The PWYP campaign originally evolved out of UK-based Global Witness’ investigations into the squandering of oil wealth from Angola and the role that the international companies and institutions had to play in exacerbating corruption and poverty by not being financially transparent<sup>1</sup>. The founding members of the campaign were mostly UK-based NGOs, including Global Witness, the Catholic Agency for Overseas Development (CAFOD), Oxfam, Save the Children UK and Transparency International UK. A coalition was formed as more and more NGOs from around the world including extractive industry producer countries saw resource governance issues being a serious concern. These organisations joined forces to mount the appeal and have actively brought in developing country partners to contribute to lobbying efforts. National PWYP coalitions are now active in the south, in particular Congo-Brazzaville and Nigeria, as well as throughout Western Europe and North America.

## 2. The Inadequacy of Voluntary Disclosure

Before understanding the full rationale for the Publish What You Pay campaign’s call for an international regulatory framework, it is important to clearly understand why voluntary initiatives have not delivered any real change or results on the ground. The campaign coalition takes the view that voluntary initiatives by

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1 See “A Crude Awakening” (1999) and “All the President’s Men” (2002) at [www.globalwitness.org](http://www.globalwitness.org)

the industry have already failed in an attempt to deal with financial transparency and that a regulatory approach to address the problem in developing countries is required. Whilst a number of initiatives, designed to deal with the lack of transparency in the oil, gas and mining sectors, have existed for some time, each of these have their limitations. These initiatives are all based on voluntary codes, principles and actions. They include:

- The **Global Reporting Initiative**: an established reporting standard for extractive companies. It has transparency as a key principle and is seen as creating “best practice” in the industry. There is a specific provision for country-by-country reporting of taxes paid to governments by companies. However, there are inadequate monitoring mechanisms and it does not supersede confidentiality clauses in contracts that prevent the necessary disclosures being made. Moreover, very few companies currently report in accordance with the full set of standards.
- The **OECD Guidelines for Multinational Enterprises**: non-binding recommendations from governments to all companies based in or operating in their jurisdictions. Only thirty-three OECD governments and four non-OECD governments have agreed to the guidelines, which leaves significant gaps in its effectiveness – global solutions are required for global problems. Also companies from OECD countries could be undercut by companies from non-OECD countries who are not required to disclose information about payments made to a host government.
- The **UN Global Compact**: provides an established framework of nine principles of responsible corporate behaviour. Many large international companies already support it. However, it simply plays an advisory role and has no binding mechanisms to hold corporations accountable to their commitments.
- The **IMF Code of Good Practice in Fiscal Transparency**: a good practice standard for fiscal transparency that is an important tool with which the IMF can conduct its surveillance of fiscal policy and institutional issues. Forty-six countries are currently reporting against this code. Whilst it is hoped that more will do so in the future, reporting against it is voluntary – as is publication of the reports. Furthermore, reporting is not undertaken on a regular basis and there are no enforcement mechanisms.
- Lastly, **unilateral disclosure** by companies on a voluntary basis: disclosure by a single company will not provide information about total government revenues from extractive industries. It would only be a small part of a much bigger picture needed for full accountability in the countries involved. Moreover, unilateral action may be a risk to companies if their competitors

do not follow suit and then potentially use the published information to undermine them. BP was threatened when the company announced that it would publish what it paid to the Angolan government in 2001. This proves the need for a level playing field achieved via mandatory measures that would overcome such “gagging” clauses in contracts and agreements.

It is clear from even a brief analysis, that voluntary approaches are not sufficient. Their goals and principles are to be endorsed but with billions of dollars still missing in some of the poorest (but resource-rich) countries in the world, they are evidently inadequate.

### 3. The Case for Mandatory Disclosure

The PWYP coalition advocates a regulatory approach to implementing company payments transparency and for a global and comprehensive framework incorporating a package of mandatory solutions. Specific recommendations that are the basis for the “policy cocktail” of mandatory mechanisms that the NGO coalition advocates include:

- **Disclosure Rules for Securities Markets** is a simple and effective solution. Companies wishing to have their securities admitted to trading on financial markets need to provide information about their activities in a prospectus and then are obliged to report regularly about the company’s financial position. Disclosure rules would override confidentiality clauses in contracts and they would have a wider application than company law since many international companies are quoted on a number of securities markets beyond those in which they are incorporated. The Publish What You Pay campaign coalitions in the US and EU are actively lobbying to incorporate provisions for payments disclosure into legislation currently being proposed that could include amendments requiring disclosure into the rules for companies listed on regulated markets.
- **International Accounting Standards** are a set of reporting requirements for companies adopted by thirty countries. From 2005 all listed companies in the enlarged EU and Australia will report under the standards and in the longer term they are emerging globally accepted set of standards. Changes to the reporting requirements of the standards could be made through a binding Statement of Recommended Practice for Extractive Industries to include provision for tax and other payments broken down by country. The key advantage of this mechanism is the comparability of data and the timely reporting of audited data. As a mandatory requirement by home

governments, changes to the International Accounting Standards could override any confidentiality clauses.

- **Export Credit Agencies** extending support to companies should require disclosure of payments as a condition of that support. A statement of business principles is already a feature of some export credit agencies. These should be amended to bring in detailed guidelines about transparency disclosure expectations.
- **International Financial Institutions** and **donor countries** should make transparency in the extractives sector a condition of their support, where such transparency is critical to achieving poverty alleviation and sustainable growth. This would operate at the overall country assistance level and should be specific to projects in the extractive industries. If all IFIs, regional banks and donors were to implement this option, and if donors were to agree to abide by the provisions themselves, most countries would be covered.
- **Oil-backed loans from banks:** The international banking industry should require transparency of revenues from extractive industries as a condition for all oil-backed loans to developing countries, particularly those loans secured by future resource revenues (and especially with regards to mortgaging of future oil revenues). Oil-backed loans from banks have, at best, undermined the work of multilateral institutions like the IMF in countries like Angola; At worst, they may have provided a whole set of parallel financing, outside of public scrutiny, for the operations of the shadow state, providing lucrative opportunities for cash diversion. Although banks can be sure of the return of their capital with high interest rates because such loans are serviced and insured by a pre-allocated share of future resource extraction, they risk rendering themselves complicit in the misappropriation of state funds if provisions to check actual loan disbursement and assure fiscal transparency are not implemented.
- Finally, a **host country** should adopt best practice in transparency and require all companies operating in its territory to disclose information about payments and should at the same time declare the amounts of revenue that it receives from the extractives sector. Where contracts contain confidentiality clauses host governments should provide their consent for the disclosure of data needed for compliance. This arrangement would ensure that all parties to any given contract were bound by the same requirements, but would only work in countries committed to this level of transparency. It would also satisfy comprehensiveness criteria as a full picture of company payments and government revenues would be available.

Requiring companies to ‘publish what you pay’ is the easiest step to take in order to promote transparency. Requiring governments to ‘publish what you earn’ is a parallel step that would lead to more accountable system of revenue management in which civil society could play a role. However, voluntary measures generally favoured by the industry and governments (both in the North and by producer countries) will fail to deliver, particularly in the more difficult, less democratic and most corrupt countries. The international regulatory framework, as has been outlined above, would also guarantee a level playing field for company payments disclosure and override confidentiality clauses in existing agreements that currently prevent the necessary information from being published.

#### **4. The Response to Publish What You Pay thus far**

The Publish What You Pay campaign has grown steadily with the increased support of NGOs and civil society organisations. The coalition members of NGOs come from over 43 countries worldwide, representing every continent with the majority of organisations being from developing countries. The campaign has brought the issue of revenue transparency and mandatory measures to the attention of governments (both North and South), investors, companies and international institutions and been met with, on the whole, positive reaction.

A significant turning point in the international community’s response to Publish What You Pay was at the G8 Evian summit (2003) with the release of a “Declaration on Fighting Corruption and Improving Transparency”<sup>2</sup> that included its first specific statement on the importance of transparency of natural resource revenues. The PWYP coalition welcomed this statement, which set out the urgent need to provide for the disclosure of payments made by extractive companies, and for revenues received by governments in the oil, mining and gas sector worldwide. The G8 commitment is an important first step; however, as discussed, the voluntary approach to disclosure is weak – revenue transparency will not be delivered everywhere it is most needed. Moreover, the G8 also committed to the aggregation of payment information, which masks individual revenue flows from public scrutiny. Companies individually disclose their payments to the G8 governments. Aggregating the information in developing countries would set different standards for the North and South.

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2 See: [http://www.g8.fr/evian/english/navigation/news/news\\_update/fighting\\_corruption\\_and\\_improving\\_transparency\\_-\\_a\\_g8\\_declaration.html](http://www.g8.fr/evian/english/navigation/news/news_update/fighting_corruption_and_improving_transparency_-_a_g8_declaration.html)

A recent statement by a group of 38 UK, Europe and American institutional investors has also given full support for transparency of company payments and government revenues, stating: “[The lack of transparency] is a significant business risk, making companies vulnerable to accusations of complicity in corrupt behaviour, impairing their local and global “licence to operate”, rendering them vulnerable to local conflict and insecurity, and possibly compromising their long-term commercial prospects in these markets.”<sup>3</sup> The investment community is playing an increasingly important role in this issue, which is evidenced by their participation in the UK-led Extractive Industries Transparency Initiative, (see below) and the pressure some are putting on their investee companies to implement payments disclosure. The PWYP coalition will be continuing to closely engage with investors in maintaining pressure on companies and working towards investment in the extractive industries being a source for growth and development.

The companies themselves have had varying reactions to Publish What You Pay. The more supportive companies on this issue, namely AngloAmerican, BP, Newmont, Norsk Hydro, and Shell, have been in discussions with campaign advocates for some years. They support the objectives of the campaign, but not always the means to reach these goals. At a recent European Parliament hearing of the Development Committee, Shell signalled their support for mandatory disclosure so long as a level playing field was guaranteed for all company payments disclosures and that their competitive advantage was not threatened. Other major international companies, particularly American ones, have been less progressive. Whilst they have given some broad public support, there has been a general emphasis on voluntary endeavours and aggregation of information at country levels.

## 5. Extractive Industries Transparency Initiative

The EITI was the creation of the UK Government in response to the launch of Publish What You Pay. The UK government was especially supportive of the campaign in its early stages and continues to work closely with the coalition in developing this initiative, which brings together international stakeholders (governments, companies, NGOs and international organisations) to work towards implementing a workable and consistent approach to achieving payments and revenues transparency. The voluntary initiative, personally backed by Prime Minister Tony Blair,

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3 For the full investors statement see: [http://www.dfid.gov.uk/News/News/files/eiti\\_draft\\_report\\_investors.pdf](http://www.dfid.gov.uk/News/News/files/eiti_draft_report_investors.pdf)



has held international meetings in 2003 to develop a common statement of principles and agreed actions for all parties involved. Reporting guidelines for companies and governments have also been developed, with one set of guidelines for the mining sector and another for oil/gas. The initiative has broad support from all stakeholders and is undergoing further work led by the Department for International Development (DFID) in London.

The initiative has pledged to consider both voluntary and mandatory measures to delivering its objective. However, at present there is no indication that the process will head down the latter track. At the high-level stakeholder conference in June 2003, it was agreed that a few individual countries would pilot the EITI, including Azerbaijan, Ghana, Nigeria, Sierra Leone, East Timor, and Trinidad & Tobago but there is no indication of these being applied in all countries where transparency is needed and on a global scale.<sup>4</sup>

Whilst the EITI is the most encouraging response by the international community so far to the problems of revenue transparency in developing countries, it is currently weak in not being bound by any timeframe and relying on being a voluntary process, which means that there are no guarantees firmly established to ensure its success. It has also been proposed to pool together company payments information at national levels, thereby denying the right of local citizens to disaggregated company payments disclosures – a major double standard in the developing world where such transparency is desperately needed and where mandatory measures would eliminate such discrepancies.

## 6. Conclusion

PWYP is a crucial first step on the road to improved governance in resource-rich-but-poor countries and enhanced corporate accountability. But if – or indeed when – the voluntary efforts currently favoured by governments, various companies and other bodies fail to be effective on a global scale – and particularly in the most corrupt and poor countries – how long will it be before we say, “Enough is enough!”? How long do we have to wait before this very achievable and practical call for companies to publish what they pay and governments to publish what they receive is implemented?

Another important question is why would companies not want to contribute proactively to a safer operational environment in developing countries? Interna-

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4 For the Conference report and other information on the EITI, see: [www.dfid.gov.uk](http://www.dfid.gov.uk)

tional companies, including industry giants BP, ChevronTexaco, ExxonMobil, Shell and Total, have substantial operations in the developing world. All too often they become targets for communities that see little benefit from oil revenue and then in some cases (e.g. Nigeria) resort to actions that raise serious security concerns. Company financial transparency will contribute to greater corporate accountability in developing countries, thereby shifting the focus of civil society to calling their governments to be responsible for revenues made from extractive companies' operations and their use for economic and human development. So as vital business operations try to sustain themselves in highly volatile and increasingly dangerous places, the business community needs to react to protect their vested interests. The longevity of extractive operations is otherwise threatened.

Shareholders and investment groups are also increasingly calling on companies to be transparent in their financial dealings with government with the growing emphasis on socially responsible investment. It would be a moral outrage and an unhealthy business decision not to fully cooperate with the objectives of the Publish What You Pay campaign and Extractive Industries Transparency Initiative. Companies should do so by openly working towards payments transparency in the oil, gas and mining sectors on a global scale and supporting mandatory approaches.

Revenue Transparency is just a first step. It's not going to happen overnight but it has to be pursued with a sense of urgency by the international community. The key questions concern the methods, mechanisms and commitment that will generate real and rapid progress for the millions of people who continue to unnecessarily suffer in these resource-rich-but-poor countries. International efforts to alleviate poverty, combat corruption, improve corporate and government accountability, enhance global energy security will be hampered by the lack of revenue transparency in the extractive industries. Some voluntary efforts may work in some places and this will be welcomed. But the mandatory, comprehensive and rapidly delivered approaches proposed by PWYP are needed to ensure this maintains a level playing field for companies and reaches those countries most in need of change.

The whole international community has a decision to make: act now with binding solutions that will guarantee benefits to millions of poor citizens worldwide and to its own interests, or watch passively as the situation deteriorates.