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Getting the Most Out of Extractive Industries Transparency: How a More Explicit Treatment of Political Considerations Could Strengthen the Impact of Transparency Efforts

Columbia Center on Sustainable Investment
Columbia Law School, ccsi@law.columbia.edu

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Getting the most out of extractive industries transparency:

How a more explicit treatment of political considerations could strengthen the impact of transparency efforts



The extractive industries (EI) are at a critical juncture. A period of significant commodity price volatility is intersecting with the global energy transition and, more recently, the major social, political and economic repercussions of the COVID-19 pandemic – a combination of forces creating both uncertainty and potentially major shifts in how EI are developed and governed. As EI governance practitioners grapple with these shifts, and the challenges and opportunities they bring, transparency will be an essential tool. However, practitioners need to think – and work – more politically as they develop and deploy this tool moving forward to make the most of its potential.

INTRODUCTION

For decades, scholars and practitioners have grappled with the problem that, despite extractive industries (EI) holding the potential to be a major source of wealth and prosperity, their development often fails to live up to such expectations. A long-standing commitment to building technical capacity of relevant government institutions has been complemented in the past fifteen years by a strong push to bring greater transparency to an historically opaque sector. Although attention most often focuses on the Extractive Industries Transparency Initiative (EITI), many efforts have been undertaken by a range of actors working at global, national and sub-national levels to illuminate different aspects of oil, gas and mining sector operations and finances.

The implicit logic underlying much of this work has been that greater transparency could inform and incentivize improved governance of the sector, whether by enabling greater accountability or contributing to better policy decisions. We will argue that:

- whether and how this logic plays out in reality, i.e., the extent to which some of the key intended impacts of EI transparency are realized, depends in important ways on political context;
- political context can shape the ultimate trajectories and outcomes of EI transparency work throughout the transparency lifecycle;
- integrating political considerations more systematically into the design and implementation of programs and projects focused on EI transparency should help realize greater value;
- and all of this, in turn, should help sustain and reinvigorate support for EI transparency for societal benefits.

EI transparency: a moment of opportunity

As work on EI transparency - a large and important component of a broader governance of EI (henceforth GEI) field - has ma-

tured, there is now an opportunity to reflect on the track record to date and consider how to bolster and magnify the impact of transparency efforts in contributing to various goals moving forward.¹ There is the added urgency and uncertainty caused by the global coronavirus pandemic and resulting pressures on government, industry, civil society and funders to adjust priorities. Can EI transparency processes retain attention and resourcing at this moment when they are arguably more needed than ever, but competing with other demands? Attention to political dynamics will be essential to assure they do.

In terms of securing commitments to disclosure and increasing the volume of publicly available information, work on EI transparency to date has been a major success story. The range of stakeholders now have access to more data on critical aspects of EI activities and flows, such as revenues, and it has become the norm for certain core pieces of information to be in the public domain. There is a growing library of use cases for this information. This is not to say that more information would not be useful to assure good governance of the sector, nor that the information published has been or can be used to the extent that many hoped. Some, including from civil society, have raised concerns over levels of “zombie transparency” and the ability to demonstrate governance and broader development impacts of transparency initiatives.

Situating this Discussion

This discussion piece is one aggregation of perspectives, ideas and questions coming out of several years of expert consultations, meetings, and interviews undertaken as part of the Executive Session on the Politics of Extractive Industries convened by the Columbia Center on Sustainable Investment. The piece focuses on the ways in which political realities can shape the efficacy and impact of efforts to advance various goals through transparency of extractive industries (EI transparency). The authors suggest that more systematic integration of political considerations into the design and implementation of these efforts may minimize risks of “zombie transparency,” and reinforce ultimate positive impacts. It should help those seeking to use EI data for specific purposes, such as to reduce corruption and enhance benefit sharing; unpack monolithic terms; account for incentives along the transparency lifecycle; and realize yet more of the potential of information disclosures. This is an introductory piece intended to catalyze and provoke critical thinking, debate, further investigation, and, ultimately, practical experimentation. It will be accompanied by a series of blog posts authored by different members of the Executive Session and other EI experts to explore some of the themes touched on below in greater detail, e.g. through country- or sector-specific lenses.

Why we need to address political realities more systematically

There are multiple factors that likely limit stakeholders' ability to realize the range of benefits of EI data disclosures. Many of the factors conditioning these outcomes are technical. However, we argue that political factors are also critical to shaping the outcomes of transparency efforts (including through their effects on levels of technical capacity) and should be more squarely integrated into strategies and approaches meant to foster and build on EI transparency. While it is encouraging that there has been increased attention given to the political economy of the extractives sector more broadly, especially in the past five years, we suggest that this focus should be deepened for specific issue areas. To that end, in this discussion piece we begin to unpack how political factors can influence the effectiveness and ultimate impact of transparency efforts from the initial commitment to disclose through the use of eventual data resulting from such commitments.

Of course, as we turn to the matter of impact, this process necessarily involves considering more explicitly the goals that availability of information is intended to advance, and the circumstances under which disclosures help address specific problems in order to advance these goals.² Ideally, one should specify the mechanisms through which transparency is expected to contribute to particular goals and consider how to address the constellation of factors – technical *and* political – that can shape how these mechanisms unfold and operate.

The following is an effort to *map some of the ways in which political factors can influence the trajectory of EI transparency and data use efforts and in doing so, can shape their ultimate impacts and the extent to which they contribute to the realization of specific goals*. The hope is to illustrate and provoke discussion on how thinking about political context systematically can *inform the design of GEI programming to take more advantage of the immense strides made on EI transparency to date*. Building on this foundation, a blog series will follow over the coming months, exploring individual topics in greater depth and with a focus on thinking through how these insights on political context can inform and improve the impact of EI transparency and broader governance efforts.

GETTING SERIOUS ABOUT POLITICS

In recent years, practitioners working on GEI have begun to pay more systematic attention to identifying and implementing technical approaches to boost effective uptake and implementation of EI transparency commitments, seeking to secure credible and accessible data that is then used for various ends. By contrast, treatment of analogous factors on the political side

has tended to be more limited and *ad hoc*, and not a primary driver of programming in the broader field. As the importance of political context in determining the fate of EI transparency efforts becomes more apparent, there is a need to complement the technical lens with a political lens to illuminate how transparency and disclosure mechanisms and requirements could and should be implemented and resulting information used more effectively.

Traditionally, development practitioners have primarily engaged with the issue of political context through reference to “political will.” Researchers, practitioners and donors alike have frequently identified political will as a crucial determinant of success or failure of reforms.³ However, as the “thinking and working politically”⁴ movement has underscored, both the simplicity of this term and the absence of systematic treatment of the universe of issues it covers are highly problematic. As Heather Marquette discusses in a related blog post for this series,⁵ political will as a concept is simply too vague and often treated as too fixed and exogenous to prompt an actionable agenda. Thus, with political will dismissed as seeming either too broad or too difficult to address, too little systematic attention has been paid to understanding and actively addressing the ways in which political realities shape the processes and outcomes GEI practitioners care most about.

The Executive Session on the Politics of Extractive Industries explores the implications for GEI writ large, but for this discussion piece, we ask: how does this play out in the context of transparency requirements and usage of resulting data? We suggest that work on EI transparency and data use could benefit from more consistent efforts to unpack political will and more systematic thinking about the ways in which power, interests, and attributes of political systems shape both process and outcomes. We begin to explore some of these issues below.

THINKING AND WORKING POLITICALLY ACROSS THE TRANSPARENCY LIFECYCLE

Where we are meant to be going with EI transparency

For better or worse, the bulk of EI transparency work over the last two decades has seen its value tied, explicitly or implicitly, not just to producing data as an end in itself but to the deployment of this data to advance broader goals,⁶ such as a reduction in levels of corruption, an increase in the public's ability to hold companies and governments to account, or the improved use of information in development planning or implementation. Despite important process victories and expansive data production,⁷ existing evidence is more limited when it comes to EI transparency's contribution to advancing these broader goals.⁸ Fears arise about the prospect of “zombie transparency.”⁹ While

evidence of impact is complicated by shifting goalposts, long results chains and the challenge of assessing deterrent effects of transparency on behaviors,¹⁰ few experts would argue that there is no room for deepening the contributions of EI transparency to those broader goals that animated much of the field in the first place.

How we are meant to get there

When considering the impact of existing EI transparency measures, it is worth noting that the goals motivating them (whether related to corruption, accountability, government take, development outcomes, or otherwise) have often been inexplicit or broad and the mechanisms through which EI transparency is expected to advance these goals have been under-specified. This lack of specificity is likely often deliberate, helping secure buy-in to a process with a more technocratic framing - not everyone needs to accept the purpose is, say, to fight corruption. However, it has hampered understanding of the contexts - technical and political - in which these mechanisms would unfold as intended. This overview and accompanying blog series grapple with the political side of this last point: *the ways in which realities of political context can shape approaches to pursuing sectoral governance goals through transparency.*¹¹

Politics and the “transparency lifecycle”

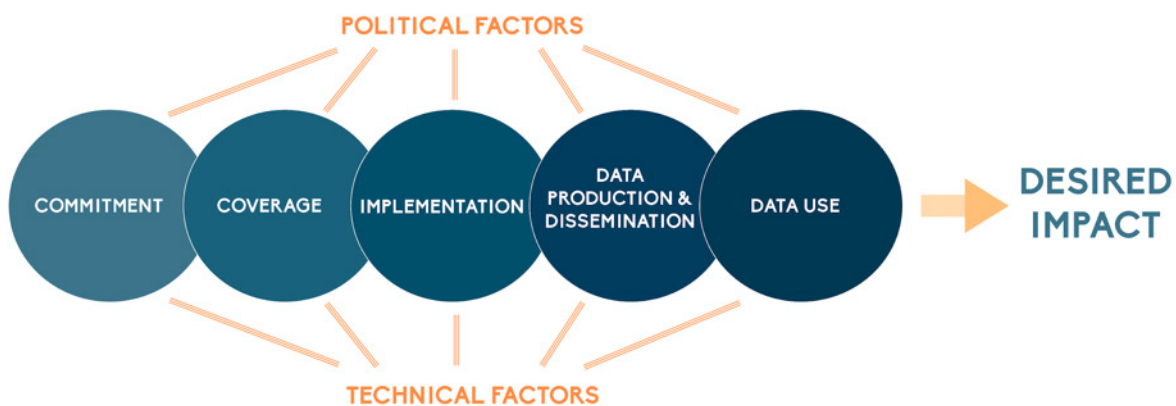
We will review illustrative political dimensions of each stage of a “transparency lifecycle” on which most traditional approaches

to transparency are implicitly based,¹² namely:

- **Commitment** – whether governments and companies commit to disclosures
- **Coverage of disclosure** – what is (not) included in disclosure commitments
- **Implementation** – whether these commitments are put into action through regulation, institutionalization and data production
- **Data production and dissemination** – how accurate, credible and accessible is the data that is produced
- **Data use** – whether, by whom and how data is/can be used

Specific manifestations of each of these elements underlie the theories of change or pathways to intended impacts for much of the mainstream EI transparency work to date, each feeding into the next. In theory, commitments to EI transparency would be made and they would cover relevant information, i.e. be targeted to address informational needs for a specific purpose (e.g. to assure implementation of a policy). Once the commitment is made and its scope determined, it would need to be enacted in order to assume some meaning in practice and operationalization. This implementation would then lead to some sort of data production. Ideally this production should not only assure timeliness, accuracy and credibility of the data but also its release in formats that are accessible to intended audiences. Finally, those intended audiences (and other serendipitous users) would need to be able to utilize the resulting information to perform a specif-

TRANSPARENCY LIFECYCLE



ic task or role(s) in service of improving outcomes from EI investment for the populations of host countries in some way.

Theory rarely matches practice. Too often, these pieces do not fall into place as intended, a function of technical and political factors that heavily condition outcomes. Both types of factors need to be identified and addressed so that transparency can contribute to more accountable governance, less corruption or other GEI goals.

HOW DOES POLITICS PLAY IN?

The following is an attempt to begin to more systematically grapple with the political factors that can shape how transparency unfolds at every stage. For each dimension of the transparency lifecycle, we briefly review the general track record of those efforts to date. With this in mind, we then turn to illustrating the ways in which political context may be affecting the performance and impact of transparency efforts in ways that can profoundly shape their ultimate trajectories even from the very beginning.

Commitment: Who is and isn't signing onto what

A. Lots of actors are taking first steps, but how to sustain, broaden, and deepen?

Over the last decade, *numerous and varied actors have made commitments to redress the longstanding opacity of EI*. Alongside the 53 countries that have formally committed to implementing the EITI Standard,¹³ various home and host countries have integrated aspects of EI transparency into national and sub-national laws¹⁴ and policies,¹⁵ and transparency requirements and voluntary commitments now routinely appear in the guidance and standards of international actors, including financial institutions¹⁶ and some extractive companies.¹⁷ However, the nature of those commitments is uneven and who is (not) undertaking them is telling.

Many transparency commitments are voluntary, only on occasion crossing over into a mandatory legal requirement (although, as discussed below, in practice even a legal requirement is no guarantee of implementation). Even when legislated, transparency requirements risk being “undone” through repeals and rollbacks, a reality perhaps most blatantly on display with the rollback of the resource payment disclosure requirements of Section 1504 of the Dodd-Frank Act and the withdrawal of the US as an implementing member of EITI.¹⁸ Ultimately, as noted in the 2017 World Development Report, powerful actors can too often intentionally withhold information they would rather keep to themselves under voluntary commitments, thereby perpetuating important informational asymmetries (which in turn reinforce power asymmetries).¹⁹

In addition to the issues arising from the types of commitments being made, there is the issue of who still falls outside of them altogether: some of the most powerful global actors have largely steered clear of transparency commitments, including government and corporate actors from China, MENA, and Russia, all major players in the extractive industries both as producers and, particularly in the case of China, as outbound investors.²⁰

B. Politics and disclosure commitments

Where politics can come in. There are clearly ways in which political processes and the (mis)alignment of powerful actors' interests – again, based on a variety of calculations – can affect the decision of whether or not to commit to some sort of transparency measure in the first place, the form that commitment will take (voluntary or mandatory) and its likely durability.

Most actors will avoid commitments that might risk undermining their power or generate opposition from other powerful actors on whose support or acquiescence they rely. Greater scrutiny enabled by transparency may lessen EI company and government discretion in decision-making and the pursuit of particular interests. This may well explain why voluntary commitments have been easier to come by, why mandatory requirements like Section 1504 have been so vulnerable to attack when key government entities bend to powerful corporate interests,²¹ and why some important players in the sector do not make any commitments at all.

On the other hand, for some companies and governments (and more specifically, for key decision-makers within each), committing to transparency of some sort can be compatible with one or another of their interests or priorities, e.g., a quest for international reputational benefits²² (translating into more and better investment opportunities); a desire to signal to domestic or international audiences a genuine intention to undertake reforms; or the need to diffuse opposition or, during electoral campaigns, to inspire support.

Of course, interests may not be consistent across the whole of government (or corporate structure); internal political dynamics will come into play. What serves the Treasury might not serve the Ministry of Mines or the Ministry of Environment. Willingness to sign off on a commitment may vary across ministries accordingly. Some countries might require parliamentary approval, especially for mandatory requirements. The politics of securing that approval might prove a deterrent to making a strong commitment.

Implications for practice. Understanding whether and how actors undertake commitments is likely to be a good predictor of how the subsequent elements of the transparency lifecycle will unfold. Gauging underlying motivations and interests of relevant

government agencies and corporates can inform societal expectations of what commitments might be made, how the case for transparency can best be framed, and where genuine support for and resistance to disclosure commitments might come from. There may also be ways to strategically capitalize on moments of political opportunity (and the circumstances that precipitate them, e.g., elections, scandals, or popular pressure) to get governments or companies to commit to EI disclosures, as long as these are coupled with measures to buttress the durability and implementation of such commitments after the “moment” has passed.

Coverage: What EI transparency efforts do and do not include

A. Expanded coverage but who sets the limits?

Expanding beyond an initial focus on voluntary revenue transparency²³ and transparency of mineral supply chains,²⁴ *EI transparency efforts now cover a wide range of issues and activities.* The field has continued to identify key substantive areas where more information may help with governance and where less information may be enabling bad outcomes from EI. Efforts now include promoting greater transparency of EI contracts,²⁵ licensing²⁶ and procurement processes,²⁷ revenue management, and, more recently, have begun to take up issues like beneficial ownership²⁸ and social and environmental impacts²⁹ of EI projects.³⁰ In recent years, individual countries have actively sought to build on and expand even beyond EITI’s expanding reporting requirements and recommendations.³¹

However, *key gaps in coverage remain.* For instance, good information on social and environmental impacts of EI projects has long been sought by civil society actors and communities, but has yet to be produced in a meaningful and systematic way, although there are now moves in this direction. Information on state-owned enterprises (SOEs) remains scanty despite their significant control over EI assets and influence over political decisions in many countries.³² While recently EITI has shifted to requiring project level disclosures, recognizing that disaggregated data increases utility, other important gaps in disclosure requirements remain. Closing them will likely require both technical and political thinking.

B. Politics and coverage of EI transparency: decisions on what (not) to disclose

Where politics can come in. What is and is not covered by transparency initiatives and disclosure requirements shapes the ultimate impact of these initiatives by determining what issues or activities are and are not open to scrutiny. Choices about what information to publish also shape, in turn, the potential

scope of public debate – the data is often the starting point for multi-stakeholder dialogue; and an absence of certain data can significantly hamstring the possibility and reach of such dialogue. These decisions always have an important political dimension – those committing to disclose will be influenced by what they consider will be compatible with their interests and those crafting transparency initiatives and laws will have to strategically account for and navigate these considerations. Where EI disclosure has taken place, it has been a result of such strategic navigation.

Government officials and EI companies – their own activities typically the subjects of EI transparency requirements – play a central role in defining the scope of industry standards around EI transparency, national legislation and international standards. In doing so, they can sometimes shape coverage in ways that may prioritize their respective interests over disclosure requirements that would most empower citizens or prioritize benefits to the broader economy or society. For example, multiple people consulted and interviewed for this project felt that the exclusion of meaningful social and environmental impact data from most transparency efforts to date is due to resistance from governments and companies even though such information is typically among the highest priorities for communities and host country civil society. While there are steps developing to expand coverage to these issues they are far from comprehensive. Again, the interests of companies and different agencies within government likely come into play. As those with first-hand experience tell us, the final requirements are often a reflection of the relative power of different actors, such as that of a Minister of Mines relative to that of a Minister of Environment and of EI companies relative to host governments and/or societies.

The distribution of power and interests across levels of civil society can also affect the coverage of EI transparency measures and initiatives. Issues covered by global EI transparency efforts tend to reflect the advocacy agendas of international civil society actors (typically from the Global North) over those of national organizations and the priorities of CSOs in capital cities over those in EI-affected communities – all of which reflect the relative distribution of power and interests among these different actors. While there may be overlap and alignment across these varied agendas, this is not always the case, and the result can sometimes be supply-driven transparency without the requisite demand to generate action in response to whatever data is produced.

Implications for practice. When those with the power to determine what is disclosed have different, at times competing, priorities and interests from those demanding the information, the likelihood that the data they choose to make available will feed into significant changes in policy or practice will be diminished. Ultimately, those championing transparency should

more closely scrutinize and account for the motivations of those deciding what to make transparent. Coordinated demands may have more prospect of influencing the coverage of transparency commitments, as some national level EITI processes have demonstrated.

If the realization of goals around accountability or sustainable development require local communities or members of national or subnational civil society to act on or mobilize around information derived from EI data, the data needs to pertain to issues they care about most, the substance of which will vary from one context to the next. Efforts to support EI transparency initiatives may benefit from clearer mechanisms to understand and integrate the data demands of different stakeholders (communities, CSOs, a range of governmental actors, etc.) and not limit those conversations to the periodic review of global standards. That contextualized articulated demand can then be a starting point for negotiating what is disclosed, while recognizing the different incentives of those who hold the information. Multi-stakeholder processes, if deliberately designed in ways that try to neutralize power differentials and provide reasonably equitable voice to different actors, could prove valuable in mediating any competing demands of potential users for data and resistance from potential suppliers to provide that data.

Implementation: putting commitments in practice

A. How to match commitments on paper in practice?

While far from ubiquitous, as noted above, *the number and range of voluntary commitments and mandatory disclosure requirements and policies have expanded considerably and been adopted by a variety of actors. Despite the impressive volume of commitments, laws and policies, their implementation – translating commitments into relevant regulations, creating mandated bodies, and meeting disclosure targets and requirements – has been uneven.*³³ Problems with implementation can range from wholesale non-implementation, to partial or incomplete implementation to implementation undertaken in such a way that the *de facto* result is that “the transparency is merely notional.”³⁴

Evidence examined to date suggests that a considerable volume of transparency, accountability, and participation commitments, laws and policies have not been implemented effectively.³⁵ This includes major implementation gaps even in countries that are in formal compliance with EITI requirements. These findings were supported by a recent analysis by NREGI of implementation of legal reforms related to EI in Africa.³⁶ The study identified significant shortcomings in implementing commitments to transparency in many countries, most often related to social and environmental impacts and subnational revenue transfers, but also to the workings of SOEs, sovereign wealth fund commit-

ments, and compliance with fiscal rules.³⁷ Such implementation gaps are likely not exclusive to governments and further study is needed of corporate track records on actuating transparency commitments. Any effort to improve GEI must tackle the realities of such implementation gaps that separate *form* (what institutions and policies are intended to do) from *function* (how they work in practice).³⁸

B. The politics of implementing transparency

Financial and technical capacity limitations can undermine implementation of laws, policies and commitments related to EI transparency, but so can political factors: effective implementation relies not only on capabilities (*themselves influenced by political priorities!*) but also on the desire of relevant actors to deliver on promises.³⁹ Simply put, when those charged with implementation “do not see an incentive to implement a given law, that law will remain on paper only.”⁴⁰ As noted in a 2012 analysis of implementation gaps by Global Integrity and the Center for International Private Enterprise, “[a]ll the multiple reasons behind the existence – and persistence – of implementation gaps in diverse country contexts clearly points to one overarching theme shared among these different explanations: incentives matter. When an implementation gap occurs, its root cause is the fact that incentives – be they political, economic, or socio-cultural – are misaligned or even counterproductive. It is therefore imperative to understand what those incentives are in order to diagnose why policies are rarely implemented as planned and to effectively address particular manifestations of the implementation gap.”⁴¹

The incentives to implement laws, policies and commitments to EI transparency can be influenced by a range of considerations, e.g., anticipated personal gains or costs associated with effective implementation; political priorities of the “agent” in question; political momentum behind a particular issue after a law has been passed or commitment has been made; or perceived (il)legitimacy of the laws to be implemented.⁴² They can also be shaped by the influence of interests of other powerful political and economic actors who may oppose transparency for their own reasons.⁴³ For example, among corporate actors, while some might support transparency in hopes it will project a stable and reliable image to international investors, others benefit from relationships of patronage and kleptocracy that would lead them to favor opacity. We anticipate implementation gaps around EI transparency when the beneficiaries of opacity have more power and concentrated interests in maintaining the *de facto status quo* than others have in changing it.⁴⁴

Governments and companies commit to transparency codes, laws, or international initiatives like EITI for various reasons, which can bode better or worse for subsequent effective implementation.⁴⁵ For instance, when commitments from powerful

voices within government or companies reflect a genuine desire to prioritize or advance accountable governance and improve sustainable development for one or multiple reasons,⁴⁶ then meaningful implementation should follow (assuming the requisite capacity is in place). However, we hypothesize that this may not be the case when the chief motivations behind commitments are securing international or national reputational gains or responding to domestic political circumstances (elections, scandals, political pressure). Without a genuine interest in encouraging use of disclosures to improve sector governance and accountability, implementation could well be weak or fleeting, especially in the absence of strong consequences for non-implementation.

Similarly, the interests of powerful policy-makers in protecting themselves, their parties or other allies from greater scrutiny might create incentives for *ineffective* implementation⁴⁷ which might take the form of non-implementation or partial implementation (which exempts key activities or actors from the requirements in question).⁴⁸ As McCullough notes in her analysis of environmental and social impact assessments (ESIAs), when governments undertake commitments around ESIs, even when they formalize these commitments in legislation, they are generally unlikely to implement and enforce them for two types of reasons: 1) the formal rules in questions are out of synch with informal rules that guide how things are “really done” on the ground; and 2) power relations that favor certain interests opposed to effective implementation over the general good represented in the legislation.⁴⁹ Thus, misalignments with political realities on the ground can stop reforms in their tracks by preventing their translation into meaningful practice. Similar implementation blockages can result from powerful actors capturing and neutralizing the policy implementation process, as was the case with the oil lobby in the US undermining Dodd-Frank Section 1504 during the implementation phase.⁵⁰

Implementation can also be influenced by inconsistent priorities depending on where an actor sits in a government or company. This can exacerbate situations in which lack of clarity and/or of coordination within the organization is already making implementation difficult. There can be a mismatch of incentives between those making commitments and those charged with enacting them. To the extent to which the interests of those committing to transparency reforms are aligned with those who are directly responsible for enacting those commitments (assuming coordination across the key responsible parties exists), one would expect greater support for effective implementation. However, one can envisage how the opposite might play out. For example, a government or company official sitting at the international EITI table may agree to certain disclosures as they pursue the goal of winning international reputational benefits, but the official who then has the responsibility to provide that data may have competing incentives (e.g. a desire to avoid hav-

ing to justify and explain the information once subject to public scrutiny). Similarly, such disconnects can undermine the chances of successful implementation.

Implications for practice. Clearly, transparency commitments on paper or in law which are not carried out in practice are not the desired outcome for most actors in the GEI field. To secure effective implementation more attention needs to be paid to better understanding the underlying incentives behind this and considering more explicitly: who would be responsible for putting commitments in practice; who/what influences them; the likelihood of their implementing a particular commitment at all; and the prospect of their doing so in ways that are more or less consistent with advancing desired outcomes. Project design should account for their interests and incentives – including those resulting from pressure from current beneficiaries of opacity – alongside their technical capacity needs.

This is not to say that the political prospects of implementation should determine whether or not capacity-building or technical assistance around implementation of transparency commitments takes place at all. Rather, practitioners should consider how both can be aligned and/or shifted to support more disclosure commitments being put into practice. This might mean building in plans and incentives for more effective implementation from the very early stages, or developing mechanisms for monitoring that encourage implementation and introduce sanctions for a failure to follow through (e.g. censuring, loss of certain privileges or participation, some sort of financial cost).

Data Production: Seeking Both Quantity and Quality

A. How to assure both quality and quantity?

The quantity of data being produced as a result of EI transparency efforts is often raised as evidence of success and is indeed a major achievement. *There is now much more information on EI available than there was a decade ago, a significant feat for an historically opaque sector.* Both through EITI reports and information generated by various national disclosure requirements, the volume of data on EI – in particular, on revenues, production data, licensing, and contracts – has dramatically increased, even if this data is unevenly distributed across issues and geographies.⁵¹

However, some stakeholders will seek further assurance on the accuracy of this information. There is growing recognition in the open data community writ large – not confined to the extractives sector – of the importance of the messenger in terms of how stakeholders perceive the credibility of disclosed information. Some sources will be more trusted than others. It will vary across different actors. Some stakeholders may discount infor-

mation simply because of its source e.g., a mining company or a specific government agency. One value of a multi-stakeholder process, therefore, is that it can increase trust in the reliability of information shared publicly.

Concerns over data accuracy may often be misguided. However, we cannot ignore the potential for information being produced to be manipulated by those generating it, especially in the absence of neutral third-party verification mechanisms. In an age of active disinformation campaigns and wavering trust in institutions (both public and private), *even when EI information is accurate, concerns about credibility and trust in that data often persist.*

B. Politics and the realities of data production and sharing

Credible, accurate and accessible data is the cornerstone of EI transparency efforts and any related goals to which they are meant to contribute. Credibility and accuracy are both affected by technical capacity, as is well known. They are also potentially conditioned by the interests of actors charged with producing data and by the interests of those who influence them.

When those who potentially would be most impacted by different forms of EI transparency are in a position to oversee or even undertake the production of data, its quality and potential utility can be compromised. For instance, the interests of EI companies responsible for commissioning and funding environmental and social impact assessments – the production and dissemination of which is now a widespread requirement for EI projects – differ from those of the communities who would be users of the information. The firm – typically the actor funding, contracting with consultants to produce, and disseminating the findings of ESIAAs – has an incentive to under-report downsides that might jeopardize projects or increase delays and company costs associated with them.⁵² Firms may also have a strong incentive to offer a biased representation of their social and environmental track records to host governments or communities, another example of conflicts of interest in information production, a specific dynamic explored in greater depth in a related post. Similarly, under EITI or other government disclosure requirements, the role of government actors in producing information that could potentially reveal misdeeds or mismanagement by government officials can create potential disincentives to producing full, accurate or accessible information. Beyond EI, the reality of such politicization of data is on stark display as leaders worldwide manipulate the production of COVID-19 related data that they fear could have damaging repercussions for them if uncensored.⁵³ Even the perception of such potential conflicts of interest can compromise trust in the data that is produced, thereby decreasing the likelihood that action will be taken on the basis of this data.

Political factors may also play into the formats by which data is released and timeframes. Those agencies responsible for broader government data production and sharing – including open data platforms – may not have close working relationships with those agencies that hold EI data. EI transparency requirements may fail to specify that data be provided in open format, but simply stipulate that it be reported. For years, valuable information in EITI reports was locked in PDFs that constrained its use and reuse. While some countries have made notable strides towards open data platforms (which also are better suited to timely reporting), one cannot discount the potential that delays in doing so may reflect not just technical barriers but calculated attempts to constrain use.

Implications for practice. While the production of good data can certainly be undermined by various technical challenges, addressing conflicts of interest that can compromise data and informational quality, comprehensiveness, accessibility, publication formats, timeliness and credibility must also be a priority for those hoping to maximize the impact of transparency efforts. Whether this means turning to third parties for data production/publication or verification, creating multi-stakeholder mechanisms to monitor data production, creating incentives for accurate and comprehensive reporting, or more proactively engaging the actual data holders in conversations on what to disclose, there are various ways to potentially address the politics of data production.⁵⁴ Therefore, it is important for practitioners to ask, *who is in a position to influence the production of information covered by a particular transparency measure/initiative and do their interests align with the ultimate goals the measure/initiative was designed to advance? If not, what can be done to decouple powerful interests from data production? Pushing for open data formats for publication and alignment with broader government data policies and approaches may also increase accessibility and timeliness.*

Data Use: Where Significant Hopes of Impact Lie

A. How to maximize the benefits of disclosures?

For many observers, the impact of transparency efforts is determined at this stage of the lifecycle: whether EI data is actually accessed and used in service of specific objectives, whether information on misappropriation, mismanagement or mistakes is acted upon. *On some occasions, increased EI data has revealed important discrepancies or simply previously unknown information that was subsequently acted upon in some way.* Transparency demands and heightened ability to scrutinize extractive project finances have led to several prosecutions in high-profile corruption cases.⁵⁵ IFC-required disclosures for projects of its EI clients have been leveraged by local communities to pursue defense of their social and environmental rights.⁵⁶ Journalists

and NGOs take advantage of EITI report data in investigations, for example to raise questions about license acquisitions and oil sale deals, that draw policy-maker attention to governance vulnerabilities.⁵⁷ Gillies highlights the use of EITI reports to expose context-specific practices vulnerable to abuse and suspicious deals and transactions to investigate further, as well as their production serving a potential deterrent function to those who may think twice about undertaking corrupt practices that might be exposed.⁵⁸

And yet, a common refrain among experts consulted for this project is that, despite the examples of data harnessed for a specific prosecution or policy debate, there remains significant unrealized potential for the use of EI data. Recent analyses by the International Finance Corporation⁵⁹ and the Leveraging Transparency to Reduce Corruption project have both reviewed extensive evidence and argue that there is significant room for expanding the use of EI data for various ends, particularly in service of improving accountability and reducing corruption.⁶⁰ There is a risk of perpetuating “zombie transparency” in which EI data languishes unused or unusable and, over time, undermines the case for disclosure. More optimistically, there is the possibility of leveraging the EI data that is already being produced to much greater effect.⁶¹

B. Politics and data use: getting to tangible outcomes

Across the field, there is now widespread recognition that impactful data use will not automatically follow from the publication of data, but will depend in significant part on contextual factors. Without doubt, there are important technical impediments to uptake and accessibility that impede the use of EI data, issues on which a number of actors in the GEI field have been focusing their attention. For example, there are efforts to aggregate data, simplify reports, remove restrictions to open data, address linguistic and literacy impediments to effective translation of outputs, address technological accessibility, enhance the role of infomediaries, and avoid over-reliance on online publication formats.

Yet, political factors also shape outcomes by affecting the likelihood, and consequences of data use by different actors to advance good GEI.⁶² The political mobilization that is often understood to be the crux of turning information into action, e.g. translating transparency into accountability, is not automatic. Rather, it is heavily conditioned by power asymmetries, competing interests and the ability of different actors to influence the incentives of others to act.⁶³ These factors need to be more explicitly understood and addressed if we wish to see significant increases in data use and, in turn, more progress toward the range of desired impacts from EI transparency efforts.

A fuller consideration of how these factors play out with examples is offered in an accompanying blog, but there are three key points to emphasize with an eye to designing transparency initiatives:

i) potential users need to have an interest, existing or developed, in the data that is produced in order to mobilize around its use. Without unpacking the interests (and influence) of potential data users, we will fail to fulfil the potential of EI data disclosures. In considering data disclosures there is a tendency to bucket users, for example project documents might refer to “civil society” or “government” generically. The reality is that each is comprised of a host of different actors each with their own interests, functions and priority problems.⁶⁴ No surprise then that the data they need and are motivated to use⁶⁵ (or to deliberately ignore) will vary. Those engaged, as representatives of any one constituency, in shaping disclosure decisions may in practice be prioritizing specific agendas and making their own assumptions about the data needs and motivations of others who are the ultimate intended users. Such disconnects will decrease the likelihood that data that is produced is actively sought out and deployed.

The challenge is to gauge how feasible it is to anticipate uses. A problem-driven approach would point away from transparency as the starting point, but see it as a potential tool to be wielded in response to specific needs. Those urging broad disclosures would not want to cut off unanticipated uses of information. What seems harder to let pass is transparency efforts that make broad assumptions on use without testing those assumptions regularly and adjusting accordingly.

ii) potential user engagement with data reflects in large part the prospect of eliciting a response. While different potential users might see the relevance of certain datasets they may not use them if they feel that there is no prospect of eliciting a sought response, such as shaping a specific policy reform.⁶⁶ This affects responses among and within different civil society actors, especially at the community level, where leaders face a variety of pressing concerns and will likely prioritize engagement where they see the most immediate chance of advancing their interest. IFC and TAI consultations in Colombia revealed this dynamic - mining communities choosing not to track available data on royalties as they determined they would have little to no power to shape applications to the central government for projects to spend those royalty funds.

Related calculations can play out within government, where powerful actors can choose not to use data in certain ways if the anticipated response it might evoke is opposed to their interests. Political factors affect information sharing and use across different levels of government (federal vs state vs local), between agencies at the same level, and even within an agency. An oil

ministry may have no incentive to proactively alert the central bank or finance ministry or auditor general to financial information which might lead to awkward questions. Data that tells bad news has a habit of not passing up the bureaucratic chain, blocked by interested parties who risk being compromised if it is acted upon.

iii) the extent of civic space and de facto opportunities for people and organizations to participate in political life without fear of retribution or physical violence can significantly determine data use. Even when they have an interest in the data produced, civil society groups may not act upon data due to lack of opportunity or fear of the repercussions.⁶⁷ As constraints on civic space deepen and evolve (currently exacerbated by COVID responses worldwide⁶⁸),⁶⁹ threats to those activists who allege corruption or fight for environmental protections are all too real. So, the most relevant, accessible, high quality data may still prove to be obsolete if there is no space to use it or potential users are immobilized by fear, as detailed in a recent study of Mozambique.⁷⁰ Data produced in Kazakhstan and Azerbaijan since the two countries joined EITI has been accompanied by increasing crackdowns on civil society - enabling what Oge has termed “mock compliance” with the initiative - the data available but without the reasonable expectation of it being used to inform debate, let alone reform.⁷¹ This chilling effect on potential users and uses can be felt beyond civil society organizations within media and even within parts of government. A journalist might hold reporting under threats of violence. An editor might resist publishing stories that will upset authorities and could in turn spark a tax audit or even shut down. A bureaucrat might feel the need to bury data that might show the government in a poor light if they perceive a real threat of career retribution from political leadership.

Implications for practice: Those designing and managing extractives data-related initiatives should more actively work to enable data use, anticipating and addressing impediments to impactful use of information. This means better connecting data supply and demand by unpacking different constituency interests and analyzing how specific and potentially competing data needs match up versus current and potential data supply. In practice this would mean more creative and explicit “match-making” around existing data and more demand-driven data production moving forward for specific constituencies and purposes, thereby increasing the likelihood of uptake and use.

To address the dampening effects on data use of pessimism regarding the possibility of precipitating change, groups working on transparency might consider how to increase costs/disincentives for non-response. They can also incentivize better response by supporting local actors in developing strategic issue-linkages that might align better with specific priorities of government officials and thereby increase the likelihood of eliciting response.

Finally, highlighting positive responses when they do occur may help build trust and faith in the potential for progress.⁷²

Finally, tackling explicit and *de facto* constraints on civic space must be a priority for those whose theories of change rely on civil society action or popular mobilization in response to data. In contexts where opportunities to use data to hold companies or government officials to account are highly constrained (or worse, actively discouraged or punished) and where institutional checks on government power are limited, we need to consider if there are other useful ways to deploy data (for example, via advocates in home countries) to achieve greater impact. In such contexts, is investment in data production merited? Do we anticipate broader signaling effects of creating some precedent for transparency even if there are not immediate prospects for reform?

Final Thought: The Dynamism of Political Context

It is worth keeping in mind throughout that across the transparency lifecycle, political context is not static. Therefore, snapshots of who has power over what and whom, and their respective interests and incentives, need to be regularly revisited during implementation recognizing that interests, personnel, and governments will change. Even under the most inauspicious political circumstances, an investment in the infrastructure for transparency may pay off when a political opening appears (and perhaps even contribute to the emergence of such an opportunity), if designed appropriately. Can the supporting infrastructure for EI transparency be put in place to support such regular reviews and integrate them into EI work, including those mandated under an international standard like EITI? We can learn more from the few projects, such as the UK supported Facility for Oil Sector Transparency and Reform project⁷³ in Nigeria, that have deliberately pursued an adaptive approach.

CONCLUSION: WORKING POLITICALLY ON TRANSPARENCY

The road to impact must be paved with technically and politically sound approaches

In a relatively short time, EI across the globe went from notoriously opaque to significantly more transparent even in some of the most challenging settings. As the breadth and volume of disclosure commitments and data continue to expand across countries and across the value chain, there is a real opportunity to leverage these developments for a range of positive outcomes. But these will not follow automatically. Purely technocratic approaches will not realize the full potential of EI transparency. Identifying good practice, investing in capacity, and building systems matter, but so do power, interests and political process-

es. We – whether government champions, corporate leaders, donors, or civil society activists and advocates – should be looking to anticipate and counter actions (or deliberate non-actions) that weaken commitment, limit accountability to implement, and impede impact. We should be seeking to identify specific openings and opportunities to foster data transparency and use for specific purposes. All of these should be more firmly integrated into project and program design for actors across the board.

Political realities can shape every stage of the transparency lifecycle. They can amplify or undermine the effectiveness and impact of EI transparency. There is already important work underway to overcome technical barriers that shape the impacts of EI transparency – including support to both data producers, e.g., for improved data quality and access, and to potential data users e.g, for improved data literacy or communication. We should match that on the political side of the equation. So what might that look like?

Understanding where politics fit in

Improving our understanding of the significance of political realities for EI transparency trajectories will likely need to happen on multiple levels. At a global level, we should further analyze and expand beyond the examples discussed in the various sections above in order to provide some high-level insights into the types of issues to look out for. As a starting point, we can aggregate insights from and build on the growing volume of work examining how political economy factors condition the EI sector and outcomes of efforts to improve its governance.⁷⁴ These can range from country contextual analysis (often confined to the project design phase) to efforts to more systematically identify and address the ways in which political realities inform decisions and actions of the range of stakeholders (including donors, global companies, home governments and INGOs) at each stage of the transparency lifecycle. We can also draw lessons from analyses of political economy and broader development and governance work beyond EI.⁷⁵

In addition to getting a better handle on the broad types of issues at stake, at a more localized level we need to be able to produce more real-time political economy analysis that at the very least can illuminate some of the key allies and opponents, obstacles and openings for building on EI transparency in a given context. Again, there are some resources from beyond the GEI field that provide useful insights for getting started on this.⁷⁶

Working politically

In terms of applying this knowledge to work on GEI, just as there is no single set of political realities in which all EI governance takes place, there is no one way to “work politically.” The spe-

cific approaches of different organizations will be determined by the local context, the specific issues they are hoping to address, their respective goals, and the resources they have available. However, in determining approaches, there are already a range of options and resources for working in more politically informed ways on which to draw.⁷⁷

There are also already experiments that we can build on and learn from, including those that start with a specific stakeholder and problem and then consider what information needs they have, how to best access that information and how to support politically savvy approaches for them to use analysis drawn from that information to advance their rights. As noted above, FOSTER in Nigeria, as well as its sister project, Ghana Oil and Gas for Inclusive Growth (GOGIG)⁷⁸ are two extensive examples of working politically on GEI in action.⁷⁹ Such examples may also inform how broader, country-wide or multi-country transparency efforts can be refined.

As more politically-informed approaches to working on EI transparency are developed and deployed, it is important to capture and share lessons on doing so with the broader field. We are conscious of the limited documented examples of political factors at play, but remain confident that these are not reflective of their absence. Rather, they often play out behind the scenes and are hard to get acknowledged. (Certainly many EI Executive Session members and scores of interviewees had examples they could point to off the record.) Few have sought to systematically document them. We need to be proactively asking and talking about political factors - and, more importantly, understanding how they affect our work and thinking about how to deal with them. They are inescapable and they matter.

Our intention in this piece has been to begin to open up discussions on both through systematic framing, illustrations, and preliminary thoughts on practical implications. Directly engaging issues of political economy can sometimes result in normatively uncomfortable and practically inconvenient departures from “the way we do things” as practitioners in the extractives governance field. However, if improving the impact, not just the existence, of EI transparency is the goal, then such aversions and inconveniences must be overcome and political aspects more actively embraced.

This discussion paper was written by Leila Kazemi, Columbia Center on Sustainable Investment, and Michael Jarvis, Transparency and Accountability Initiative.

ENDNOTES

- 1 Hudson, A. (Apr. 11, 2019). "Transparency: From revolution to evolution." Global Integrity (GI). <https://www.globalintegrity.org/2019/04/11/transparency-from-revolution-to-evolution/>.
- 2 Ibid.
- 3 For example, "political will is identified by the Open Data Barometer as the 'key factor that makes or breaks the success of [an open data initiative]'" "Improving the Design and Effectiveness of Investments in Governance Data: Lessons Learned and Practical Guidance for Funders." (2018). Transparency & Accountability Initiative (TAI), at 21. <http://www.transparency-initiative.org/wp-content/uploads/2018/10/tai-data-investment-report.pdf>. Furthermore, a study of corruption in Hong Kong, Singapore and Ghana found that "the single most important factor that accounts for the varying levels of corruption in [those countries] is the degree of political will exhibited by leaders of these countries in combating the menace." Abdulai, A. (2009). "Political will in combating corruption in developing and transition economies: A comparative study of Singapore, Hong Kong and Ghana." *Journal of Financial Crime*, 16(4), 387-417, at 399. As far back as 1998, political will was blamed, in a USAID publication, for the shortcomings of anti-corruption work in Latin America. Brinkerhoff, D. W. (2000). "Assessing political will for anti-corruption efforts: An analytic framework." *Public Administration and Development*, 20(3), 239-252.
- 4 See Thinking and Working Politically: Community of Practice. <https://twpcommunity.org/>.
- 5 Marquette, H. (Jan. 12, 2020). "Political Will: What It Is, Why It Matters for Extractives and How on Earth Do You Find It?" Columbia Center on Sustainable Investment (CCSI). <http://ccsi.columbia.edu/2020/02/13/political-will-what-it-is-why-it-matters-for-extractives-and-how-on-earth-do-you-find-it/>.
- 6 Rustad et al. (2017) refer to these as developmental goals (in contrast with operational and institutional goals) in the context of EITI. Rustad, S.A., Le Billon, P., & Lujala, P. (2017). "Has the Extractive Industries Transparency Initiative been a success? Identifying and evaluating EITI goals." *Resources Policy*, 51, 151-162. https://eiti.org/files/documents/le_billio_et_al_2016_eiti_evaluations_metastudy.pdf.
- 7 See Lujala et al. (2017) for a discussion of institutional and operational goals (as distinct from development goals). Lujala, P., Rustad, S. A., & Le Billon, P. (2017). "Has the EITI been successful? Reviewing evaluations of the Extractive Industries Transparency Initiative." U4 Brief 2017:5. <https://www.u4.no/publications/has-the-eiti-been-successful-reviewing-evaluations-of-the-extractive-industries-transparency-initiative.pdf>.
- 8 For instance, a study by Sovacool et al. (2016) looking at eight of the World Bank's governance and performance metrics, showed that GDP per capita, regulatory quality, accountability, and foreign direct investment were higher in EITI countries than in non-EITI countries, but not that those indicators changed from pre-EITI performance. Sovacool, B. K., Walter, G., Van de Graaf, T., & Andrews, N. "Transnational Rules, and the Resource Curse: Exploring the Effectiveness of the Extractive Industries Transparency Initiative (EITI)." *World Development*, 83, 179-192. Kasekende et al. (2016) surveyed 65 resource-rich countries and found that EITI has not significantly reduced corruption and that corrupt countries are more likely to join the initiative. Kasekende, E., Abuka, C., & Sarr, M. (2016). "Extractive industries and corruption: Investigating the effectiveness of EITI as a scrutiny mechanism." *Resources Policy*, 48(C), 117-128. Corrigan (2017) has found that while EITI has spurred significant economic growth, oddly enough, it has done little to combat corruption. Corrigan, C. (Nov. 2017). "The effects of increased revenue transparency in the extractives sector: The case of the Extractive Industries Transparency Initiative." *Extractive Industries and Society*, 4(4), 779-787. <https://eiti.org/blog/assessing-impact-of-eiti-membership>.
- 9 Bourgoing, R. on Kaufmann, D. (Feb. 20, 2016). "Zombie Transparency: Lessons from the Extractive Industries. AidInfoPlus." <https://aidinfoplus.org/zombie-transparency-lessons-from-the-extractive-industries/>.
- 10 While such challenges pertaining to understanding and evidencing impact certainly merit further consideration, doing so is beyond the scope of the current discussion and would involve tracing complex causality and proving counterfactuals. Alexandra Gillies provides a valuable starting point for thinking about more specific potential contributions of EI transparency (including deterrent effects) in her 2019 analysis of EITI's role in addressing corruption. Gillies, A. (Oct. 2019). "The EITI's Role in Addressing Corruption. Extractive Industries Transparency Initiative (EITI)." https://eiti.org/files/documents/eitis_role_in_addressing_corruption_en.pdf.
- 11 Although 1 will vary according to the reader or practitioner, and, in turn, the specifics of 2 will depend on what those ultimate objects are, for the purpose of this discussion, the focus is on some of the key dimensions of a traditional pathway linking transparency of information with a range of desired outcomes from EI. The framing that follows builds on an analysis done by TAI and the Open Data Charter in 2016. Carolan, L. (May 2017). Mapping open data for accountability. Transparency and Accountability Initiative (TAI) & the Open Data Charter. https://www.transparency-initiative.org/wp-content/uploads/2017/06/taiodc_draft_data4accountabilityframework.pdf.
- 12 Although the bulk of the GEI field's EI transparency work is roughly represented by this lifecycle, i.e. steps aimed at building toward data bring produced and used for particular goals, there is another school of thought that focuses on transparency's impact taking place through the deterrent effects of disclosure and norm-building.
- 13 Progress Report. (2018). Extractive Industries and Transparency Initiative (EITI). https://eiti.org/sites/default/files/documents/2018_eiti_progress_report_en.pdf. [Henceforth EITI Progress Report (2018)]. The World Bank has supported the initiative with \$60 million since its inception. Supporting Enhanced Transparency in Extractives: The World Bank's Support to EITI. (Mar. 12, 2018). World Bank. <https://www.worldbank.org/en/topic/extractiveindustries/brief/supporting-enhanced-transparency-in-extractives-the-world-banks-support-to-eiti>.
- 14 On the general rise in transparency, Florini wrote (in 2010): "With regard to right to know laws, on the surface the rapid growth in sheer numbers of laws and policies is impressive. From fewer than a dozen at the beginning of the 1990s, some 86 countries now claim some sort of government disclosure law." Florini, A. (Aug. 2010). The National Context for Transparency-based Global Environmental Governance. *Global Environmental Politics*, 10(3), 120-131. https://www.mitpressjournals.org/doi/pdf/10.1162/GLEP_a_00017.

15 The US has stepped up enforcement of Foreign Corrupt Practices Act in the years since 2006. The UK passed a bribery act in 2010. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions from 1997 was updated with new provisions in 2009. In addition, EI transparency commitments have played an important role in OGP commitments. Jia, S., Lintzer, M., Moses, E., & Excell, C. (Oct. 2017). Closing the Gap: Strengthening the Development and Implementation of Natural Resource Commitments in the Open Government Partnership. Natural Resource Governance Institute (NRGI). www.resourcegovernance.org/analysis-tools/publications/closing-gap-strengthening-development-and-implementation-natural.

16 See, e.g., Fiscal Transparency Initiative: Integration of Natural Resource Management Issues. (Jan. 29, 2019). International Monetary Fund (IMF). www.imf.org/en/Publications/Policy-Papers/Issues/2019/01/29/pp122818fiscal-transparency-initiative-integration-of-natural-resource-management-issues; Sanctions System. (2020). Inter-American Development Bank (IADB). <https://www.iadb.org/en/transparency/transparency-accountability-and-anti-corruption>; Beyond the Balance Sheet - IFC Toolkit for Disclosure and Transparency. (2018). International Finance Corporation (IFC). https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+cg/resources/toolkits+and+manuals/beyond+the+balance+sheet+-+ifc+toolkit+for+disclosure+and+transparency.

17 Whether through industry associations like ICMM (www.icmm.com/en-gb/society-and-the-economy/governance-and-transparency) or on an individual company basis (e.g., www.tulloil.com/test/sustainabilityhistoric/shared-prosperity/transparency; www.riotinto.com/en/sustainability/ethics-integrity/transparency; www.bhp.com/community/governance-and-transparency/; www.resourcegovernance.org/blog/total-becomes-first-major-oil-company-support-contract-transparency), a certain cadre of reputation-sensitive companies seem to be integrating transparency commitments into their voluntary corporate principles.

18 Grabar, N. & Flow, S. L. (Feb. 16, 2017). Congress Rolls Back SEC Resource Extraction Payments Rule. Harvard Law School Forum on Corporate Governance. <https://corpgov.law.harvard.edu/2017/02/16/congress-rolls-back-sec-resource-extraction-payments-rule/>, <https://www.reuters.com/article/us-usa-eiti/u-s-withdraws-from-extractive-industries-anti-corruption-effort-idUSKBN1D2290>.

19 World Development Report. (2017). World Bank, at 247-251. https://openknowledge.worldbank.org/bitstream/handle/10986/25880/9781464809507_Spot11.pdf?sequence=49&isAllowed=y.

20 Kaznacheev, P. (Jan. 11, 2017). Curse or Blessing? How Institutions Determine Success in Resource-Rich Economies (Policy Analysis No. 808). CATO Institute. <https://www.cato.org/publications/policy-analysis/curse-or-blessing-how-institutions-determine-success-resource-rich>.

21 Marsh, R. (Jan. 31, 2017). House Republicans look to roll back transparency law for energy companies. *CNN*. <https://www.cnn.com/2017/01/31/politics/oil-industry-regulations/index.html>; Mufson, S. (Jan. 14, 2017). Trump signs law rolling back disclosure rule for energy and mining companies. *Washington Post*. https://www.washingtonpost.com/business/economy/trump-signs-law-rolling-back-disclosure-rule-for-energy-and-mining-companies/2017/02/14/ccd93e90-f2cd-11e6-b9c9-e83fce42fb61_story.html.

22 See Gillies (2010) for a discussion of the implications of reputational benefits for the rise and trajectory of transparency norms. Gillies, A. (Mar. 2010). Reputational Concerns and the Emergence of Oil Sector Transparency as an International Norm. *International Studies Quarterly*, 54(1), 103-126. <https://academic.oup.com/isq/article-abstract/54/1/103/1789885>.

23 For example, the Publish What You Pay (PWYP) movement: <https://www.pwyp.org/about/>.

24 For example, the Kimberly Process, used to track diamonds: <https://www.kimberleyprocess.com/>.

25 Beyond civil society and donors, contract transparency has gained some favorability in the private sector as well, e.g. with the French oil giant Total announcing its support in 2018. Total Becomes First Major Oil Company to Support Contract Transparency. (Jan. 2018). Natural Resource Governance Institute (NRGI). <https://resourcegovernance.org/blog/total-becomes-first-major-oil-company-support-contract-transparency>.

26 Open Contracting for Oil, Gas and Mineral Rights: Shining a Light on Good Practice. (Jun. 2018). Natural Resource Governance Institute (NRGI). <https://resourcegovernance.org/sites/default/files/documents/open-contracting-for-oil-and-gas-mineral-rights.pdf>.

27 Geipel, J. (Jul. 1, 2019). Why procurement should be the “next frontier” in transparency for mining. International Institute for Environment and Development (IIED). <https://www.iied.org/why-procurement-should-be-next-frontier-transparency-for-mining>.

28 Beneficial ownership: Revealing who stands behind the companies. Extractive Industries Transparency Initiative (EITI). <https://eiti.org/beneficial-ownership>.

29 Quantifying the economic, environmental and social costs and benefits of extraction. Extractive Industries Transparency Initiative (EITI) 8th Global Conference: Partner Event. <https://eiti.org/conference/2019-paris/programme/partner-event-quantifying-economic-environmental-social-costs-benefits-extraction#session-details>.

30 The 2019 EITI Standard’s requirements and “encouragements” provide an overview of the breadth of issues now on the table when it comes to EI transparency. See EITI Requirement 6: Social and economic spending. (2019). Extractive Industries Transparency Initiative (EITI). <https://eiti.org/document/eiti-standard-2019#r6>.

31 “In 2017, Kazakhstan, Kyrgyzstan, Liberia, Mauritania, Nigeria, Norway, and Timor-Leste all undertook studies on how to systematically disclose extractives data beyond EITI reporting.” Liberia and Sierra Leone have centralized registries of mining licenses. Ghana, Kazakhstan, and Mongolia have publicly available records of company payments and production figures. EITI Progress Report (2018).

32 Indeed, as of 2017, “only nine of the 81 SOEs assessed in the 2017 Resource Governance Index achieved a good standard of transparency and accountable governance.” Guide to Extractive Sector State-Owned Enterprise Disclosures. (Jan. 2018). Natural Resource Governance Institute (NRGI). <https://resourcegovernance.org/analysis-tools/publications/guide-to-extractive-sector-state-owned-enterprise-disclosures>.

33 See Chapter 2 of Eisen, N., Kaufmann, D., Heller, N., Preston Whitt, J., Picon, M., Bassetti, V. and Hudak, J (2020). *The TAP Plus Approach to Anti-Corruption in the Natural Resource Value Chain*. Leveraging Transparency to Reduce Corruption, Brookings Institution. https://www.brookings.edu/wp-content/uploads/2020/06/LTRC_Corruption_vfinal_x2screenreader4.pdf. As the authors note, “Many well-intended, theoretically impactful TAP efforts have failed to produce the desired outcomes. Laws have been passed, commitments have been made,

yet the results have been paltry. The efforts exist on paper but have minimal consequence on the ground. This implementation gap has been identified by some researchers as a key brake inhibiting the effectiveness of some, primarily law- or policy-oriented, TAP interventions.” p. 67.

34 Ibid., p. 69.

35 Rudiger, A. (Jun. 2018). “State of the Field Review: Fiscal Transparency and Accountability” (Research Note for the March & April 2018 Fiscal Futures’ Scenario Planning Workshops). International Budget Partnership. <https://www.internationalbudget.org/publications/state-of-the-field-review-fiscal-transparency-and-accountability/>. Oxfam’s *Weak Link* case studies provide illustrative examples of this around fiscal accountability in a handful of countries in Africa and Latin America (Peru, Ghana, Senegal and Tanzania). “The weak link: The role of local institutions in accountable natural resource management in Peru, Senegal, Ghana and Tanzania.” Oxfam. <https://www.oxfamamerica.org/explore/research-publications/the-weak-link/>. Global Integrity and the Center for International Private Enterprise explored the importance and causes of “implementation gaps” almost a decade ago. Nadgrodkiewicz, A., Nakagaki, M., & Tomicic, M. (2012). “Improving Public Governance: Closing the Implementation Gap Between Law and Practice.” Center for International Private Enterprise (CIPE) & Global Integrity (GI). https://www.cipe.org/wp-content/uploads/2012/10/GI-CIPE_Implementation-Gap_for-web.pdf.

36 “Resource Governance Index: From Legal Reform to Implementation in Sub-Saharan Africa.” (Apr. 2019). Natural Resource Governance Institute (NRGI). <https://resourcegovernance.org/analysis-tools/publications/sub-saharan-africa-implementation-gap>.

37 Id.

38 The frequent deviation between form and function is discussed throughout the TWP literature as well as in detail in Chapter 2 of the World Development Report 2017 on *Governance and the Law*, and Chapter 2 of Andrews et al. 2017. World Development Report (2017), at 51-76. https://openknowledge.worldbank.org/bitstream/handle/10986/25880/9781464809507_Ch02.pdf?sequence=31&isAllowed=y; Andrews, M., Pritchett, L., & Woolcock, M. (2017). *Building State Capability: Evidence, Analysis, Action*. New York, NY: Oxford University Press. <http://library.oapen.org/bitstream/handle/20.500.12657/31857/624551.pdf?sequence=1>.

39 We start with the assumption that reasonable time has been allowed for implementation to take place, i.e. that implementation gaps are not the temporary function of inadequate time to operationalize commitments.

40 Nadgrodkiewicz et al. (2012), at 16. The authors also note that another form of implementation gap that can result in these situations is laws being “implemented but in a selective and biased way benefiting some but not others, and fueling corruption in the process.” Id.

41 Id. at 19.

42 See, e.g., Bellver, A. & Kaufmann, D. (2005). ‘Transparenting Transparency’: Initial Empirics and Policy Applications. World Bank. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=808664; Nadgrodkiewicz et al. (2012); Evans, A. Implementing Criminal Codes and Other Legislation in Post-conflict and Developing Countries. International Network to Promote the Rule of Law. <https://issat.dcaf.ch/Learn/Resource-Library2/Tools/Implementing-Criminal-Codes-and-Other-Legislation-in-Postconflict-and-Developing-Countries>. Many thanks to NRGI for significant inputs into this section and for sharing internal research on the sources of implementation gaps as they build on their report revealing such gaps. Resource Governance Index: From Legal Reform to Implementation in Sub-Saharan Africa. (Apr. 2019). Natural Resource Governance Institute (NRGI). <https://resourcegovernance.org/analysis-tools/publications/closing-gap-strengthening-development-and-implementation-natural>). Amundsen (2014) provides highly relevant and detailed illustrations of politically-motivated implementation gaps from the Angolan context. Amundsen, I. (Jan. 2014). Drowning in Oil: Angola’s Institutions and the “Resource Curse.” *Comparative Politics*, 46(2), 169-189. <https://www.ingentaconnect.com/content/cuny/cp/2014/00000046/00000002/art00004>.

43 For a bit more on the ways in which political and economic elites can contribute to opening and closing implementation gaps, see Section 3 of Nadgrodkiewicz et al. (2012). Powerful interest groups who can press to undermine implementation of EI transparency commitments might include: the leadership of state-owned enterprises, small and medium EI companies (national and global) who want to quickly and cheaply develop their projects without added scrutiny, and some large global companies.

44 The importance of political economic factors in contributing to the fate of implementation of transparency commitments was discussed by Bellver & Kaufmann (2005). The authors argued that “it is important to pay attention to the cost and benefits to potential users and disclosures of information when designing those reforms. Disclosing information can clash with the interest of groups, organizations or individuals who might be better off with the current situation. At the same time, the benefits of disclosure are often diffuse.” Bellver & Kaufmann (2005), at 36.

45 For an overview of these motivations derived from an analysis of perceived benefit of EITI, see Ravat, A. & Kannan, S. P. (2013). *Implementing EITI for Impact: A Handbook for Policy Makers and Stakeholders*. World Bank, at 3-4.

46 The reasons can be varied. From some sort of normative commitment to a more instrumental alignment with other key priorities, e.g. during crises and corruption scandals, these commitments can be a way to diffuse tension or signal and undertake genuine commitment to reforms.

47 Some of the ways in which powerful elites can be driven to undermine the implementation of welfare-enhancing policies is explored in Chapter 2 of World Development Report 2017 on *Governance and the Law*. World Development Report (2017), at 51-76.

48 For the use of government exemptions to undercut contract transparency requirements, see “Open Contracting: A New Frontier for Transparency and Accountability.” (Oct. 2013). World Bank Institute & Open Contracting Partnership. https://www.open-contracting.org/wp-content/uploads/2016/02/OCP2013_Paper-NewFrontierforTransparency.pdf. For uneven implementation across different types of institutions within the same government (those of extraction versus redistribution), see Amundsen (2014). Similarly, the exemption or *de facto* exclusion of some powerful state-owned enterprises from EI transparency requirements can represent another pathway to partial implementation riddled with political conflicts of interest.

49 McCullough, A. (2016). “Advancing the governance of extractives at the local level: Towards politically smart support.” Overseas Development Institute (ODI). <https://www.odi.org/sites/odi.org.uk/files/resource-documents/10413.pdf>.

50 Effective industry lobbying to prevent Section 1504 implementation and win exemptions from other regulations (including various forms of

taxation) demonstrate clearly that these sorts of dynamics are global problems from which supposedly well-governed developed countries are not exempt. Mule, D. (Jan. 12, 2018). “Big Oil strikes it rich in tax overhaul and looks to repeal landmark transparency law.” Oxfam. <https://politicsofpoverty.oxfamamerica.org/big-oil-strikes-it-rich-in-tax-overhaul-and-looks-to-repeal-landmark-transparency-law/>; “U.S. Congress votes for corruption by overturning historic transparency law in gift to big oil.” (Feb. 3, 2017). Global Witness (GW). <https://www.globalwitness.org/en/press-releases/us-congress-votes-corruption-overturning-historic-transparency-law-gift-big-oil/>.

51 Under EITI alone, in 2017 \$110 billion in revenues were disclosed, bringing the initiative’s cumulative coverage to \$2.4 trillion. EITI Progress Report (2018). Beyond revenues, almost all EITI reporting countries disclose some production data and about two thirds have disclosed licenses. Id. Alongside financial reporting, “80% of validated countries disclosed a description of their legal framework and fiscal regime governing the extractive industries, as well as reforms underway.” Id. Over 2200 resource contracts and associated documents are now publicly available through resourcecontracts.org.

52 For an explanation of how company interests can distort the quality of data and information found in ESIA’s, see McCullough (2016); Dougherty, M. L. (Apr. 2019). “Boom times for technocrats? How environmental consulting companies shape mining governance.” *Extractive Industries and Society*, 6(2), 443-453. <https://www.sciencedirect.com/science/article/abs/pii/S2214790X18302867>.

53 <https://www.sdsntrends.org/blog/2020/datapolitics>

54 An experiment to undo the negative effects of conflicts of interest on information accuracy was conducted by Duflo et al. on environmental audits of industrial plans in Gujarat, India and focused on breaking some of the financial and professional incentives that had previously led to under-reporting of environmental data. The experimental treatment separated auditor selection from firms being audited (randomly assigned rather than selected by firm being audited), separated the funding of auditors from the firms being audited (previously paid by firm but under experiment payment came from a central pooled fund into which all firms paid), created monitoring mechanisms (verification of randomly selected audits) and financial rewards for accurate reporting (pay and future hiring tied to accuracy). While outside the EI sector, this experiment (and the more accurate reporting that resulted) hold some promising ideas for confronting some of the political challenges of good data production. Duflo, E., Greenstone, M., Pande, R., & Ryan, N. (Jul. 2013). “Truth-telling by third-party auditors and the response of polluting firms: Experimental Evidence from India” (Working Paper 19259). National Bureau of Economic Research (NBER). <https://www.nber.org/papers/w19259.pdf>.

55 For instance, the US Justice Department, along with law enforcement authorities from four other countries, have investigated and charged Beny Steinmetz, an Israeli billionaire accused of bribery in exchange for the rights to a Guinean diamond mine. Keefe, P. R. (Jul. 8, 2013). “Buried Secrets: How an Israeli billionaire wrested control of one of Africa’s biggest prizes.” *New Yorker*. <https://www.newyorker.com/magazine/2013/07/08/buried-secrets>. Extractive industry corruption scandals were one of many revelations of the Panama Papers, whose findings show illicit financial flows implicating both governments and multinational companies. The bribery scandals of Algerian firm Sonatrach led to jail sentences for dozens of staff, seizures of apartments in New York and charges in Italy. Fitzgibbon, W. (Jul. 25, 2016). “Secret Offshore Deals Deprive Africa of Billions in Natural Resource Dollars.” International Consortium of Investigative Journalists (ICIJ). <https://www.icij.org/investigations/panama-papers/20160725-natural-resource-africa-offshore/>.

56 For an example, see the successful four year fight by herder communities around the Oyu Tolgoi mine in Mongolia to leverage International Finance Corporation information and process to bring the mining company and local government to the table and resolve initial grievances. Mongolia: South Gobi Mining. Accountability Counsel. <https://www.accountabilitycounsel.org/client-case/mongolia-south-gobi-mining/>.

57 Gillies (2019), at 4. Poncian & Kigodi (2018) provides numerous examples of media capitalizing on evidence from EITI reports in Tanzania (as well as examples of use of reports for other ends, including advancing public debate and holding some government officials to account). Poncian, J. & Kigodi, H. M. (Jun. 2018). “Transparency initiatives and Tanzania’s extractive industry governance.” *Development Studies Research*, 5(1), 106-121. <https://www.tandfonline.com/doi/full/10.1080/21665095.2018.1486219>.

58 Gillies (2019).

59 Indeed, the IFC’s From Disclosure to Development program was designed explicitly to try to redress the under-utilization of EI data. See Transparency, Data & Voice. CommDev. <https://www.commddev.org/work/transparency-data-voice/>.

60 See “Transparency for Impact: Lessons from IFC Projects in Peru’s Natural Resources Sector.” (Jan. 2020). International Finance Corporation (IFC). <https://www.commddev.org/pdf/publications/Transparency%20for%20Action-ENG-FIN-web.pdf>. The report is based on extensive research on transparency and benefit-sharing outcomes in Peru. See also, “Data in Action: Natural Resources Disclosure for People and Progress.” (Jan. 2020). International Finance Corporation (IFC). <https://www.commddev.org/publications/data-in-action-natural-resources-disclosure-for-people-and-progress/>. The paper reports the findings of a recent “sector-specific data assessment approach, tested in four pilot countries: Colombia, Ghana, Mongolia, and Peru.” See also, Leveraging Transparency to Reduce Corruption in the Natural Resource Industries’ *The TAP-Plus approach to anti-corruption in the natural resource value chain*. Results for Development (R4D) June 2020, <https://www.brookings.edu/research/the-tap-plus-approach-to-anti-corruption-in-the-natural-resource-value-chain/>.

61 Bourgoing (2016).

62 For instance, a 2015 report by the Open Society Initiative for West Africa looked at cases of EITI implementation in three countries, Cote d’Ivoire, Guinea, and Liberia, finding that the impacts of EITI were undermined on the ground by “inconsistent commitments on the part of governments” (whose interests in EI transparency were driven by international and not domestic priorities) and a lack of engagement with the information needs of citizens, both of which significantly limited data use. Klutz, C., Gbede, J., Barry, A., & Nah, T. (2015). “Converting Natural Resources into Development: From Transparency to More Efficient Natural Resources Management.” Open Society Initiative for West Africa (OSIWA). <http://www.osiwa.org/publication/converting-natural-resources-into-development>.

63 “It is not enough to disclose information in a context where ‘naming and shaming’ does not deter shameless people from abusing power and state resources. It is not enough for EITI to disclose information that the government has not been transparent on extractive revenue or

a government's royalty transfers to communities do not match specific legal requirements, or that a proportion of extractive revenue cannot be traced to any government account. Supporters of ID could also inform (and train) key stakeholders on what action they need to take to ensure that a government fulfils its legal obligations. External agencies need to facilitate weak endogenous actors in focusing attention on citizen mobilisation instead of assuming that information itself will mobilise collective action. Information does not mobilise action, interest groups do." Awortwi, N. and Nuvunga, A. (2019) Sound of One Hand Clapping: Information Disclosure for Social and Political Action for Accountability in Extractive Governance in Mozambique, IDS Working Paper 523, Brighton: IDS. https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/14305/Wp523_Online.pdf?sequence=1&isAllowed=y

64 In Rustad et al.'s analysis of EITI's impact in 2017, the authors found the evidence of the impact of EITI on improving EI governance through public participation to be limited and among the studies they analyzed, "the key reasoning being that the civil society, or the 'public', is a diverse entity with diverse, and often conflicting, objectives and expectations with regard to natural resource governance, and not least, with regard to how resource revenues should be distributed and invested." Rustad et al. (2017).

65 For a useful analysis by the IFC of the immobilizing effects of a mismatch between data supply and end-user demands, see "Data in Action: Natural Resources Disclosure for People and Progress." (Jan. 2020). International Finance Corporation (IFC). [https://www.commdev.org/publications/data-in-action-natural-resources-disclosure-for-people-and-progress/.](https://www.commdev.org/publications/data-in-action-natural-resources-disclosure-for-people-and-progress/)

66 This challenge is likely to be particularly acute in authoritarian settings. For an analysis of this dynamic with regard to environmental data in China, see Seligsohn, D., Liu, M., & Zhang, B. (2018). "The sound of one hand clapping: transparency without accountability." *Environmental Politics*, 27(5), 804-829. <https://www.tandfonline.com/doi/abs/10.1080/09644016.2018.1452522>. See, generally, Gaventa, J. & Oswald, K. (2019). "Empowerment and Accountability in Difficult Settings: What Are We Learning? Key Messages Emerging from the Action for Empowerment and Accountability Programme." Institute of Development Studies (IDS). [https://www.ids.ac.uk/publications/empowerment-and-accountability-in-difficult-settings-what-are-we-learning/.](https://www.ids.ac.uk/publications/empowerment-and-accountability-in-difficult-settings-what-are-we-learning/)

67 See Bourgoing (2016); Gaventa & Oswald (2019), for a sample of the potential risks and threats that can demobilize potential data users. <https://www.business-humanrights.org/en/covid-19-coronavirus-outbreak/covid-19-coronavirus-outbreak-human-rights-defenders-civic-freedoms> and <https://register.gotowebinar.com/recording/882579490626695440>

68 Hossain, N., Khurana, N., Mohmand, S., Nazneen, S., Oosterom, M., Roberts, T., Santos, R., Shankland, A., & Schröder, P. (2018). "What Does Closing Civic Space Mean for Development? A Literature Review and Proposed Conceptual Framework (Working Paper 515)." Institute for Development Studies (IDS). [https://www.ids.ac.uk/publications/what-does-closing-civic-space-mean-for-development-a-literature-review-and-proposed-conceptual-framework-2/.](https://www.ids.ac.uk/publications/what-does-closing-civic-space-mean-for-development-a-literature-review-and-proposed-conceptual-framework-2/)

70 Awortwi, N. and Nuvunga, A. (2019) Sound of One Hand Clapping: Information Disclosure for Social and Political Action for Accountability in Extractive Governance in Mozambique, IDS Working Paper 523, Brighton: IDS. https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/14305/Wp523_Online.pdf?sequence=1&isAllowed=y

71 Oge, K. (2015). "Geopolitics and revenue transparency in Turkmenistan and Azerbaijan." *Eurasian Geography and Economics*. https://www.cepci.hei.ulaval.ca/sites/cepci.hei.ulaval.ca/files/oge_geopolitics_and_revenue_transparency.pdf.

72 This approach has been the focus of the work of Accountability Lab, "naming and faming" those who show integrity in public service, [https://www.accountabilitylab.org/category/integrity-icon/.](https://www.accountabilitylab.org/category/integrity-icon/)

73 Facility for Oil Sector Transparency and Reform in Nigeria (FOSTER). Oxford Policy Management. <https://www.opml.co.uk/projects/facility-oil-sector-transparency-and-reform-nigeria-foster>.

74 See, e.g., "Corruption interdependencies in the Extractives sector in Nigeria." (Jun. 2019). SOAS Anti-Corruption Evidence (ACE), <https://ace.soas.ac.uk/wp-content/uploads/2017/07/ACE-NI-Extractives-2pp-A4-Leaflet-Jun19-Proof02.pdf>; Research Consortium, Awortwi and Nuvunga (2019), "The weak link: The role of local institutions in accountable natural resource management in Peru, Senegal, Ghana and Tanzania." Oxfam. <https://www.oxfamamerica.org/explore/research-publications/the-weak-link/>; Melia, E. (2016) "The Political Economy of Extractive Resources: Discussion Paper." GIZ, https://www.researchgate.net/publication/297731073_The_political_economy_of_extractive_resources; Bebbington, A., Abdulai, A.-G., Humphreys Bebbington, D., Hinfelaar, M. and Sanborn, S. (eds.) (2018). *Governing Extractive Industries: Policies, Histories, Ideas*. Oxford University Press. Numerous publications under the Politics of Natural Resources program of Effective States, Inclusive Development: <http://www.effective-states.org/politics-natural-resources/>

75 See, e.g., as a starting point, the donor-facing work of the TWP community. Thinking and Working Politically (TWP) Community of Practice: Resources. <https://twpcommunity.org/resources>. For research on political settlements, see, e.g. Effective States and Inclusive Development (ESID). [http://www.effective-states.org/.](http://www.effective-states.org/)

76 See the PEA section of the following document." The Executive Session on the Politics of Extractive Industries: Approaches to Working in Politically Informed Ways." (Nov. 2019). Columbia Center on Sustainable Investment (CCSI). [http://ccsi.columbia.edu/2019/11/21/approaches-to-working-in-politically-informed-ways/.](http://ccsi.columbia.edu/2019/11/21/approaches-to-working-in-politically-informed-ways/)

77 Id. <https://www.opml.co.uk/projects/ghana-oil-gas-inclusive-growth-gogig>

78 For reflections on FOSTER, see chapter 27 of Addison, T. & Roe, A.R. (2018) *Extractive Industries: The Management of Resources as a Driver of Sustainable Development*. WIDER Studies in Development Economics. Oxford University Press.



ccsi.columbia.edu

Columbia Center on
Sustainable Investment

Jerome Greene Hall
435 West 116th Street
New York, NY 10027
Phone: +1 (212) 854-1830
Email: ccsi@law.columbia.edu

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