The benefits for Uganda of joining the emerging global transparency standard for extractive industry revenues

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This paper summarizes the implications for Uganda of the new international transparency requirements for the extractive industries agreed in the US and EU, and by the EITI, and provides policy recommendations for Government.

"All countries must adopt and enforce the project-by-project disclosure standards embodied in the U.S. Dodd-Frank Act and comparable EU legislation." – Kofi Annan, Chair of the Africa Progress Panel, 2013

The introduction of the Dodd-Frank Act (Section 1504) in the U.S.; the new Accounting and Transparency Directives in the EU; government commitments to introduce similar mandatory rules in Canada and Norway; and a new implementing requirement for the Extractive Industries Transparency Initiative, have brought a new global transparency standard for oil, gas and mining revenues into being.

The purpose of these changes is to tackle corruption in the natural resource sector, boosting development and creating more stable investment climates. In practice they mean that more companies and governments will publish detailed information about payments and receipts for the extractive sector, allowing greater scrutiny of extractives related revenues and allow citizens to 'follow the money'.

Oil companies with interests in Uganda including Tullow Oil, Total E&P and Ophir Energy (the new owner of Dominion Petroleum) are required to disclose their payments to the Government under the EU legislation. China National Offshore Oil Corporation (CNOOC) is listed on the New York Stock Exchange and will be captured by the US legislation, as is the US 'supermajor' ExxonMobil, which has repeatedly expressed an interest in Uganda's oil sector. The standards also cover many major internationally operating mining companies.

Together the EU and US requirements will cover around 70% of the market capitalisation of publicly-listed extractive companies internationally. Proposals to introduce mandatory disclosure rules in other jurisdictions are likely to capture even more companies in future.

This briefing provides an overview of these developments, brings to attention the type of information which will become available and how it might be useful for government, parliamentarians and civil society going forward. It also suggests some reasons why decision-makers in Uganda might consider introducing a similar measure in the Public Finance Bill.

United States: Dodd-Frank Act (Section 1504)

In July 2010, U.S. President Barack Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law.

Section 1504 of the Act obliges the U.S.'s primary stock market authority, the Securities and Exchange Commission (SEC), to introduce a new rule that requires all oil, gas and mining companies that file reports to the SEC to publish details of their revenue payments to governments, such as taxes, royalties and licence fees, on an annual basis.

Extractive companies are required to disclose the payments they make to governments in all countries they operate in (country-by-country), and for each individual resource project they operate (project-by-project). Payments to all departments, agencies and levels of government, as well as payments to state-owned enterprises, are to be reported. This new rule is significant because only a very small number of companies currently publish payments with data disaggregated to the country level, let alone project, making it impossible to track payments from individual projects to government agencies.

Importantly, each type[1] of payment will be disclosed separately, meaning it will be easier to track these payments into government accounts. For example, if a company covered by this rule was to pay a signature bonus upon signing a new contract or licence for a specific project, it would be disclosed in its annual payment report. However, all royalties for a given year relating to a given project would appear as one figure.

The parent firm is also required to report payments made by its subsidiaries and companies under its control, even if the parent firm does not engage in the extraction of oil, gas or minerals.

In August 2012, the SEC adopted the final rule (regulations) for the Section 1504 law. The rule included a low payment threshold, requiring companies to report all transactions of US$100,000 or more. It allowed for no country exemptions, requiring companies to report payments in all countries they operate in, with no exceptions.

The SEC also prohibited companies from defining the term "project" in a way that would allow them to aggregate payments, and took the position that the contracts that companies sign with governments should provide the basis for determining the payments to be reported. In practice companies captured by this rule and operating in Uganda will not be able to aggregate figures for different PSA areas.

Following a legal challenge by the American Petroleum Institute, an oil industry lobby group, in July 2013 the SEC was ordered by a U.S. court to re-issue a new version of the rule. However, the underlying statute requiring disclosure still stands, and the court judgment does not oblige the SEC to weaken the rule. The SEC must, however, provide a fuller analysis of its decisions.

The first SEC reports containing payment data were due to be released in spring 2014, however, the court ruling means their publication will be delayed.

As mentioned above, CNOOC, with licences in Uganda, will be captured by virtue of issuing shares on the NY Stock Exchange and filing an F20 form.

European Union: Accounting and Transparency Directives

On 12th June 2013, the European Parliament adopted a new, mandatory reporting standard for extractive companies, which was enacted in the revised EU Accounting and Transparency Directives. In line with Section 1504 of the Dodd-Frank Act, EU nations are

[1] Types of payment specified are: taxes, royalties, fees, production entitlements, bonuses, payments in kind, dividends, infrastructure improvements. For further information please see PWYP fact sheet here: http://www.pwypusa.org/sites/default/files/PWYP%20Fact%20Sheet%20on%20SEC%20Rules_Sept2012_0.pdf

required to implement laws requiring extractive companies to disclose annually the payments they make to governments for access to natural resources in every country they invest in, and for every individual project they operate.

The types of payment to be reported mirror the U.S. law, including taxes, royalties, fees, dividends and bonuses. Companies are required to report payments of €100,000 and above,[2] including payments made by any of their subsidiaries or companies under their control if they are active in the extractive industry. Payments to all departments, agencies and levels of government, as well as payments to state-controlled enterprises, are to be reported. Importantly, in line with the US rule, each type[3] of payment will be disclosed separately, meaning it will be easier to track these payments into government accounts.

The Directives define the term project as "the operational activities that are governed by a single contract, licence, lease, concession or similar legal agreements and form the basis for payment liabilities with a government." Project specific data may be relevant when looking at revenue sharing arrangements for local communities and authorities.

The EU payment reporting regime has broader application than the U.S. law, as they also apply to all large, oil, gas and mining companies based in Europe, even if they are not listed (i.e. those that have not issued shares on stock exchanges). It will also cover companies that are active in the logging of primary forests. The European companies Tullow Oil (London Stock Exchange) and Total E&P (Paris Bourse), which own oil licences in Uganda, will both be covered by the EU rules. Ophir Energy, which now owns Dominion Petroleum, is domiciled in Europe and has shares listed on the London Stock Exchange, so will also be captured by the requirements. Neptune Petroleum, whose licences in Uganda have expired, will not be captured by either the US or EU rules.

EU Member States are required to transpose the Directives into national law by July 2015, and the first tranche of payment data is scheduled for publication in 2016. Publication along with annual reports will be required but data format and exact disclosure method will be decided at a country level. In practice the information could be contained in either companies' annual reports or filings to the relevant national authorities.

Canada and Norway's commitment to mandatory reporting rules

In June 2013, the Canadian Prime Minister Stephen Harper announced that Canada will establish a new mandatory reporting standard for payments made to governments by Canadian extractive companies. Canada is home to over 2,000 oil, gas and mining companies operating in over 100 countries worldwide, some of which could express an interest in Uganda's next licencing round.

The Mining Association of Canada, the Prospectors and Developers Association of Canada and civil society organizations worked together to produce a draft set of recommendations which propose that Canadian extractive companies should disclose their payments to governments on a project-by-project basis. The chief executive of Rio Tinto, Joe Walsh, welcomed Prime Minister Harper's announcement, describing it as *"a further important*

[2] A similar sum to the US rule.

[3] Payment types are defined as: production entitlements, taxes, royalties, dividends, bonuses, fees, payments for infrastructure improvements. For further info please see PWYP fact sheet here: http://publishwhatyoupay.org/sites/publishwhatyoupay.org/files/TADFactSheet.pdf

step on the path to a consistent global standard for extractives to report the payments they make to governments."

In May 2013, the Norwegian government, as a non-EU member state, set up a working group to propose a new mandatory reporting standard, based on the EU Accounting and Transparency Directives. In addition to disclosing revenue payments, the working group is considering requirements for additional company disclosures such as profits, production volumes, purchase of goods and services and the number of employees in each country of operation. The Ministry of Finance is aiming to introduce the new standard by January 2014.

Requirement for project-by-project reporting in the Extractive Industries Transparency Initiative (EITI)

The EITI is an international coalition of governments, companies, civil society groups, investors and multilateral organisations that promotes improved governance in resource-rich countries through the full disclosure of government revenues from natural resources. One of its major strengths lies in its multi-stakeholder framework and the establishment of joint CSO, industry and government working groups in each candidate country to scrutinise the process and data.

Thirty-nine countries are now implementing the EITI, and 80 of the world's largest oil, gas and mining firms actively participate in the initiative. The UK, the US and France have also recently become candidate countries. Since its inception in 2002, companies have disclosed a total of US$1 trillion in revenue payments through EITI reports. The initiative has also won the support of over 80 global investment institutions that collectively manage assets worth over US$19 trillion.

The EITI Standard was revised and strengthened in May 2013. In a significant new development, the Standard now requires companies to report payments on a project-by-project basis, in line with Section 1504 of the U.S. Dodd-Frank Act and the EU Accounting and Transparency Directives. All companies that operate in an EITI implementing country will now be required to report disaggregated revenue payments at the project level. The new standard also introduces a new set of requirements. By 2016, EITI countries will be required to publish information on the ultimate beneficial ownership of entities with oil, gas and mining rights. The standard encourages governments to publish contacts. Governments will also be required to publish production figures and state owned companies and subnational transfers will also be covered by the disclosure requirements.

In order to become an EITI candidate country a government is required to take the following four simple steps.

1.1 The government is required to issue an unequivocal public statement of its intention to implement the EITI.

1.2 The government is required to appoint a senior individual to lead on the implementation of the EITI.

1.3 The government is required to commit to work with civil society and companies, and establish a multi-stakeholder group to oversee the implementation of the EITI.

1.4 The multi-stakeholder group is required to maintain a current workplan, fully costed and aligned with the reporting and Validation deadlines established by the EITI Board.

For further information see: www.eiti.org

Benefits of the new global transparency standard for the Ugandan Government
Payment disclosure helps to prevent oil, gas or mining revenues being mismanaged or lost to corruption. Experience shows it also leads to improvements in the tax collection process and boosts public finances as it has in Ghana and Nigeria.

Adopting project-by-project reporting as a requirement for companies operating in Uganda would send a clear signal to investors that the Government is committed to improving transparency, which in turn promotes economic and political stability and leads to an improved investment climate. Transparency over oil and mineral revenues can also contribute to the prevention of natural resource-related conflict. In addition, Uganda would establish itself as a world leader in the field of transparency, anti-corruption and corporate governance.

Benefits for communities and civil society
Project-level disclosure provides communities that live near extraction sites with details of the financial contributions that industry makes, and enables citizens, civil society groups, Parliamentarians, regulators and journalists to hold governments to account for how the revenues are spent. This is particularly important where revenue sharing arrangements divide payments amongst different sub-national bodies.

Benefits for extractive companies
Adopting this measure would level the playing field for companies operating in Uganda that are already required to report project-level payments through their obligations in U.S., EU, and other jurisdictions in due course. The establishment of a consistent standard would also avoid creating duplicate reporting burdens on business.

Improved disclosure requirements helps protect companies that act within the law from being undercut by other firms that may use secrecy as a means of gaining unfair advantage. Transparency therefore creates a fairer, more open and competitive market.

Project-by-project reporting also strengthens companies' 'social licence' to operate by showing host populations the financial contribution they make to public revenues, which in turn reduces the likelihood of resentment, protest and conflict. Local unrest can severely impact the reputation and finances of extractive companies, and cause interruptions to supply. It should be noted that Tullow Oil recently published payments to 12 governments, including Uganda, on a country by country basis in its 2012 CSR report and has publicly supported contract disclosure and project by project reporting.[i]

Benefits for investors
Project-by-project reporting has received widespread and strong support from the investment community, as it improves investors' ability to assess risk and make decisions about the allocation of capital, as well as fostering more stable operating environments that enhance prospects for investment returns. Investor groups that manage assets of around US$3 trillion in the U.S. and Australia have strongly supported mandatory project-

level reporting for extractive companies. Investors need to see consistent disclosure standards across the global extractives industry, for proper comparison and assessment of investment value.

Implications for the Public Finance Bill

The Public Finance Bill currently before the Ugandan Parliament contains a section on revenue management for the petroleum sector. This section contains a provision which requires the Government of Uganda (GOU) to publish incoming revenue receipts. The Bill, however, does not specify how reported receipts will be disaggregated, nor does it require companies to publicly disclose the payments that they make to the GOU.

There are obvious benefits to harmonising domestic legislation with new international standards:

1. If the GOU truly intends to join the EITI, as it has repeatedly stated, harmonising its reporting requirements with the EITI Standard makes logical sense in order to limit administrative burden going forward.

2. Some international companies, including Tullow Oil, Total E&P, Dominion Petroleum and CNOOC will be required to report their payments to the GOU by virtue of their stock exchange listings or home jurisdiction law. As such, it would be wise to include a requirement in the Public Finance Bill to require companies to declare their payments to the GOU in line with international transparency requirements. This would help create parity amongst potential investors, and allow civil society to compare payments with receipts across the board which in turn would help build trust in the management of the sector.

Why arguments against reform do not stand up

Some industry participants suggest that disclosure would give companies that are not covered by the standards an unfair competitive advantage. However, if Uganda adopted this measure, all extractive companies operating in the country would be required to comply, and this argument would fall away. Furthermore, payment data does not constitute information that can be reasonably considered commercially sensitive, such as proprietary geological data or bidding strategies.

As companies already record payments for internal accounting purposes, publishing them will not result in significant additional administrative or financial costs. The European Commission estimated the cost of project-level reporting for 171 companies to be 0.05% of annual revenues in the first year and less thereafter.

Recommendations

As momentum towards a common, consistent reporting rule for the extractive industries gathers pace, Global Witness encourages all countries to join the global standard by matching or exceeding the revenue payment disclosure requirements embodied in Section 1504 of the Dodd-Frank Act and in the EU Accounting and Transparency Directives.

Recommendations for the Government of Uganda:

- Become an EITI candidate country as soon as possible

- Amend the Public Finance Bill to require companies to publish the payments they make to the GOU and associated entities such as the National Oil Company
- Harmonise the reporting requirements contained in the Public Finance Bill with those of the new US and EU requirements and the EITI both for publication of government receipts and disclosure of payments by companies.

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[i] Tullow 2012 CSR report can be found here: http://www.tullowoil.com/files/pdf/reports/tullow_cr_2013.pdf