

# CHAPTER 4 – [www.eisourcebook.org](http://www.eisourcebook.org)

## 4.2 The Benefits of Transparency

**Government Effectiveness.** Transparency can be a key contributor to public policy effectiveness and efficiency. It can counter emerging rumours and speculation about how resource revenues are being allocated. Motivated decision makers need feedback on how their policies are working in practice. However, feedback is only possible when information flows freely in both directions. The prospect of public scrutiny based on transparency can also be expected to deter wasteful expenditure and encourage the development of appropriate institutional capacity, as demonstrated by the Nigerian example in the previous section.

**Reduced Corruption.** Transparency will almost certainly reduce the risk of corruption and rent-seeking, which is a persistent and endemic issue in resource revenue management and allocation.<sup>1</sup> The work of one of the leading anti-corruption organizations, Transparency International,<sup>2</sup> supports the connection between a rise in transparency and reduction in corruption related to the EI sector.<sup>3</sup> Research by the International Monetary Fund (IMF) across a wide range of countries has also identified a strong correlation between transparency and the control of corruption (see **Figure 4.1** below). Independent research provides further support for the EITI approach.<sup>4</sup>

In preference to secret deals with individual companies, a transparent and balanced tax regime is the best way to avoid corruption and provide citizens and investors with the assurance that the rents from the EI sector are being shared fairly.<sup>5</sup> However, corruption is so pervasive in the petroleum industry that a recent study was able to identify a typology for different types of corruption in the industry: policy corruption, administrative corruption, commercial corruption, and grand corruption (meaning diversification of massive amounts of money through diversion

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<sup>1</sup> See Kolstad, I., and Wiig, A. (2009). *Is Transparency the Key to Reducing Corruption in Resource Rich Countries?* World Development, Vol.37, Issue 3, pp. 521-532.

<sup>2</sup> Transparency International website. Available at: <http://transparency.org/> (last accessed 5 December 2013).

<sup>3</sup> Transparency International/Revenue Watch Institute (2011), *Promoting Revenue Transparency: 2011 Report on Oil and Gas Companies*. Berlin: Transparency International Publications, available at [http://archive.transparency.org/publications/publications/other/prt\\_2011](http://archive.transparency.org/publications/publications/other/prt_2011) (last accessed 5 December 2013).

<sup>4</sup> L David-Barrett and K Okamura, *The Transparency Paradox: Why do Corrupt Countries Join EITI?* (2013) European Research Centre for Anti-Corruption and State-Building (ERCAS), Working Paper No. 38.

<sup>5</sup> Open Society Institute (2009). *Breaking the Curse: How Transparent Taxation and Fair Taxes Can Turn Africa's Mineral Wealth into Development*. Washington D.C.: World Bank Publications.

of production, products, or revenues).<sup>6</sup> Given the rise of petroleum activities in sub-Saharan Africa, there has been particular interest in ensuring that such patterns of corruption are countered<sup>7</sup>.

Where payments of bribes are common, a way of reducing this is to establish a publicly accessible registry to register all mining and hydrocarbon licenses and rights (otherwise known as a cadastre), such as that recently established by the government of Sierra Leone covering data on all mineral rights, export licenses and related payments.<sup>8</sup> This data should be readily available so that license applicants and the public can have unrestricted access to information on licenses that have been granted or are in the process of being considered. This would address bribery arising from:

1. the granting of exploration and production licenses and contracts, environmental permits, or other permits that do not meet the requirements stated in the law and regulations;
2. the granting of licensing, environmental, or fiscal terms and conditions in agreements that are highly favourable to the license holder and highly unfavourable to government; and
3. situations in which a mineral or hydrocarbon right is provided to a favoured local party for which a *bona fide* license application has been previously received. The result is that the *bona fide* mining or petroleum company has to negotiate with and pay the local company to obtain the mineral right and to get access to the area in which it wants to explore or mine.

This is an area in which the EITI moved in 2013, extending its remit beyond a focus on revenue transparency alone.

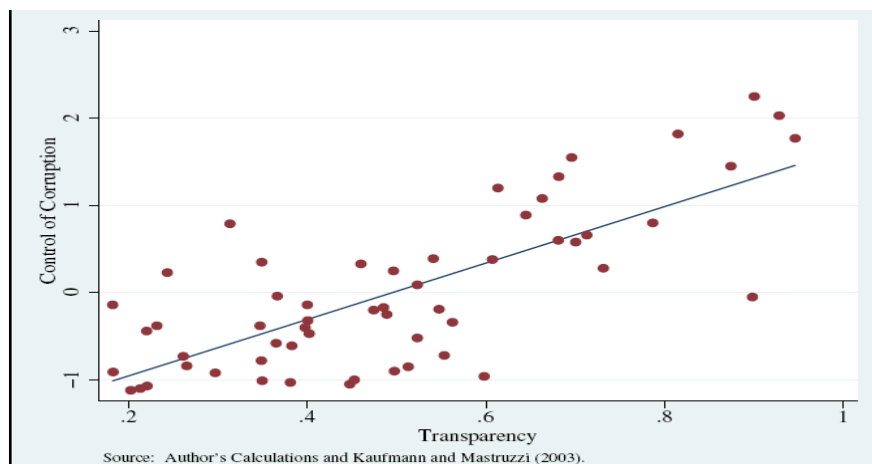
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<sup>6</sup> McPherson, C., and MacSearraigh, S. (2007). Corruption in the Petroleum Sector. In: *The Many Faces of Corruption: Tracking Vulnerability at the Sector Level*. Washington, D.C.: World Bank Publications.

<sup>7</sup> For example, four articles in a special issue of the Journal of World Energy Law and Business addressed anti-corruption laws and practices in Angola, Ghana, Mozambique and Nigeria: J World Energy L & Business, vol. 7 92014), Special issue on sub-Saharan Africa: Comparative Views on Anti-Corruption Legislation and its Enforcement with Foreword by Charles McPherson.

<sup>8</sup> *Government of Sierra Leone Online Repository*, available at <http://sierraleone.revenuesystems.org/login/auth> (last accessed 5 December 2013).

Figure 4.1: Transparency and Control of Corruption



**Information Disclosure.** Access to information is an essential precondition for checks and balances to be effective and for social accountability to be possible.<sup>9</sup> Achievement of such access to information requires clearly defined company requirements for timely and detailed reporting to regulators and the local community. This should be accompanied by public reporting of obligations and related performance, public debate and dialogue, and the government provision of regulatory requirements that can lead to performance improvement where it is needed.

It is noteworthy in this regard that in 2012 the International Finance Corporation (IFC) committed to disclosing future financing agreements as part of its revised *Sustainability Framework: Access to Information Policy*.<sup>10</sup> Specifically, the IFC promotes transparency as "essential to building and maintaining public dialogue and increasing public awareness about IFC's development role and mission."<sup>11</sup> It requires clients receiving EI project financing to "publicly disclose their material project payments to the host government" and for "the principal contract with government that sets out the key terms and conditions under which a resource will be exploited" to be made public.<sup>12</sup> The IFC has gone beyond revenue disclosure requirements to include transparency about the terms and conditions in contracts with host governments. Similarly, the IMF has designated the following information disclosure standard

<sup>9</sup> Cameron, P. (2010). *International Energy Investment Law: The Pursuit of Stability*. Oxford: OUP, p. 415.

<sup>10</sup> IFC (2012). *2012 Sustainability Framework: Access to Information Policy*. Washington, D.C.: [http://www.ifc.org/wps/wcm/connect/Topics\\_Ext\\_Content/IFC\\_External\\_Corporate\\_Site/IFC+Sustainability/Our+Approach/Risk+Management/IFCSustainabilityFramework\\_2012](http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Our+Approach/Risk+Management/IFCSustainabilityFramework_2012) (last accessed 5 March 2016); IMF (2010). *Guidance Note on the Fund's Transparency Policy*. Washington, D.C.: IMF Media Services Division. Available at: <http://www.imf.org/external/np/pp/eng/2010/032510.pdf> (last accessed 5 March 2016).

<sup>11</sup> IFC, *2012 Sustainability Framework, Access to Information Policy*, id., introduction, para. 3.

<sup>12</sup> IFC, *2012 Sustainability Framework*, supra n. 16, pp. 32-33.

as good practice in the EI sector: contractual arrangements between government and public or private entities should be clear and publicly accessible.<sup>13</sup> Various development banks have taken a similar approach, such as the African Development Bank and the European Bank for Reconstruction and Development.

**Democracy.** Transparency plays a key role in building more stable and accountable institutions to counter the poor governance which characterizes most autocratic regimes. If the EI value chain is properly husbanded, EI projects have the opportunity to facilitate the transition to democracy.<sup>14</sup> The transparency of government actions and rights of citizens to access information is generally seen as fundamental to the functioning of a democratic society. The essence of representative democracy is informed consent, which requires that information about government policies and practices be disclosed. Informed democratic debate can, among other things, help determine priorities in the allocation and expenditure of resource revenues.

**Human Rights.** Access to information may be a fundamental human right in itself, but is also a core principle necessary for the realization of many other human rights such as political and civil rights (for instance, freedom of speech), and social and economic rights (for instance, the right to an adequate education). The right of access to information is the focus of at least one international convention, the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, but is also recognized in a multitude of other international agreements including, but not limited to, the 1992 Rio Declaration on Environment and Development, Principle 10, and the 2007 International Convention for the Protection of All Persons from Enforced Disappearance, Article 12. Each of these instruments has resonance in EI sector projects. Where this right is missing or not enforced, as is the case in many developing countries, the resource curse beleaguers EI development across the Value Chain.<sup>15</sup>

Access to information is also an essential feature of many mainstream development programs and the IFC, once again, has made great strides in spelling out the importance of this principle in its *2012 Access to Information Policy* which outlines not only its responsibilities but also those of its clients.<sup>16</sup> The policy begins with a presumption in favour of disclosure, if there is no

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<sup>13</sup> IMF (2007). *Code of Practices on Fiscal Transparency*. Washington, D.C.: IMF Media Services Division. See Overview: How Does the IMF Encourage Greater Fiscal Transparency? (2015): <https://www.imf.org/external/np/exr/facts/fiscal.htm> (last accessed 5 March 2016).

<sup>14</sup> Ross, M.L., (2012). *The Oil Curse: How Petroleum Wealth Shapes the Development of Nations*. Princeton University Press: Princeton, N.J., USA.

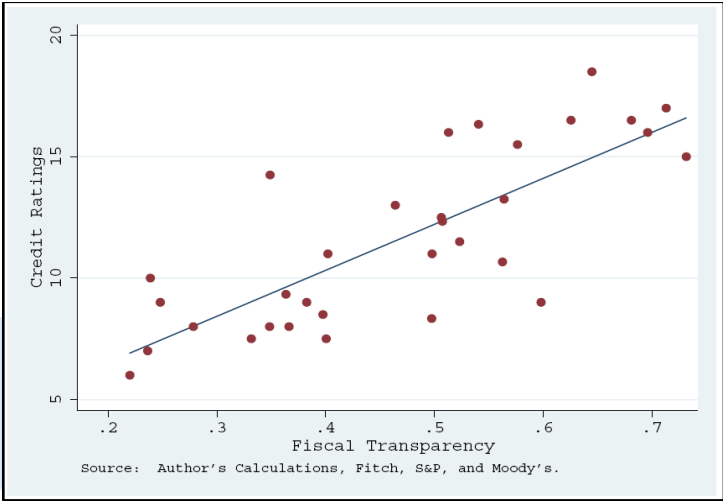
<sup>15</sup> Wenar, L., (2008), "Property Rights and the Resource Curse," *Philosophy and Public Affairs Vol. 36*, No. 1, pp. 1–32, pp. 21 et seq.

<sup>16</sup> IFC, *2012 Sustainability Framework, Access to Information Policy*, supra n. 16, General Principles, paras. 8 - 9.

compelling reason not to disclose; non-disclosure is assessed based on the likelihood of harm that will be caused to specific parties versus the benefits of disclosure.

**Finance.** Lenders and credit rating agencies have a strong interest in transparency, and serious government commitments to transparency can improve access to both commercial and concessional finance.<sup>17</sup> Research by the IMF and others has found a significant positive correlation between transparency and credit ratings (see **Figure 4.2** below).<sup>18</sup>

*Figure 4.2: Transparency and Credit Ratings*



<sup>17</sup> World Bank (2009). *Financial Infrastructure Building Access Through Transparent and Stable Financial Systems*. Washington D.C.: World Bank Publications, p. 2.

<sup>18</sup> Glennerster, R., and Y. Shin, 2008, "Does Transparency Pay?" *IMF Staff Papers*, Vol. 55, No. 1, pp. 183–209.