



Save the Children  
UK



# Beyond the Rhetoric

**Measuring revenue transparency:**  
home government requirements for disclosure  
in the oil and gas industries





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### **Measuring revenue transparency:**

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Oil and gas companies have generated enormous wealth. But rather than improving the lives of ordinary people, these revenues have often fuelled wars and corruption, weakened economic development and worsened poverty. Children are the most vulnerable to the devastating impact of these conflicts and the resulting chronic under-investment in health and education.

There has been growing recognition that the way to improve the responsible use of these revenues is to increase the accountability of governments and companies. This has resulted in initiatives such as the Publish What You Pay campaign and the Extractive Industries Transparency Initiative (EITI).

'Home' countries are those where oil and gas companies are registered or raising capital. These governments can play a key role by requiring companies to publish the payments they make to governments in each country in which they operate.

Many home governments, including the G8, have made statements in support of improved revenue transparency. But beyond the rhetoric, what are they doing to make this happen?

**This report focuses on home government performance in supporting revenue transparency by oil and gas companies.**

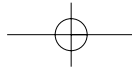
**It compares the regulatory policies and practice of ten countries, identifying the leaders and the laggards. It presents a measurement framework that points the way towards a 'gold standard' for such regulation.**

It should be seen in conjunction with a second report, *Company performance in the oil and gas industries*, which applies a similar framework to oil and gas companies.

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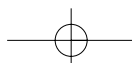
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**Save the Children fights for children in the UK and around the world who suffer from poverty, disease, injustice and violence. We work with them to find lifelong answers to the problems they face.**

**Save the Children UK is a member of the International Save the Children Alliance, the world's leading independent children's rights organisation, with members in 27 countries and operational programmes in more than 100.**

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This work builds on an earlier phase of development and testing of the framework by Mohammad Ali<sup>2</sup> and Richard Calland between April and July 2004.

At Save the Children UK, Vanessa Herringshaw, Head of Economic Policy, directed the project after creating

the original concept for the 'Measuring Transparency' framework. Liza Lort-Phillips, Private Sector Adviser, was responsible for overall project oversight and Samantha Bramley for project management.

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# Abbreviations and acronyms

ATI	access to information
CADA	Committee of Access to Administrative Documents (France)
DFID	Department for International Development (UK)
DRC	Democratic Republic of Congo
EEA	European Economic Area
EU	European Union
EI	extractive industries
EITI	Extractive Industries Transparency Initiative
FAS	Financial Accounting Standard
FASB	Financial Accounting Standards Board (USA)
FOI	freedom of information
G8	Group of Eight countries – Canada, France, Italy, Germany, Japan, Russian Federation, United Kingdom, United States
GAAP	Generally Accepted Accounting Principles
IAS	International Accounting Standard
IASB	International Accounting Standards Board
IDASA	Institute for Democracy in South Africa
IFI	international financial institution
IFRS	International Financial Reporting Standards
IMF	International Monetary Fund
JORC	Joint Ore Reserves Committee (Australia)
JSE	Johannesburg Securities Exchange
OECD	Organisation for Economic Co-operation and Development
P&L	profit and loss
PFC	Petroleum Financing Corporation
PWC	PricewaterhouseCoopers
PWYP	Publish What You Pay (an international coalition of NGOs)
SAMREC	South Africa Code for reporting of Mineral Resources and Mineral Reserves
SORP	Statements of Recommended Practices (UK)
TOD	Transparency Obligations Directive (EU)
UKLA	UK Listing Authority
WBI	World Bank Institute

## A note on technical terms:

**Securities** Trade-able interests that represent financial value, including corporate shares, mutual funds and bonds (issued by companies and governments)

**Home Governments** Governments of countries that are ‘home’ to companies either registered or raising capital within their jurisdictions

**Host Governments** Governments of countries that are ‘hosting’ company operations on their soil, i.e. where exploration and extraction are taking place

# Executive summary

## The 'Resource Curse' and its impact on children

Extractive industries (oil, gas and mining) have generated enormous revenues for a number of countries. Revenue payments, when effectively spent, have the potential to bring about dramatic improvements in citizens' lives. When spent on public investments in health and education services, they can help lift poor children out of poverty. But paradoxically, huge revenues from extractive industries have frequently fuelled corruption, exacerbated conflict and weakened economic development, resulting in damaging impacts on children's lives. Save the Children UK's 2003 report on the extractive industries, children and governance illustrates this link well.<sup>4</sup>

## The importance of transparency

Effective use of revenues is strongly linked to accountability, which in turn requires transparency of information. Where a country is receiving payments for the rights to oil, gas and minerals, its citizens need to know about the types and volumes of these payments. This information can help them to exert pressure on their governments for better spending on key basic services such as health and education.

There is a growing international focus on transparency. The 'Publish What You Pay' NGO coalition was founded in 2002 by Save the Children UK, George Soros' Open Society Institute, Global Witness, CAFOD and Transparency International to promote transparency in the extractive industries. It now has over 200 members in more than 33 countries. G8 members have committed to an Action Plan on 'Fighting Corruption and Improving Transparency', in 2002. The EU encourages increased voluntary

disclosure in its new Financial Services Action Plan (2004). The World Bank and the International Monetary Fund are looking at ways to improve transparency in the extractives industries.

In 2002, Tony Blair launched the Extractive Industries Transparency Initiative (EITI) at the Johannesburg summit on Sustainable Development. It involves governments, companies, investors and civil society organisations. The approach relies on the governments of 'host' countries (where the extraction is taking place) to take the lead and to publish all revenues they receive from companies. Where these host governments are willing to act, the EITI can bring important progress. However, it will take a long time to cover all host countries in this way. More importantly, it will not work for countries where the government does not engage, even though it is likely that these are the countries where reform is most needed. Companies, too, can conveniently hide behind this approach on the premise that they cannot be transparent unless their host government allows them to be. In short, by emphasising the role of host governments the EITI has had the effect of shifting attention away from the responsibilities of home governments and 'their' companies.

## Home governments – What should they do?

Home countries are those which are 'home' to companies either registered or raising capital within their jurisdictions. Such companies include oil, gas and mining companies that operate throughout the world. These companies must abide by the regulations of these home countries. Therefore, home governments could bring about multi-lateral improvements to transparency of extractive industry revenue information by requiring companies to

disclose their payments to governments wherever they operate. This is the central call of the Publish What You Pay coalition. Home governments could also support disclosure of such data through their access to information systems. Both mechanisms would allow citizens in resource-rich countries to secure information on payments that their governments are receiving for extractive industry resources.

### **Much talk, less action**

There has been much talk. But beyond the rhetoric, who can really bring about change? Beyond public commitments, what are they actually doing? And how does their performance compare? The 'Measuring Transparency' project aims to develop standards for three core groups of actors – home governments, companies and host governments – and to assess their progress over time. This report focuses on home governments. A sister report assesses company performance. Future phases will address host governments.

### **This report – Measuring home government action to support transparency**

This report aims to put the focus back on the direct action that home governments can take to support improved transparency in the extractive industry. It defines a standard for government regulation of company transparency on revenue payments and assesses practice against this standard in ten countries: Australia, Canada, France, Italy, the Netherlands, Norway, Russia, South Africa, the UK and the USA. The framework for the standard examines policy and management systems across four categories: revenue payments transparency; supportive disclosure; access to information; and broad governance environment. The results were subject to verification by government officials and experts in country. Eight out of ten countries responded, seven in detail. This report is focussed on the oil and gas sector. Future phases will address the mining sector.

## **Results – Revenue payments and supportive disclosure**

### **Generally very little action**

At present, home governments are not requiring companies to be transparent about their revenue payments to host governments. No home government requires 'their' extractive companies to publish the production entitlements of host governments or bonuses paid to them. Nine out of ten do not require any disclosure of royalty payments. Many governments require disclosure of composite profit taxes paid, but only by 'segment' or geographic area, not by individual host country. For citizens to hold their governments to account, they need information on revenue payments made by companies to their governments to be published on a country-by-country basis.

### **But the exception shows it is possible**

The exception is Canada, which shows strong overall leadership. Canada is not a member of EITI and yet is the only country with any mandatory requirements for disclosure on a country-by-country basis. This includes disclosure of royalty payments to host countries.

### **Golden opportunity for action – reform is happening now**

Regulation of company reporting is largely brought about through accounting and security requirements. This makes the need for action especially timely. It coincides with the biggest reform in accounting standards for over 25 years. This is a unique opportunity for home governments to put their own houses in order by supporting the inclusion of requirements for revenue payments transparency into financial regulations. These reformed standards will cover most of the world's companies for many years to come.

The IASB published an interim accounting standard for the minerals sector (IFRS 6) in December 2004. This is limited in scope, but IASB research towards a more comprehensive accounting standard is underway. The process will be open to consultation, offering a

vital opportunity for input. A discussion paper is due to be published in early 2006.

The USA is a key home government that has not signed up to International Accounting Standards, but a convergence project is underway to more closely align the standards contained within the International Financial Reporting Standards (IFRS) and the US Generally Accepted Accounting Practice (US-GAAP).

These accounting reforms are prompting significant reviews in other financial regulations such as securities, including the disclosure powers currently diluted by various relaxation or exemption clauses. There are moves towards harmonisation of securities regulations at European level (under the auspices of the Financial Services Plan). These include EC Directive 2001/34/EC and amendments via the 'Prospectus Directive' and the 'Transparency Directive'. Such reforms offer significant points of influence as national governments prepare their own legislation in accordance with the requirements of these Directives.

Harmonisation is both a risk and an opportunity. Regulators could lapse towards a lowest common denominator approach. But by building on best practice and collaborating to establish a good global standard, they could support citizens and investors in getting the information they need and ensure the 'level playing field' that companies want.

### **Need for more 'joined up' policies**

Many countries reported a lack of co-ordination between different government departments about disclosure commitments in the extractive sector. A number of accounting standard setters were not aware of their Government's commitment to the EITI or the G8, or the implications it could have for accounting or securities regulations. This highlights the importance of more 'joined up' policy-making and serves to illustrate how much difference the development of global standards could make.

## **Results – Access to information**

### **Poor Access to Information coverage of information held by the private sector**

Could a requestor use home government Access to Information laws and systems to gain information about revenue payments from companies to host governments?

At present, most such information is held by private companies. In nine home countries, Access to Information law does not cover information held by the private sector. However, again the exception proves that this is possible. South Africa provides a comprehensive right of access to privately held information, where access is necessary for the protection or exercise of another right. Companies in the oil and gas sectors have had a huge impact on people's lives. The South African approach is to say that those companies must be just as transparent and accountable in the use of their private power as government is in the use of its public power.

It is worth noting that in all countries except Canada, those living outside the country have a right to use the Access to Information system.

### **Varied Access to Information coverage of information held by state-owned companies**

Information on revenue payments to host governments is also held by state-owned companies operating outside their home country territory and private entities performing a public function such as regulation. Access to Information law currently covers these entities in only four countries – US, UK, Netherlands and South Africa – and should be extended in all home countries.

## **Conclusion**

- Some progress on revenue payments transparency is being made through the EITI but this is limited. The initiative's focus on host governments should

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not shift attention away from the responsibilities of home governments and ‘their’ companies. By requiring companies to disclose what they pay on a country-by-country basis, home governments could directly and efficiently increase the information available concerning most countries where extraction is taking place. But despite their rhetoric around transparency, very few have taken any such action.

- Canada is the clear exception. It is the only country with any mandatory requirements on disclosure on a country-by-country basis. It demonstrates that a home government with a genuine commitment to transparency can lead from the front.
- The scale of current reforms in accounting and securities standards gives each home government the chance to integrate transparency requirements into mainstream regulations.
- But harmonisation of these regulations also offers a golden opportunity for home governments to collaborate on a global set of standards that could set an international ‘level playing field’ for most companies.
- Home governments could also learn from South Africa’s exemplary law on Access to Information and extend their laws to include information held by the private sector.

## Summary of key recommendations

Home governments must go beyond the rhetoric and put their own houses in order.

1. **Home governments should require companies to publish what they pay** to governments wherever they operate.
2. **G8 leaders must commit to global standards** for disclosure in the extractive industry as part of their Action Plan on ‘Fighting Corruption and Improving Transparency.’ During its presidency of the G8, the UK government should ensure that this is expressed at the G8 Summit in July, 2005.

3. **Home government regulators** involved in reform of accounting and securities regulations (especially those responsible for updating IFRS6, convergence of IFRS and GAAP and national implementation of the EU’s Financial Services Plan)<sup>5</sup> need to ensure that this results in:
  - disclosure of all revenue payments by companies to all governments
  - disclosure on a country-by-country basis rather than by segment or geographic area
  - avoidance of exemptions or vague definitions that compromise disclosure
  - a ‘race to the top’ through convergence rather than a drop to the lowest common denominator.
4. **The UK government must lead the call for such regulation by home governments to be incorporated into the standards of the EITI** if it is to stay relevant as a standard bearer for transparency.
5. **Home governments should actively engage in the EITI** and support progress where host governments are willing to bring change. Greater political and diplomatic support is necessary if countries such as the US, Russia and China are to engage.
6. **Home governments should extend Access to Information laws to provide a comprehensive right to access information held by private and state owned companies.** This would build on the ‘gold standard’ Access to Information policy set by South Africa.

Companies, investors and civil society should support this process by:

1. **Engaging directly with regulators** on reform of securities and accounting legislation
2. **Using the standards provided in this ‘Measuring Transparency’ report** to track progress of respective governments’ on transparency.
3. **Pushing for reform of Access to Information legislation** and testing the usefulness of existing laws in gaining data on revenue payments by private and state owned companies.

# I Background, objectives, scope and audience

## I.1 Background

### The 'Resource Curse' and children

Extractive industries (oil, gas and mining) have generated enormous revenues for a number of countries. Revenue payments, when effectively spent, have the potential to bring about drastic improvements in citizen's lives. When spent on public investments in health and education services, they can help lift poor children out of poverty. But paradoxically, huge revenues from extractive industries (EI) have frequently hurt children by fuelling corruption and conflict and weakening economic development.<sup>6</sup> The resulting poverty, instability and poor growth from this 'Resource Curse' damage rates of child survival and development and pose a risk to the investment environment.

### The importance of transparency

Effective use of revenues is strongly linked to accountability, which in turn requires transparency of information. Where a country is receiving payments for the rights to oil, gas and minerals, its citizens need to know about the types and volumes of these payments. This information can help them to exert pressure on their governments for better spending on key basic services such as health and education. To drive this necessary progress towards transparency, NGOs formed the 'Publish What You Pay' coalition in 2002<sup>7</sup> which now has over 200 members in 33 countries.

Improved transparency is ultimately to the benefit of all stakeholders.

- **Civil society** needs transparency in order to hold governments to account for the use of extractive revenues.

- **Host governments** (where extraction is taking place) can improve relations with their citizens and lower borrowing costs in the international financial markets for emerging market economies<sup>8</sup> if they operate transparently.
- **Governments of countries that use oil and gas** recognise that poor management of natural resource revenues can foster instability that may affect the security of their supplies.
- **Companies** are increasingly realising the importance of transparency in ensuring a level playing field and in maintaining credibility with investors, consumers and local communities.
- **Financial regulators, rating agencies and investors** recognise that corporate and government transparency are major factors in financial risk.
- **International financial institutions (IFIs)** are aware that transparency is a key condition for ensuring that loans are well managed.

There has been a growing recognition of the importance of improved transparency in the EI. The Extractive Industries Transparency Initiative (EITI) was launched by the UK government in 2002. This is a multi-stakeholder initiative and a broad range of countries, companies, international financial institutions (IFIs), civil society organisations and investment institutions have expressed their support for the EITI principles and a pilot programme is currently underway. G8 members have acknowledged the importance of transparency through their commitment to their Action Plan (2002) on 'Fighting Corruption and Improving Transparency'. The EU, through amendments to the Transparency Obligations Directive (TOD), has also recognised the importance of transparency in the sector. The French government has pledged direct support to the EITI, but few other G8 governments have shown signs of

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commitment. A number of other initiatives, including those conducted by the Organisation for Economic Co-operation and Development (OECD), IMF and the World Bank Group are also looking at ways to improve transparency in the extractive industries. Transparency is a growing topic of discussion in conferences and the press.

But beyond the rhetoric, who can really bring about change? What are they doing? And how does their performance compare?

The ‘Measuring Transparency’ project was established to develop standards for three vital groups of actors – home governments, companies and host governments – and to assess their progress over time.

This report focuses on home governments. A sister report addresses company performance.<sup>9</sup> Future phases will address host governments.

### **Home governments – definition and potential role**

Home countries are those which are ‘home’ to companies either registered or raising capital within their jurisdictions. Such companies include oil, gas and mining companies that operate throughout the world. These companies must abide by the regulations of these home countries. Therefore, home governments could bring about multi-lateral improvements to transparency of EI revenue information by:

- requiring companies either registered in their jurisdiction or those raising capital on their territories to publish what they pay to governments wherever they operate, and/or
- developing better access to information systems in their countries.

The effects would be two-fold. First, information on company payments could be accessed by citizens in countries less amenable (or paying lip-service) to voluntary initiatives such as EITI, either through company reports or through access to information (ATI) legislation. Secondly, by applying to all

companies registered or raising capital in home countries, it would have the effect of levelling the playing field, a move that companies should welcome, particularly if home governments agreed to work together. While these regulations might still be unable to cover *all* state-owned companies, they would affect major national oil companies (such as those whose home countries are China, Indonesia and Russia) that increasingly seek to raise capital for their operations overseas. In particular, through increasing harmonisation of supportive disclosure standards, a small number of regulations through home governments could cover most company payments to governments where extraction is taking place.

By addressing the availability of revenue payments information, such requirements would facilitate other important aspects of the EITI, especially discussion between host governments and their citizens regarding the level and use of those revenues. Home governments can seek to ensure that disclosure is the norm, rather than an option.

The EITI is an important initiative and has made some progress in a few countries where the host government has been willing to take a lead. However, by emphasising the role of host governments, the EITI has had the effect of shifting attention away from the responsibilities of home governments and ‘their’ companies.

## **1.2 Objectives of this report**

This report aims to put the focus back on the direct action that home governments can take to support improved transparency in the EI. It defines a standard for the way that these governments should operate and assesses practice against this standard.

More specifically, the report aims to:

- benchmark and compare home government performance in supporting transparency
- identify best practice from which other governments can learn

- illustrate the differences between ‘laggard’ countries and those whose policies represent a potential ‘gold standard’ for disclosure in the sector
- identify upcoming reviews of regulations that offer opportunities for improvement.

### 1.3 Scope and timing

Due to resource limitations, only the oil and gas sector are covered in this analysis. This prioritisation was based on the scale of revenues derived from the oil and gas sector in a broad range of countries and their anticipated expansion in a number of key developing countries over the next ten years, notably in Africa. However, it will be important to extend this study to the mining and minerals sector in a subsequent phase. We also recognise the importance of covering host governments in a future phase.

The aspects of home government performance covered were accounting standards, securities regulation, access to information and an assessment of the broader governance environment (including control of corruption and overall regulatory quality).

The timeframe was for the calendar year 2004, taking into account that many countries in the study already have legislation in place for the move to international accounting standards with effect from 1 January 2005.

The research was conducted between October 2004 and February 2005.

### 1.4 Audience

This report is for those concerned with improving revenue transparency and lowering the risks that arise from poor accountability. Those with a particular interest in securing this through the regulatory environment for companies will include:

- regulators seeking practical methods for enforcing and raising standards
- investors and rating agencies
- policy-makers in government

- civil society – seeking to influence outcomes in this area
- international financial institutions (IFIs).<sup>10</sup>

### 1.5 Home government coverage

The rationale for the country choice included the following factors:

- a) home to significant international oil and gas companies either registered or raising capital
- b) a G8 member, given their stated commitments to improving transparency and reducing corruption and
- c) a range of best practice in governance and transparency requirements.

**Australia:** home to significant oil and gas companies, with a comprehensive anti-corruption regime.

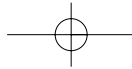
**Canada:** G8 member with a strong track record on anti-corruption and transparency issues.

**France:** G8 member, making moves towards a more active EITI engagement; home to Total, now merged with Elf. Both companies were involved in a number of bribe-paying scandals.

**Italy:** G8 member and home to oil and gas company Eni, which has grown rapidly since privatisation, and now ranks seventh in the Petroleum Financing Corporation energy list of the world’s biggest international oil and gas companies.

**Netherlands:** home to the Royal Dutch side of the Shell Group, it is also a major offshore tax haven for the incorporation of operating subsidiaries for international oil and gas companies.

**Norway:** the second largest producer of oil in Europe after Russia. Its two largest oil companies, Statoil and Norsk Hydro, were formerly state-owned, and the government still retains major stakes in both. Norway is considered a model for the prudent management of oil wealth.



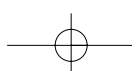
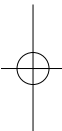
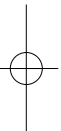
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**Russia:** while its operations are arguably 'less global' and largely restricted to the former Soviet Union, it is nonetheless an important player, a G8 member and issues of transparency and poverty are still critical in this region.

**South Africa:** while home to significant mining, rather than oil and gas interests, South Africa is unique in that it is the only country to have access to information (ATI) requirements on companies.

**UK:** G8 member, home to significant oil and gas companies, initiator of the EITI, new access to information law.

**USA:** G8 member, home to significant oil and gas companies.



## 2 Methodology and approach

### 2.1 Background to the framework

In developing the methodology for measuring transparency in the extractive industries, a survey of relevant transparency-related initiatives/performance measures and reports/studies on transparency was undertaken in order to build on 'best practice'. A list of those reviewed is presented in Appendix 1.<sup>11</sup>

### 2.2 Principles guiding the design of the methodology

In the approach to the concept and design of the methodology, it was agreed that it must be:

- **Credible and robust** – able to deal with a range of features of both companies and countries and still allow comparison
- **Practical and not overly complex** – useable from a rating and lobbying point of view
- **Replicable and sustainable** – in the long term
- **Sufficiently sensitive** – to yield 'best' and 'worst' class performance, and to demonstrate incremental progress being made
- **Transparent** – to support its credibility, as well as its accessibility, the methodology should itself be open to scrutiny.

Clearly there are tensions between some of these guiding principles. For example, for credibility, the methodology must be sufficiently detailed, and allow for sufficiently precise collation and distillation of good-quality information, to permit comparison between actors. However, the more the detail, the costlier the exercise and the harder it is to replicate and sustain in the long term. The proposed methodology attempts to balance these principles.

### 2.3 Framework of indicators

For the full list of indicators, please see Appendix 2.

#### The categories and indicators

There are two key dimensions to the framework of indicators: aspects of transparency and aspects of implementation.

#### Dimension 1: aspects of transparency

The following transparency categories were identified to examine the ways in which home governments can support the transparency of revenue flows between companies and host governments.

#### Category A: revenue payments transparency

These indicators provide information on the regulatory environment affecting the public disclosure of financial information relating to payments from companies to host governments. This lies at the heart of the issue concerning revenue transparency in the extractive industries. It covers the disclosure of benefit streams flowing from companies to countries, and covers:

- production entitlements
- royalties
- profit taxes
- bonuses and fees.

#### Category B: supportive disclosure

In order for citizens and investors to judge the accuracy of revenue disclosure and to anticipate future revenue trends, there are other broader areas of required disclosure on companies and governments. These include general information, such as the disclosure of exploration and production activities and the relevant contract and legal regimes. It includes

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company financials such as the disclosure of company revenues, costs, profits and assets in a particular country. It also includes production and reserves such as the disclosure of historical and future production volumes, as well as the quantity and value of reserves.

**Category C: access to information**

In addition to reported information, interested parties should also have the right to gain access to unreported information that is in the public interest. There are three potential holders of revenue payments information that access to information (ATI) legislation could address.

1. **Information held by public bodies**, typically government departments. Addressed by indicator 1, this largely covers information about home government activities but it might also include information about agents of government such as state oil companies and private companies, provided that the information is actually held by a government department. However, at present this information is too limited to be of great use. Therefore, home government laws that allow access to information held by public bodies will be of some, but only limited, relevance for enhanced revenue transparency in the oil and gas sectors.
2. **Information held by parastatals**, other quasi-governmental bodies (eg, administrative agencies or state-owned oil companies) or private entities fulfilling a public function. This is addressed by indicator 2. Again, such bodies might also hold information about purely private corporations as well their own payments. This information is of more direct relevance, especially in the case of state-owned oil companies.
3. **Information held by private companies**. This is addressed by indicator 3. Clearly, this is the most directly relevant and potentially useful legal right of ATI, in terms of revenue transparency in the oil and gas sectors.

**Category D: broad governance environment**

Sustainable disclosure on issues specific to the extractive industries needs be fostered by a broad

governance environment that supports transparency and accountability.

A survey of global governance indicator sets<sup>12</sup> evaluated their relevance for use in this study according to the following three criteria:

- country coverage
- time series coverage
- relevance of issues to this project.

According to these criteria, the World Bank Institute (WBI) Governance Indicators were selected, as they provided the most comprehensive coverage in terms of country scope and continuous trend data. The methodology is considered credible and robust. It is perceptions-based, drawing on polls of experts and surveys of opinion. It uses over 250 different measures that are aggregated together to form six clusters of governance. The individual measures are transformed into common units from which a weighted average of the individual measures is constructed to use as the aggregate score.

Therefore, the overall framework of indicators for this analysis of home governments has incorporated the World Bank Institute 'Governance Indicators' model and data for this category in the framework.

The WBI approach<sup>13</sup> assesses governance in a framework with six composite indicators (see box opposite).

**Dimension 2: aspects of implementation**

The most important measure of progress is whether necessary information is being disclosed, and whether this is done in ways that foster its use by target audiences. However, for large and complex organisations like multinational companies and governments, there may be many stages between making a genuine commitment to improving transparency and seeing this translate into actual and useful disclosure. In an attempt to increase the sensitivity of the framework in capturing progress and identifying gaps, as well as evaluating actual disclosure, indicators for each category were developed (as far as

### **World Bank Institute – Governance Indicators**

#### **Voice and accountability**

Various aspects of the political process, civil liberties and political rights. Measures the extent to which citizens are able to participate in the selection of governments. Also includes measures of the independence of the media.

#### **Political stability and the absence of violence**

Perceptions of the likelihood that the government will be destabilised or overthrown by unconstitutional or violent means.

#### **Government effectiveness**

Quality of the public service provision; quality of the bureaucracy; competence of civil servants; independence of civil service from political pressures; credibility of government commitment to policies. Focus is on 'inputs' required for government to produce and implement good policies and deliver public goods.

#### **Regulatory quality**

Focused on policies themselves. Incidence on market unfriendly policies such as price controls or inadequate bank supervision. Perceptions of the burdens imposed by excessive regulation in areas such as foreign trade and business development.

#### **Rule of law**

Extent to which agents have confidence in and abide by the rules of society. Perceptions of the incidence of crime, the effectiveness and predictability of the judiciary; enforceability of contracts. Measures the environment in which fair and predictable rules form the basis of economic and social interactions.

#### **Control of corruption**

Perceptions of corruption, conventionally defined as the exercise of public power for private gain.

possible) to address three aspects of implementation as appropriate:

1. **Policy:** Does the government have an adequate policy or law on the issue?
2. **Management systems:** Has the government created adequate systems and allocated sufficient resources for successful implementation?
3. **Performance:** Has a good outcome been achieved in terms of disclosure of information?

Combining these two dimensions, the proposed framework begins with individual indicators and ends with the composite score. Intermediate levels of aggregation have been structured to allow analysis and comparison across different categories of transparency and between different degrees of progress.

## **2.4 Scoring and weighting**

To prepare a composite index to enable relative ranking of country performance requires the introduction of a scheme for scoring and weighting both individual indicators and the relative weight to be attached to each category (A, B, C and D). Scoring and weighting options with scenarios are discussed below.

### **Scoring**

**Category A (revenue payments) and B (supportive disclosure) indicators** have been developed to allow scoring on a simple binary (yes/no) basis. A single score (1) is awarded for public

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disclosure of the information identified in the indicator set. A double score (2) is awarded for disclosure of information disaggregated at the country level (where relevant). This is an important distinction as most existing legislation covering company disclosure is defined by geographical or business segment rather than at the country level.

**Category C (access to information) indicators** are binary where possible. The exceptions are indicators 7 and 9. These are concerned with key issues of implementation (systems development and compliance) and a scale has been used to reflect the complex variations in adherence. An initial score out of five is justified on the basis of the pivotal nature of the two indicators, as follows:

- 0: Totally absent
- 1: Lacking/Poor
- 2: Inadequate
- 3: Adequate: meets minimum standards
- 4: Good/Strong
- 5: High/Close to the ideal.

Scores for indicators 1, 2, 3, 7 and 9 depend on the degree to which the ATI law covers information held by public bodies, parastatals or private companies according to their relative usefulness for revenue payments disclosure discussed above. If the law covers public bodies, it scores one point for indicator 1 and scores for 7 and 9 are based on the initial score out of five outlined above. If the law covers information held by parastatals/state-owned companies, it scores three points for indicator 2 and the initial scores for indicators 7 and 9 are multiplied by two. If the law covers information held by the private sector, it scores five points for indicator 3 and the initial scores for indicators 7 and 9 are multiplied by three.

**Category D (broad governance environment)** Indicators use the same scoring mechanism applied to the published indicator set from which they were drawn (ie, the WBI Governance Indicators). This method allows the study to draw on the results of

extensive stakeholder participation and in-country research in the preparation of existing scoring methods used by democracy and governance indices.

### Weighting of categories

A weighting scheme was adopted with differential weights assigned to the categories as follows:

Category	Weighting
A	40%
B	25%
C	25%
D	10%

The rationale for this weighting is as follows:

- The most important information for transparency will come from Category A.
- Where this is not available, categories B and C can assist as leading indicators to inform category A.
- Category D is weighted lowest, reflecting its status as a background contextual category.

Alternative weighting scenarios were also tested. These covered unweighted, equal weighting, differential weighting and country-level scoring only (rather than by global, geographical or business segment). However, these did not produce any significant variation in the sequence of ranking in the final results.<sup>14</sup>

## 2.5 Research process

### Data sources

Data sources were deliberately limited, as far as possible, to that which is in the public domain (as a key aspect of transparency). Where documents were not accessible, information was gathered from key informants before and as part of the verification process. Where reasonable payment was required (eg, to access international accounting standards) this was

made, since otherwise the work could not have been undertaken. In particular, the following data sources were used.

#### **For revenue payments and supportive disclosure**

- accounting standards
- financial regulations (including securities regulations and stock exchange rules)
- comments and reviews of accounting standards on professional accounting websites
- interviews with accounting experts and other finance professionals
- consultation with home government officials

#### **For access to information indicators**

- largely from Internet sources
- supplemented by some desk-based resources such as academic studies and reports
- consultation with experts

#### **For broad governance environment indicators**

At the time of writing, data from 2004 was not yet available, and therefore this section includes data from the last survey conducted in 2002.

#### **Verification process**

Desk-based research and preliminary consultation with experts informed the preparation of a draft set of

indicators. Officials and professional experts from the selected home governments were then invited to verify, supplement or amend the proposed draft indicators for their country. Responses were received from government officials or industry experts in eight out of ten countries, with detailed responses from Canada, the Netherlands, Norway, Russia, South Africa, the UK and USA on regulations concerning revenue payments and supportive disclosure and less input from Italy. Australia and France did not reply.

#### **Reference Group**

Consultation and engagement with members of the Reference Group was a key part of the process both for building credibility and support for the tool being developed, as well as open dialogue being an agent of change in itself. The Reference Group members participated in the project in three key ways:

- developing and reviewing the methodology
- providing information to feed into the preparation of the indicators
- reviewing drafts.

Members were drawn from a wide range of government, civil society, industry and investors. For a full list of participants, including all those consulted during the research and data verification process, please see [www.savethechildren.org.uk/measuringtransparency](http://www.savethechildren.org.uk/measuringtransparency).

## 3 Results

### 3.1 Overall ranking of home government support for transparency

The following section presents overall ranking of home government support for financial transparency in the extractive industries (EI). For each country, the total and percentage scores for the four categories of indicators (A-specific revenue payments; B-general supportive disclosure; C-access to information; and D-broad governance environment) are calculated and compared in order to enable a cross-country comparison.

These country profiles give the score for each indicator by country, together with explanatory notes and data sources. Due to the large scale of information these contain, they are not included in this report but can be found on the website at [www.savethechildren.org.uk/measuringtransparency](http://www.savethechildren.org.uk/measuringtransparency).

The results are presented graphically in Chart 1 opposite.

#### Key findings on overall ranking

##### 1. Overall performance is disappointingly low

Nine out of ten countries score less than half of the available score for supporting EI transparency. This indicates that home governments have avoided regulating 'their' companies to publish what they are paying to host governments.

##### 2. Canada shows that good practice in regulation is possible

Canada scores relatively well compared to other countries and is the only country to require any disclosure on a country-by-country basis. This is largely because of its securities regulations. Canada is currently an EITI observer rather than a participant, suggesting that those more engaged with the EITI could do much more to act on their commitments to the principle of greater transparency.

**Table 1: Overall ranking of home government support for transparency**

Country	CAN	UK	USA	NE	NOR	FR	IT	AUS	SA	RU
A-revenue payments	16.0	13.3	13.3	13.3	13.4	13.4	13.4	2.6	2.6	8.0
B-supportive disclosure	19.9	12.6	11.7	9.9	9.9	9.9	9.9	9.9	7.2	9.0
C-access to information	6.4	8.4	8.8	5.9	4.9	3.9	1.9	5.4	10.3	1.9
D-broad governance environment	8.1	8.0	7.4	8.4	8.3	7.4	6.8	8.1	5.4	2.9
Total score (Max. 87)	50.5	42.4	41.5	37.7	36.6	34.	32.1	26.2	25.8	22.0
% Score	58.1	48.8	47.7	43.3	42.1	39.9	37.0	30.1	29.6	25.2
Ranking	1	2	3	4	5	6	7	8	9	10

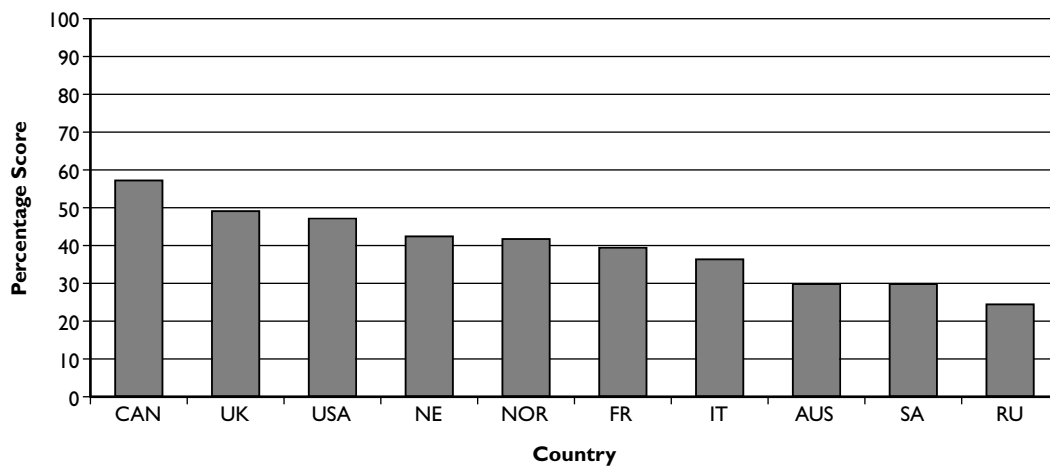


Chart 1: Overall ranking of home country support for transparency

### 3. Overall performance across the four categories masks important differences in country performance on different categories of indicators

For example, South Africa shows outstanding performance in terms of its progressive law and practice in access to information, which is the only one that extends to include disclosure on private entities. However, it does badly on revenue payments transparency and supportive disclosure. Likewise, the broad government environment indicators allow Australia to score third place, higher than their performance on any of the other three categories, with the Netherlands and Norway taking the top two slots.

This suggests that most countries need to take a more systematic approach to maximising their support for transparency and improve the degree to which their policies are 'joined up'.

### 4. G8 commitments and involvement with the EITI do not appear to be the key to good performance.

Scoring positively on these commitments is important (note that both Australia and South Africa suffer from not being participants of EITI). But it is securities regulations, followed by accounting standards, which appear to be the secret to high scoring success.

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## 3.2 Results – Revenue payments disclosure

This section compares home government performance in supporting disclosure of revenue payments in the

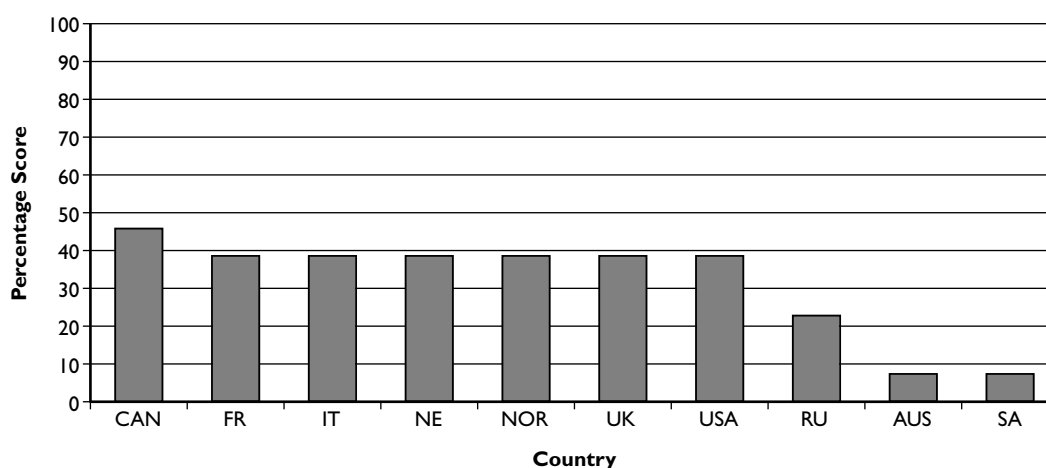
extractive industries, especially through regulation of companies.

The full country-by-country profiles (with explanatory notes) for specific revenue payments transparency indicators are available on the website.

**Table 2: Home government scores in supporting revenue payments transparency**

Country	AUS	CAN	FR	IT	NE	NOR	RU	SA	UK	USA	Max score
<b>Policy</b>											
1 Does the country have a public policy covering transparency of revenue payments globally?	0	1	1	1	1	1	1	0	1	1	1
2 Does this policy require company disclosure of production entitlements of host governments?	0	0	0	0	0	0	0	0	0	0	2
3 Does this policy require company disclosure of payments (in cash or kind) to host countries?	0	2	0	0	0	0	0	0	0	0	2
4 Does this policy require company disclosure of profit paid to host countries?	1	0	1	1	1	1	1	1	1	1	2
5 Does this policy require company disclosure of bonuses to host countries?	0	0	0	0	0	0	0	0	0	0	2
<b>Management</b>											
6 Does the country assign strategic responsibility for transparency of revenue payments at a senior level?	0	1	1	1	1	1	1	0	1	1	1
7 Does the country engage with stakeholders to inform its understanding of revenue transparency?	0	1	1	1	1	1	0	0	1	1	1
8 Does the country use a recognised standard (such as the EITI) to put policy commitment into practice?	0	1	1	1	1	1	0	0	1	1	1
9 Does the country have an external audit mechanism in place to ensure reliability of revenue payment disclosure?	0	0	0	0	0	0	0	0	0	0	1
<b>Total Score (A)</b>	1	6	5	5	5	5	3	1	5	5	13
<b>Max Score (A)</b>	13	13	13	13	13	13	13	13	13	13	13
<b>Weighted Total Score (A)</b>	2.7	16.1	13.4	13.4	13.4	13.4	8.0	2.7	13.4	13.4	34.8
<b>Weighted Max Score (A)</b>	34.8	34.8	34.8	34.8	34.8	34.8	34.8	34.8	34.8	34.8	34.8
<b>Weighted Percent Score (A)</b>	7.7	46.2	38.5	38.5	38.5	38.5	23.1	7.7	38.5	38.5	100.0
<b>Weighted Rank (A)</b>	9	1	2	2	2	2	8	9	2	2	

Please note: the performance impact of home government support for revenue payments transparency will be revealed largely in the performance of 'their' companies. This information has been collected and analysed in the separate Save the Children UK study measuring transparency of companies in the oil and gas sector. See [www.savethechildren.org.uk/measuringtransparency](http://www.savethechildren.org.uk/measuringtransparency). For this reason, there are no 'performance' measures for this section.



**Chart 2: Home government support for revenue payments transparency**

### Key findings for revenue payments

#### 1. Overall performance is disappointingly poor

This section is at the very heart of improving revenue payments transparency in the EI sectors. At present, home governments are not requiring companies to be transparent about their revenue payments. No home government requires 'their' EI companies to publish the production entitlements of host governments or bonuses paid to them in any way. Most do not require any disclosure of royalty payments. This is particularly disappointing given the crucial role that home governments could play.

#### 2. Country-by-country disclosure is vital but almost non-existent

This is a key issue. With the exception of one country, none of the countries surveyed require disclosure of payments at country level. This means that no citizen from a producing (host) country can find out what revenues their government has received for these resources unless that government has voluntarily agreed to publish what it receives or companies have voluntarily agreed to publish what they pay.

#### 3. But the exception, Canada, shows it is possible

Home governments often claim that it is impossible for them to take a lead and put regulations on companies that are not required by other home governments since this will unfairly disadvantage 'their' companies. Yet, historically, countries have

taken such dynamic and initially unilateral action when the moral imperative is strong, such as the need to ensure adequate labour standards. Here, Canada demonstrates that it is possible to lead from the front. Currently an observer rather than an EITI participant,<sup>15</sup> and it is performing better than the other full members.

Canada distinguishes itself by being the only country to require mandatory disclosure of royalty payments at the host country level. This mandatory disclosure is required under Canadian Securities Regulations,<sup>16</sup> although its power is reduced under certain relaxations that may limit the amount of country disclosure actually reported.<sup>17</sup> Mandatory disclosure under accounting and/or securities regulations is far more powerful than the voluntary commitments to revenue payments transparency under the EITI and G8 agreements. Canada provides a leading example of making disclosure of royalty payments a mandatory requirement for companies listed on the Canadian stock exchange. This pioneering legislation could be further improved by extending it to other types of revenue payments to host governments (such as bonuses and production entitlements) and by eliminating the relaxation clauses.

#### 4. Voluntary versus mandatory disclosure

As stated, the performance impact of home government support for revenue payments transparency is revealed in the actual information

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disclosed by companies. This information is presented in the sister report on companies.<sup>18</sup> Not surprisingly, it is Canadian companies that score the highest on revenue transparency and supportive disclosure. It is the Canadian regulations that apply to companies wherever they operate rather than the host country-by-host country approach of the EITI that has had the most systematic impact.

### 5. Gaps in accounting standards

The clustering of EU countries in this category reflects the adoption of the International Financial Reporting Standards (IFRS) from January 1st 2005. However, none of the countries' accounting standards have any requirement for revenue payment disclosure by country as an integral part of their national accounting standards. This is as true for the majority of countries that have adopted IFRS as it is for countries that have maintained their own accounting standards (such as Canada and the USA). Even IFRS 6, *Exploration for and Evaluation of Mineral Resources* published by the International Accounting Standards Board (IASB) in December 2004, fails to include any reference to revenue payments disclosure at the host country level. Harmonisation at EU level does, however, give the opportunity for countries to go beyond the standards, since the Directives allow for 'stretch room' at a national level.

However, IFRS 6 is only an interim measure to make limited improvements to accounting practices in the extractive industries. IASB research into disclosure requirements in the extractive sector is ongoing and

provides a central focus for lobbying for accounting standards reform. (See key findings in section 3.3 for a more detailed discussion of these regulations.)

### 6. Opportunities through securities regulations

Canada's leading example shows that securities regulations are a fruitful avenue to pursue. In fact they have particular potential for impact given that companies from all over the world are listed on each stock exchange, including those that are outside the influence of IFRS or Generally Accepted Accounting Principles (GAAP) such as China, Malaysia, etc. The EU project for the harmonisation of securities regulations in member states provides a central point to exert pressure. (Again, see section 3.3 key findings for a more detailed discussion of these regulations.)

### 7. Policy commitments to transparency of EI revenue payments globally

Indicator 1 shows the extent to which countries have a commitment to revenue payments transparency through a public policy on transparency of revenue payments applicable to the oil and gas sectors. The majority of countries in this study (six out of ten) are signatories to the Extractive Industries Transparency Initiative (EITI). In addition, the G8 countries are also participants in the G8 commitment to Fighting Corruption and Improving Transparency that includes provision for transparency of revenue flows and payments for partner countries. Australia and South Africa are the notable exceptions, being neither EITI signatories nor having any other known public policy in this area.

### 3.3 Results – Supportive disclosure

This section compares home government performance in regulating companies to disclose information that allows citizens and shareholders to judge the accuracy of revenue payments disclosure and anticipate future revenue trends in the extractive industries.

The full country-by-country profiles (with explanatory notes) for supportive disclosure transparency indicators are available on the website.

**Table 3: Home government performance in requiring supportive disclosure**

Country	AUS	CAN	FR	IT	NE	NOR	RU	SA	UK	USA	Max score
<b>Policy</b>											
Does the country's financial regulations, accounting and auditing standards require companies to disclose the following information:											
<b>10</b> Names of material subsidiaries	2	2	2	2	2	2	2	2	2	2	2
<b>11</b> Names of key properties	2	2	2	2	2	2	0	0	2	2	2
<b>12</b> The contract regime (ie, production sharing, concession system, joint venture company, risk services)	1	1	1	1	1	1	1	1	1	1	2
<b>13</b> A description of exploration and production activities	1	2	1	1	1	1	1	1	1	1	2
<b>14</b> Revenue	1	2	1	1	1	1	1	1	1	1	2
<b>15</b> Production costs	1	2	1	1	1	1	1	1	1	1	2
<b>16</b> Development and exploration costs	1	2	1	1	1	1	1	1	1	1	2
<b>17</b> A measure of profit before tax	1	1	1	1	1	1	1	1	1	1	2
<b>18</b> Production volumes	0	2	0	0	0	0	1	0	1	1	2
<b>19</b> An estimate of future production volumes	0	2	0	0	0	0	1	0	1	0	2
<b>20</b> A measure of reserve quantities	1	2	1	1	1	1	0	0	1	1	2
<b>21</b> A measure of reserve values	0	2	0	0	0	0	0	0	1	1	2
<b>Total Score (B)</b>	11	22	11	11	11	11	10	8	14	13	24
<b>Max Score (B)</b>	24	24	24	24	24	24	24	24	24	24	24
<b>Weighted Total Score (B)</b>	10.0	19.9	10.0	10.0	10.0	10.0	9.1	7.3	12.7	11.8	21.8
<b>Weighted Max Score (B)</b>	21.8	21.8	21.8	21.8	21.8	21.8	21.8	21.8	21.8	21.8	21.8
<b>Weighted Percent Score (B)</b>	45.8	91.7	45.8	45.8	45.8	45.8	41.7	33.3	58.3	54.2	100.0
<b>Weighted Rank (B)</b>	4	1	4	4	4	4	9	10	2	3	

Note on indicator 10 ('names of material subsidiaries'): If this was to ask for names of *all* subsidiaries rather than 'material or significant', most countries (with the possible exception of the USA) would score zero. This is an important loophole that many companies currently exploit. It is generally acknowledged that lack of transparency and corruption tends to be worse among smaller subsidiaries that 'slip through the net'. Future benchmarking of home government requirements (and company performance) should address this question more fully.

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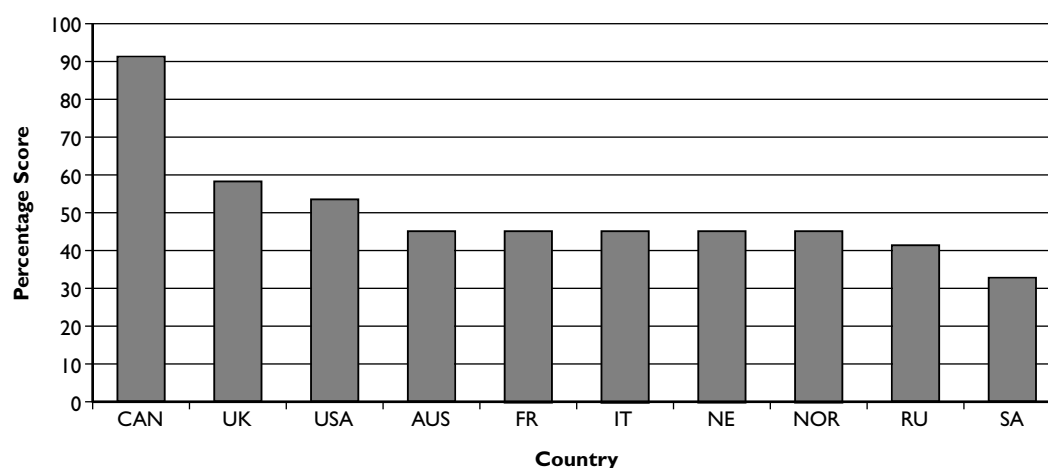


Chart 3: Home government performance in requiring supportive disclosure

### Key findings for supportive disclosure

#### 1. Lacklustre performance overall

Although marginally better than their performance on support for revenue payments transparency, scores are still poor. Where countries do require disclosure of certain types of information within this category, very few do so on the country-by-country basis essential for citizens to hold their governments to account for revenues received.

#### 2. Canada is the trail-blazing leader in this section

An impressive score of over 90 per cent sets Canada far ahead from the next group of countries. The distinguished leadership shown by Canada is once again attributable to its progressive securities regulations that require mandatory disclosure in the aggregate and 'by country' of information relating to reserves (quantities and net present value), future development costs, oil and gas properties, exploration and development costs, production history and future estimates. The potential power of this legislation is unfortunately diluted by various relaxation clauses. For example, companies may satisfy the requirement of disclosing information 'by country' by instead providing information by 'foreign geographic area' for companies outside North America 'as may be appropriate for meaningful disclosure in the circumstances'.<sup>19</sup> The Canadian case provides a good base to develop a gold standard for securities

regulations that could be made more effective by tightening or eliminating the relaxation clauses.

#### 3. Impact of harmonisation of financial regulations

The chart demonstrates a clustering of EU countries in the middle range. This is a result of harmonisation of EU financial regulations. (For more information on these regulations, see section 3.4.)

#### 4. South Africa is the weakest performer but has a clear opportunity to improve

This is disappointing since South Africa showed leadership in its early adoption of International Accounting Standards, being the first to do so from the ten countries selected for detailed study in this report. Although South Africa is not a formal signatory of the voluntary EITI code, it has developed an extensive supportive disclosure framework for the extractive industries in the form of the South African code for reporting of Mineral Resources and Mineral Reserves (the SAMREC Code). The SAMREC Code sets a minimum standard for public reporting in the minerals sector and most importantly has been incorporated into the Johannesburg Securities Exchange (JSE) listing rules as a mandatory requirement. However, the SAMREC Code, although applicable to key extractive industries in South Africa (such as diamonds and coal) as it currently stands, explicitly excludes the oil and gas sectors. These are

not large sectors in South Africa, but their incorporation into the SAMREC Code and hence the JSE listing requirements would enable South Africa to leap into a leadership role in this indicator set (taking second or third place). The inclusion of oil and gas in the SAMREC Code is currently under review in South Africa.

#### **5. Russia's performance is also poor but its companies are being influenced by the practice of other home governments**

Russia is also a weak performer, which again is a disappointing result given Russia's public commitment to adopting international accounting standards. But progress has been slow for a number of reasons: the need for institutional strengthening (eg, private sector accounting associations); training of the Russian accounting profession in international standards; the full translation of international accounting standards into Russian. Next year all listed companies will be required to present IFRS or USA Generally Accepted Accounting Principles (GAAP) financial statements in accordance with the Federal Securities Commission.

What is particularly noteworthy is that the impetus towards improved supportive disclosure standards is coming from the Russian private sector with international operations.<sup>20</sup> Internationally accepted accounting standards (such as IFRS and USA GAAP) are the *de facto* level of disclosure adopted by large listed companies in the Russian oil and gas sector, such as Lukoil and Gazprom. They are responding to the regulatory requirements of foreign stock exchange listings because their creditors or investors are demanding it, rather than any progressiveness within the national accounting or securities regulations. This perhaps runs counter to the argument that home government regulations could result in an uneven playing field, putting local companies at a competitive disadvantage. Securities regulations mean that companies from any country raising funds on the international capital market will need to comply and thus can have a positive impact far beyond the countries where such markets are based. The response of those Russian companies operating internationally

to the requirements of their investors or creditors also demonstrates the key role that these bodies can play in improving transparency.

#### **Key findings for improving revenue payments and supportive disclosure**

Golden opportunity for action – reform is happening now!

#### **Reform of accounting standards and securities regulations**

The timing of this project coincides with the biggest reform of accounting standards for over 25 years. More than 90 countries will either require or permit the use of IFRS during the next five years. Thousands of companies throughout the world will be making a transition in financial reporting by breaking away from national practices and changing to accounting standards set by the IASB. In terms of the countries selected for detailed study in this report, this affects all countries except the USA and Canada, which will continue to use their own national accounting standards (the Generally Accepted Accounting Principles, or GAAP). However, the IFRS – GAAP convergence project is also working towards greater alignment and harmonisation between North American accounting standards and the international accounting standards adopted by a significant proportion of the international community. This move towards harmonisation will impact on the company level indicators in the following year, as the majority of international oil and gas companies comply with the shift to IFRS for accounting periods starting on or after 1 January 2005.

The main source of differential country performance, therefore, comes not from differences in accounting standards, but from differences in securities regulations. Securities regulations incorporate and can go beyond accounting regulations in their disclosure requirements affecting the extractive industries. This explains Canada's significant lead due to its mandatory securities regulations that require country-level disclosure across a wide range of financial information.

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The future trend is towards harmonisation of securities regulations. For example, European securities regulations are currently being reformed as part of a package of financial measures (under the umbrella of the Financial Services Action Plan) to upgrade information requirements for the benefit of investors. The regulatory structure that governs the co-ordination of the conditions for the admission to official stock exchange listings and the information to be published on those securities at the community level are provided by three key directives, which are summarised in the box below.

This move towards international harmonisation of accounting and securities regulations is a double-edged sword for stakeholders pushing towards greater corporate disclosure in the extractive industries. On the one side, it provides a centralised and cost-effective focus for lobbying efforts. For example, the ongoing IASB research on accounting standards relating to the extractive sector will inform future sectoral accounting standards and welcomes inputs from any constituents.<sup>21</sup> Likewise, the European Directives towards harmonisation of securities regulations provide another centralised route for pressure. On the other

### **European harmonisation of securities regulations**

#### **Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001**

This Directive outlines the information requirements to be published for admission of securities to official stock exchange listings (Official Journal L 84 of 6 July 2001). It includes an explicit reference to additional requirements for the extractive sector:

*"For mining, extraction of hydrocarbons, quarrying and similar activities insofar as significant, description of deposits, estimate of economically exploitable reserves and expected period of working. Indication of the periods and main terms of concessions and the economic conditions for working them. Indication of the progress of actual working."*  
(Annex I para 4.1.3)

#### **Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003**

This Directive outlines the information requirements for the prospectus to be published when securities are offered to the public or admitted to trading. This provides amendments to Directive 2001/34/EC and provides text with specific EEA relevance. (Official Journal L 345, 31/12/2003 P.0064 – 0089). This Directive entered into force on 31 December 2003, and the final date for implementation in Member States is 1 July 2005.

**Directive of the European Parliament and of the Council** on the harmonisation of transparency requirements with regard to information about issuers whose securities are admitted to trading on a regulated market (amending Directive 2001/34/EC). Political agreement on the proposed '**Transparency Directive**' was reached in the European Parliament in March 2004 and confirmed at the ECOFIN Council of 11 May 2004. Formal adoption is scheduled for autumn 2005. The new Directive will have to be implemented by Member States within two years. The Transparency Directive implies high level – rather than full – harmonisation, whereby the issuer's home Member State may continue to impose more stringent periodic or ongoing disclosure requirements.

side, the move towards harmonisation runs the risk of a lowest common denominator outcome. Existing EU Directives allow for more stringent disclosure requirements at the Member State level. This could be used to push for incentives and provides scope for a race to the top in disclosure standards.

## 2. Extractive industry sectoral codes and standards

Another source of information affecting corporate disclosure and country scoring across Category B indicators is specific extractive sector accounting and industry protocols. The most significant of these is the recent publication of International Financial Reporting Standard 6: *Exploration for and Evaluation of Mineral Resources* published by the IASB in December 2004. A summary of the objectives and scope of IFRS is provided in the box [overleaf], together with highlights of the outstanding issues still to be addressed.

In terms of this piece of work, IFRS 6 will *not* require mandatory disclosure of corporate revenue payments to host governments. However, it does require disclosure of profit taxes by business or geographical segment and allows for disclosure of significant payments (such as production entitlements; royalties; bonuses) to host governments (IAS 1, paras 103; 81-83). The use of these paragraphs for disclosure of significant items is noted by IFRS 6 in the Basis for Conclusions. In addition, IFRS 6 will affect Category B indicators covering more general supportive disclosure in the following key ways:

- requirement to treat exploration and evaluation of assets as a separate class of assets for disclosure
- provide clarification and guidance on the measurement and reporting of exploration and evaluation activities.

IASB acknowledge that this is an interim and very limited extractive sector standard. IASB research into a more comprehensive international standard for the extractive industries is currently being undertaken by

staff from the national accounting standard setters in Australia, Canada, Norway and South Africa. The first progress report of the research team is expected in April 2005 at the 'national standards setters' meeting at the IASB offices in London. Details of the meeting and the research reports will be made publicly available. Some of the outstanding issues still to be addressed by the IASB are noted in the box [overleaf].

In addition to the extractive industry accounting standard issued by the IASB, there are a number of extractive sector codes and standards that operate at the country level. For example, the South African Code for Reporting of Mineral Resources and Mineral Reserves (the SAMREC Code); the Statement of Financial Accounting Standards 19 and 69 (FAS 19; FAS 69) covering oil and gas sector accounting and disclosure requirements in the USA; the Australian Code for Reporting of Mineral Resources and Ore Reserves (the JORC Code) in Australia; and the Statement of Recommended Accounting Practice for Oil and Gas Exploration, Development, Production and Decommissioning Activities (SORP) in the UK.

This research shows that these different codes, standards and protocols have different regulatory authority across countries. For example, the UK SORP provides recommended accounting practice in the oil and gas sector but is not a mandatory requirement of accounting standards or securities regulations. In contrast, the SAMREC Code in South Africa sets a minimum standard for public reporting in the minerals sector which is explicitly incorporated into the JSE Listing Rules. Likewise, FAS 19 and 69 in the USA and the JORC Code in Australia represent mandatory reporting requirements.

The high level of specificity and mandatory nature of the US and Australian codes (that cover oil and gas) ensure a more distinguished country ranking in the category B indicators than those countries that have no known sector-specific protocols relating to the oil and gas sectors (for example, Russia and South Africa).

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### 3. Making better use of existing room for manoeuvre

In addition, there is considerable scope to exploit 'grey' areas in existing accounting and securities regulations. For example, International Accounting Standards (IAS

1; para 103; 81-83) could be used for disclosure of significant revenue payments such as production entitlements; royalty payments and bonuses paid to host countries.

#### IFRS 6 Exploration for and evaluation of mineral resources

##### Objective

The objective of this IFRS is to specify the financial reporting for the exploration for and evaluation of mineral resources. In particular, the IFRS requires:

- limited improvements to existing accounting practices for exploration and evaluation expenditures
- entities that recognise exploration and evaluation assets to assess such assets for impairment in accordance with this IFRS and measure any impairment in accordance with IAS 36 (Impairment of Assets)
- disclosures that identify and explain the amounts in the entity's financial statements arising from the exploration for and evaluation of mineral resources and help users of those financial statements understand the amount, timing and certainty of future cash flows from any exploration and evaluation assets recognised.

##### Scope

An entity shall apply the IFRS to exploration and evaluation expenditures that it incurs. The IFRS does not address other aspects of accounting by entities engaged in the exploration for and evaluation of mineral resources. An entity shall not apply the IFRS to expenditures incurred:

- in activities that precede the exploration for and evaluation of mineral resources
- after the technical feasibility and commercial viability of extracting a mineral resource are demonstrable.

##### Outstanding issues

This interim standard provides guidance for entities transitioning to IFRS before a comprehensive standard is developed. Some of the outstanding issues that need to be addressed in any future standard include the following:

- standardisation of accounting for and disclosure of reserve quantities and values as a key indicator of extractive sector performance
- consistent method to account and report for exploration and evaluation activities
- cost centre reporting at the country level
- separate disclosure of significant revenue payments (such as royalties, production entitlements and bonuses)
- disclosure of different legal and risk-sharing arrangements
- accounting for and disclosure of joint ventures.

Sources: IASB(2000);<sup>22</sup> PWC (2004)<sup>23</sup>

### 3.4 Results – Access to information (ATI)

Exploring the usefulness of access to information (ATI) laws and systems to improve transparency of revenue payments is a new area of analysis. The following represents the product of a first major phase of data gathering. During future phases of ‘measuring transparency’, findings may need to be refined.<sup>24</sup> The table [overleaf] shows the detailed scores by country with the overall rank of each country (in alphabetical order).

The full country-by-country profiles (with explanatory notes) for access to information indicators are available on the website.

#### Key findings for Access to information

##### 1. Gold standard policy – South Africa

No single country scores more than 48 per cent.

South Africa is the leader, mainly because of its ‘gold standard’ ATI policy. Backed by constitutional right, this provides for access to information wherever this is needed for the protection or exercise of another right. This covers access to information held by parastatals. Uniquely, and most importantly, it also covers information held by the private sector and extends to non-citizens of South Africa. The caveat that the access must be necessary for the protection or exercise of another right has been broadly interpreted to include statutory and common law rights, as well as constitutional rights. This encompasses all conceivable rights that would arise in respect of the conduct and public accountability of oil and gas companies. Moreover, the right is enjoyed by non-citizens as well as citizens of South Africa. This has great potential in terms of accessing information on revenue payments from companies to host governments. However, South Africa has a poor record to date in terms of general ATI performance and few cases focusing on the private sector have been brought so far under this relatively new law.

##### 2. Good existing ATI systems could be extended to cover key areas

Canada has the best system in the world in terms of facilitating access to public documents, with a well-developed and respected enforcement body – the Federal Freedom of Information Commissioner. Canada’s ATI law, however, is seriously deficient in that it only covers information held by government agencies.

On one level, the United States has one of the best systems of access to information in the world. Public records are provided in response to millions of requests from citizens. But the strength of its ATI regime has been seriously diluted, first by the chronic nature of the delays in responding to requests, and second by retreats from its well-developed policy of proactive publication of information sanctioned by Attorney-General Ashcroft following the 9/11 attacks. These types of problem are worsened by the absence of a specialist federal oversight body. Also, ATI law does not cover the private sector.

The UK has recently established new policy and systems. Though they do not cover information held by the private sector, they are generally well constructed. However, there has been insufficient time to judge whether government will be able to overcome its historical culture of secrecy. If the UK complies with its new duties under the Freedom of Information Act, then its score will rise rapidly up the table.

Canada, the Netherlands and, to a lesser extent Australia and Norway, have good systems in relation to information held by public agencies. However, these do not extend to either parastatals or the private sector.

##### 3. Laggards in policy and practice

Russia appears at the bottom of the ranking. Not only is its legal right to access to information very limited, but also all the available evidence suggests that it is very hard to use and is a very blunt instrument in terms of permitting access to information.

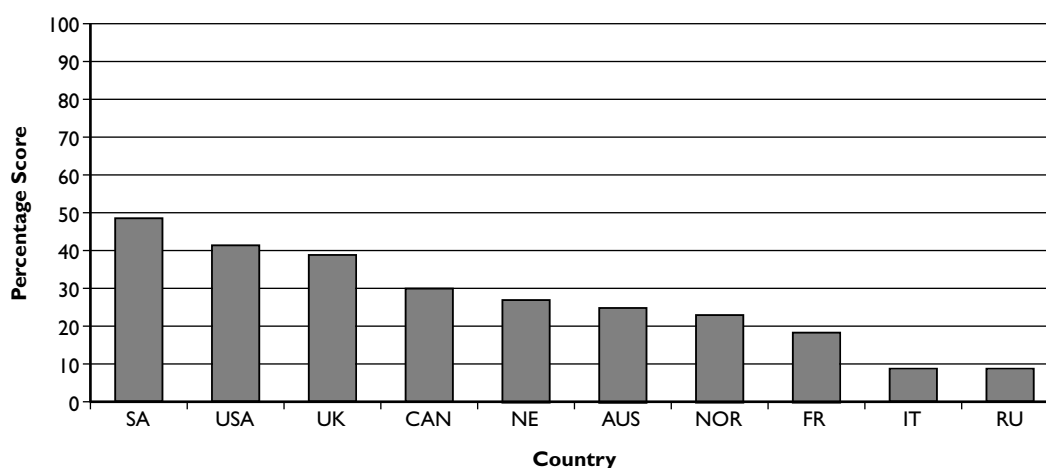
Italy also has major problems in terms of law, management and performance. France disappoints,

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**Table 4: Home government performance on access to information**

Country	AUS	CAN	FR	IT	NE	NOR	RU	SA	UK	USA	Max score
<b>Policy</b>											
1 Is there a right to access to information enshrined in law or in the Constitution?	1	1	1	1	1	1	1	1	1	1	1
2 In law, does the legal right extend to cover information held by a parastatal such as a state oil company?	0	0	0	0	3	0	0	3	3	3	3
3 In law, does the legal right to access to information extend to cover information held by a private corporation?	0	0	0	0	0	0	0	5	0	0	5
4 Are there any exemptions or blanket exclusions that negate the obligation to grant access to information in relation to extractive industries?	1	1	1	1	1	1	0	1	1	1	1
5 Are there exemptions balanced by a Public Interest override protection?	0	0	0	0	0	0	0	1	1	0	1
6 Does the law include any duty to disclose proactively – ie, without a request for information under the law?	1	1	0	1	1	1	1	1	1	1	1
<b>Management</b>											
7 Are there adequate procedures and infrastructure? Does it provide a useable right of access?	3	4	2	1	6	3	1	6	6	6	15
8 Is there an enforcement mechanism (such as an information commission or appeal tribunal) and is it independent?	1	1	1	0	0	1	0	0	1	0	1
<b>Performance</b>											
9 Is there effective implementation of the access to information right and does government comply with the legal duties, in terms of time limits and other procedural requirements?	3	4	2	0	0	2	1	3	2	6	15
10 Is the enforcement mechanism accessible, affordable and efficacious?	1	1	1	0	0	1	0	0	1	0	1
<b>Total Score (C)</b>	11	13	8	4	12	10	4	21	17	18	44
<b>Max Score (C)</b>	44	44	44	44	44	44	44	44	44	44	44
<b>Weighted Total Score (C)</b>	5.438	6.426	3.95	1.98	5.932	4.94	1.977	10.38	8.403	8.898	21.75
<b>Weighted Max Score (C)</b>	21.75	21.75	21.8	21.8	21.75	21.8	21.75	21.75	21.75	21.75	21.75
<b>Weighted Percent Score (C)</b>	25	29.55	18.2	9.09	27.27	22.7	9.091	47.73	38.64	40.91	100
<b>Weighted Rank (C)</b>	6	4	8	9	5	7	9	1	3	2	

Please note: With regard to indicator 9 covering 'effective implementation', scores of 0 were assigned to Italy and the Netherlands because insufficient information was available from public sources to make an assessment, and requests for clarification from government departments were not answered on this issue. With regard to all indicators for Russia, very limited information was available from public sources or provided by government departments. The UK's new ATI law only came into implementation in January 2005. For this reason it is assigned a low score for current level of implementation (indicator 9). This will rise rapidly if progress is in line with agreed plans for implementation of the law. Therefore these figures should be treated with a degree of caution.



**Chart 4: Home government support for access to information**

and needs to substantially improve both its law and its management and compliance standards. Both France and Italy are renowned for bureaucratic cultures of secrecy.

#### **4. ATI held by government – most developed but least useful**

In general, the older ATI laws – those of Australia and Canada – only cover public information held by government departments. This is mainly due to the fact that they were passed before the revolution in the structure of the state that occurred during the 1980s and 1990s, when many public functions were outsourced or privatised.

Such laws only assist in accessing information on revenue payments paid by companies to host governments where such information is held by government departments. At present, this is extremely rare. To improve transparency under existing ATI legislation, home governments should increase the requirements on the information to be reported to government, the content of which is outlined in categories A and B.

#### **5. ATI held by parastatals – moderate coverage and usefulness**

More modern ATI laws tend to cover private entities that are performing a public function and state-owned companies. As stated, these include the USA, UK, Netherlands and South Africa. In contrast, the Norwegian Freedom of Access to Information Act only

permits access to documents held by the public administration. In Canada, there is concern about the growing number of quasi-governmental organisations that perform public functions but operate outside the Freedom of Information law. ATI laws should extend to such bodies. And, especially where home countries have state-owned oil and gas companies operating in other territories, ATI laws should cover the revenue payments of such bodies.

#### **6. ATI held by private companies – least coverage but most useful**

This is the most useful type of ATI since it would allow a requestor to ask an EI company to disclose the payments they make to host governments. Only South Africa's Promotion of Access to Information Act (PAIA) of 2000 covers information held by the private sector where access is necessary for the protection or exercise of another right. Of the ten countries reviewed, this is the most important comparative finding.

A review of Australia's Commonwealth Freedom of Information Act of 1982 missed an opportunity to extend it to the private sector. The review argued that the private sector was already accountable to the community through regulatory schemes and voluntary codes of practice.<sup>25</sup> However, these are inadequate to address the importance of revenue transparency in reducing corruption and improving resource use and the impact of companies on communities outside the home country.

In the United States, the need to legislate to improve business transparency is reflected in the passage of an environmental law called the Emergency Planning and Community Right to Know Act in 1986.<sup>26</sup> This has resulted in businesses long accustomed to disclosing little or no information about their operations increasingly feeling a legal obligation to open their plant doors – and sometimes even their decision-making processes – to residents of their community and other stakeholders. However, this does not yet extend to country-by-country revenue payments transparency.

ATI law in the other nine countries of the study should be reformed to reflect the gold standard established by South Africa, such that they include access to information held by the private sector where this is necessary for the protection or exercise of another right.

### 7. Non-citizens right to access information

Finally, it is worth noting that in all countries except Canada, a non-citizen may avail themselves of the legal right to access information. This means that anyone from a host country where extraction is taking place could in theory request information from home governments.

### 8. Exemptions

There are a number of common exemptions in the ATI laws that could dilute the obligation to grant access to information in relation to the extractive industries. These include commercial information, financial agreements with business and industry, trade secrets, and third party information. As noted above, many ‘normal’ exemptions that are included for good reason in ATI laws may be abused by bureaucrats if they are minded to defeat the public policy objectives of the ATI law. In Norway, it is for the King to prescribe exemptions when particularly weighty reasons so indicate.<sup>27</sup> No examples are cited in the law. The UK Freedom of Information Act contains many exemptions and has already been criticised by non-governmental organisations and politicians across the political spectrum as being insufficient and weaker than the existing code of practice.<sup>28</sup>

For this reason, it is important to have a public interest override clause. Only the ATI laws of Australia, South Africa and the UK have such a clause. Where the public interest in disclosure outweighs the public interest in withholding the information in accordance with an exemption, the information should be disclosed. For an ATI law to be effective in promoting transparency in the oil and gas industries, where the vested commercial interests are so intense and the possibilities of corruption significant, it is essential that such a public interest override be present.

### 9. Proactive disclosure

Except for France and the new UK Freedom of Information (FOI) law, all the other FOI laws include a duty to disclose information proactively without the requester always having to make a formal request. For some countries, such as Italy, this is limited to publishing information concerning the institution and its functions or, in the case of Norway, an electronic index of all available records. In Australia, Canada, the Netherlands, South Africa and the USA, the requirement includes regular publication of manuals, plus annual and financial reports.

### 10. Management systems

Good implementation relies on investing in creating awareness about the law, minimum formalities in submitting requests, proper records management and appointment of adequate information officers.

Minimum access fees are also vital. In Norway and Italy, documents are generally provided free of charge. In South Africa, there is an access fee of R35 (US\$10), with additional costs depending on the size and language of the required information. In the UK and USA, fees for disclosure are determined by the public authority in accordance with regulations.<sup>29</sup> In Australia, the current freedom of information fee regime is the subject of considerable criticism. Applicants complain that costs are high and that they pay even if all the documents they request are withheld on the basis that they are exempt. Journalists can show estimated fees of several thousand dollars.<sup>30</sup> In Canada, attempts to increase revenues by selling information and increasing

processing fees may undermine equal access to government information.<sup>31</sup>

Freedom of information requests are generally made in writing to public agencies. In cases where a requester is illiterate or disabled, public officials should assist the requester accordingly. This is explicitly contained in the South Africa and UK laws and, for the former, information should also be provided in the language in which it is requested.

### 11. Enforcement mechanisms

A combination of internal, external and independent enforcement mechanisms exists among the ten countries.

Australia has an independent Administrative Appeals Tribunal as well as judicial and ombudsman review. Canada has an independent Information Commissioner who can investigate complaints but does not have powers to issue binding orders. In France, the Committee of Access to Administrative Documents (CADA) is charged with oversight of the Act, while appeals are handled by administrative courts. Norway also has an internal appeal system and the Ombudsman provides oversight. There have been no cases where an appeal has been made to a court in the 30 years of the Norwegian Act.<sup>32</sup> The UK law creates the office of an independent Information Commissioner with the power to receive complaints and issue decisions. Appeals will be made to the independent Information Tribunal.

A number of states in the USA have information commissions that review decisions, but there is no central oversight body. Courts are the only point of external review in the Netherlands, South Africa and the USA. This effectively prevents users from enforcing their rights because of the costs and significant delays involved in bringing cases.<sup>33</sup> In Italy, there is an oversight committee under the Office of the Prime Minister known as the Committee on Access to Administrative Documents. Appeals can be directed to a regional administrative court. The internal system tends to uphold the denials and results in more delays rather than enhancing access.<sup>34</sup>

An independent enforcement mechanism is essential to ensure delays and costs do not prevent cases being brought and successfully processed.

### 12. Compliance and performance

The knowledge that decisions and processes are open to scrutiny, including under the Freedom of Information Act, imposes a constant discipline on behaviour. In Australia, the Freedom of Information Act has had a marked positive impact on the way government agencies make decisions and the way they record information. The assessment is not entirely positive, however. A number of dissatisfied users of the Act contend that it is not achieving its objectives.<sup>35</sup>

In Canada, in their 1998 review, the Information Commissioner considered the Act a success. However, delays, excessive secrecy, improper record handling, fees and political interference were cited as barriers. Citizens have experienced instances of malicious non-compliance and adversarialism.<sup>36</sup> Since then, most agencies have substantially improved their procedures and delays have dropped.

In Norway, an analysis in September 2001 found that in terms of withholding information in breach of the Freedom of Information Act, the worst offenders were the Foreign Ministry, Defence Ministry and Petroleum and Energy Ministry.<sup>37</sup> There is dispute as to how well the law is working in the Netherlands. Although the general rule is that government information should be available to citizens, this is not always the case.<sup>38</sup>

In South Africa, a 2003 monitoring study on access to information revealed serious problems with implementation of the Promotion of Access to Information Act (PAIA), hailed as a good law on paper.<sup>39</sup> Among these were a general lack of awareness of the law's existence and purpose, inadequate training in information delivery, and a widespread misunderstanding of the role of accountability in government. A further study testing compliance found that government departments were more likely to ignore a request for information than respond to it (62% of completed requests received no response at all).<sup>40</sup>

### 3.5 Results – Broad governance environment

This section assesses the degree to which each home country’s broad governance environment supports transparency and accountability.

The full set of country-by-country profiles (with explanatory notes) for the broad governance environment indicators is available on our website, at [www.savethechildren.org.uk/measuringtransparency](http://www.savethechildren.org.uk/measuringtransparency).

#### Key findings for broad governance environment

The results have the same laggards as the A and B indicators, with Russia and South Africa scoring poorly. The leaders, however, become the Netherlands and Norway, where a long-standing culture and practice of openness, regulation and stability results in a high overall score. Australia also scores well in this category, in contrast to its performance in the other categories. This is then followed by the familiar cluster of Canada, the UK and USA occupying the fourth, fifth and sixth slots, rather than the top slots which they have taken for Categories A and B.

Table 5: Broad governance environment

Country	AUS	CAN	FR	IT	NE	NOR	RU	SA	UK	USA
1 Voice and accountability	0.94	0.95	0.88	0.84	0.98	0.99	0.34	0.71	0.94	0.91
2 Political stability	0.90	0.87	0.71	0.73	0.96	0.97	0.33	0.43	0.74	0.56
3 Government effectiveness	0.93	0.95	0.91	0.80	0.99	0.93	0.44	0.69	0.98	0.91
4 Regulatory quality	0.95	0.94	0.86	0.84	0.99	0.92	0.44	0.69	0.98	0.91
5 Rule of law	0.95	0.94	0.88	0.76	0.95	0.97	0.25	0.60	0.94	0.92
6 Control of corruption	0.94	0.96	0.89	0.76	0.96	0.95	0.21	0.68	0.94	0.92
<b>Total Score (1–6) (D)</b>	5.6	5.6	5.1	4.7	5.8	5.7	2.0	3.8	5.5	5.1
<b>Max Score (D)</b>	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0
<b>Weighted Total Score (D)</b>	8.1	8.1	7.4	6.9	8.5	8.3	2.9	5.5	8.0	7.4
<b>Weighted Max Score (D)</b>	8.7	8.7	8.7	8.7	8.7	8.7	8.7	8.7	8.7	8.7
<b>Weighted Percent Score (D)</b>	93.5	93.4	85.4	78.8	97.2	95.5	33.6	63.2	92.0	85.6
<b>Weighted Rank (D)</b>	3	4	7	8	1	2	10	9	5	6

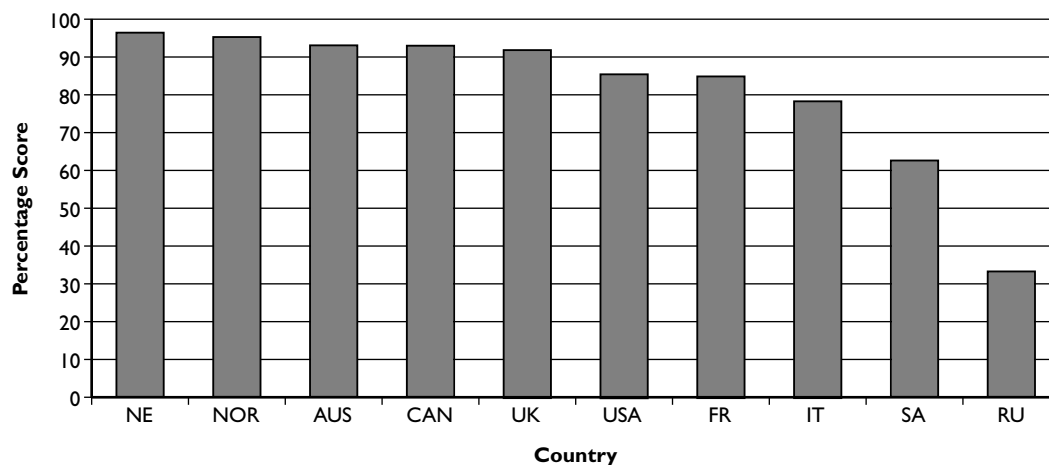


Chart 5: Broad governance environment

## 4 Conclusions and recommendations

The following section addresses results from categories A and B (revenue payments transparency and supportive disclosure), followed by those from category C (access to information) and D (broad governance environment).

### 4.1 Revenue transparency and supportive disclosure – all countries

#### Golden opportunity – take advantage of current moves towards reform

Beyond the rhetoric, most of those who have made commitments to transparency in the extractive industries have taken little concrete action. In particular, they have done nothing to improve the regulations governing company transparency, even though they have the power to require them to publish what they pay to host governments wherever they operate.

But right now, the biggest reform in accounting standards for over 25 years is underway. In turn, this is prompting significant reviews and reforms in other financial regulations such as securities. This provides a golden opportunity for home governments to mainstream revenue payments transparency into a global standard for disclosure. The outcome of the reform agenda will impact on disclosure standards worldwide for many years to come.

#### Recommendations – the time for action is now

- Home governments should seize the opportunity of reforms in financial regulations to ensure that companies operating within their jurisdiction publish what they pay to governments in all the countries in which they operate.

- This should begin with a G8 declaration in support of global standards for disclosure as part of its Action Plan on ‘Fighting Corruption and Improving Transparency’.
- Investors, civil society and companies interested in better revenue use and improved local ‘licences to operate’ for companies should engage with regulators to make the most of this unique window of opportunity.

#### Opportunities for improved accounting standards

An research project is currently being undertaken by the IASB to develop a more comprehensive international accounting standard for the minerals sector, IFRS 6. Most IASB meetings are open and materials and dates of future meetings are posted on the IASB website ([www.iasb.org](http://www.iasb.org)). The discussion paper is due to be published early in 2006.

A convergence project between International Financial Reporting Standards and Generally Accepted Accounting Principles (GAAP) is ongoing. With commitment to learn from best practice, this could raise the global bar on disclosure. However, without it there is a danger that the process could lower the bar to lowest common denominator.

Some existing accounting standards already provide a number of ‘grey areas’ where there is scope for information to be provided on revenue payments. For example, IFRS provides a number of areas where information for indicators A and B could be disclosed – eg IAS 1 (paras 103; 81-83) allows for disclosure of significant payments (such as production entitlements; royalties; bonuses) to host governments. This existing scope could be much more readily used by members of EITI and Publish What You Pay.

### Focus on improving securities regulations

As well as the harmonisation of international accounting standards, there are also moves towards harmonisation of securities regulations at the European level (under the auspices of the Financial Services Plan). These include EC Directive 2001/34/EC and amendments via the 'Prospectus Directive' and the 'Transparency Directive'. These offer significant points of influence as national governments prepare their own legislation in accordance with the requirements of these Directives. For example, the UK Government has published its own consultation draft to revise the UK Listing Rules and other European countries will be doing the same.

However, the disclosure power of securities regulations is often diluted by various relaxation or exemption clauses. For example, in the USA, foreign private issuers are exempt from some of the disclosure requirements of US registrants, whereas Canadian securities regulations provide certain relaxations that could be used to significantly curtail the requirement of providing disclosure by country. Similarly, both UK and Dutch companies disclose revenue payments to government from domestic oil and gas operations, whereas this is not required for foreign operations.

Again, any harmonisation of standards must avoid lapsing into any decline to the lowest common denominator, but rather build on best practice. Incorporation of industry codes of best practice into accounting and securities regulations can be very powerful. For example, the Joint Ore Reserves Committee (JORC) code has been incorporated into Australian listing rules. Conversely the power of the Statements of Recommended Practices (SORP) in the UK is weakened by its 'best practice' rather than mandatory nature.

Many countries reported a lack of co-ordination between different government departments about disclosure commitments in the extractive sector. For example, a number of accounting standard setters were not aware of their government's commitment to the

EITI or the G8, or the implications it could have for accounting or securities regulations.

### Recommendations – Ensure accounting and listing requirements support transparency

- The International Accounting Standards Board managing IFRS and securities regulators must ensure reform results in:
  - disclosure of revenue payments by companies in the extractive industries
  - disclosure on a country-by-country basis, not by segment or geographic area
  - avoidance of exemptions that would seriously curtail appropriate disclosure.
- All regulators involved in convergence should focus on a 'race to the top' in standards rather than any lapse into the lowest common denominator.
- Home governments must express political support for such reforms.
- Civil society, including non-governmental organisations (NGOs) and investors, should engage strongly to push for these reforms. The indicators included in this 'Measuring Transparency' framework and a 'gold standard' IFRS currently under development by Save the Children UK and Global Witness will provide a good platform for this engagement.
- Where existing accounting standards provide 'grey areas' on scope for publishing of revenue payments, these need to be utilised by companies, NGOs and investors.
- Home governments need to ensure 'joined-up' policy between accounting, listing and EITI minimum standards. The UK government should lead on this if the EITI is to remain relevant as a standard bearer in the sector.

## 4.2 Access to information – all countries

### Improving ATI held by the private sector

If access to information (ATI) legislation covered information held by the private sector, this would

potentially allow a citizen to request and get information about payments made by companies to host governments. Because of the dominant role of private companies in the global oil and gas sectors, this aspect of ATI legislation is the most important.

In South Africa, the policy framework is the most progressive in that it is the only country of the ten to provide a comprehensive right of access to private information, where access is necessary for the protection or exercise of another right. The extractive industries are a prime example of the relevance of this approach. Companies in the oil and gas sectors have had a huge impact on the social and economic environment and on ordinary people's lives. The South African approach is to say that those companies must be just as transparent and accountable in the use of their private power as government is in the use of its public power.

### **Improving ATI held by parastatals**

Information on revenue payments to foreign host governments is also held by state-owned companies that are operating outside the home country territory. Only in four of the ten countries does the ATI law cover state-owned companies and private entities performing a public function – the USA, UK, Netherlands and South Africa.

### **Improving ATI held by governments**

All the countries have access to information (ATI) that covers information held by government departments. However, currently little information is held on revenue payments by companies to host governments, so this is of little use.

### **Improving the policy and practice of all aspects of ATI**

Certain principles of law and practice should be applied to help ensure that the implementation of the law will serve to facilitate a meaningful and useable system of access to information.

### **Recommendations – extending ATI to support EI revenue payments transparency**

- The ATI law in other countries should be reformed to build on the 'gold standard' of South Africa to cover access to information held by the private sector where this is necessary for the protection or exercise of another right.
- Within South Africa, precedent needs to be set by making these kinds of information requests concerning company revenue payments to governments around the world.
- ATI law should also extend to parastatals, especially where home countries have a partial or full stake in any oil and gas companies operating in other territories.
- To improve revenue payments transparency under existing ATI legislation, home governments should increase the requirements on information to be reported to government, the content of which is outlined in the indicators for categories A and B.
- Exemptions concerning third party or commercial information, or national economic interest, should be kept to a minimum.
- Such exemptions should be balanced by a public interest override provision, which says that where the public interest in disclosure outweighs the harm that may be caused by disclosure (and which the exemption seeks to prevent), the information should be disclosed.
- For effective implementation, ATI law needs to be backed by:
  - a concerted effort to ensure that political will is built up and sustained
  - champions of openness encouraged
  - training for bureaucrats conducted to help shift the mindset of secrecy
  - detailed procedures put in place for the handling of requests.
- Provision for a specialist, accessible and affordable enforcement mechanism such as an independent Information Commissioner is also essential.
- Best practice is served by encouraging a 'right to know' approach to the organisation and dissemination of information, largely through the proactive publication of information.

### 4.3 Broad governance environment

The high scorers in this category – the Netherlands, Norway and Australia – should look at the contrast with their scores in the categories of revenue transparency and supportive disclosure and seek to extend their general culture and practice of openness and good regulation to transparency in the extractive industries.

### 4.4 Measuring transparency framework – future development

The framework presented here provides a strong base for the development of internationally appropriate standards for home governmental support of transparency.

#### Recommendations

- The indicators should be used as a benchmark wherever transparency standards are required, eg, by regulators, rating agencies, investors, international financial institutions, reporting initiatives, companies, etc.
- Analysis of the ten countries should be repeated in a year's time to determine progress. Ideally, this will be done by a body that will act as the long-term institutional 'home' for the framework and its application.
- Future phases should extend the analysis to cover the mining sector and host governments. (A parallel report in this phase is already covering company performance.)

### 4.5 Country-specific recommendations – revenue payments and supportive disclosure

#### Australia

- Extend the range of disclosure requirements of JORC to include revenue payments to host governments.

- Require this information to be reported on a country-by-country basis.
- Join the international effort to improve extractive sector transparency by becoming a member of the EITI.

#### Canada

- Remove various exemption and relaxation clauses that curtail the power of existing financial regulations.
- Tighten up on the requirement for country-by-country disclosure.
- Extend the requirement for royalties disclosure to other financial and non-financial flows to government (such as production entitlements, bonuses and fees).
- Use its leadership example by moving from being an observer to a participant in the EITI.

#### EU/EEA (including France, Italy, the Netherlands, Norway, the UK)

- Accelerate the early adoption of the Directives under the Financial Services Plan.
- Member countries should regard this as a minimum standard for disclosure and push for progressive national standards using Canadian Securities Regulations as an example of good practice.
- This reform agenda should be open and transparent and welcome multi-stakeholder inputs into the consultation process.
- Similarly, the development of a more comprehensive international accounting standard for the extractive sector should take multiple stakeholder interests into account, moving beyond the traditional focus on investor interests.

#### Russia

- Accelerate the process towards the full adoption of IFRS in national accounting practice. Rectify the lack of a full text of international accounting standards available in Russian, which has contributed to the postponement of the full adoption of IFRS until an unspecified date.

- Revise the securities regulations to incorporate a specific protocol for the extractive sector (using Canadian Securities Regulations as a guide).
- Join the EITI.

#### **South Africa**

- Significantly improve the weak performance identified in this review by the early extension of the SAMREC Code to include the oil and gas sectors as well as incorporating the revised Code into JSE Listing Requirements.
- Join the EITI.

#### **UK**

- Take advantage of its presidency of the EU and G8 this year to lead the call for global standards on company disclosure requirements on a country-by-country basis. As the founder of the EITI, which exhorts host governments to improve revenue transparency, it is somewhat puzzling that the UK Government has taken so little regulatory action within its own jurisdiction on these issues. The need for the UK Government to play this role is compounded by the fact that London is the home of the IASB headquarters and a major stock exchange.
- Ensure joined-up policy in the setting of progressive standards between accounting, listing requirements and EITI requirements.

#### **USA**

- Extend the US-GAAP and IFRS Convergence Project to specifically include accounting standards in the extractive sectors (eg, IFRS 6).
- Move towards consistency between disclosure requirements for US registrants and foreign private issuers with material oil and gas operations.
- Move to country rather than segment-level disclosure in US Securities Regulations.
- Actively engage in EITI.

## **4.6 Country-specific recommendations – Access to information**

#### **Australia**

- Extend the ATI law to cover information held by parastatals/state-owned companies and private companies where access is necessary for the protection of exercise of another right.
- Improve the quality of the access system, its management and government performance and compliance.
- Create a federal specialist ATI body to oversee the working of the Act, with order powers similar to the model of the Western Australian state Information Commissioner.

#### **Canada**

- Extend the ATI law to cover information held by parastatals/state-owned companies and private companies.
- Reform the law to permit non-Canadian citizens to use the legal right to access to information. (Of the ten countries, Canada is alone in limiting the right to citizens.)

#### **France**

- Extend the ATI law to cover information held by parastatals/state-owned companies and private companies.
- Provide the political will to overcome the secretive bureaucratic culture and make use of the potentially strong enforcement agency in the Committee of Access to Administrative Documents (CADA).

#### **Italy**

- Provide the political will to overcome the secretive bureaucratic culture.
- Extend the ATI law to cover information held by parastatals/state-owned companies and private companies.

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- Remove the requirement to demonstrate a legitimate interest in the information requested.
- Create a new enforcement body that is truly independent of the administration.

#### **Netherlands**

- Test the provision in the ATI law that appears to cover parastatal information.
- Extend the ATI law to cover information held by private companies.
- Create a specialist, independent enforcement body with order powers.

#### **Norway**

- Extend the ATI law to cover information held by parastatals/state-owned companies and private companies.
- Add a public interest override to the ATI Act.

#### **Russia**

- Create a modern ATI Act, with a full public participation process to design and pass a strong law that would provide a full legal right to public, parastatal and private information needed to protect or exercise another right.

#### **South Africa**

- Test requests and litigation should be made and identified as soon as possible.

- The ATI law must be immediately reformed to create an independent enforcement and oversight body with powers to order disclosure.
- The gap between policy and implementation needs to be closed.

#### **UK**

- Extend the ATI law to cover information held by private companies.
- Test the provisions of the new ATI law as soon as possible, in order to show that civil society is serious about ensuring that there is full government compliance. In particular, the public interest override provision must be used to assert the public's right to know and to counter-balance the defects in the Act in terms of ministerial discretion and the wide range of exemptions available to government.
- NGOs should work closely with the Freedom of Information Commissioners in Scotland and England to monitor how government responds to requests for information and to ensure that the historical culture of bureaucratic secrecy does not hamper the objectives of the Act.

#### **USA**

- Extend the ATI law to cover information held by private companies.
- Create a federal oversight body.
- Issue an Executive Order reinstating the (forsaken) time limits imposed by the law.

# Appendix I Summary of transparency initiatives and performance measures

Name	Organisation Responsible
<b>1. Extractive Industry Transparency</b>	
a Extractive Industries Transparency Initiative (EITI)	UK Department for International Development
b OECD Project on Revenue Transparency in DRC	Organisation for Economic Co-operation and Development
c Promoting Transparency in the African Oil Sector	Centre for Strategic and International Studies (US)
d Proposed Economic Assistance Conditionality Act	US House of Representatives
e Extractive Industries Review	World Bank Group
<b>2. General Transparency</b>	
a Global Reporting Initiative	Coalition for Environmentally Responsible Awareness and UN Environment Program
b Global Transparency Initiative	NGO consortium
c BankTrack Report on Equator Principles	NGO consortium
d IMF Code of Good Practices and Fiscal Transparency	International Monetary Fund
e OECD Guidelines for Multinational Enterprises	Organisation for Economic Co-operation and Development
f Proposed IAS Accounting Standard	Association for Accountancy and Business Affairs
<b>3. Company Benchmarking Tools</b>	
a FTSE4Good Indices	FTSE
b SRI Biodiversity and Extractives Industry Benchmarking	ISIS, Insight Investment
c Dow Jones Sustainability Indexes	Dow Jones
d S&P Corporate Transparency and Disclosure Study	Standard and Poor's
<b>4. Country Initiatives and Benchmarks</b>	
a Africa Governance Report	UN Economic Commission for Africa (UNECA)
b Bribe Payers Index	Transparency International
c Corruption Perceptions Index	Transparency International
d Country Assessment in Accountability and Transparency	United Nations Development Program
e Democracy Index	Institute for Democracy in South Africa
f Global Integrity Report	Centre for Public Integrity, Washington DC
g Opacity Index	PricewaterhouseCoopers
h Worldwide Governance Indicators Dataset	World Bank

## Appendix 2 Framework of indicators

### A. Revenue payments transparency

#### Policy

- 1 Does the country have a public policy covering transparency of revenue payments globally?
- 2 Does this policy require disclosure of production entitlements of host governments?
- 3 Does this policy require disclosure of royalty payments (in cash or kind) to host countries?
- 4 Does this policy require disclosure of profit taxes paid to host countries?
- 5 Does this policy require disclosure of bonuses paid to host countries?

#### Management

- 6 Does the country assign strategic responsibility for transparency of revenue payments at a senior level?
- 7 Does the country engage with stakeholders to inform its understanding of revenue transparency?
- 8 Does the country use a recognised standard (such as the EITI) to put policy commitment into practice?
- 9 Does the country have an external audit mechanism in place to ensure reliability of revenue payment disclosure?

### B. Supportive disclosure

#### Policy

Does the country's financial regulations, accounting and auditing standards require companies to disclose the following information:

- 10 Names of material subsidiaries
- 11 Names of key properties
- 12 The contract regime (ie, production sharing, concession system, joint venture company, risk services)

- 13 A description of exploration and production activities
- 14 Revenue
- 15 Production costs
- 16 Development and exploration costs
- 17 A measure of profit before tax
- 18 Production volumes
- 19 An estimate of future production volumes
- 20 A measure of reserve quantities
- 21 A measure of reserve values

### C. Access to information

#### Policy

- 1 Is there a right to access to information enshrined in law or in the constitution?
- 2 In law, does the legal right extend to cover information held by a parastatal such as a state oil company?
- 3 In law, does the legal right to access to information extend to cover information held by a private corporation?
- 4 Are there any exemptions or blanket exclusions that negate the obligation to grant access to information in relation to extractive industries?
- 5 Are there exemptions balanced by a public interest override protection?
- 6 Does the law include any duty to disclose proactively – ie, without a requester having to make a formal request for information under the law?

#### Management

- 7 Are there adequate procedures and infrastructure? Does it provide a useable right of access?
- 8 Is there an enforcement mechanism (such as an information commission or appeal tribunal) and is it independent?

### **Performance**

- 9 Is there effective implementation of the access to information right and does government comply with the legal duties, in terms of time limits and other procedural requirements?
- 10 Is the enforcement mechanism accessible, affordable and efficacious?

### **D. Broad governance environment indicators\***

#### **Policy**

- 1 Voice and accountability
- 2 Political stability
- 3 Government effectiveness
- 4 Regulatory quality
- 5 Rule of law
- 6 Control of corruption

*\*From the World Bank Governance Indicators, 2004*

# Endnotes

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3 Please see “reference group members” at [www.savethechildren.org.uk/measuringtransparency](http://www.savethechildren.org.uk/measuringtransparency) for list of review group members and all those consulted for their professional input during this project.

4 See ‘Lifting the Resource Curse: Extractive Industries, Children and Governance’ (2002) Save the Children UK.

5 A ‘gold standard’ IFRS6 based on the framework developed by this report is currently being developed by Save the Children UK and Global Witness.

6 See ‘Lifting the Resource Curse: Extractive Industries, Children and Governance’ (2002) Save the Children UK.

7 See endnote 5 above.

8 J Cady, ‘Does SDDS Subscription Reduce Borrowing Costs for Emerging Market Economies?’, IMF Working Paper, April 2004. *The Opacity Index*, PricewaterhouseCoopers, January 2001.

9 See [www.savethechildren.org.uk/measuringtransparency](http://www.savethechildren.org.uk/measuringtransparency)

10 IFIs are key shapers of and participants in the extractive investment process. IFIs are encouraged to use this methodology as a basis for developing their own codes and conditions for loans and investment to relevant home governments.

11 For more information see ‘Summary of transparency initiatives and performance measures’ at [www.savethechildren.org.uk/measuringtransparency](http://www.savethechildren.org.uk/measuringtransparency)

12 The survey included the WBI Governance Indicators (World Bank); Global Integrity Index (Center for Public Integrity); Opacity Index (PWC); Corruption Perceptions Index (Transparency International); Democracy Index (IDASA); Africa Governance Report (UNECA) and Country Assessment in Accountability and Transparency (CONTACT-UNDP). The survey is available as a part of the online version of this report. See [www.savethechildren.org.uk/measuringtransparency](http://www.savethechildren.org.uk/measuringtransparency)

13 Kaufman and Kraay (2004) *World Bank Governance Indicators*.

14 Please refer to the website at [www.savethechildren.org.uk/measuringtransparency](http://www.savethechildren.org.uk/measuringtransparency) for further information.

15 Canada “cannot commit to the Agreed Actions that are attached to the Statement since those Agreed Actions include a commitment to building policies on actions that are still not fully developed”. (Extract from address by Canada at the EITI meeting, 17 June 2003).

16 National Instrument 51-101, *Standards for Disclosure for Oil and Gas Activities*, September 2003.

17 For example, General Instruction 4 (National Instrument 51-101) states that any item that is not ‘material’ need not be disclosed.

18 [www.savethechildren.org.uk/measuringtransparency](http://www.savethechildren.org.uk/measuringtransparency)

19 General Instruction 6 to Form 51-101F1 in accordance with National Instrument 51-101, *Standards of Disclosure for Oil and Gas Activities* (NI 51-101), September 2003.

20 An interesting response from a Russian accounting expert was that the problem was not so much a lack of information, but rather too much and in a form that is not useful to key stakeholders and investors in particular.

21 Comments should be made in writing and addressed to the Director of Technical Activity, IASB. This project has invited the participation of many of the research team involved in this IASB project, including senior members of the Canadian accounting standards board and the South African Institute of Chartered Accountants (SAICA).

22 IASB (2000) *Summary of Issues: Extractive Industries. Issues for comment by the IASC Steering Committee on Extractive Industries*.

23 PWC (2004) *Crunch Time: Embedding IFRS in the Oil, Gas and Utilities Industries*.

24 Any updated information received after the final editing of this report will be posted on the website at [www.savethechildren.org.uk/measuringtransparency](http://www.savethechildren.org.uk/measuringtransparency)

25 Australian Law Reform Commission, *Open government: a review of the federal Freedom of Information Act 1982*.

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37 Banisar D (2004) *Op cit*.

38 <http://europa.eu.int/ISPO/legal/en/publaw/holland.html>

39 Mayer M and Tilley A (2002) 'Access to information law and the challenge of effective implementation: The South African case' in Calland RR and Tilley A (eds), see endnote 26.

40 Results of ODAC survey into the implementation of access to information in South Africa 2003 in association with Open Society Justice Initiative. [http://www.opendemocracy.org.za/documents/results\\_SA\\_OSJI\\_study.doc](http://www.opendemocracy.org.za/documents/results_SA_OSJI_study.doc)

