Session Report

Please know you may design the structure of this report to better suit the session. It's important to capture the key outcomes and solutions proposed for the future.

Session Title: Who is Behind Clean Energy's Big Names?

Date & Time: Saturday, 10.12.2022, 2:30 pm – 4:00 pm GMT -5

Report prepared by: Alanna Markle, Policy and Research Associate, Open Ownership

Moderated by: Louise Russell-Prywata, Head of Policy and Advocacy, Open Ownership

Panellists:

- **Marie Gay Ordenes - Anti-corruption Lead, Extractive Industries Transparency Initiative**
- **Jennifer Lewis - Deputy Director, USAID Anti-Corruption Task Force**
- **Tobias Musonda - Director Planning and Information, Permanent Secretary, Ministry of Mines and Minerals Development, Government of Zambia**
- **Matthieu Solomon - Acting Governance Programs Director, Senior Governance Officer Natural Resource Governance Institute (NRGI)**
- **Tim Robinson - Chief Compliance Office, BHP**
- **Tetiana Shevchuk - Anti-Corruption Action Centre, Ukraine**

Share the thematic focus of the session, it's purpose and corruption risks?

This session took a deep dive into the important role that beneficial ownership transparency (BOT) can play in supporting a just energy transition. Corruption risks surround the both oil and gas sector as economies transition away from fossil fuels, and the mining sector as demand multiplies for the critical minerals upon which clean energy technologies rely. BOT is a promising and concrete tool that can be deployed

in the development of clean energy, for example to ensure transparency along supply chains and accountability in climate finance. This panel considered the case for BOT to help ensure a just transition, and identified relevant lessons learned from the extractives sector.

Summary of panellists' contributions & discussion points (please be as detailed as possible)

Marie Gay Ordenes - Anti-corruption Lead, Extractive Industries Transparency Initiative

The panellist opened with the concrete example of Myanmar. An early adopter of BOT reforms under the Extractive Industries Transparency Initiative (EITI), Myanmar launched a public beneficial ownership (BO) register for extractive industries in 2020 with the clear objective of understanding the extent to which the military has ownership and participating interest in the sector. Its closure following the military coup greatly reduced the public's ability to understand these dynamics and the extent to which revenues from high value resources such as jade funded the conflict. A year later, we are hearing the same questions about how the oligarchs in Russia are funding the conflict in Ukraine.

Because the extractive sector is so lucrative (e.g. jade production accounted for half the value of Myanmar's GDP), there is an urgent need to guard against the real corruption risks that are being exacerbated. An estimated 40% of production of minerals such as copper, cobalt and lithium will come from countries with weak governance systems and regulatory frameworks.

There are two key lessons that can be learned from extractives and applied to the clean energy sector. The first is that BO information needs to be made available at every relevant stage of the value chain. There is a concern that the fast tracking of mining licences to meet net zero targets will compromise the integrity of screening processes; using BO information in licensing can help detect conflicts of interest or evidence of the use of shell companies. An investigation into possible conflicts of interest in the purchase of wind farms in Argentina offers an example of why procurement and supplier due diligence is important. The second is that BOT can play a role in domestic resource mobilisation (DRM) to ensure that increased profits mean increased revenue for the countries where critical minerals are located. Nigeria's Mining Cadastre Office is a good example of how BO data is being used for DRM.

Jennifer Lewis - Deputy Director, USAID Anti-Corruption Task Force

The panellist noted that USAID's Administrator has three key priorities: climate, corruption, and covid. When it comes to climate, the race for critical minerals is a race against time, and China has stated that taking hold of minerals is part of its national development strategy. USAID sees China's approach as coming at the expense of development strategies of countries the agency is working with to transition to renewable energy in an equitable and inclusive way. It is also the agency's priority to support countries that did not have mineral production previously to make the most

of it for development and DRM, instead of seeing it enrich corrupt actors or grow illicit financial flows.

BOT is a fundamental development tool that has been pioneered by the EITI and which is pertinent to anti-corruption generally. It is a tool though, not the goal. BO registers are not only useful for extractives, but imperative for all sectors of the economy and for governments. However, starting with BO in extractives can open the door from a niche area to broader application across all sectors.

BOT is not a panacea, but an opening salvo. There is still a lot to do on data quality and due diligence in terms of which data is and is not included in a register. In addition, it is important to ensure that BO disclosure flows down the supply chain and doesn't just sit with top level producers. Finally, interoperability is a separate issue and can help ensure all datasets are useful. There is a need to be able to cross-reference data because actors operate in more than one context. Interoperability strengthens the dragnet for corrupt actors.

In terms of what USAID is planning to support, the agency is supporting the EITI Secretariat which is working on BOT in several countries. It also has its own pilots in the Democratic Republic of Congo and Dominican Republic, piloting the application of BO and the EITI standard more broadly in the critical minerals space. On the programme side, the Global Accountability Programme is looking to strengthen the resilience of country-level systems that impede actors from preying on systemic governance weaknesses, such as countries' AML frameworks, enforcement, investigations, and follow the money work. Finally, Under the Summit for Democracy, USAID is committed to the Grand Challenge, which is an approach that has been used in the past for other wicked problems. It includes the initial Just Energy Transition (JET) Minerals Challenge, which BOT will likely be a part of.

Tobias Musonda - Director Planning and Information, Permanent Secretary, Ministry of Mines and Minerals Development, Government of Zambia
The panellist started by setting out the context in Zambia. A major critical minerals producer, it is ranked seventh globally for copper production. BOT is viewed as critical for managing natural resources, and Zambia is promoting it from a policy, legal, and institutional perspective, as well as promoting EITI. From a policy perspective, the country launched a mining resources development policy a few weeks ago to increase accountability and transparency in mineral resources.

Zambia is among the countries that has embedded BOT in its legal frameworks, primarily in its Mines and Minerals Development Act, which promulgates mining rights. The Act provides for a public BO registry that all key stakeholders can access and use. This has been useful for financial investigation agencies and anti-corruption watchdogs in ensuring that details about the ultimate beneficial owners of mining firms match information provided to the mining cadastre, who award mining rights. Currently, data on BO and on directors is provided through a template and screened

at the time mining rights are granted, and this data is cross-referenced with the public register.

However, there have been challenges. The data on the public BO register is bulky and sometimes difficult for people to use to pursue transparency and accountability. The Government of Zambia is working to streamline the data so that it is more user friendly. Another issue has to do with access. The public does not want access to be restricted, so the Government is looking at this as a legal issue to ensure that data remains available.

Tangibly, Zambia has benefited from BO information in its licensing process. An audit of the mining cadastre revealed that there were signs of speculators, some of whom owned more than 50 licences as an individual person or company. When this was cross-referenced with company data, it became clear that these licences were not being used for the benefit of the people of Zambia, but for speculation. This stimulated a change in policy, so that now firms can have no more than 5 licences unless they can demonstrate they have the capacity to use them. In this sense the public register was a panacea for coming up with a new policy.

Matthieu Solomon - Acting Governance Programs Director, Senior Governance Officer Natural Resource Governance Institute (NRGI)
The panellist noted that NRGI has worked with the EITI including on BOT, and encouraged its inclusion in the Standard. The premise behind NRGI's BO engagement is that actors can detect and prevent corruption if they know what risk factors to look for, such as an extractive company trying to gain an unfair advantage and elites trying to exploit the sector for private benefit. One NRGI research project looked at publicly documented cases where someone had tipped off investigators to possible corruption. It found 55% of cases involved hidden ownership in a company competing for or bidding on a public contract, which was used as a red flag.

When thinking about the energy transition, NRGI sees little difference between critical minerals and traditional minerals when thinking about how to reduce corruption risks and politically exposed persons' (PEPs) involvement in licensing in particular. However, more licences are being pushed forward for these minerals, and there is more pressure and geopolitical interest. There may be limited capacity among licencers where demand is high, and there may be different arrangements in terms of who the players are and what contracts are being negotiated.

BOT is not a magic bullet. It won't help fight corruption right away. It is a good starting point, and data is only impactful if it is used to detect, deter, and penalise corrupt conduct. Complementary measures are also needed, here are four ideas:
- Include anti-corruption provisions in extractive sector rules; for example, countries can enact laws restricting PEPs' involvement in mineral licences, which not all have done;
- Establish rules on collecting and publishing BO information as part of licence applications; this decision is a key moment determining the effectiveness of the

project, where the host country has leverage and there there is public interest and scrutiny;

- Screen application for manifest accuracy and corruption problems in the BO information provided; for example where the disclosure is not submitted or certified, where the company claims it cannot identify the beneficial owner, or where there are signs of connections between companies;
- Scrutinise corruption risks in key selected bodies where there is higher risk; for example, projects in a location that is known to be affiliated with a PEP.

Tim Robinson - Chief Compliance Office, BHP

The panellist began with a background on BHP, which is a leading global resources company working in 90 locations around the world. It has a current focus on transition minerals and recognises that a number of these are in countries with higher perceived levels of corruption risk. This presents a fork in the road: if well-governed, their extraction could lift tens of millions out of poverty, but if poorly governed, there are risks including civil conflict, erosion of trust, and a delayed transition. Genuine progress on corruption is therefore critical and is informing the company's investment choices.

The transparency agenda underpins and enables a host of anti-corruption elements, including land ownership rights, community participation, and accountability mechanisms. It is a priority for creating social value from critical minerals. For BHP, BOT also has a business imperative and there is a role for the private sector advocacy that the company is playing. BOT prevents corrupt companies from gaining an unfair advantage in the right to develop these minerals, and promotes a level playing field for legitimate interest in the right to develop these resources.

BHP is a long-time supporter of the EITI. For example, it played a leading role in a forum last year in London getting large players such as Anglo American and others to sign up to a statement of interest which included commitments to the global adoption of BOT, to publishing their own BO data, and which discussed how to identify and use BO data for internal due diligence.

There are three key benefits BHP sees from transparency:
- Levelling the playing field and reducing opportunities for corrupt actors to conceal interest in companies with the right to develop resources;
- Sending a signal that corruption won't be tolerated and will be exposed throughout the value chain, creating a disincentive at all critical processes, from the point of granting of exploration licences to the granting of licences to build a major mine;
- Sending a signal to suppliers indicating that purchasers won't partner with companies that fail to identify ultimate beneficiaries, and that it is not possible to conceal corrupt interests because purchasers will look at this as part of their due diligence and will not proceed unless they are comfortable.

Finally, public registers are important for making due diligence less expensive and more reliable. They offer a starting point for smaller companies with resource constraints to join the fight against corruption. There is great alignment of interests between communities, ethical businesses, and governments in terms of ensuring a level playing field. Companies need to earn host communities' trust, and transparency is fundamental to this.

Tetiana Shevchuk - Anti-Corruption Action Centre, Ukraine
The panellist began with a reflection on the progress that was made in Ukraine on BOT before the war. This did not stop at opening the BO register, but rather its establishment opened the floodgates for more work to be done on the issue. Namely, on the quality of the data on the register and on the possibility of making the data machine readable and in a format that was easier to work with. It was noted that Open Ownership has done a lot of work on the data standard and IT solutions.

Verification of data has been a current focus at AntAC, both in terms of understanding policy solutions regarding what information should be there and incentives to make companies submit data. Incentives can be positive or negative. Positive incentives include procurement benefits for companies, while negative ones can include fines for failure to submit information. There are companies that embrace BO in their work, but some others, including banks who should be interested in it, have opposed these reforms.

There was a need to find common ground to move forward, and a few months ago Ukraine adopted legislation that will allow for validation of the data, if not verification. However, there are still problems with the register, even on the policy side. For example, AntAC wants companies to have to renew data annually, which was not originally implemented as MPs saw it as a burden on companies. AntAC argues that it is not a burden, but a few clicks, and the hope is that Parliament will also pass this in the next few months.

There is a practical application of the register in the energy industry and green energy, but the invasion stopped progress on disclosure by energy companies for now. A study AntAC carried out a few years ago showed that at least one-third of licences were owned by or related to PEPs, and even more were owned by offshore companies. It has been a way to invest money of questionable origin and from polluting spheres. It will be a challenge to start this work again, as 40-50% of the country's energy infrastructure has been destroyed. However, there is hope that the new green energy market will have fairer rules to the game.

Main outcomes of session (include quotes/highlights and interesting questions from the floor)

Highlights from panellist remarks
*"There is a concern that the fast tracking of **mining licences** to meet net zero targets will compromise the integrity of screening processes; using BO information in licensing*

can help detect conflicts of interest or evidence of the use of shell companies." - **Marie Gay Ordenes, Anti-corruption Lead, Extractive Industries Transparency Initiative**

*"There is a need to be able to cross-reference data because actors operate in more than one context. **Data interoperability** strengthens the dragnet for corrupt actors."* - **Jennifer Lewis, Deputy Director, USAID Anti-Corruption Task Force**

*"[From an audit drawing on BO data] it became clear that [some] licences were not being used for the benefit of the people of Zambia, but for speculation. This stimulated a change in policy ... In this sense, the **public register** was a panacea for coming up with a new policy."* - **Tobias Musonda, Director Planning and Information, Permanent Secretary, Ministry of Mines and Minerals Development, Government of Zambia**

*"[Transition minerals] present a **fork in the road**: if well-governed, their extraction could lift tens of millions out of poverty, but if poorly governed, there are risks including civil conflict, erosion of trust, and a delayed transition."* - **Tim Robinson, Chief Compliance Office, BHP**

*"BOT is not a magic bullet. It won't help fight corruption right away. It is a good starting point, and data is only impactful if it is used to detect, deter, and penalise corrupt conduct. **Complementary measures** are also needed."* - **Matthieu Solomon, Acting Governance Programs Director, Senior Governance Officer Natural Resource Governance Institute (NRGI)**

*"[Progress] did not stop at opening the BO register, but rather its establishment opened the floodgates for more work to be done on the issue. Namely, on the **quality of the data** on the register and on the possibility of making the data machine readable and in a format that was easier to work with."* - **Tetiana Shevchuk, Anti-Corruption Action Centre, Ukraine**

Questions from the floor and highlights from panellist responses
What are current trends in data and best practices around data **usability, accessibility,** and sanctions and **enforcement** in BOT regimes?

- Tetiana - There should be a standard for the data, otherwise it's garbage in, garbage out. A lack of penalties for non-disclosure and for inaccurate disclosure is a problem. A problem Ukraine faces is deciding who to fine - director, shareholder, or beneficial owner?
- Tobias - In Zambia, the law provides for sanctions of USD 2,000 for failure to provide BO information, four years in jail, or both.
- Jen - The US is looking at unique identifiers for companies, which in theory would allow you to use data in a cross-sectoral way and lays the basis for cross-referencing of data in global BO datasets.
- Gay - the technical requests we receive from countries for support on verification and compliance indicate that data quality and the comprehensiveness of disclosure are still concerns for many.

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Is the best practice to approach **local communities** at early stages, for example before licences are awarded? An example is used from mining in Serbia.

- Tobias - from our side, a minister must see that there is consent from communities before mining activity can take place.
- Matthieu - When it comes to local communities, the biggest question is about social licence to operate. In areas prone to corruption, it can aggravate social impacts of mining.
- Tim - There is a theme that BOT is not enough, and we all acknowledge that publishing is not enough to solve the problem and win the trust of host communities that will be impacted by the development of transition minerals. BHP is supporting the Disclosure to Development project, which aims at working with countries to enhance understanding and use of the data.

Why is a focus on ownership and control of **state-owned enterprises** an important element of the approach to transparency in the energy transition?

- Matthieu - SOEs are an important and tricky topic, as we are seeing more countries establish SOEs and give them responsibilities for transition minerals; one important focus is on their partnerships, joint ventures and contractors as these are high risk areas in terms of corruption.
- Tobias - SOEs are critical. The Board of Directors are the ones that anchor the operations and in our laws we have defined them as PEPs, so if you are in charge of running a public institution you are accountable if things go wrong.

Key recommendations for the future and concrete follow-up actions

- Use BO data to address corruption risks in mineral **licencing**, from exploration to major mining projects
  - Monitor and legislate to prevent the involvement of PEPs in licences
  - Collecting and publishing BO information at time of licence applications - this decision is a key moment when countries have the most leverage and public interest is high
  - Cross-check BO data that is collected against public registers were possible
- Make BO information available at every relevant stage of the **value chain** and use it for due diligence, creating disincentives for corruption
  - Require BO information from suppliers
  - Don't partner with companies that fail to identify ultimate beneficiaries
- **Improving BO data** quality, accessibility, usability, and interoperability continues to be a priority
  - Effective implementation of BOT reforms means taking an iterative approach
  - Zambia and Ukraine are countries that exemplify this approach

What can be done to create opportunities for scaling up the solutions discussed in the session? And by whom?

- There is alignment between the needs of communities, ethical business and government in implementing BOT to level the playing field in critical mineral development, and this can be better communicated and leveraged.
- When it comes to effectively engaging local communities and creating a social licence to operate, there should be: clear rules, free and priority consent, a grievance mechanism, and community consultation needs to take place as a starting point.
- We know which countries have critical mineral reserves. It is a finite number. As a global community we should be coming together around a collective action approach to support these countries. For example, with peer learning mechanisms and making links between governments and the private sector.
- Further recommendations from Open Ownership and EITI are available in our newly released policy briefing Who Benefits? How company ownership data is used to detect and prevent corruption.

Is there a specific call to action to key stakeholders, such as governments, businesses, funders, civil society, young people, journalists or any other stakeholder that should be noted? Please specify if relevant.

- Civil society - Need for a community of practitioners that will share best practices and solutions to challenges when implementing BOT reforms. To this end, the Opening Extractives Programme is creating a global peer learning group. In January this group will start to create a platform for important discussions of lessons learned.
- Companies - BOT has a business imperative and there is a role for the private sector advocacy, for example to help prevent companies companies from gaining an unfair advantage in the right to develop these minerals
- Governments - Verifying authorities should have the power to ask questions about the data, and data users can encourage them to do so. For example, if banks are inquisitorial in checking data, the register may look at quality more
- Governments - Public registers are important for making due diligence less expensive and more reliable. They offer a starting point for smaller companies with resource constraints to join the fight against corruption.

Rapporteur's name and date submitted

Alanna Markle, 16.12.2022