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: **Anti-Corruption's Next Frontier in Extractive Industries: Procurement of Goods and Services**

Date & Time: **Saturday, 10.12.2022, 9:00 am -10:30 am GMT -5**

Report prepared by: **Samantha Sheppard, Mining Shared Value**

Moderated by: **Mario Picon, Leveraging Transparency to Reduce Corruption, Results for Development**

Panellists:

- **Robert Pitman - Senior Governance Institute, Natural Resource Governance Institute (NRGI)**
- **Gosia Nowakowska-Miller - International Finance Corporation**
- **Jeff Geipel - Managing Director, Mining Shared Value**

Share the thematic focus of the session, its purpose and corruption risks?

The focus of the session was to examine the complexities of the mining and oil and gas sectors beyond large extractive industry companies where attention is often placed, to examine the nearly $1 trillion global market that supplies goods and services to extractive industries. Despite many well-known cases of corruption involving procurement by mining and oil and gas companies, this topic has not received the scrutiny it deserves. The purpose of the discussion was to understand the types of corruption risks that exist in extractive industry procurement, illustrate the case for oversight of procurement and supplying firms, and highlight initiatives and existing tools for deterring corruption in procurement processes.

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

After an introduction by **Mario Picon - Leveraging Transparency to Reduce Corruption, Results for Development, Robert Pitman - Senior Governance Institute, Natural Resource Governance Institute (NRGI)** began by describing the extractive industry supply chain, from a mine site or oil well to the end consumer, narrowing the scope of the discussion to focus only on the suppliers of goods and services to a producing site. Often corruption cases directly involve large, well known, public facing exploration or production companies who own the rights to explore or exploit a resource. However, there is also a myriad of suppliers that must be considered, from large conglomerates to much smaller, specialized companies, as they are often on the receiving end of significant payments. In fact, approximately two thirds of every dollar spent in extractive industries is directed to suppliers, and this spending globally has represented nearly $1 trillion each year prior to the pandemic, which has temporarily reduced activity. Spending on procurement has implications for project costs, and therefore the taxable income that governments can receive. It is also a critical component of local content, to direct spending and employment to local communities.

The Natural Resource Governance Institute (NRGI) examined a host of corruption cases under the Foreign Corrupt Practices Act and found that extractive industries were the most prevalent of all sectors, with over half of these cases involving suppliers. The typology of these cases was analysed, with occurrences in countries across those with frontier industries (Ghana and Mauritania), mature industries (Venezuela and Nigeria), and advanced industries (United Kingdom and United States). The role that state-owned enterprises (SOEs) play in these corruption cases, due to their ability to influence private sector procurement processes through direct purchasing, as regulators, policy makers, or joint venture partners, was also noted, highlighting a need to improve oversight. This led to a discussion of the motives and patterns in corruption cases, as outlined in the 2020 report produced by NRGI titled Beneath the Surface: The Case for Oversight of Extractive Industry Suppliers. These types of corruption include suppliers working to gain rewards or advantages; companies using suppliers to pay bribes or hide channels of influence; political elites manipulating supplier contracting for their own benefit; and economic elites using their influence to tilt the field towards their own companies. The speaker described recent high-profile cases that implicated companies or political elites, and went on to present the main issues with existing corruption enforcement mechanisms. Overall, few governments and companies are taking meaningful action to shed light on this issue, as most procurement processes are hidden from public view. There is also little information available on who is awarded certain supply contracts. Finally, relevant local content laws often allow for too much discretion, where the definition of local is not clearly defined and, for many countries, local content targets and results are not published.

Robert then referred to several initiatives that have been successful in curating information on procurement processes, supplier identities (and in some cases, beneficial owners) and contact information, as well as supplier spend and taxation. Among these are Oyu Tolgoi's procurement portal (Rio Tinto), and the United Kingdom Oil and Gas Authority's Energy Pathfinder tool. He noted that reporting standards are also seeing greater uptake, such as the Mining Local Procurement Reporting

Mechanism (LPRM), Extractive Industries Transparency Initiative (EITI) where countries like Senegal are including procurement data, the Open Contracting Data Standard (OCDS), and the Global Reporting Initiative (GRI). Anti-corruption guidance is also being developed by the NRGI for private sector partners of SOEs.

Gosia Nowakowska-Miller International Finance Corporation, was then posed the question: There are high expectations linked to local content and opportunities for local businesses, how do companies manage these expectations and ensure transparent processes and systems? She began by identifying several challenges, first being the perception of governments or local communities that bidding and supplier selection processes are not transparent. Many companies have robust procurement policies and systems in place, but at the site level, there may be distrust and gaps in information, creating difficulty in achieving balance between a competitive selection process and minimising single sourcing, and meeting local content commitments. Companies may also develop strategies to direct contracts to local businesses, often through unbundling, to ensure smaller suppliers can bid competitively on contracts and furthermore, deliver them successfully. There are challenges associated with increasing transparency in the selection process, while also complying with procurement practices that prioritise efficiency, low costs, and the assurance that comes from working with established service providers. Expectations on companies often act as good motivators, though sometimes those expectations come from problematic influential actors. Therefore, databases that disclose ownership information, as well as the Mining LPRM and efforts by the EITI, are critical. These initiatives put people to task, and there arises a need to provide clarity on supplier selection, and advances of the conversation on transparency.

Gosia also noted the ways of doing business and acceptable behaviours that may differ for multinationals operating in new jurisdictions, for instance, customary gift giving, which may be viewed as problematic. Companies have implemented procurement systems and portals that remove the human factor and make bidding processes more transactional. In countries where the IFC is working to ensure local businesses are able to compete for procurement opportunities however, this can create significant barriers to entry for local suppliers.

Jeff Geipel - Managing Director, Mining Shared Value was posed the question: How does corruption undermine the goal of increasing local procurement in host countries? He began by drawing attention to procurement of goods and services, because it represents the largest payment from a mining or oil and gas project to a host country, stating the difference between countries such as Canada and Australia and countries where economic development from mining is not fully realised, is highly determined by a presence or lack of backward linkages from extractive industry companies to domestic suppliers. Procurement is not only an avenue for corruption, for example, payment of bribes through overpriced service contracts, but it also undermines the goals of local content and efforts to establish backward linkages. He offered insights from his experience on the ground in West Africa, describing cases where local procurement goals have commonly not been realised due to importing of key goods by political elites that prevents localised production of such goods. He also highlighted an example where it is commonly understood that the reason a rail line is not being repaired – in a way that would help the competitiveness of all businesses – is because government officials own haulage companies that transport goods by road.

Jeff then provided an overview of the purpose, development, and implementation of the Mining LPRM, which began with a baseline of mining sector reporting on procurement spending and supplier due diligence processes. This included the creation of a checklist, showing trends in the types of data disclosed by the largest Canadian and then global mining companies, which initiated behavioural change and efforts by many of those companies to increase information sharing on spending across different supplier categories. The LPRM was the result of consultations with industry, a global steering committee, and with stakeholders in extended visits to Mongolia, Mali, and Albania, and is a framework for reporting on local procurement policies, processes, and spending. Jeff stated that efforts are underway to take this information – now being provided by twelve global mining companies – from annual reporting and make it more accessible to ensure effective dissemination at the site level. With the goal of driving performance and increasing transparency, the disclosures require that companies address gaps in their processes and implement the required systems. In fact, the first company to adopt the LPRM produced a supplier code of conduct as a result of having to provide information on their supplier due diligence processes towards reporting in accordance with the LPRM.

In response, moderator Mario Picon summarised some key takeaways and posed the following **questions to the audience:**
There is a normalisation of corrupt practices, despite best efforts and many initiatives that have triggered action, how much are these practices entrenched, and initiatives bypassed? Is there awareness of the availability of procurement data, and who should be ensuring oversight of this information? How can we take collective action to ensure these efforts are effective in deterring corruption?

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

A main outcome of the session was the understanding that not only can procurement in extractive industries be an avenue for corruption, but corruption itself also undermines the potential for countries to harness supplying opportunities. These contracts are substantial and can mean missed opportunities for host communities.

The following notable questions were received from the audience.
Q: Though it is important to monitor procurement, suppliers, contracts, and tenders, there is another area of extractive industries where corruption is prevalent which involves equity partners of a corporation. Where published information does not disclose minority partners of subsidiaries, should companies be asked to disclose beneficial owners of their equity partners?
A: In response, it was noted that the EITI Standard requires that companies disclose the names of joint venture partners. More thorough disclosures would require extensive investigation and greater public awareness and campaigning to address any problematic findings. For public versus private companies, there are different

expectations as to what is shared publicly. For companies receiving financing from the IFC, for instance, there are strict due diligence processes in place to ensure integrity and manage reputational risks. The importance of regularly updating beneficial ownership databases was also highlighted.

It was argued by an attendee that it is often more profitable for companies to continue doing business as usual, therefore why would voluntary mechanisms, such as the Mining LPRM, be effective if companies and even governments are benefitting and are complicit in corruption? In response, one speaker stated that generally companies see value in local procurement and realise its business case, but often there is hesitancy to increase information sharing on the topic. Although the Mining LPRM is voluntary, there are cases where it may become required by governments. One of the main reasons why it is challenging for mining and oil and gas companies to increase local procurement and engage in supplier development is quarterly pressures – there is a short sightedness, and since effective initiatives are long term, they are difficult to justify to shareholders at present. Another speaker noted that the presence of corrupt actions in procurement are, in fact, more costly, due to direct payments, but also in the long term, due to a less diverse pool of suppliers, a more concentrated market, and less competition that drives prices up. Corruption also facilitates other environmental and social risks that create fallout due to the unethical behaviour of contractors, which is costly to manage. There are supply chain due diligence standards, such as from the Organisation for Economic Co-operation and Development (OECD), evolving legislation across the EU, as well as certification schemes that track the origins of metals and minerals. This is leading to heightened scrutiny of end user companies by consumers. The consensus was that in fact, most extractive industry companies have an incentive to deter corruption during procurement to avoid increased supply chain costs and conflict.

The UK's Modern Slavery Act and its applicability to subcontractors was also discussed, and how accountability might be placed on those at the top of the supply chain. One speaker commented on recent changes around traceability in the apparel industry, driven mainly by consumers, asserting that mining supply chains should also allow for this level of transparency.

Key recommendations for the future and concrete follow-up actions

Panellists emphasised the identification of means to not only ensure enforcement and repercussions for corrupt practices but also, to incentivise actions that seek out and deter these practices. Both private and public actors must influence and disrupt the subculture where corrupt practices are engrained and accepted as a way of doing business. Mario Picon concluded by sharing the following priorities: advancing the discussion on challenging the status quo; examining the progress that has been made, leveraging existing tools such as the EITI and LPRM and asking what more can be done; and ensuring the actors that should be scrutinising this data are, in fact, using it. Looking ahead, we must consider how collaborative action to support these efforts can advance existing solutions to achieve greater impact.

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

The speakers emphasised that extractive industry suppliers receive substantial contracts but often maintain a low profile. Corruption in procurement processes means high stakes and consequences for project costs, government revenues, and local content. Transparency of this information is a critical first step. Since processes tend to originate at the government or company level, there must be coordination to ensure that procurement data is available and comparable. Databases that disclose beneficial ownership information, frameworks such as the Mining LPRM, and efforts by the EITI, should be widely adopted to enhance clarity on supplier selection processes and advance the conversation on transparency. Exercising oversight of reporting on procurement, and addressing the violations and misreporting that is often associated with this topic, should mirror the requirements for financial reporting and associated repercussions. Spending data is needed as a starting point to understand the corruption risks and the scale of what is at stake.

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.

States, businesses, and civil society were called to recognise the magnitude and implications of corrupt practices in extractives supply chains, challenge business as usual, and ask how the landscape, and the mindsets that justify and allow for corruption to occur, can be disrupted. To ensure extractive industry companies purchase from national suppliers, governments must intervene with demand side policies that are supported by supply side policies. This is even more of an imperative due to increased automation and provision of services from remote providers, which may compromise local value creation and procurement opportunities for local supply chain actors. Furthermore, local content requirements must be accompanied by supplier development funds and efficient use of tax revenues to support this. However, without addressing deterring corruption in procurement processes, even the most ideal local content regulations will be undermined, and so ensuring transparency is vital.

Rapporteur’s name and date submitted

Samantha Sheppard, 06.01.2023