

PERSPECTIVES

The PERSPECTIVES section of APERIO features diverse viewpoints of guest editorialists from various constituencies relating to Canadian extractive operations in Canada and abroad.

The Dodd-Frank Act: A Catalyst for Increasing Calls to Improve Transparency

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It has been less than eight months since the Dodd-Frank Act was passed by the United States Congress, yet a huge wave of parallel calls for improved transparency in the extractive industries has already been seen worldwide. Over the past month, some evidence has indicated that those calls are being heard.

The Dodd-Frank Act contains a slew of financial reforms that relate to industries such as banking, manufacturing and mining. These reforms include a requirement for extractive companies listed on American stock exchanges to publish what they pay to foreign governments.

This requirement has created quite a buzz not only for civil society organizations that have been fighting to improve transparency in a sector that has traditionally been very opaque, but for other stakeholders as well.

In a letter published on the Elysée website in January, President Sarkozy of France encouraged new European rules requiring oil, gas and mining companies to disclose the payments they make to governments around the world. He stated that he had ‘...decided to ask the EU to adopt, as speedily as possible, legislation to compel industries in the extractive sector to disclose their payments to all countries in which they operate’.

The Observer reported on February 20th that the UK’s coalition government was backing PWYP rules in Europe. It was also reported that George Osborne, the UK Chancellor, raised the issue at the G20 Finance Ministers Meeting. Osborne stated ‘I strongly believe it’s in everyone’s interest that mining companies and others operate to the highest standards. That’s the way to ensure some of the world’s poorest benefit from the wealth that lies in the ground beneath them’.

Following these calls, a recent report from the European Council of Ministers Competitiveness Council included a section that invites the Commission “to come forward with initiatives, in consultation with Member States and relevant stakeholders, on the disclosure of financial information by companies working in the extractive industry, including the possible adoption of a country-by-country reporting requirement, International Financial Reporting Standards (IFRS) for the extractive industry, and the monitoring of third-country legislation.

In addition to positive support coming from France, the UK and the EU, celebrity and activist Bono recently lent his support to the PWYP campaign and improving transparency in the extractive industries while answering a set of questions on the future of Africa that was published in *The Guardian* on February 20th, 2011.

This high profile public support has been matched with massive protests and grassroots efforts in several countries around the world, demanding an improvement to transparency and an end to decades of corruption by government elites using natural resource wealth to fund luxurious lifestyles, while ordinary citizens live in poverty. Additionally, there are calls to reform the governance of natural resources to assure that citizens are getting a good deal, and that companies are paying a fair amount of taxes and royalties.

It is now more important than ever to continue these efforts and build on the momentum created by recent events. As a major player in the extractive industries, particularly the mining sector, Canada should play a proactive role in harmonizing its disclosure requirements with those outlined in the Dodd-Frank Act, in order to promote accountable governments and companies, as well as transparency worldwide.

Canadian Securities Roundtable: Harmonizing Canadian-US Disclosure Requirements in the Extractive Industries

In July 2010, the United States Congress passed the Dodd-Frank Act requiring all US-listed companies to publish what they pay to governments for natural resource exploration and extraction, country-by-country and even project-by-project. In addition, the law also requires companies for which Democratic Republic of the Congo (DRC) or adjoining country-based conflict minerals are necessary inputs to their products to publicly disclose measures taken to determine the source of such minerals and disclose a description of the manufactured products that use conflict minerals from the region.

In an effort to build on the momentum created by the Dodd-Frank Act, and universalize emerging best practice in the extractive industries, PWYP-Canada and the Revenue Watch Institute, in partnership with the International Human Rights Program at the Faculty of Law, University of Toronto, hosted a roundtable discussion entitled [Harmonizing Canada-US Disclosure Requirements in the Extractive Industries](#).

The meeting brought together business, regulators, civil society and academia to discuss the potential impact of the US legislation on the Canadian regulatory regime and Canadian companies, as well as the best way forward for Canada as a major global player in the extractive industries and as a country committed to transparency and accountability. The discussion demonstrated broad support from the majority of participants, and was the first step in what is expected to be an on-going discussion with relevant Canadian stakeholders on how to improve revenue transparency in Canada and eliminate the use of conflict minerals.

Potential TSX-LSE Merger under Review

The Canadian government has announced that it will review the proposed merger between the Toronto Stock Exchange and the London Stock Exchange, in order to determine if the merger is of “net benefit” of Canada, a requirement for Canadian government approval under the Investment Canada Act. The merger is said to be an equal merger, however the LSE would control just over 50 percent of the merged company. It would create the largest stock exchange in the world, with over 6000 companies with an aggregate value of 5.8 trillion dollars. For more information on the implications of the proposed merger, [click here](#).

MEDIA WATCH

- An article by Karin Lissakers, Director of the Revenue Watch Institute, was recently published in The Hill with a discussion on the positive effects of country-by-country reporting for oil companies. The article, entitled *The Benefits of Oil Payment Reporting*, highlights the importance of the Dodd-Frank Act in the United States, and points to the recent events in North Africa and the Middle East, where massive protests have shown that citizens will no longer tolerate their natural resource wealth to be abused by the political elite. To read the article, [click here](#).
- Human Rights Watch has released a report detailing allegations of severe human rights abuses committed by security personnel employed at Barrick Gold’s Porgera Mine in Papua New Guinea. The allegations include murder and rape of vulnerable women. The report highlights the difficult security situation at the mine, including armed raids by illegal miners, but claims that these allegations are in no way a response to these threats. Human Rights Watch states that while Barrick Gold is responding to the situation, the company should have acted more diligently. To read the report, entitled *Gold’s Costly Dividends*, [click here](#).
- On March 10th, 2011, the government of the Democratic Republic of the Congo lifted a 6-month mining ban that had been placed on the eastern part of the country in an attempt to address the violence and human rights violations being committed by rebel groups involved in mining in the region. While the government has argued that the ban has had an impact on controlling violence and smuggling in the region, human rights activists argue that the situation has not ameliorated.
- On March 3rd 2011, Amnesty International published a call for urgent action related to the abuse and harassment of peaceful protesters at the Marlin Mine in Guatemala. The protest stemmed from continued operations at the mine, owned by a wholly-owned subsidiary of Goldcorp, despite the Inter-American Commission on Human Rights’ (IACHR) order for activities to be suspended until the effects of the mine on local indigenous communities are properly assessed. For more information, [click here](#).
- The SEC received comments for sections 1502 and 1504 of the Dodd-Frank Act until March 2nd. Two Canadian investment firms, NEI Investments and Bâritente, were among many who submitted comments to the SEC supporting the new legislation, and stated that disclosure would serve to help mitigate risk for investors. To read NEI Investments’ submission, [click here](#). To read Bâritente’s submission, [click here](#).
- Toby Heaps, President and Editor of *Corporate Knights Magazine*, was featured in the *Globe and Mail* on March 22nd 2011 with an article on the importance of transparency for Canadian companies. The article focuses particularly on Canadian companies operating in countries with despotic leaders where the risk of corruption is strongest, and argues that Canadian companies have the opportunity to become the “gold standard” internationally by becoming more transparent. To read the article, [click here](#).
- Bronwyn Best, Executive Director of Transparency International Canada, was quoted in a recent article in the *Globe and Mail* highlighting the difficulties for Canadian companies when operating in countries with high corruption. To read the article, [click here](#).

PWYP-Canada Launches Capacity Building Project

PWYP-Canada would like to announce the launch of a new capacity building project with the goal of increasing the use of publicly available information disclosed by Canadian mining companies. The project will include two main activities over the next year. The first activity will be to create documentation on some of the largest Canadian oil and mining companies operating in Africa, which will be shared with civil society organizations and enable them to become better informed about the companies operating in their countries. The project targets 25 major Canadian companies operating in Africa in order to create a comprehensive portfolio for each company, containing relevant and easily accessible information. The second activity will be to provide enhanced guidance for accessing information published on the Canadian Securities Administrators' data base, SEDAR, with the creation of a training manual that provides a more in depth explanation on how to retrieve publicly available information on Canadian companies.

This project is an initial response to increasing demands from PWYP members trying to untangle the labyrinth of the complex regulations framework governing Canadian companies.

In order to ensure that this project is collaborative in nature, we welcome comments and feedback from our civil society partners. The project will run throughout the year, and will be led by Kady Seguin. Any comments or questions regarding the project can be directed to her at kseguin@pwyp.ca.

5th EITI Global Conference Held in Paris: Six Countries Receive Compliant Status

The 5th EITI Global Conference was held in Paris on March 2nd and 3rd, 2011. The announcement of 6 countries that have been declared EITI compliant by the EITI Board was seen as an important milestone for the initiative and highlighted the progress that countries are making in implementing the EITI. The new compliant countries are the Central African Republic, the Kyrgyz Republic, Niger, Nigeria, Norway and Yemen.

The EITI also welcomed its new Chair, Rt. Hon. Clare Short, former UK Secretary of State for International Development (1997-2003) and member of UK parliament until 2010. Short will replace former EITI Chair, Peter Eigen.

While Publish What You Pay recognizes the significant advancements made by the EITI, the coalition stressed the importance of continuing efforts to strengthen the initiative in order to ensure its relevance. The push for transparency needs to be taken beyond payments to host governments to include other areas, such as contract and license transparency, and should be supported by domestic financial reporting regulations. EITI Board member Dorjdari Namkhajantsan of the Open Society Forum in Mongolia claimed that new legislation such as the Dodd-Frank law passed last summer by the United States will "greatly strengthen EITI implementation processes and encourage other countries to join the initiative".

In addition, the protection of civil society activists to freely and actively participate in EITI processes without the fear of threats to their well-being was seen as an area where the EITI has made improvements. However, EITI Board member Jean-Claude Katende of the Association Africaine de Défense des Droits de l'Homme in the Democratic Republic of Congo cautioned that it was imperative that the EITI continue its efforts in this area, and that these efforts were "central to the continued credibility of the EITI's international standing that civil society activists are able to work freely and without fear of interference or threat".

Publish What You Pay press releases from the event can be found on the website at publishwhatyoupay.org.

PAC Begins Work on a Regional Certification Mechanism for Conflict Minerals in the Great Lakes Region of Africa

Partnership Africa Canada, hosting organization of the PWYP-Canada Coalition, recently signed a Memorandum of Understanding to assist the International Conference on the Great Lakes Region (ICGLR) with the implementation of a regional certification mechanism for high-value minerals, including coltan, tin, tungsten and gold. The ICGLR is an inter-governmental organization that brings all the countries of the region together to dialogue and agree on strategies to bring peace and prosperity to the region. It groups eleven countries: Angola, Burundi, Central African Republic, Republic of Congo, Democratic Republic of the Congo, Kenya, Rwanda, Sudan, Tanzania, Uganda and Zambia.



In December 2006, the ICGLR Heads of State and Government signed a Pact on Security, Stability and Development, which came into force in 2008. One of its main protocols deals with the issue of preventing the illegal movement of natural resources. PAC has participated throughout the ICGLR process as an adviser on natural resource issues. PAC participated in the drafting of the protocol and subsequently drafted a series of recommendations to help move the certification process forward. At the same time, a number of industry and donor-led mineral tracking initiatives began to emerge in the region that targeted certain minerals, such as tin. In April 2010, the ICGLR adopted a proposal developed by PAC for a regional certification mechanism for high-value minerals, and PAC is now working with the ICGLR Secretariat to help implement it. The mechanism will comprise four main elements:

- Chain of custody tracking from mine site to export implemented by national governments prior to export, with successful export applications given an ICGLR Regional certificate, which serves as proof of compliance throughout region.
- Regional Tracking of Mineral Flows via an ICGLR Database (at the ICGLR Secretariat in Bujumbura), with data on regional mineral flows being transmitted to the ICGLR and being stored on a publicly accessible database.
- Regular independent third-party audits, with all actors in the mineral chain being submitted to regular audits by independent third party auditors in order to be considered compliant (i.e. those failing audits will be declared non-compliant).
- An independent Mineral Chain Auditor who will monitor the full mineral chain for discrepancies and anomalies arising from data collected in system.

The ICGLR is an important political process that gives the countries of the region the mandate to work together to combat the illegal trade in natural resources. Canada is co-chair of the Group of Special Envoys and Friends of the ICGLR and for many years gave strong political support to this emerging process. Foreign Affairs and International Trade Canada recently announced multi-year financial support to PAC's work in the Great Lakes Region. The Canadian government and Canadians should continue to support the ICGLR and the efforts of its member countries to deal with the issue of conflict minerals. At the legislative level, Bill C-571 on "corporate practices relating to the purchase of minerals from the Great Lakes Region of Africa" has been brought forward in the Houses of Parliament in Canada and it deserves all-party support. But the ICGLR mandate is much wider than minerals management and there is considerable scope for Canadian involvement to help bring a permanent peace to this troubled region.

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