

ONR Briefing Note

OECD Natural Resources Policy Dialogue: 9th Plenary Meeting

The Commonwealth Secretariat, through its Ocean and Natural Resources Advisory Section, provides member states with technical assistance on the sustainable development of petroleum and mining sectors. This support typically includes areas such as policy formulation, legislative, regulatory and fiscal reform, capacity building and transactional advice (e.g. bid proposals, negotiations). In addition, the Secretariat collaborates with international organisations, specialist think-tanks, and regional agencies to foster knowledge-sharing and to develop and promote international best practices and standards. The Organisation for Economic Co-operation and Development (OECD) Natural Resources Policy Dialogue (PD) is one such collaborative effort.

The OECD NR-PD provides a platform for producer countries, private sector, development agencies, think-tanks and civil society to craft innovative collaborative solutions and share best practices in order to address the complex multidimensional challenges of the extractives industry's contribution to the Sustainable Development Goals. The PD is framed around four Work Streams

1. shared value creation,
2. getting better deals,
3. revenue management and spending, and
4. tackling base erosion and profit shifting and corruption.

The methodology adopted for progressing each work stream has been to develop frameworks and guiding principles in multi-stakeholder expert working groups, which are then presented at the bi-annual plenary meetings (June/December) for adoption prior to publication through OECD channels. Thereafter, compendiums of practices and case studies are developed to provide further guidance for operationalising the frameworks.

Since 2015, the Commonwealth Secretariat has actively participated in these expert working groups and the bi-annual plenary sessions (including as panel speakers).

This Briefing aims to provide a summary of the key issues discussed at the 9th Plenary Session held on 31st January -1st February 2018 in Paris.

Work Stream 1: In-Country Shared Value Creation

The framework on Collaborative Strategies for In-Country Shared Value Creation was endorsed in February 2016 and presents a practical five-step guide on how host governments, extractive industries and civil society can work together in a structured and systematic way to enable in-country shared value creation. It is

The Framework is structured around the following actionable steps:

STEP 1. Adopt a comprehensive, long-term vision and implementation strategy to build competitive and diversified economies and create in-country shared value from natural resources.

STEP 2. Build an empirical basis to inform decision making through an inclusive participatory process.

STEP 3. Unlock opportunities for in-country shared value creation: local workforce and supplier development and shared infrastructure (power, water and transport).

STEP 4. Support and contribute to innovation leading to new products and services.

STEP 5. Establish effective and transparent monitoring and evaluation systems and regularly review the collaborative strategy.

complemented by an [on-line compendium of practices](#) which provides concrete examples for each of the four steps across different country contexts.

Participants discussed and validated four new examples for inclusion in the on-line compendium of practices:

- Uganda: how can industrial baseline surveys inform long-term decision making and the creation of sustainable economic linkages;
- Oman: how can long-term planning and data analysis contribute to the development of a flexible approach to local workforce and supplier development in the petroleum sector;
- Chile's Mining Sector Suppliers Development Programme and
- The Mining Local Procurement Reporting Mechanism: how can more granular data facilitate effective and transparent monitoring and evaluation systems.

Work Stream 2: Revenue Management and Spending

The size and volatility of natural resource revenues has significant implications for revenue management and spending particularly in the context of developing countries. Peer-learning has to date focused on ways to help smooth revenues through boom and bust cycles and improving the understanding of the advantages and disadvantages of various spending mechanisms.

Discussions at the 9th plenary focused on experiences in Mongolia and Alaska as two main examples to date of direct distribution cash transfers, with a view to improving understanding of its advantages and effectiveness in contributing to the achievement of the SDGs.

Work Stream 3: Getting Better Deals

Investment contracts are key governance tools. They define investor-state relationships, and, depending on the legislative context play a critical role in determining the distribution of risks, costs, benefits and the level of public revenues to be expected from investment projects. This work stream is focussed on building a common knowledge base to negotiate better deals, bridging asymmetry of information and identifying ways to improve the quality of advice from service providers. In particular, it identified an increasing frequency in the demand for the re-negotiation of extractive contracts, and highlighted how this could negatively impact investment and sustainable economic growth.

One of the aims is to work towards a set of guiding principles that host governments and investors can use as a common reference to build mutual trust during contract negotiations, and structure extractive contracts for the long term. Discussions at plenary sessions and in multi-stakeholder expert working groups has resulted in an on-line consultation of the draft "Guiding Principles for Durable Extractive Contracts". This sets out eight principles along with supporting commentary that host governments and investors can use as a common reference for future negotiations of enduring, sustainable and mutually beneficial contracts. This public consultation period is open until 30 March 2018.

Discussions at the plenary were centred on two of these guiding principles, VII and VIII, which had been redrafted to incorporate concerns raised during the 8th Plenary and subsequent expert working group meetings. The sessions reviewed both the text and commentary for the principles as well as the underpinning legal and fiscal concepts. Following the close of the public consultation, substantive comments will be included for consideration at the next meeting (June 2018).

The Commonwealth Secretariat will provide a more detailed briefing note with more background information to encourage member governments to participate in the consultation process.

Work Stream 4: Tackling Base Erosion and Profit Shifting and Corruption (Domestic Resource Mobilisation)

This work stream reflects the global commitment to counter corruption and address tax base erosion issues facing many developing countries in raising revenue from their natural resource sectors. The *Typology of Corruption Risks, Mitigation Measures and Incentives* was released in April 2016 to provide a toolkit for identifying, assessing and proactively managing corruption risks across the extractive value chain. This is part of the ongoing work to prevent and address corruption in high-risk areas and is intended to contribute to other international processes, such as the 2030 Agenda for Sustainable Development and the G-20 Anti-Corruption Working Group.

This work is complemented by the *BEPS in Mining Program*, which aims to equip governments in developing countries with the knowledge, skills and tools to build and administer mining tax systems that help reduce and eliminate tax base erosion and profit shifting (BEPS) by investors. High-priority BEPS issues in mining have been identified with the objective of building a common knowledge base, improving understanding across governments and industry, and providing responses.

At the 9th plenary, participants considered the potential work plan on a growing issue in international dialogue - commodity trading transparency. Presentations made based on initial research suggest that the combined sale of government's share of oil, gas and minerals and other revenue received in-kind (that is, directly, via state owned enterprises, other state entities including state trading arm subsidiaries, refineries or private companies) are estimated to outweigh the payments for their extraction.

Transparency efforts to date have focused on the 'extraction' payments, and overall there is a clear lack of reporting and international standards in commodity trading, including opacity in the selection of buyers, negotiation of contract terms, transfer of revenues, and the use of sales proceeds. Initial views from the EITI (Extractive Industries Transparency Initiative) pilot project on how to improve transparency practices related to commodity trading were shared. Discussions

IGF-OECD 'BEPS in Mining Program'

BEPS are a particular risk to resource-rich developing countries given their reliance on corporate income tax and the lack of sector specific expertise. Building on the OECD/G20-led actions on BEPS, the program aims to produce practical policy and administrative tools to counter BEPS in the mining sector. The following have been identified as high-priority areas

- Excessive interest deductions*
- Abusive transfer pricing*
- Undervaluation of mineral exports*
- Harmful tax incentives*
- Tax stabilization and investment treaties*
- International tax treaties
- Metals Streaming
- Abusive Hedging arrangements
- Indirect transfer of mining assets
- Inadequate ring-fencing

*Work has begun on these topics.

focused on developing a common definition of the scope of "first-trade" related payments, mapping relevant stakeholders, as well as a proposed work plan for future work to address key gaps identified.

There were also updates provided on the 'BEPS in mining' program on three papers that are currently in progress. These were on the issues of "Excessive Interest Deductions", "The Hidden Cost of Tax Incentives" and "Policy Options for Monitoring the Value of Mineral Exports". The government consultation process is expected to begin soon and the Commonwealth Secretariat will provide a more detailed briefing note to provide more background information and to assist member country responses.

Draft Guiding Principles for Durable Extractive Contracts

Please note these principles interact with each other and should be considered together and should be read in conjunction with associated commentary in the document open for public consultation until 30th March 2018, available [here](#).

- i. Durable extractive contracts are aligned with the long-term vision and strategy, defined by the host government on how the extractive sector can fit into and contribute to broader sustainable development objectives.
- ii. Durable extractive contracts are anchored in a transparent, quality and long-term relationship and operational partnership between host governments, investors and communities, to fulfil agreed and understood objectives based on shared and realistic expectations that are managed throughout the lifecycle of the project.
- iii. Durable extractive contracts balance the legitimate interests of host governments, investors, and communities, with due account taken, where relevant, of the specific rights of indigenous peoples as recognised under applicable international and national law.
- iv. Durable extractive contracts seek to maximise overall value, including economic, social and environmental outcomes to be drawn from the development of the host country's resources. To the extent not covered by the applicable law, durable extractive contracts provide for the identification and management of potential adverse environmental, health, safety and social impacts of the extractive project and establish clear roles and responsibilities for the host government and the investor for the prevention, mitigation and remediation of those impacts, in consultation with affected communities.
- v. Durable extractive contracts are negotiated and based on continuing sharing of key financial and technical data to build a common understanding of the performance and of the main risks and opportunities of the project throughout its life-cycle.
- vi. Durable extractive contracts operate in a sound investment and business climate and should be underpinned by a fair, transparent and clear legal and regulatory framework.
- vii. Durable extractive contracts are consistent with applicable laws, and anticipate that host governments may introduce laws, regulations or policies that: (a) are not arbitrary; (b) reflect internationally recognised standards and/or good practices generally accepted from time to time in the industry; with due regard taken of the consequences of any substantive adverse impact on the performance of the project.
- viii. Durable extractive contracts are underpinned by a fiscal system that provides for a fair sharing of economic rent between the investor and the host government, taking into consideration the risks and potential rewards. A regime with automatic adjustments for the government take to prevailing market conditions (variable with commodity price, production volume, resource quality, or project profitability) reduces the incentives for either party to seek re-negotiations of terms. Due regard should be given to providing assurance of fiscal receipts to the host government for each year of commercial resource production.



The Commonwealth

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