Responsible Mining Foundation

Research Insight

Corporate ESG disclosure: from external requirement to company-wide norm

Stronger disclosure of data on environmental, social and governance (ESG) issues is evident where mining companies are subject, or have signed up, to external requirements and reporting frameworks.

Although the concept of voluntary expectations sounds attractive, one of the key findings of the Responsible Mining Index (RMI) Report 2018 is that external requirements improve public disclosure of evidence of companies' responsible conduct on ESG issues. This may sound rather obvious – if a company is required to, or has committed to disclose, it generally will. But it is interesting to examine the reach of these external drivers of better ESG disclosure, and to explore how companies can be encouraged to apply the same high level of disclosure and implementation across all their operations.

While the RMI Report 2018 results suggest that the mining industry still has a long way to go to meet society expectations on transparent and responsible management of ESG issues, more systematic public disclosure would enable companies to better demonstrate their policies, practices and performance on these public interest matters and facilitate more informed engagement with other stakeholders.

Home country regulations on company-wide ESG disclosure

Home country legislation on ESG transparency is one of the most powerful drivers of company-wide disclosure, even though such legislation may not be fully adhered to by all companies.

Evidence of this is seen in the results of the RMI Report 2018 indicator on companies' disclosure of payments to governments – a key element of efforts to support revenue transparency and good governance. This indicator measures the extent to which companies disclose, across all their operations worldwide, project-disaggregated information on all the payments they make to sub-national and national governments. The results on this indicator demonstrate the positive impact of home country regulations. Those companies subject to legislation in Canada, UK and/or Luxembourg – by virtue of being registered, listed or present in one or more of these jurisdictions – account for nearly all of the strongest performances on this indicator, as shown in Figure 1.[1]

[1] These pieces of legislation are the Canadian Extractive Sector Transparency Measures Act (ESTMA); and the European Union Directives 2013/34/EU and 2013/50/EU (as translated into the UK Reports on Payments to Governments Regulations 2014, and the Luxembourg Transparency Law).

Figure 1 RMI Report 2018 results: Mining companies subject to home country reporting requirements on payments to governments account for strongest performances on this issue

Notes: *Each dot represents one company's score on this indicator. Total: 30 companies.*
Company scores colour-coded and ordered left-to-right, from best (● green) to worst (● red) performers.
** Company reporting required by Canadian Extractive Sector Transparency Measures Act (ESTMA), UK Reports on Payments to Governments Regulations 2014, and/or the Luxembourg Transparency Law.*

However, it is also evident that not all companies subject to these regulations demonstrate full disclosure of such payments. For example, one of the companies bound by the relevant Canadian legislation, which requires companies to publicly report payments made in Canada and abroad, reports project-level payments only for its mine sites in Canada and two other countries, leaving unreported the payments made by the vast majority of its sites. More generally, concerns have been raised about cases of non-compliance with these home country regulations.[2]

There is also little or no evidence of companies adopting the same level of reporting required by home country regulations for those parts of their business outside the scope of these regulations. For example, one company reports project-level payments only for its UK-registered subsidiary, which is subject to the UK reporting legislation, and not for its other entities.

Producing country requirements for ESG disclosure

Globally, producing country governments are increasingly requiring ESG disclosure by companies operating in their jurisdictions. In addition to national regulations linked to stock exchange requirements on ESG reporting, governments are setting obligations on a range of non-financial disclosures. For example:

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[2] See for example a study by PwC that found that the first year of ESTMA reporting (2016-2017) saw 80% of ESTMA reports showing one or more deficiencies (PricewaterhouseCoopers (2017). *The Extractive Sector Transparency Measures Act – Year 1 Reporting Highlights.* *www.pwc.com/ca/en/energy-utilities/publications/pwc-energy-canada-estma-year-1-reporting-highlights-July%2014,2017-EN.pdf*) and written comments by Publish What You Pay on the UK Reports on Payments to Governments Regulations 2014 that highlighted examples of non-compliance and uncertainties around reporting obligations such as those related to joint venture operations (Publish What You Pay UK (2017). Submission to the UK Government Review of the Reports on Payments to Government Regulations 2014. http://www.publishwhatyoupay.org/wp-content/uploads/2017/11/2017.11.17-PWYP-submission-to-UK-review-final.pdf).

- In Indonesia, companies are required to regularly, proactively and publicly disclose environmental information including environmental impact assessments, greenhouse gas emissions data and water monitoring results.[3]
- In South Africa, companies are required to publicly report a wide range of ESG information including, for example, data on air quality, greenhouse gas emissions, workplace safety incidents, and mine closure plans.[4]
- In Peru, mining companies are required to publish annual sustainability reports that detail the socio-economic impact of their operations, including information on pollution, greenhouse gas emissions, resource use, environmental degradation, labour conditions and stakeholder engagement.[5]

Many more producing country regulations on ESG disclosure are more limited in their impact on transparency, requiring only that companies provide compliance- or due diligence-related data to the relevant regulatory bodies, not to the wider public. Some countries however are leading the way in freely sharing corporate ESG data. Chile, for example, has legislated that its citizens have the right to access all environmental data in the government's possession, and maintains a national repository of corporate submissions of project-level environmental impact assessments, although the data is reportedly not fully complete.[6] And Brazil makes publicly available a 'dirty list' of Brazilian companies that have been fined in the last two years for using slave labour, including forced labour and degrading working conditions, in their supply chains, though there are concerns about how regularly the list is updated.[7]

A similar pattern as observed for home country regulations is evident in producing country requirements: while they do lead to stronger disclosure, best practice reporting shown in some jurisdictions is not adopted company-wide. For example, Figure 2 shows one example of a company that reports project-level data only for its operations in Extractive Industries Transparency Initiative (EITI) implementing countries and does not voluntarily disclose project-disaggregated data on payments to governments across all its operations.

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[3] See https://accessinitiative.org/creating-change/indonesian-government-introduces-new-rules-expand-release-environmental-information.

[4] See The Open Society Foundation for South Africa and Oxfam (2016). South Africa's Extractives Industry Disclosure Regime: Analysis of the legislative and regulatory regime and selected corporate practice. http://www.osf.org.za/wp-content/uploads/2018/05/South-Africas-Extractive-Industry-Disclosure-Regime-FINAL-Open-Society-Foundation-for-South-Africa-OSF-SA-Publications.pdf.

[5] See www.reportingexchange.com.

[6] See http://seia.sea.gob.cl/busqueda/buscarProyecto.php; OECD (2016). Environmental Performance Review: Chile. Highlights 2016. https://issuu.com/oecd.publishing/docs/highlights_chile_eng_web

[7] See www.business-humanrights.org/en/examples-of-government-regulations-on-human-rights-reporting-due-diligence-for-companies; www.globalslaveryindex.org/2018/findings/country-studies/brazil/.

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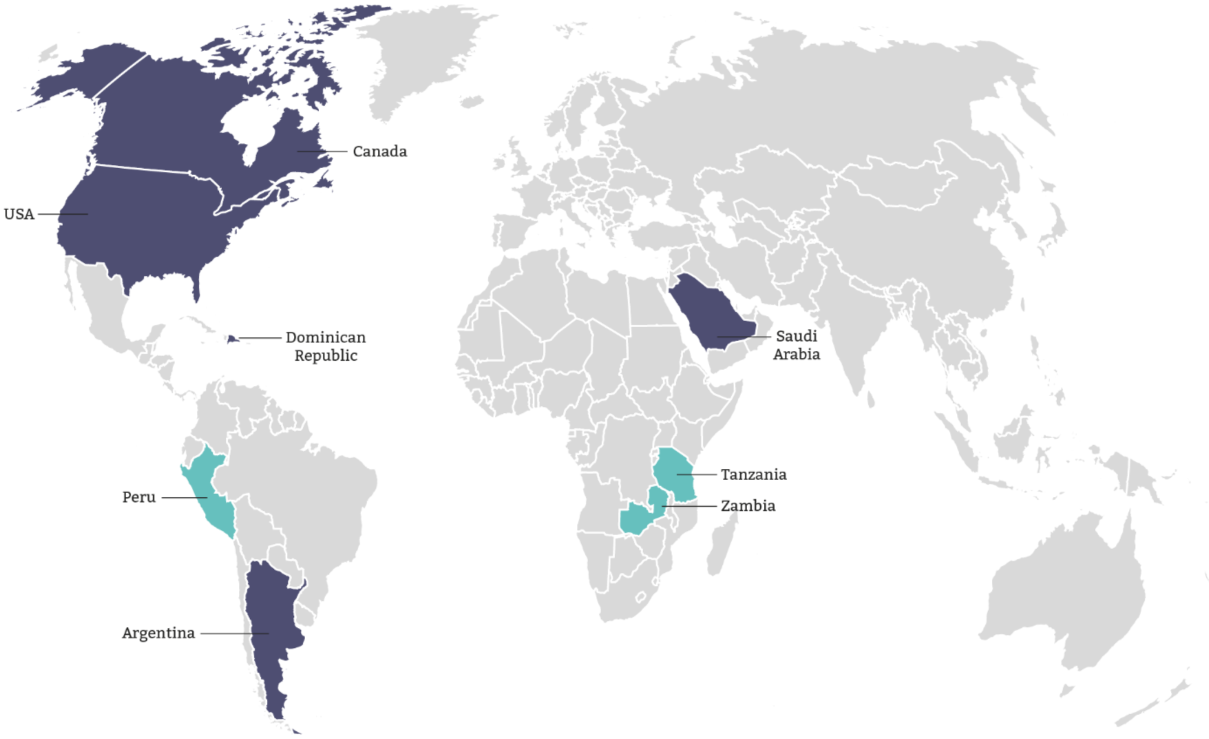
Figure 2 RMI Report 2018 results: Example of a mining company disclosing project-level data on payments to governments only for its operations in EITI implementing countries, not across all its operations



Legend: *Non-EITI implementing countries: company does not disclose project-level data on its payments to governments.*
EITI implementing countries: company discloses project-level data on its payments to governments.

Investor requirements for ESG disclosure by specific mining operations

Investor requirements on ESG disclosure for mine sites receiving finance clearly support transparency at the mine sites involved. However, as with governmental regulations, these requirements appear to have little or no impact on company disclosures at other mine sites where these conditions do not apply.

One example of this is seen in the RMI Report 2018 mine-site-level assessments, which measure the extent to which companies disclose performance data on issues of central importance to mining-affected stakeholders: issues such as local procurement and local employment, water quality, and the functioning of grievance mechanisms to enable workers and communities to raise issues of concern and have them addressed. The results of these indicators reveal not only a very weak level of these site-specific disclosures, but also a lack of consistency in the level of disclosure across different mine sites owned by a given company.

For example, four mine sites assessed for one company in the RMI Report 2018 include a mine that receives loan support from the International Finance Corporation (IFC), the European Bank for Reconstruction and Development (EBRD) and other lending institutions.

To comply with the environmental and social standards of the lenders' group, the results of independent environmental and social audits are publicly disclosed. The data in these reports is largely responsible for the mine site ranking as the strongest disclosing site among the 127 mine sites assessed in the RMI Report 2018. However, the company's other three mine sites assessed, not subject to the same requirements, score much lower, as shown in Figure 3. Again, the evidence suggests that companies show strong ESG disclosure only where they are required to do so.

Figure 3 RMI Report 2018 results: Good practice ESG disclosure at one mine site, related to lender requirements, is not applied consistently across a company's assets

Similarly, investors like the IFC have made contracts disclosure a mandatory commitment for all the mining projects they support, though some gaps exist in their online contracts repository[8] – and seemingly without any lateral influence on companies' approach to contracts transparency among their other assets.

Stock exchanges: listing requirements

Stock exchanges are increasingly including ESG disclosures as part of their requirements for any companies wishing to become members. According to the UN-led Sustainable Stock Exchange Initiative, there are currently 16 stock exchanges, covering over 15,000 companies,

[8] See https://www.ifc.org/wps/wcm/connect/industry_ext_content/ifc_external_corporate_site/ogm+home/priorities/contract+disclosure

which require some form of ESG reporting as a listing rule.[9] These include for example, exchanges in Brazil, Peru, India and Singapore.

However, many stock exchanges stop short of setting requirements on ESG, providing only guidance or recommendations on ESG reporting for their member companies.[10] This includes some of the major stock exchanges such as the London Stock Exchange where some of the largest mining companies are listed, and the Toronto Stock Exchange which accounts for the largest number of mining companies, globally. And in many cases, exchanges' ESG disclosure requirements are limited to the publication of a sustainability report rather than more specific obligations.

Interestingly, the Hong Kong stock exchange has recently proposed an expansion of its requirements on ESG disclosure, including upgrading some of its recommendations to provisions that companies must report on, on a 'comply or explain' basis.[11] This includes for example introducing disclosure obligations on social Key Performance Indicators, environmental targets and climate-related impacts.

Investor pressure for company-wide disclosure

Investor engagement at a company-wide level can have a large potential impact on ESG disclosure levels. One promising example is the recent Disclosure Request issued to nearly 700 listed mining companies by the Church of England Pensions Board and the Swedish Council on Ethics for the AP Funds, and supported by 96 investors with a combined US$10.3 trillion in assets under management.[12] The request, prompted by the Brumadinho tailings dam disaster in Brazil in January 2019, asks for comprehensive public disclosure of companies' tailings storage facilities and companies' efforts to assess and ensure the safety of these facilities. The deadline for companies to submit their disclosures has recently passed and it will be interesting to see the level of response received.

EITI requirements and expectations

As illustrated by the example shown in Figure 2, EITI requirements for implementing countries can have a positive impact on disclosure by companies operating in these countries.

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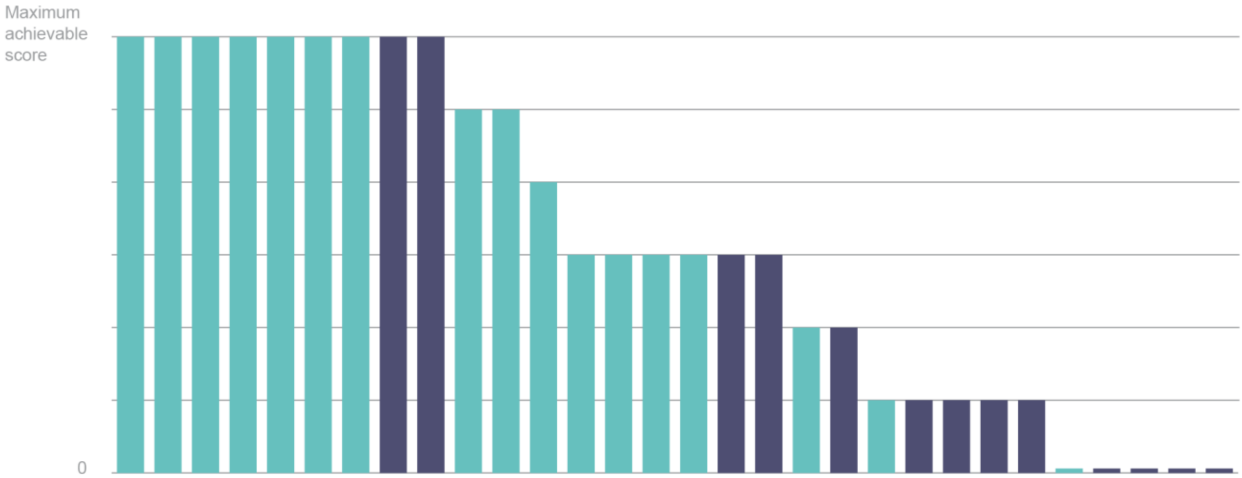
[9] See http://www.sseinitiative.org/data/. The SSE is organised by the UN Conference on Trade and Development (UNCTAD), the UN Global Compact, the UN Environment Program Finance Initiative (UNEP FI), and the Principles for Responsible Investment (PRI).
[10] According to the Sustainable Stock Exchange, some 43 exchanges have published guidance on ESG reporting.
[11] See https://www.hkex.com.hk/News/News-Release/2019/1905172news?sc_lang=en.
[12] See https://www.churchofengland.org/more/media-centre/news/finance-news/investors-give-mining-companies-45-days-full-disclosure.

In addition, and in contrast, to the binding requirements for implementing countries encompassed in the EITI standard, EITI sets non-binding expectations for mining companies that choose to become an EITI supporting company.[13] These expectations cover a range of issues, including for example disclosure of taxes, beneficial ownership and contracts.

Measured by the RMI Report 2018 indicators, used as proxies for the EITI expectations, the response by EITI supporting companies to these non-binding expectations appears to be variable. For example, on the issue of payments to governments, the RMI Report 2018 results reveal that EITI supporting companies show very mixed results, ranging from the best to the worst performers (see Figure 4).

Figure 4 RMI Report 2018 results: EITI supporting companies show mixed results on disclosure of payments to governments



Notes: *Each bar represents one company's score on this indicator. Total: 30 companies. Company scores ordered left-to-right, from best to worst performers.*
● = *EITI supporting company*
● = *non-EITI supporting company*

Similarly wide-ranging results by EITI supporting companies were seen in the RMI Report 2018 on other issues, such as tax transparency and contract disclosure.

At this stage, evidence suggests that in the case of this very important and influential international initiative, the rigour applied to EITI country requirements is more effective in encouraging company reporting, than the non-binding expectations applied to companies.

Encouraging strong and impactful ESG disclosure

Stronger ESG disclosure has the potential to support accountability, of not only companies but also their home countries and producing countries, and their investors and financiers. For example, data on payments made by mining companies to governments can help governments

[13] See https://eiti.org/document/expectations-for-eiti-supporting-companies.

and citizens know if companies are meeting their contractual obligations, and can also tackle corruption by removing conditions that enable misuse of mineral revenues. Enhanced corporate transparency can also facilitate informed and constructive engagement with mining-affected communities, investors, labour unions, civil society, manufacturers, and other stakeholders.

While regulations and requirements by governments, investors and international initiatives are not failproof mechanisms for driving stronger ESG disclosure, they do have a clear impact on companies' transparency and performance on these issues.[14] Regulations set by home countries, producing countries, investors and stock exchanges have the widest reach, covering large numbers of companies and with the potential to drive systemic improvements in transparency of the mining industry.

At the same time, non-binding and voluntary measures also have a role to play in encouraging improvement in ESG disclosure. This includes for example expectations produced by membership organisations, such as the Responsible Gold Mining Principles currently being developed by the World Gold Council and the Performance Expectations recently produced by International Council on Mining and Metals (ICMM). And reporting frameworks such as the Global Reporting Initiative (GRI) and the Carbon Disclosure Project (CDP) contribute to more systematic disclosure by companies using these tools.

Collectively, these initiatives support improvement in ESG-related performance and reporting and a levelling of the playing field, by leading more companies in more jurisdictions to disclose and demonstrate how they manage ESG issues. Likewise, by measuring company-wide and mine-site level performances on a wide range of ESG issues, the RMI Report 2018 encourages companies to transcend binding requirements and non-binding expectations to show leading practice disclosure of public interest data across all their business units and all operations. In this way leading practice can be acknowledged and learning disseminated for the whole industry.

[14] Research by the Principles for Responsible Investment (PRI) and MSCI found that companies in countries with mandatory, government-led comprehensive ESG reporting requirements have, on average, a 33% better MSCI ESG rating score than those without, indicating better ESG risk management practices relative to risk exposure. The study also found a small positive relationship (+11%) between voluntary ESG disclosure requirements and ESG rating. See PRI and MSCI (2016). Global Guide to Responsible Investment Regulation. https://www.unpri.org/download?ac=325