FIFTH MEETING OF THE POLICY DIALOGUE ON NATURAL RESOURCE-BASED DEVELOPMENT

2-4 December 2015

Summary report

The meeting was conducted under Chatham House Rule: "When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed."

I. Meeting objectives and structure

Under the co-chairmanship of Chile, Kazakhstan, Korea, Liberia, Norway and Peru, twenty-one government delegations from Africa, Asia, Europe, and Latin America, as well as representatives from ten major firms and industry associations and twenty-one civil society organisations and think tanks convened at the OECD on 2-3-4 December 2015 for the Fifth Plenary Meeting of the Policy Dialogue on Natural Resource Development. The African Development Bank's Legal Support Facility and Natural Resource Center, the African Union Commission, the Commonwealth Secretariat, the European Union, the New Partnership for Africa's Development (NEPAD), the UN Conference on Trade and Development (UNCTAD), the UN Development Programme (UNDP), the UN Economic Commission for Africa's Mineral Development Centre (AMDC), and the World Bank were also in attendance. High-level participants included the Minister of Mining and Geology of the Republic of Guinea, H.E. Mr Kerfalla Yansané, the Minister of Mines of the Republic of Mali, H.E. Dr Boubou Cissé, and the Commissioner on Trade and Industry of the African Union Commission, H.E. Mrs Fatima Haram Acyl. The Chair of the Governing Board of the OECD Development Centre, H.E. Ambassador Pierre Duquesne, and the Deputy Permanent Representative of the Federal Republic of Germany to the OECD, Ms. Margitta Wülker-Mirbach, welcomed participants on 2 and 3 December.

The OECD Development Centre, acting as a neutral knowledge broker, contributed to framing the broad thematic areas and specific issues for discussion, as outlined in the background documents distributed to all participants in advance of the meeting. Besides the OECD Development Centre, the Centre for Tax Policy and Administration, the Development Co-operation Directorate, the Directorate for Financial and Enterprise Affairs, the Directorate for Legal Affairs, the Directorate for Public Governance and Territorial Development, the Directorate for Trade and Agriculture and the Office of the General Secretariat (Sherpa Office) were also represented.

The dialogue was structured around eight sessions. The first two days (2-3 December) were dedicated to multi-stakeholder consultations on Work Stream 1 (Shared Value Creation and Local Development), 3 (Getting Better Deals) and 4 (Detecting Corruption Risks in the Extractive Sector) gathering representatives of governments, international organisations, extractive industry and civil society, while the third day (4 December) featured intergovernmental discussions on mineral pricing issues and on Work Stream 2 (Stabilisation Funds and Revenue Spending).

II. Summary of the Discussion and Conclusions

Participants welcomed the strong spirit of collaboration that underpins the public-private approach of the policy dialogue, supported by dual pillars of analysis and partnership. As this meeting was marking the anniversary of the first biennium of the initiative, participants assessed the progress made by the Dialogue in terms of producing analytical tools and guidance frameworks, commending their integrated and multidimensional approach and the collaborative nature of the process through which they were produced. Participants welcomed the Dialogue's efforts to link its work to other international and regional processes and initiatives, including the 2030 Development Agenda and the G7 CONNEX Initiative for the establishment of a Negotiation Support Forum as part of Work Stream 3 on Getting Better Deals. In particular, participants recognised the important role that the Policy Dialogue can play to identify best practices to inform the domestication of the African Mining Vision. The process and issues discussed in the Policy Dialogue were regarded as crucial for the articulation of measures to address price volatility and encourage diversification as part of holistic policies for structural transformation.

Work Stream 1 - Shared Value Creation and Local Development (Session 1)

Session 1 was co-chaired by Hon. Deputy Minister of Operations Sam G. Russ, Ministry of Mines, Lands and Energy, Republic of Liberia, and Mr Pål Arne Davidsen, Senior Adviser, Private Sector Development, Department for Economic Development, Gender and Governance, Norwegian Agency for Development Cooperation (Norad), Norway. The session had two main outcomes – the Operational Framework on Public-Private Collaboration was reviewed and endorsed in principle, pending suggested drafting revisions, and next steps were discussed for moving forward on Work Stream 1.

The Framework is an operational tool offering voluntary guidance on actionable steps for harnessing non-renewable natural resources to build competitive, diversified and sustainable economies through public-private collaboration. While the draft was addressed to governments and industry, clearly articulating their respective roles for improved coordination, mutual respect and accountability, participants suggested clarifying the role that civil society can play to support the development of strategies on value creation. The Framework transcends sectoral boundaries and looks at integrated approaches to build synergies and inter-linkages across sectors and different policy areas. Dimensions of value considered in the document include local employment, local procurement, shared used of infrastructure, power, transport and innovation, with a view to fully exploiting the potential for unlocking lasting and shared benefits directly or indirectly linked to resource exploitation. The Framework is designed to foster coherence, sequencing and coordination on public-private partnerships that support progress towards more sustainable paths for access and usage of non-renewable resources.

Participants were unanimous in their praise of the broadly consultative drafting process involving governments, industry, and civil society. The document was described by participants as being fairly unique both in terms of its structured approach and practical implementable nature. Participants thought the document was useful in terms of creating a high-level playing field on how to use finite resources to create long-term and shared prosperity. In this respect, they emphasised its importance as a blueprint to understand different roles and responsibilities, which will help considerably expedite collaboration since most extractive projects spend significant energy and time determining those roles.

Participants embarked on a thorough in-depth review of each of the six steps that structure the document. From the discussion, general consensus emerged on the definitions, focusing on win-win arrangements as opposed to mandatory approaches and optimising value across present and future projects and showing, for example, how access to infrastructure can bring down costs in the long term.

Participants agreed that the development of a long term vision and implementation strategy was not just a task for governments but something that should involve the participation and input of industry, civil society, and other impacted stakeholders. A systematic approach and a well-articulated long-term vision helps support a shared understanding among different constituencies. Participants repeatedly mentioned the need to develop good participatory mechanisms: having a wide variety of inputs is integral to having a comprehensive strategy that is resilient enough to withstand the cyclical nature of commodity markets irrespective of high or low prices, and the potentially distortionary impact of rapid and unbalanced growth. The example of the Ekofisk oil field in Norway's North Sea was cited, as the field has been operating since 1971 and production is expected to continue there until at least 2050. A consultative approach to planning also means better understanding and identifying precompetitive opportunities, ensuring that local industry can benefit and environmental impact and costs can be reduced. The importance of an open dialogue and in-depth understanding of local dynamics was regarded as essential for both the social license to operate and for creating an economically viable and vibrant culture that promotes competitive local value creation. The case of Oman was cited as an example of this.

Strengthening policy alignment further involves interrelations between different ministries and agencies within government. A lack of coordination can lead to missed information and difficulties in implementation. A strong understanding of the market and the extractives industry was regarded as key, both in terms of determining the best opportunities for linkage development related to the extractives sector as well other potential area for development in the broader context of the economy. Participants observed that ensuring a broad and consultative approach to planning and implementation is often difficult as there can be mistrust between different groups, as well as within them. When different agencies within government do not speak to each other, this can act as a substantial barrier to development, while unrepresentative consultations can miss important information and viewpoints. Finding common ground is essential. If different parts of government have different goals for an extractive project or for the sector as a whole, they may advocate policies that are at cross-purposes with each other. As one participant noted, one agency may see the purpose of a project as a chance to increase government revenue, while another might frame it in terms of employment and infrastructure development.

Good planning relies on good empirical data, and host governments can act as conveners for its development. Participatory and coordinated planning processes help government and industry better anticipate infrastructure and capacity building needs and more effectively address them. Common empirical knowledge supports informed decision making, both in terms of understanding the opportunities created by extractive sector development and what is required for their development (workforce, infrastructure, other inputs), as well as developing expectations of which opportunities are within reach, and which might be more feasible at a later date. A collective assessment of opportunities also helps identify related sectors that might be developed, as well as the barriers that may make that difficult.

Participants further considered monitoring and evaluation and regular review of the strategy as critical for public-private collaboration. Participants noted how the importance of measurable progress is underscored by the 2030 Agenda for Sustainable Development, which envisions a global indicator framework that operates at regional and national levels. The clearly defined roles articulated in the Operational Framework will help facilitate the structure of this exercise and the capture of progress towards the desired outcomes. Building on existing platforms, avoiding duplication, and responding to new developments are essential for both efficiency and relevance, while minimising unnecessarily burdensome approaches. Participants discussed merging together Steps 5 and 6. Participants also noted the complexity of developing metrics and indicators, and the need for clear responsibilities, even in terms of different parts of the government. They also suggested that planning for monitoring and evaluation should start as far in advance as possible in the process, both to establish baselines and because good frameworks take time to establish. When monitoring and evaluation is already occurring on a project-by-project basis, it should be coordinated as much as possible with higher scale evaluations, to avoid duplication. Connected to that, participants also noted that depending on the level of measurement – project, sector, or country – metrics could look very different.

Participants stressed the importance of moving from the conceptualisation of the Framework to its operationalisation at country and, where appropriate, regional level, to support countries through fit-for-purpose approaches for competitive and shared value creation that builds on existing analysis and efforts. In this respect, country reviews will be carried out upon demand and used to support country-owned processes, such as the development of Country Mining Visions in Africa, while generating at the same time evidence to feed the inter-governmental peer-learning process. The country reviews will also offer the opportunity to create feedback loops to further refine the Operational Framework in the future. The country reviews will be part of the Policy Dialogue intergovernmental process, with knowledge peers serving as learning/capacity building tool, and acting as mirrors for self-assessment in both their similarities and differences. Countries under review will benchmark options against peers. Data will shed light on particular areas where the country lags behind, generate greater awareness of the bottlenecks to development and precipitate reflection on the policies needed to unlock opportunities. While each country is different, by comparing itself with others, the country under review will be able to consider a range of policy options to make better-informed choices and to accelerate its development.

As part of the Policy Dialogue and the OECD Competitiveness Program, an initial study on resource-based value creation in Kazakhstan is already underway. Participants also welcomed the announced collaboration between the OECD Development Centre and the African Mineral Development Centre on Ghana and Tanzania as possible pilot countries for the country reviews.

Areas of future work also include using the Policy Dialogue process to forge a public-private alliance for supporting the achievement of relevant Sustainable Development Goals, through the development of a Compendium of Practices to showcase what can work in practice and how. Participants discussed how breakthroughs in achieving the SDGs will require public-private collaboration based on constructive dialogue, shared understanding, mutual trust and the recognition of the distinct roles and responsibilities of governments, industry, civil society and local communities. In particular, participants highlighted the potential impact of the extractive sector on the success of the SDGs, given the sector's economic weight in many developing countries. Participants agreed that the OECD Operational Framework on public-private collaboration provides a common basis across governments, industry and civil society organisations to enable systematic engagement and collaboration to support, in particular, the achievement of SDGs 8 (Promote inclusive and sustainable economic growth, employment and decent work for all) and 9 (Build resilient infrastructure, promote sustainable industrialization and foster innovation) and contribute to SDGs 6 (Ensure access to water and sanitation for all) and 7 (Ensure access to affordable, reliable, sustainable and modern energy for all), on the basis of new mechanisms of shared governance. Making visible the contribution of extractives to the national economy will help manage expectations, while clarity around roles and responsibilities set out in the Operational Framework can help define how to apply sustainable lenses to extractives and how they can contribute to relevant SDGs at country-level. Participants agreed that there was value in developing an on-line Compendium of Practices as a living tool to collect examples of practical solutions to current problems and position countries to better manage their natural resources and put them on a track to enable them achieve relevant SDGs.

Work Stream 2 – Revenue Spending and Stabilisation Funds (Session 7)

The session was co-chaired by Ms Bernardita Piedrabuena, Coordinator for Capital Markets and International Finance, Ministry of Finance and Mr Muhamed Izbastin, Director of Management of State Obligations and Development of the Financial Sector Policy Department, Ministry of National Economy of the Republic of Kazakhstan.

The session offered the opportunity to discuss the final version of the *Comparative analysis on the performance of stabilisation funds and investment options* and the proposal to focus future work on how to use resource revenues to achieve development objectives, as also reflected in the Addis Ababa Tax Initiative.

Participants endorsed the lessons learned contained in the *Comparative analysis on the performance of stabilisation funds and investment options* recognising that it provides a solid knowledge base for knowledge sharing and peer-learning on the performance of stabilisation funds and investment options, by comparing experiences across OECD and non-OECD countries with stabilisation funds in place. While recognising that stabilisation funds are not a panacea, the current decline in commodity prices shows the value of having a stabilisation fund and precautionary savings that can be used when markets collapse and revenues from natural resources decline. The point was made that stabilisation funds can serve as a financial management tool to help ensure discipline on spending sustainability over time, address absorptive capacity issues from high commodity prices and limit opportunities for corruption through more transparent accounting practices of revenue flows.

It was emphasised that sequencing matters. Once governments get the stabilisation function right, they can start exploring how to find the right balance between saving and spending in investing. It was observed that the rule of investing abroad is often based on the experience of developed economies. In Norway, for example, the sovereign wealth fund came as a consequence of development and not as a vehicle to drive structural transformation. Good governance was in place well before discovery of large deposits of natural resources. There was also agreement that oil revenues would go to the sovereign wealth fund and be saved for the future, although a small proportion of the interest can be spent on investment, with decisions taken by professional managers rather than politicians.

Participants considered that a critical factor in the decision to invest domestically is whether domestic capital markets are sufficiently developed to provide for appropriate benchmarking and competition. If this is not the case, priority may be given to financial sector development that also targets intermediation and secondary market development essential for the adequate functioning of capital markets. The Kazakh example illustrates how this can be managed with caution. Based on the assumption that underdeveloped capital markets cannot provide adequate information on investment performance, all investments by the National Fund of the Republic of Kazakhstan are invested abroad except for a share that may be channelled through Samruk Kazyna (SK), the holding company for state owned enterprises, which is considered to have enough leverage to make domestic investment, attract foreign capital and therefore contribute to capital market consolidation.

Moving forward and in line with the domestic resource mobilisation agenda, participants recommended investigating how natural resource revenues can contribute to the financing of the SDGs to improve health and education, provide access to water and infrastructure, and alleviate poverty. Participants further commented on the need to better understand what is meant by social spending. Indeed, social spending covers different realities across countries and policy areas (e.g. health, education, social protection, employment, etc.). The mechanisms (e.g. allowances, cash transfers, tax exemptions, etc.), modalities and timeframes may vary significantly and should be further analysed in order to identify the type of social expenditures that may be better suited for funding from resource revenues. Some participants insisted on the importance to disconnect the decision on what to spend on from the decision on how to finance this expenditure. For example, in Chile the decision to spend on an education reform was made independently from the decision on how to finance it. Funding was provided through a tax reform rather than from resource revenues, based on the need for long-term sustainable funding.

Participants recognised that there is currently no dedicated space to address the specific needs and concerns of developing countries on how to spend resource revenues for development. Indeed, the questions and challenges faced by a high-income country in running natural resource fund with assets in the order of USD hundreds of billions are very different from those of a lower-income country with funds in the order of USD hundreds of millions. Governance and management needs will also significantly differ between small institutional investors and large institutional investors. More fundamentally, for middle to high-income countries, the use of natural resource funds typically emerged as a consequence of economic growth and development. Natural Resource Funds were not, in most cases, a catalyst of that development. For low-income countries that are now establishing or have recently established a natural resource fund, the underlying expectation is that they will support and catalyse more sustainable economic growth and development.

Hence, for purposes of future discussions participants agreed to gather not only asset managers responsible for the investment function of natural resource funds (for which collaboration with the International Forum on Sovereign Wealth Funds was considered useful), but also people in charge of spending decisions in developing countries and emerging economies with the objective of: i) improving understanding of their common needs and possibilities for more effective resource revenue management and spending in order to achieve improved development outcomes; ii) raising awareness among resource-rich developing countries of good policy and operational practices surrounding natural resource funds and spending options; and iii) providing clear and adaptable lessons and principles that developing countries can employ to maximise the benefits and operational effectiveness of natural resource funds and spending decisions.

Work Stream 3 – Getting Better Deals (Sessions 3, 4, 5, 6 and 8)

Supporting complex contract negotiations and mineral pricing issues

The second day of the meeting (3 December) focused on issues related to contract negotiation support. The key outcome of the discussion was the agreement to move forward with the setting up of a Negotiation Support Forum, a joint endeavour between the G7 Initiative on Strengthening Assistance for Complex Contract Negotiations (CONNEX) and the OECD Policy Dialogue on Natural Resource-based Development. Through knowledge sharing and peer learning, the primary objective of the Negotiation Support Forum is to investigate how the quality of advice as a process can be improved, and how cooperation and coherence among support providers can be enhanced with a view to achieving better deals. The Forum further aims at developing guidance for balanced contractual arrangements that can translate into improved development outcomes. Participants emphasised the importance of having such a tripartite dialogue between host governments, investors and support providers in a neutral space to ensure a more holistic and tailored approach to negotiation support. The inter-governmental session 8, chaired by Mr Kang-Hyeon Yun, Vice-Chair of the Governing Board of the OECD Development Centre and Deputy Permanent Representative, Delegation of the Republic of Korea to the OECD, provided the opportunity to delve deeper into the challenge of mobilising resources from extractive industries in a scenario of falling commodity prices.

Participants welcomed the timeliness and relevance of the Negotiation Support Forum at a juncture where commodity prices are falling, extractive industries are reconsidering their investment strategies and official development assistance is decreasing. In light of these circumstances, investment contracts more than ever are an essential governance tool. Participants recalled once more how the Addis Ababa Financing for Development conference highlighted the potential of natural resources to mobilise domestic resources in support of the implementation of the SDGs. The extent to which natural resources contribute to development largely depends on the negotiation of investor-state contracts. Indeed, contracts not only define the relationship between investors and host governments, but they set out risk allocation, costs, as well as the share of revenue to be derived from investments. Contracts can boost job creation, strengthening ties to the local economy, and have an impact on social and environmental aspects that have significant long-term impacts.

Before embarking on any specific contract negotiations, participants emphasised the importance of improving mutual understanding across host governments and investors around mutual priorities and interests. Host governments need first to understand what they want to achieve with their natural resource endowments, by articulating a strategic vision on the role that the extractive sector can play. Participants noted, in particular, the importance of the pre-negotiation stage, involving the conduct of feasibility studies, surveys, assessment of available assets, consultation with impacted communities, public awareness campaigns. The more thoroughly this exercise is undertaken, the better prepared the parties will be to negotiate a good agreement.

Participants considered that a “good deal” relies on the mutual understanding of clear objectives on both the government and investors’ side and in addressing complex issues around stabilisation, local content, related infrastructure development, transfer pricing, environment, arbitration. Developing a common vision across the government and different relevant stakeholders was considered essential for successful negotiations. Governments usually expect the deal to bring economic growth and development while at the same time, providing for social, environmental and ethical safeguards, to build economic opportunities for the development of the local economy (skills, infrastructure, supply base, downstream processing industry, etc.). The issue of transboundary infrastructure development, often confronted with vested interests, different political priorities and legal frameworks across different jurisdictions, was regarded as a pre-condition for the successful exploitation of world class deposits, especially in land-locked countries. For example, there are currently several negotiations running in parallel in East Africa, where opportunities for shared interests across governments and investors at regional level could be seized. Investors commonly expect to operate under a transparent, stable policy and regulatory framework, risk shared with local partners, returns commensurate with life assets, and taxes, charges, and royalties based on fair risk/return principles. Contract negotiation support therefore needs to be envisaged as part of a wider structural transformation strategy at the national or even regional level, in particular where cross-border infrastructure opportunities exist. Moreover, participants cautioned against linking the timing of negotiations to new discoveries. The point was made, however, that sound policy and legal frameworks are not by themselves sufficient to achieve good contracts. Building capacity of governments on project management, including financial and economic modelling, and monitoring is necessary to ensure that contract design and implementation align with the government’s long-term vision and goals.

Participants highlighted the challenge to balance the need to attract investments, which in some cases may lead to overgenerous fiscal concessions and freezing of contracts, and the need to adapt the contract to changing circumstances to counter the obsolescing bargain. Participants referred to an older contract with a thirty-year fiscal and legal stabilisation clause, ruling out changes made in the fiscal framework and entirely overlooking environmental and community development obligations.

Participants started discussing where support is most needed. Participants identified, in particular, the following gaps in negotiation support:

1) Asymmetric level of information and unbalance in available capabilities along the value chain of extractives, in particular regarding the compilation and interpretation of geological data to understand what host governments are negotiating on. Host governments also have very little information and control on costs of production to evaluate rents and assess commodity prices. Capacity on the ground should be developed to address these gaps.

2) Difficulty in pulling together a multi-disciplinary negotiating team with a wide range of legal, technical and financial expertise to prepare for and conduct the negotiations. Host governments need to know where

and how to best select a team of advisors to meet host countries' needs and priorities. This process can be difficult, either because ministries often act in an uncoordinated manner and with different goals. For example, negotiations are often led by the ministry of finance with no involvement of technical staff from other relevant ministries (mines, environment, transport, agriculture, etc.). Time pressure can also force quick decisions, since delays in negotiations have a bearing on the chances of taking a project forward. This time pressure can lead to the sub-optimal selection of advisors with no in-depth knowledge of the country context and with a mandate that does not reflect the actual needs of the government. Cost can also become an issue, with prices escalating quickly beyond an initial estimate, or services that began on a pro bono basis suddenly requiring compensation. Time pressure may also lead governments to hire law firms before obtaining financial assistance, and there may be a mismatch between actual costs and financing. Issues of conflict of interest and trust may also arise when ad hoc advisers are appointed.

3) Limited knowledge sharing and peer learning across countries on experiences around concluded contracts and the implications associated with key contractual clauses, such as adaptation to changing circumstances, transfer pricing, and local content. Asymmetric contracts are not likely to be durable, whether due to the contract itself or how it is implemented and the legal framework that supports it. Examples were raised of agreements that were signed under older legal regimes that, while legal at the time, are no longer in keeping with new laws introduced in those countries. Illustrative of this were contracts in Mali that failed to integrate new societal aspirations such as social and environmental performance. It was also noted that trust may be eroded due to practices such as transfer pricing and tax optimisation that take advantage of grey areas and loopholes in national legislations and international law. Participants recognised the value of developing a catalogue of options that could be used as a reference for future negotiations.

4) The need to build trustful relationships between host governments and support providers, requiring long-term relationships rather than one-off assistance. Trusted institutions are needed to identify the required expertise (international law firms, geologists, engineers or other technical experts), carry out due diligence, negotiate fees that are affordable, respond to countries' actual demands and monitor implementation. Although international law firms usually have binding codes of conduct in place, this may not be the case for all service providers. Ensuring compliance against existing codes of conduct including the one developed by the G7 CONNEX Initiative will help service providers build trust with their counterparts and act as honest brokers. Moreover, both governments and international law firms should ensure that compliance and integrity standards trickle down along the chain of service provision and apply to intermediate service providers.

With the proliferation of service providers, participants felt the need for a more systematic approach to contract negotiation support, which so far has been too fragmented and limited in scope and scale. In particular, participants emphasised the need for a more coordinated approach to harness in-country long-term capacity. For example, centres of excellence at the regional level could be created to manage support for contract negotiations and progressively deliver training on key issues such as mining laws (as it is being done through the African Mining Legislation Atlas) and domestic resource mobilisation, including revenue collection, transfer pricing and tax audits. Regional professional bodies may be supported in developing in-country capacity. Capacity-building can also focus on on-the-job training. For example, links between international law firms and local law firms could be systematically developed to train local lawyers for future negotiations. This solution can help alleviate conflict of interest issues that may arise with ad hoc advisors. The same model can be applied to build local non-legal expertise. When highly qualified technical expertise is needed, complementary external support could always be sought. In this respect, NEPAD is putting together a database on available multi-disciplinary expertise, combining international and national/regional sources.

Participants discussed how the size of the natural resource pie can vary considerably depending on external factors such as price volatility. It was reported that over 500 oil projects are on hold, while copper and zinc production have been cut across a number of countries. However, in some instances prices have remained relatively high, if put in perspective. For instance, it was observed that the price of gold between 1995 and 2005 was on average 300 dollars and projects were launched on these basis. From 2005 to 2015 the prices went up to 1800 dollars and now are at 1100 dollars.

The recent downturn in commodity prices is placing considerable fiscal and macroeconomic pressure on many resource-rich countries with taxes, jobs, and exports falling. Governments need to manage this revenue shortfall. In this environment, governments may be tempted to raise taxes to recover their loss in revenue; while revenue authorities can get better at raising revenues, they can also deploy methods which are destructive for the business environment, such as slowing down or stopping VAT refunds.

Faced with the decline of commodity prices, energy and mining companies are cutting production and exploration as a way to stabilise prices, while also coping with the challenge of access to capital markets by entering into streaming arrangements. These arrangements enable mining companies to access funds for partial or complete mine development and construction, and can fill a financing gap where funds are not available from traditional sources such as banks. In practice, a financier funds upfront the construction of the mine which will be repaid through a discounted price on the minerals sold. But, for countries that are imposing tax arrangements on the basis of the prices charged, this essentially means losing their tax base. Streaming reduces the tax base of resource-producing countries, where fiscal settings (such as ad valorem royalties and CIT) use sales revenue as part of tax calculations. In addition, since the amount of financing provided is linked to the applicable discounted price, mines have strong incentives to agree to lower fixed prices, since this increases the up-front finance provided to them. Streaming agreements also pose challenges for revenue authorities because they contain both debt and equity characteristics, which can add complexity for developing countries and give rise to mismatches in tax treatment where agreements are with foreign parties. Moreover, product sales require careful transfer pricing analysis when undertaken between related parties to ensure base erosion through transfer pricing is not occurring.

Discussing commodity prices, participants noted the importance of the topic for developing countries, especially in a scenario of declining commodity prices. While recent price falls are a “fact of life” that needs to be managed, they are nevertheless seriously affecting many countries. As one example, some participants expressed concern that the actions of major iron ore producers to continue producing at current levels despite price falls are causing less competitive mines in developing countries to cut production or close. Participants also discussed the challenges of forecasting future price movements, whilst noting there is considerable analysis produced by World Bank (pink sheets), IMF and others (e.g. market analysts) that can be freely obtained and that can assist policy makers to understand key forces affecting each market. Whilst there will always be uncertainty on the future path of prices, participants noted it was more important to focus on how to design fiscal settings and contracts that adapt to price changes. In order to reconcile the need for stability with rapidly changing market conditions, it was observed that ideally the fiscal regime should be progressive so that as the investments become more lucrative, the government acquires a greater share of the revenue. Some participants also wondered whether contracts where natural resources are exchanged for infrastructure could represent a viable alternative, shielding producing countries from the rapid decrease of commodity prices.

Participating countries welcomed on-going OECD work on mineral pricing. This work, which is being developed with the strong support and engagement of the Policy Dialogue’s participants for the G20 Development Working Group, aims to build developing countries’ capacity by: i) outlining a practical methodology for developing countries to better understand mineral product transformation chains and pricing; ii) providing three case studies to identify the forms under which minerals are exported – gold, copper and iron ore – covering key transformation processes and traded mineral products; iii) offering extended case studies in these minerals outlining common pricing practices when mineral products are sold; and iv) providing additional information on industry practices that may assist revenue authorities to better understand how those minerals are priced, including a compilation of data sources that may assist revenue authorities in reviewing transacted prices between related parties.

Participants welcomed the progress made since the last meeting, noting the importance of the work on mineral product pricing developed by the Secretariat of the Tax and Development Task Force to address an ongoing challenge for developing countries for both contract negotiations and transfer pricing issues. The consultation drafts were seen as an important step towards providing a useful benchmark for fixing prices and practical assistance to revenue authorities. It was suggested to extend the work to apply the pricing methodology to bauxite/aluminium products for which most of the transactions are over-the-counter between companies and for which there is no internationally accepted reference price. The value chain approach was also regarded important to adequately address the needs of developing countries since they often do not export refined metals. Participants suggested mapping price and cost structures as well as tax issues throughout the value chain.

Work Stream 4 - Corruption risks in the value chain of extractives (Session 3)

The session was co-chaired by Mr Fuad Khoury Zarzar, Comptroller General, Republic of Peru and Mr Nicola Bonucci, Director for Legal Affairs and OECD Representative to the G20 Anticorruption Working Group. The session had two main outcomes: 1) the final draft of the Typology on Corruption Risks, Mitigation Measures and Incentives in the Value Chain of Extractives was welcomed by participants, with useful suggestions concerning the publication of the work in Q1 2016 put forward; and 2) participants discussed options on how to make best use of the comprehensive risk mapping and recommendations for risk mitigation and prevention.

The Typology was prepared by the OECD Development Centre with the support of a Multi-Stakeholder Working Group composed of France, Guinea, Indonesia, Papua New Guinea, Peru, Philippines, Eni, Berne Declaration, Engineers Without Borders, Natural Resource Governance Institute, Oxfam France, Sherpa France, Transparency International, and U4 Anti-Corruption Resource Center. The Typology further benefitted from input and comments received from the OECD Anti-Corruption Division of the Directorate for Financial and Enterprise Affairs, the OECD Directorate for Public Governance and Territorial Development and the OECD Centre for Tax and Policy Administration. The OECD Development Co-operation Directorate was also consulted. Earlier drafts of the document were discussed on different occasions, including the OECD Integrity Forum in March at the OECD in Paris, the APEC Mining Task Force on 27-28 August 2015 in Cebu (Philippines) and the meeting of the G20 Anti-Corruption Working Group on 16 October 2015 at the OECD in Paris.

Participants welcomed the Typology study as a useful toolbox for practitioners and policy makers commending its unique comprehensive scope and integrated approach covering the entire value chain of extractives. For example, for the first time the work covers corruption risk in commodity trading which represents a potentially huge loss of revenues for producing countries considering the financial volumes involved in the commodity trading sector. It was reported that, between 2011 and 2013, oil trading in the ten major Sub-Saharan African countries represented 56% of state public budgets. Participants suggested broadening the scope of the last section on corruption to include social expenditures made by private companies outside contractual arrangements and address, for example, corruption risk related to social expenditures in licensing. Participants recognised the usefulness of pragmatic mitigation measures and incentives that can induce voluntary change in behaviour, by putting a cost on corruption and help make it less attractive. To achieve this, participants insisted on the importance to not only have rules and regulations in place but also political leadership, systems and procedures to ensure effective enforcement, control and sanctioning of deviant behaviours, in particular in contexts where corruption is systemic.

Experiences were shared about the type of incentives that can be put in place to prevent corruption and encourage detection and reporting. For example, in Liberia, the recently enacted legislation on whistleblowing rewards individuals who alert and report on corrupt practices. Additional incentive measures were suggested for integration in the report, including de-listing from stock exchanges of companies guilty of corruption. Countries like Guinea or Mali have decided to disclose all their mining licenses and permits, contracts and conventions in an online public registry. In the case of Guinea, this new measure came in response to the lack of control and visibility of the government on more than 800 licenses, a significant share of which had remained inactive for a long time and were held by companies that had no technical expertise in exploration and production. In the case of Mali, a registry which not only maps out licenses and permits but also reports all associated payments has rendered the decision-making process more efficient, reducing its length from twenty-four months to two months.

Participants felt that the Typology manages to capture the multiplicity of actors involved, their roles and interactions. The proposed mitigation measures were also recognised as comprehensive and innovative in that they addressed both the supply and demand sides, for example calling on companies active in commodity trading to conduct due diligence on the conditions under which commodities are traded. Some participants noted that home countries can also have a role in making this happen. Participants highlighted that any solution that did not address both the supply and demand side by including the responsibility of home countries would fall short of achieving the desired result.

The document stresses that corruption is increasingly associated with other forms of cross-border criminality such as terrorism, drug trafficking, resource smuggling, money laundering, and tax evasion. Several participants expressed interest in better understanding the link between corruption and illicit financial flows and in clarifying the role played by other key actors involved in corruption schemes, such as third country destinations, intermediaries, and banks.

On the structure of the document, participants suggested ways to improve its usability. They recommended matching mitigation measures to specific risk factors and drawing a line between general governance reforms and targeted anti-corruption measures. The potential impact of recommended measures on other policy areas could also be considered.

The question of how to operationalise the Typology and bring it to a wide audience was raised. The need to ensure broad ownership and uptake by different key constituencies was considered necessary, given the multiplicity of stakeholders concerned by the recommendations contained in the document. Participants urged the OECD Development Centre to raise awareness and disseminate the excellent work developed so far across different targeted audiences, taking advantage of relevant international events to be held in 2016 including, amongst others, the 7th EITI Global Conference (24-25 February, Lima, Peru); the OECD Integrity Forum (19-20 April, OECD, Paris); the OECD Global Forum on Responsible Business Conduct (OECD, Paris); the Inter-governmental Forum on Mining, Minerals, Metals and Sustainable Development (October, Geneva); and UNCTAD's High Level Meeting on Commodities and Development.

There was strong support for home and host governments, companies and civil society to use the Typology as a guide for self-assessment to measure progress in fighting corruption in the value chain of extractives. The Plenary meetings of the Policy Dialogue offer a forum where different stakeholders can report back on implementation. A big oil company reported that it has already customised the Typology to its needs by developing a user-friendly tool which is being distributed to all its compliance officers to support their annual risk mapping and allocation of resources reflecting the identification of risk. There was also support to adapt the Typology for possible integration into existing methodological tools to carry out peer-reviews, such as the African Peer Review Mechanisms. A checklist could eventually be developed to support this exercise in resource-rich countries.