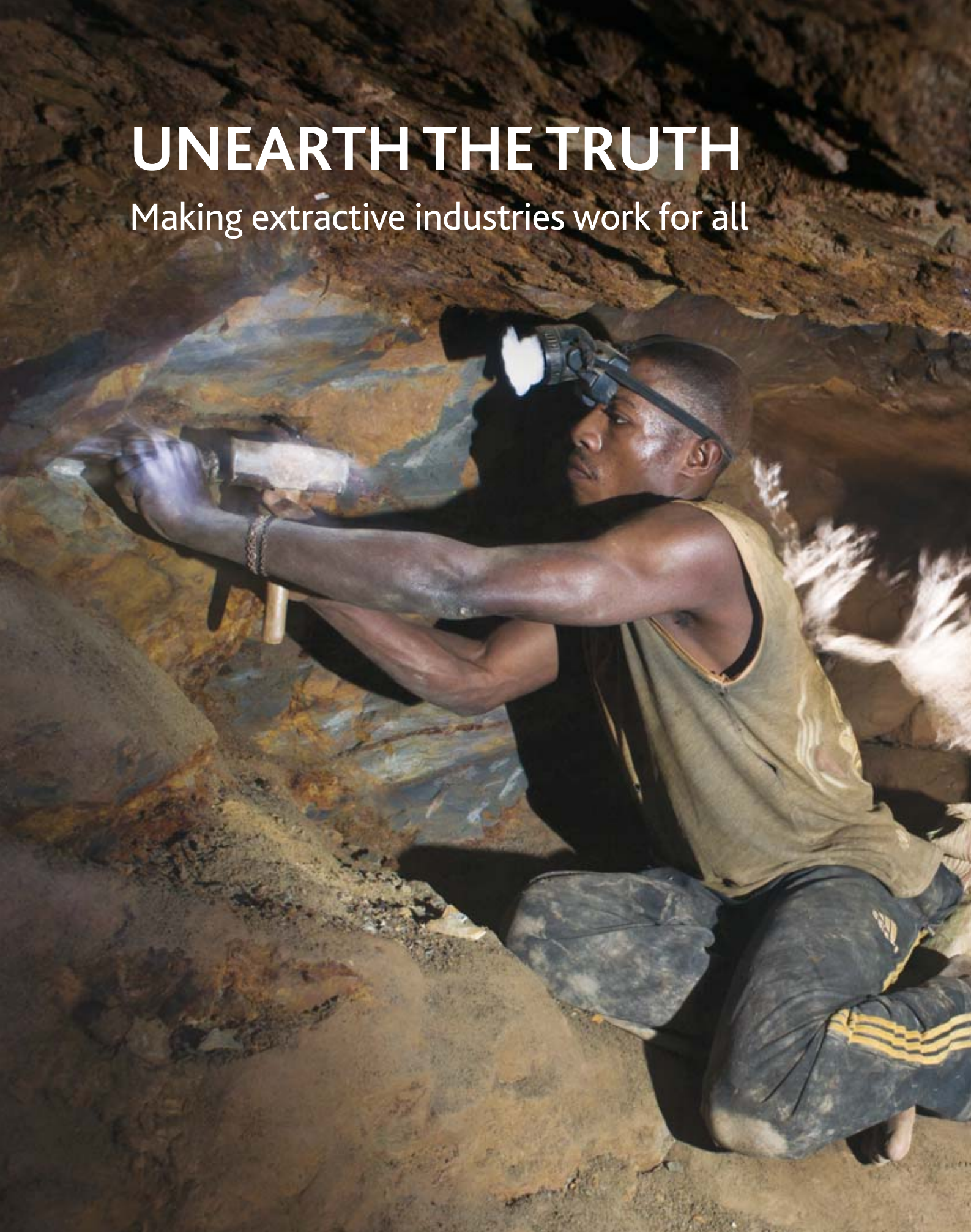


UNEARTH THE TRUTH

Making extractive industries work for all



tearfund

Unearth the truth

Making extractive industries work for all

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Tearfund is a Christian relief and development agency working with a global network of local churches to help eradicate poverty.

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Executive summary

Every second, \$5,000 are lost to corruption in Africa; money that could be spent on tackling poverty. For example, it could be used to help save the lives of the one in six children who die unnecessarily from malaria – the equivalent sum of \$5,000 could buy 1,000 insecticide-treated bed nets. In a world where 3,000 children die daily from malaria, where would you rather see that money go?

While corruption, lack of transparency and poor accountability are as much of a problem in richer countries as they are in poorer countries, the consequences are graver in poorer countries because they have a disproportionate impact on poor and vulnerable groups.

For poor communities where Tearfund works, corruption translates into a lack of access to basic services, a reduction in access to justice and the abuse of human dignity. It also undermines trust and social cohesion and perpetuates the poverty of those who are already poor.

Seven out of the ten most corrupt countries are rich in oil, gas and mineral resources; and four of these are classified as Least Developed Countries by the UN Conference on Trade and Development.¹ It is clear that there is a strong correlation between extractive resources and corruption.

Companies pay large sums of money to resource-rich countries for the commercial development of their extractive resources. They are also involved in other forms of financial activity which could significantly contribute to development and poverty eradication in many of these countries. However, poor people are not benefitting much from the proceeds of extractive resources and this is in large part because it is not clear to people how this money is collected, managed and used.

The primary aim of this research was to explore what impact transparency or secrecy in payments from extractive companies to foreign governments has on access to services and the accountability of governments to their citizens, especially in low income, but resource-rich countries. Field research was carried out in two countries – Colombia and Sierra Leone – with seventy respondents comprising members of local mining communities, academics, non-governmental organisations, government officials, parliamentarians and the private sector. The study also drew on secondary sources, mainly academic literature.

A high number of respondents cited limited access to information on revenue as a major issue for them. Academics, civil society and government respondents were concerned that most of the information that was available lacked the quality, consistency and reliability that they needed to be able to effectively analyse the contributions of the sector to their economies.

Academics and representatives of civil society particularly felt that the levels of corruption were very high in the sector, but they lacked credible and detailed information to hold their governments to account.

On the part of the government, they had difficulties ascertaining the production volumes and the quality of precious stones and metals that companies were extracting and often did not have the resources to verify the data they were given.

Overall, the changes that respondents felt were needed fell into the following categories:

- Creation and implementation of strong laws and policies on mining (at both local and international levels)
- Access to credible and detailed information about government revenue and company activities

¹ Transparency International (2010) *Corruption Perception Index*

- Provision of information from listed and non-listed multinational companies
- Publication of mining contract information
- Prioritisation of the voice and needs of local communities in decision making on mining exploration and exploitation
- Strengthening of public accountability institutions

What has this got to do with the UK and the EU?

EU member states collectively have €2.6 trillion of the market value of the extractive industries on their stock exchanges and the UK LSE Group represents 1.2 trillion of the EU total figure.² The UK and other countries within the EU have already taken some action that should help citizens in resource-rich developing countries to enjoy more of the proceeds of these resources and to actually have a central role in decision making surrounding them – for example, through the Extractives Industry Transparency Initiative. However, it is clear that voluntary mechanisms are not enough.

Many of the oil, gas and mining companies operating in resource-rich developing countries are listed or based in the UK or elsewhere in Europe. This research found that a substantial number of multinationals operating in Sierra Leone and Colombia were listed on European stock exchanges, including the Alternative Investment Market (AIM) of the London Stock Exchange.

The US government has taken a laudable step by enacting the Dodd-Frank legislation in July 2010. Section 1504 of the Dodd-Frank Act requires extractive companies to publish payments they make to foreign governments on a country and project level basis. The momentum is now with the UK government and the EU to do the same.

Disclosure will clearly be of great benefit to citizens, especially poor and vulnerable producing and non-producing communities in resource-rich countries. There are, however, other arguments in favour of this legislation. Strong legislation would:

- Help governments and citizens to properly value the costs and benefits of mining in their countries
- Complement demand side initiatives of building civil society capacity
- Make aid more effective
- Enhance the Extractive Industries Transparency Initiative (EITI)
- Enhance efforts to tackle bribery and corruption globally
- Create a level playing field
- Challenge 'closed societies' – such as China
- Be good for business
- Improve citizen engagement with their governments

The UK and the EU must ensure that their other efforts to combat poverty are not undermined, act in the interests of domestic businesses and demonstrate political leadership (see below).

² See page 49.

Recommendations for the UK government, the EU and the G20

The EU should...

- 1 Establish legislation that would make it mandatory for oil, gas and mining companies to publish payments they make to foreign governments and other relevant financial information, disaggregated by project as well as by country. This should be in line with the reporting requirements of Section 1504 of the US Dodd-Frank legislation, but should also include other information that would enable citizens in developing countries to hold governments and companies to account, such as **production volumes, pre-tax profits, employee numbers and labour costs**.
- 2 Ensure that the legislation has as wide a reach as possible by including non-listed companies as well as companies listed on stock exchanges. This will require amendment of both the Transparency Obligations Directive and the Accounting Directive.
- 3 Encourage governments of resource-rich countries to disclose oil, gas and mining contracts with multinational companies.

The UK government should...

- 4 Be a strong advocate of this legislation at the EU level and work with EU colleagues to ensure that the legislation is enacted as quickly as possible.
- 5 Ensure that, once legislation is agreed at the EU level, it is applied in the UK as quickly as possible – or go ahead and introduce UK legislation if progress is not made at the EU level.
- 6 Ensure that DFID's private sector strategy delivers results for poor people, promotes corporate transparency and responsible investment, and is fully coordinated with the HM Treasury, Department for Business Innovations and Skills (BIS) and the Ministry of Justice.
- 7 Mandate DFID country offices to invest more in building the capacity of citizens to hold resource-rich governments to account. A new focus on citizen capacity building should be brought into their existing commitment to strengthen accountability in aid recipient countries (5% of Budget Support is already earmarked for this purpose).

The G20 should...

- 8 Bring forward mandatory disclosure measures in every G20 country.
- 9 Provide global leadership, champion transparency and promote strong standards of disclosure across the extractives sector, making this issue a core focus of their work going forward.

1 Introduction

1.1 Background

Every second, Africa loses \$5,000 to corruption.³ This is money that could be used to tackle poverty. For instance, it could be used to help save the lives of the estimated one in six children who die unnecessarily from malaria⁴ – the equivalent sum of \$5,000 could buy 1,000 insecticide-treated bed nets.⁵

For poor communities where Tearfund works, corruption translates into a lack of access to basic services, a reduction in access to justice and the abuse of human dignity. But most of all, for these poor communities, corruption means the undermining of trust and social cohesion and the perpetuation of poverty for those who are already poor.

Corruption is the abuse of entrusted power for private gain at the expense of others or society as a whole. It manifests itself in many ways. It can happen on a grand or petty scale. It can be silent. And it thrives where there is a culture of secrecy based on a lack of transparency and accountability of public institutions, private businesses and powerful individuals.

Corruption, transparency and poor accountability are as much of a problem in richer countries as they are in poorer countries. However, the consequences are graver in poorer countries because they have a disproportionate impact on poor and vulnerable groups. Research shows that while there is no direct link between poverty and corruption, corruption has direct consequences on the economic and governance factors that drive poverty.⁶

The management of extractive resources – oil, gas and precious minerals and metals – is closely associated with poverty, corruption and a lack of transparency. There are only a few low income countries – such as Bolivia, Venezuela and, more recently, Zambia – where revenue generated through the proceeds of extractive resources is translating into improved outcomes for poor and vulnerable communities. Rather, many countries that are known to be rich in extractive resources are also known to be the poorest, the most corrupt and the most prone to conflict. For instance, Transparency International's Corruption Perception Index reveals that in 2010 seven out of the ten most corrupt countries were rich in extractive resources; and at the same time four out of these were classified as Least Developed Countries (LDC)⁷ by the UN Conference on Trade and Development.

Corruption and a lack of transparency play a critical role in the poor performance of these countries in the area of socio-economic development.

-
- 3 According to an African Union report, the amount of money diverted through corrupt acts plus resources withheld or deterred due to the existence of corruption is thought to be \$148bn per year, which represents 25% of Africa's GDP. Corruption is also thought to increase the cost of goods by as much as 20%. [BBC News, 18/09/02; *The Economist*, 19/09/02]. The figure of \$5,000 is based on a breakdown of the \$148bn.
- 4 DFID (2010) 'Malaria in Africa' – <http://www.dfid.gov.uk/Media-Room/Features/2010/Malaria-in-Africa/> – Retrieved on 22 August 2011
- 5 The World Health Organisation (WHO) estimates that an insecticide treated bed net costs \$5.
- 6 Chetwynd F, Chetwynd C and Spector B (2003) *Corruption and Poverty: a review of recent literature*. Management Systems International for the United States Agency for International Development.
- 7 According to the UNDP, LDCs 'are those that have the lowest per capita income, the lowest health, nutrition and education indicator and the highest economic vulnerability'. From Havro G and Santiso J (2011) *Benefiting the Resource Rich: how can international development policy help tame the resource curse*. IDS Working Paper 355. LDC and low income countries are used interchangeably in this report.

1.2 Implications – what does this mean for the UK and the EU?

Many medium and large mining, oil and gas companies that operate in Africa, Asia and Latin America are headquartered in the UK or other European countries as stock exchange listed or non-listed business entities. These companies pay large sums of money to resource-rich countries for the commercial development of their extractive resources. They are also involved in other forms of financial activity which could significantly contribute to development and poverty eradication in many of these countries.

In 2008, for example, it was estimated that Africa exported oil and minerals worth \$393 billion – nearly nine times the value of international aid (\$44 billion) to the continent.⁸ It is hard to ascertain how these huge sums of money get spent or are accounted for because of a tradition of secrecy and limited information.

The UK and other countries within the EU have already taken some action that should help citizens in resource-rich developing countries to enjoy more of the proceeds of these resources and to have a central role in decision-making surrounding them. They have given aid to many of these countries, some of which has had the aim of strengthening governance and improving accountability and transparency. They have also created voluntary mechanisms for the promotion of transparency and accountability, most notably the Extractive Industries Transparency Initiative (EITI), and the Kimberly Process Certification Scheme (KPCS). Many bilateral and multilateral agencies, as well as high profile individuals, have also taken steps to either create similar initiatives or support existing ones.

Unfortunately, after so many years, it has become evident that voluntary mechanisms are not enough to guarantee improved public accountability, reduce corruption in the sector and ensure better infrastructure and essential service provision to citizens in these countries.

The US government has taken a laudable step by enacting the Dodd-Frank legislation in July 2010. Section 1504 of the Dodd-Frank Act imposes requirements on extractive companies, in their annual reports filed with the Securities and Exchange Commission (SEC), to provide information regarding

Riding over a mine
of wealth in Colombia.
But will these children
enjoy any of it?
The hill in the middle
distance is a spoil
heap from previous
mining activity.

Paul Cook / Tearfund



8 In written evidence submitted by the Publish What You Pay (PWYP) coalition to the Treasury Select Committee's inquiry into the principles that should underpin the UK's tax system on 11 March 2011 – <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmtreasy/753/753vw18.htm> – retrieved on 29 July 2011.

payments made by the company, a subsidiary of the company, or an entity under the control of the company, to either the US Federal Government or a foreign government for the purpose of the commercial development of oil, natural gas or minerals. Section 1504 defines 'commercial development of oil, natural gas, or minerals' to include exploration, extraction, processing, export and other significant actions relating to oil, natural gas or minerals, or the acquisition of a license for any such activity, as determined by the SEC.

The momentum is now with the UK government and the EU to create similar measures within their jurisdictions. This is essential for two key reasons:

1.2.1 RESOURCE REVENUES

Eighty-six multinational oil, gas and mining companies are listed in the UK. These companies pay large sums of money to resource-rich countries for the sale of oil, gas and minerals which could serve as a basis for development and poverty reduction.

Within the Euro zone, Revenue Watch Institute (RWI) found that the extractives sector had a share value of about €2.16 trillion on five exchanges in Europe. The London Stock Exchange (LSE) controls 59% of that total. The LSE Group also represents the largest exchange in terms of the market value of extractive industries of all the 31 major exchanges across the world (excluding the United States), comprising 20% of the total extractives market investment.

At the moment 12 out of the 86 companies listed on the LSE are also listed on either NASDAQ or the New York Stock Exchange (NYSE) in the US. If legislation is extended to the UK and other parts of the EU, this will raise the number of companies covered significantly.

1.2.2 BETTER TARGETED AID

The EU in general – and the UK government in particular – give large sums of money in aid to many resource-rich, but low income countries. An increase in the capacity and commitment of resource-rich countries to generate and manage revenue coming from the extractives sector will free up the resources from donor countries to support resource-poor low income countries, making aid more effective. It would also create opportunities for sustainable development and poverty eradication in the long term.

Information from company financial reports, if made available and disaggregated, could be a vital tool in reducing corruption and improving basic service provision by giving citizens essential data with which to hold their governments accountable for the revenues mobilised and how they are used.

1.3 Objectives of the research

The primary aim of this research was to explore what impact transparency or secrecy in payments from extractive companies to foreign governments has on accountability and services on the part of governments to their citizens, especially in low income, but resource-rich countries.

It is based on the assumption that transparency is crucial to ensuring that citizens, especially representatives of poor communities, have access to vital information that could enable them to hold their governments to account, and that extra-territorial measures could play a vital role in securing improved accountability in the management of extractive resources for the benefit of poor communities.

To test this assumption, the research sought to hear and document how the mining sector impacts citizens and poor communities in resource-rich countries, what information about payments is

currently available, and what value they think extra-territorial legislation could add to improve the management of the sector and the proceeds that are derived from it.

1.4 Research method and limitations

This report is the product of information generated from field research carried out in two countries – Colombia and Sierra Leone. It also draws on secondary sources, mainly academic literature, to strengthen the case for enhanced standards of company disclosure in the extractives sector.

The primary research was conducted using qualitative tools, including semi-structured one-to-one interviews and group discussions. Five categories of respondents were targeted for the field research: government (including bureaucrats and politicians), extractive companies, local communities, civil society organisations and key informants (eg those who are familiar with the sector but do not fall under the other categories of respondents).

It is limited by the fact that all the field analysis relies solely on qualitative information, and that the choice of locations was influenced by where Tearfund has existing partners and programmes. Another limitation is that because of time constraints, the field research could not cover more than two countries and a limited number of local communities for the rural responses. In addition, only a small number of private sector actors took part in the interviews as a result of logistical challenges experienced by the researchers, and the unwillingness of some of the companies that were approached to take part in the interviews.

1.5 Structure of the report

CHAPTER 2 explores the general impact of activities in the extractives industry (social, environmental and political) to illustrate the costs to poor communities in resource-rich countries. It highlights the limitations of voluntary mechanisms and makes a case for new legislation, giving examples of existing good practice.

CHAPTER 3 analyses findings from the research carried out in Colombia and Sierra Leone. It includes information on the general socio-economic climate in those countries, and perceptions about the level of transparency and accountability in the extractives sector. The research focused largely on the mining sector and collected the views of different categories of stakeholders who are directly or indirectly impacted by mining activities.

CHAPTER 4 looks at the challenge to the EU to take action now to create strong legislation, building on the findings and analysis in the previous chapters. It bases its argument on what resource-rich countries and the EU stand to gain by strengthening the regulatory standards for extractive multinational companies.

CHAPTER 5 presents concluding arguments and proffers specific recommendations towards the UK government and the EU.

2 Understanding the issue

2.1 Explaining extractive resources

All natural resources are either **renewable** or **non-renewable**.

Renewable natural resources can be replenished or reproduced. Some of them, such as sunlight, air and wind are continuously available and their quantities are not affected by human consumption. Although many renewable resources can be depleted by use – such as wood – they can all potentially be replenished over time.

The terms *non-renewable natural resources* and *extractives* are often used interchangeably. These resources are formed over long geological periods and cannot be renewed once depleted. They include minerals, oil and gas. In terms of their availability, they are exhaustible, and on the basis of distribution, access to them is localised.

2.2 Explaining transparency

Transparency implies an openness and willingness to accept public scrutiny. Kaufmann and Bellver (2005) put it more precisely as 'increased flow of timely and reliable economic, social and political information, which is accessible to all relevant stakeholders'.⁹

Kolstad and Wiig (2008) make an important distinction between political and bureaucratic corruption, which helps to underline the complex nature of dealing with the poor management of extractive resources in resource-rich low income countries. They describe political corruption as 'the abuse of office by those who make the rules...' while bureaucratic corruption 'takes place at the implementation end of public policies.' They argue that political corruption is most prevalent in resource-rich poor countries as the political elite tend to control huge resource rents.

Bureaucratic corruption obviously has negative consequences. But political corruption creates a bigger challenge in this context – mainly because those in charge of these rents are those expected to create standards of transparency, giving them little incentive to initiate reforms that would subject them to increased scrutiny. Therefore, it is unsurprising that ten years after the creation of the Extractive Industries Transparency Initiative only 35 countries are implementing it with just 11 fully compliant to date.¹⁰ It has little to do with institutional capacity. It has a lot more to do with commitment on the part of the political class. While domestic legislation is obviously important, this demonstrates why extra-territorial measures are required to regulate the extractives sector.

9 KaufmannD, Bellver A (2005) *Transparenting transparency – initial empirics and policy applications*. Presentation at the Pre-Conference on Institutional Change for Growth and Poverty Reduction in Low-Income Countries at the International Monetary Fund, Washington, DC, July 6–7, 2005, p4

10 See the full list of all the 35 countries on the EITI's website – <http://eiti.org/implementingcountries> – retrieved on 27th July 2011. Note that Yemen, one of the fully compliant countries, has been suspended. According to a Global Witness briefing 'Five challenges for the EITI to deliver' (posted here <http://www.laohamutuk.org/Oil/EITI/GW5ChallengesEITIMar09.pdf> and dated 3rd March 2009), 'although EITI Compliance does not mean that a country is free from the risk of corruption... it is a powerful signal to the world that the country is committed to openness.'

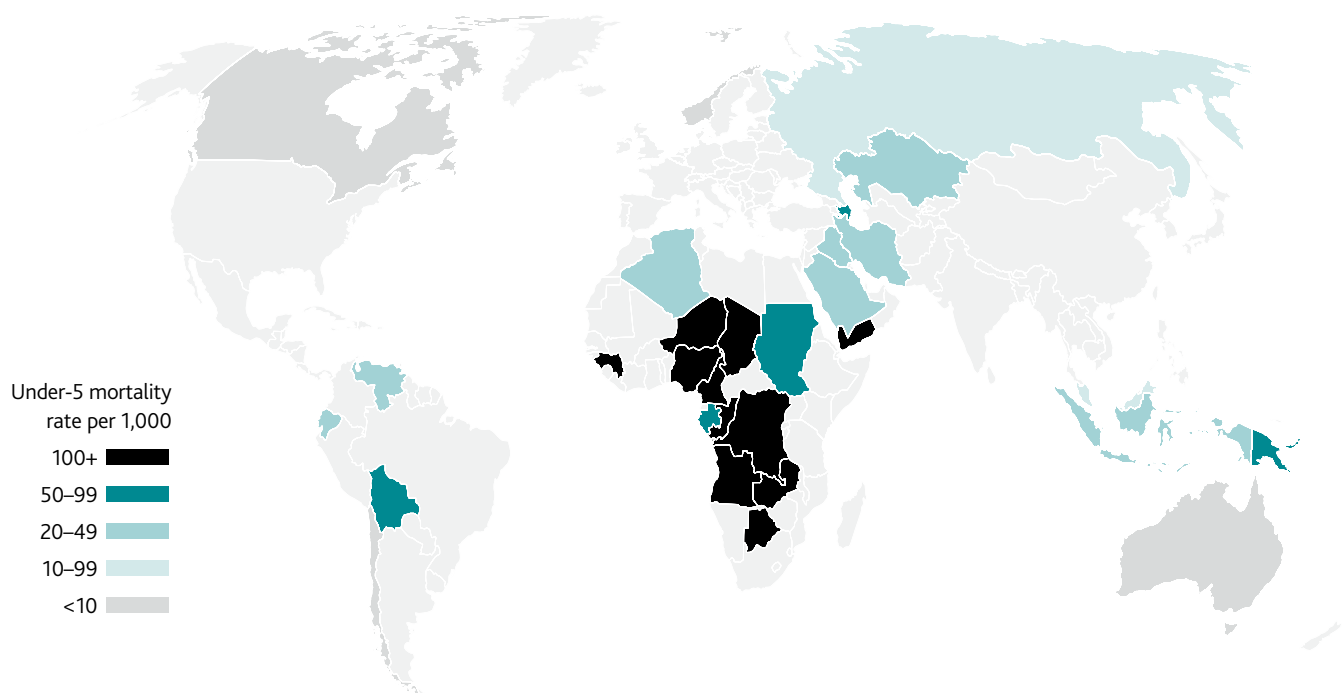
2.3 What are the pertinent issues underlying extractive resources exploration and management?

2.3.1 POOR PEOPLE ARE NOT BENEFITING MUCH FROM THE PROCEEDS OF EXTRACTIVE RESOURCES

When Tearfund conducted initial scoping research in three countries in 2009¹¹ poor management of natural resources, especially extractive resources, was identified by many respondents as a major barrier to poverty eradication and a key to enhanced public accountability.

Although the links between poverty and the poor management of extractive resources is contested, a number of academics, including Paul Collier (2007), Terry Lynn Karl (1997) and Michael Ross (1999), have explored the associations between poverty and extractive resources in low income resource-rich countries. While there seems to be some evidence to suggest improvements in citizens' access to benefits from the recent commodity boom which peaked in 2007-2008, it has also been pointed out that the assumptions of progress have been predicated on GDP growth and nothing more.¹² In parallel, social indicators did not improve significantly, further strengthening the argument that citizens of resource-rich low income countries are not benefiting enough from the wealth under their feet.

Figure 1 Under-five mortality for selected resource-rich countries¹³



11 Tearfund (2009) *Tying Our Feet Together: towards a global advocacy programme on governance and corruption*. Unpublished

12 Hamilton H, Ley E (2010) 'Measuring National Income and Growth in Resource-Rich, Income-Poor Countries'. *The Economic Premise*, Poverty Reduction and Economic Management Network. World Bank, August 2010, No 23

13 Havro G, Santiso S (2011) *Benefiting the Resource Rich: How can international development policy help tame the resource curse?* IDS Working Paper No 355, Brighton

2.3.2 EXTRACTIVE RESOURCES WILL NOT ALWAYS BE AVAILABLE AND ARE CONTRIBUTING TO CLIMATE CHANGE

Given that extractive resources are finite and that the burning of fossil fuels is contributing to climate change, the significance of non-renewable resources in economic development is a contentious issue. It is imperative that nation-states take all the necessary steps to ensure that the proceeds not only benefit current generations of citizens, but that extractive resources are managed well to sustain future generations without exacerbating climate change.

Global temperatures are already increasing and average temperatures are likely to be several degrees higher by the end of this century unless we start to live more sustainably. Scientists predict that a rise of just 1.5°C above pre-industrial levels will have disastrous consequences for many developing countries and small island states.¹⁴ Therefore, it is important that all countries depend less on extractive resources (especially fossil fuels) in the long term.

Most of the fossil fuels extracted from developing countries are used by wealthy countries and do not contribute to meeting energy needs in the country of origin. The burden lies with developed nations to cut their own emissions and to provide money to help poorer nations invest in low-carbon growth. It is therefore imperative that developed countries quickly become less reliant on extractive resources so that the poorest countries have the ecological space to use them sparingly to support more sustainable growth.

Limited extraction in developing countries must be done as sustainably, equitably and transparently as possible. Increased transparency is likely to help generate better informed debate about the merits and long-term sustainability of the sector in the countries affected.

2.3.3 EXTRACTIVE INDUSTRIES CAN HAVE A NEGATIVE IMPACT ON THE LOCAL ENVIRONMENT AND LIVING STANDARDS

The impact of extractive industries on the environment and the often negative consequences for the health, livelihoods and well-being of local populations is well documented. Local communities in La Guajira Department of Colombia and Kono District in Sierra Leone had a lot to say about the immediate impact of the mining industry on their eco-systems, their access to basic services (such as water), their health and their livelihoods. Many of them could not quantify or understand the full implications of this impact but they noticed the tangible difference it was making to their immediate environment. For instance, a respondent from Montelibano pointed out that their water sources had become contaminated as a result of nickel mining.

It is important to ensure that every possible action is taken by governments and industry across the world to ensure that the sector minimises the negative effects that it has on the local environment as far as possible, and that revenue from the commercial development of these resources is used in ways which help to balance out the impact for citizens in resource-rich countries. More transparent information about payments should also help to improve scrutiny of the sector's environmental and social responsibilities.

14 Hansen J et al (2008) 'Target Atmospheric CO₂: Where Should Humanity Aim?' *Open Atmospheric Science Journal*, 2, pp217-31

2.3.4 EXTRACTIVE RESOURCES ARE A KEY FACTOR IN CONFLICT IN LOW INCOME COUNTRIES

Many countries rich in extractive resources are also amongst 'the most economically troubled, the most authoritarian, and the most conflict-ridden in the world.'¹⁵ Although there are contending views about whether the poor management of extractive resources actually underpins conflict, is interwoven with other economic and political grievances or is just a means to finance violent conflicts, it is widely agreed that conflict has links to extractive resources either directly or indirectly in resource-rich low income countries.¹⁶

The UN, World Bank and other major donors have played significant roles in trying to address conflict associated with extractive resources. For example, the Kimberly Process Certification Scheme (KPCS) came out of a UN resolution seeking to prevent diamond sales from financing insurgent activities.

The Niger Delta in Nigeria, Angola and Democratic Republic of Congo are all examples of countries or regions that have experienced varying degrees of conflict that could be associated with extractive resources. The extent to which political, social, economic, human and environmental capitals have become eroded in these countries is difficult to quantify. What is clear is that a rebuilding of transparency, accountability institutions and mechanisms to tackle conflict are required.¹⁷ Both territorial and extra-territorial rules and mechanisms are essential in this otherwise extractive minerals could continue to be a source of conflict and under-development for many resource-rich countries.

2.3.5 RESOURCE-RICH COUNTRIES TEND TO RELY TOO HEAVILY ON THE EXTRACTIVES INDUSTRY AT THE EXPENSE OF OTHER SECTORS

A lot has been written about the relationship between an increase in the commercial development of extractive resources and a decline in manufacturing, and also other sectors such as agriculture.

Extractive resources are believed to reduce a government's incentive to innovate and diversify its economy, lead to high inflows of foreign aid (negatively affecting non-extractive exports and creating a façade of a strong economy) and exposing the economy to price shocks in commodity markets.¹⁸ Extractive resource revenues may also reduce the need for domestic taxes,¹⁹ and where this happens the public is less likely to demand accountability, and in effect undermine democracy (Sue Unsworth 2010).

Nigeria, Angola, Ecuador (at the central level), DRC and Azerbaijan have relied heavily on the extractives industry over the years. The benefit of reliable, timely and accessible information for these and other countries is that their governments could come under internal pressure to use the proceeds of these resources to build other sectors of the economy.

15 Terry Lynn Karl, cited in Kramsey L (2008) 'Challenging the Curse: creating a new framework for understanding the resource curse'. *International Politics of Oil*, Fall 2008

16 See Ross M (2003) *Natural Resources and Civil War: an overview*; Ballentine K, Sherman J (2003) *The political economy of armed conflict: beyond greed and grievance*. A project of the International Peace Academy

17 Wohlmut K (Ed) (2007) *Reconstructing Economic Governance after Conflict in Resource-rich African Countries: learning from country experiences*. Institute for World Economics and Economic Management

18 De Koning R (2008) 'Resource-Conflicts Links in Sierra Leone and The Democratic Republic of Congo'. *SIPRI Insights on Peace and Security*, No 2008/2

19 Kolstad I, Wiig A (2008) 'Is Transparency the Key to Reducing Corruption in Resource-Rich Countries?' *World Development*, Vol 37, No 3, pp521-532, Elsevier Ltd

2.3.6 POOR MANAGEMENT OF NATURAL RESOURCES COULD LEAD TO LOW LEVELS OF TRUST AND RECIPROCITY

Corruption is known to undermine trust and social cohesion. In a field study carried out by Tearfund in 2010, local community respondents from Cambodia, Peru and Zambia cited corruption as contributing to a lack of trust in society and towards the government. It is suggested that this is based on years of feeling isolated and disempowered and seeing others progress while they have not.²⁰

Poor management of extractive resources exacerbates a lack of trust between state and society with negative consequences. Action needs to be taken, both domestically and globally, to give citizens and citizens' groups more access to all kinds of information that could foster the engagement of states with their citizens.

2.4 The limits of voluntary mechanisms

A number of voluntary mechanism initiatives have been developed in the past decade to try and better regulate the extractives industry. Prominent among these is the Extractive Industries Transparency Initiative (EITI). Others include the Kimberley Process Certification Scheme (KPCS) Measuring Transparency Project, UN Global Compact, Global Reporting Initiative, Publish What You Pay (PWYP) and Revenue Watch Institute. The latter two are civil society led initiatives.

Kimberley Process Certification Scheme

The KPCS is a joint government, civil society and industry initiative launched in January 2003 to combat the trade in diamonds that funds conflict.

The main requirement for becoming a member is to guarantee that diamonds coming from that country are not financing any rebel or insurgent activities seeking to overthrow a UN-recognised government.

The Scheme has been successful in creating greater awareness and scrutiny of the diamond trade and promoting best practice techniques.

However, it has failed to impose disciplinary measures on defaulting members and is not deemed to have been very successful in tackling smuggling, money laundering or the abuse of human rights of miners.

UN Global Compact

UNGC is a policy initiative for companies that are committed to bringing their business practices in line with ten universally accepted principles in the areas of the environment, anti-corruption, human rights and labour. It was established in 2000.

The initiative has successfully contributed to the emergence of corporate social responsibility as a moral obligation and a management imperative.

One of the key challenges the UNGC has faced in recent times is the allegation that it is unable to enforce its principles and standards with members.

20 Tearfund (2010) *Corruption and its Discontents: assessing the impact of corruption on people living with poverty*

Global Reporting Initiative

GRI was created by a network of businesses, civil society organisations, investors, accountants and others in 1997 to mainstream disclosure on environmental and social performance.

The initiative was set up mainly for those who want to demonstrate a leadership position and commitment towards sustainability.

One of the key benefits of the GRI has been cited as its standardised approach to reporting.

However, this is also seen to be a challenge. The fairly generic framework of reporting has made it difficult for many companies to serve the needs of their clients and other report users. Some of the information that is required is contextual, but the reporting framework does not provide for this.

Extractive Industries Transparency Initiative

The EITI was established in September 2002 with the aim of increasing transparency in operations between governments and companies within extractive industries.

Since its inception, 35 countries have become Candidates, 11 of which have acquired Compliant status.²¹

Some of the successes of the EITI are reported to be enhanced dialogue between governments, civil society and extractive industries, public access to information on government revenues and improved public accountability.

Some of the main challenges have been highlighted as a limited number of countries signing up to the initiative, inconsistency in the quality and reliability of data provided within and across countries and the timeliness of information provided.

As useful as these initiatives are it has been found that they are not sufficient to lead to the high standard of transparency that is needed to guarantee that stakeholders are able to access timely and reliable information to hold public institutions and multinational companies to account.

For instance, Clive Wright (2003) states that while KPCS is the first time that a serious attempt has been made by the international community to tackle the problem in diamond trading, 'there are few sanctions for non-compliance, no way of suspending or disciplining those who behave badly, and no international body to judge and enforce implementation.'²²

Andres Mejia Costa (2008) also writes that a study evaluating the contribution of civil society organisations to the EITI revealed that civil society engagement tended to occur only in the early stages of the process. Their role in the latter stages was said to be unclear and inadequate.²³ Several

21 According to the EITI, 'A country that has fully and to the satisfaction of the EITI Board met the five sign-up requirements becomes a Candidate country', and to achieve 'EITI Compliant status a country must complete an EITI Validation'. Countries must achieve Compliant status within two and a half years of being accepted as a Candidate country and the process of validation is carried out by an independent validator.

22 Wright C (2003) 'Tackling Conflict Diamonds: The Kimberley Process Certification Scheme'. The article is based on a paper presented at the annual conference of the British International Studies Association in Birmingham in December 2003

23 Acosta AM (2010) *Impact and Effectiveness of Transparency and Accountability Initiatives: a review of the evidence to date*, IDS (prepared for a Transparency and Accountability Initiative Workshop in October 2010)

civil society organisations and coalitions that are part of the EITI Multi Stakeholder Groups (MSG) have complained that the information made available by the companies is often not disaggregated and is too technical to understand.

The biggest challenge is that as all these mechanisms are organised around some form of voluntary membership, and as there are no explicit sanctions for defaulting on the standards, they are very limited in their capacity to guarantee high and consistent standards of transparency. In addition, many resource-rich countries have not signed up to these voluntary mechanisms and are not showing any willingness to do so.

However, the EITI has still helped to entrench the standard for transparency in the extractives industry. It is expected that universal rules of data disclosure, along with robust EITI mechanisms and processes at national level, could enhance transparency and improve accountability in the management of extractive resources. Besides, additional information with respect to other non-revenue related company activities could improve the sector to the benefit of governments, citizens and extractive companies

2.5 The US Dodd-Frank Act

Section 1504 of the US Dodd-Frank Act will require oil, gas and mining companies to publish information on payments they make to foreign governments by country and by project. Similar legislation is needed in Europe to make sure that more companies are publishing what they pay, and to create a level playing field between extractive companies (including some European companies) listed on the NYSE and NASDAQ, and those only listed on European exchanges.

In a letter to the US Security and Exchange Commission (SEC), Eric Postel, Assistant Administrator, Bureau for Economic Growth, Agriculture and Trade in USAID, stated that 'vigorous implementation of Section 1504 could contribute to the efficient and effective use of US development dollars and complement US development strategies by ensuring resource extraction dollars benefit the developing country rather than increase the wealth of certain individuals.'²⁴ If Europe follows the path the US has taken, it would enhance all the efforts it has been putting into development and poverty eradication in resource-rich low income countries over the years.

Now is the best time to do so, especially as the US SEC is under pressure to guarantee that similar standards will be established elsewhere.

2.6 Good practice is already taking place – greater momentum is needed

A few countries and companies have already established high standards of transparency through legal and regulatory mechanisms, requiring companies to provide full annual disaggregated reports of payments and revenues to the government.

Liberia, and more recently Nigeria, has enacted EITI standards into law. For the period of 1 July 2008 – 30 June 2009, the Government of Liberia reported revenue and payments beyond the data they had received from companies. The government had open and accessible records in line with

²⁴ Quote is taken from a letter to the Secretary of the US SEC, Ms Elizabeth Murphy by Mr Eric on the subject of the implementation rules for Section 1504 of the Dodd-Frank Act. <http://www.sec.gov/comments/s7-42-10/s74210-101.pdf> – retrieved on 27th July 2011.

the transparency standards it had created, so it was possible to trace all revenue even though some companies had defaulted in their reporting – all of which were fined in line with Liberian EITI law.²⁵

In addition, PWYP documents a list of companies providing more detailed reporting than that required by current accounting standards. These include Newmont (based in the US) Talisman Energy (based in Canada) and Statoil Hydro (based in Norway), who all provide different levels of information on a country-by-country basis.²⁶ These examples show that it is possible to create EU standards at a cost that will not be too high for companies to bear compared to the benefits. RWI quotes the US SEC as saying that the costs to companies would be modest and are estimated at an increase of one-third of one-percent (0.33 percent) over existing professional compliance costs.

Polluted water:
one of many
sources of misery for
communities living
in mining locations
and not enjoying
the proceeds.

Abimibola Akinyemi / Tearfund



25 For more information see 'Summary of LEITI Second Report': 1 July 2008 – 3 June 2009
http://www.leiti.org.lr/doc/leiti_report_forweb.pdf – retrieved on 14th August 2011

26 See 'New International Financial Reporting Standard for Extractives: background briefing from PWYP'
http://www.revenuewatch.org/files/IASB_pre-reading_from_PWYP_RWI.pdf – retrieved on 27th July 2011

3 Findings by country

'It would be excellent to have legislation that makes it mandatory for companies to publish what they pay. It should be global and should cover all sectors. This will help the mining sector at the global level too.'

Mr Cesar Diaz -Executive Director, Colombian Chamber of Mining (also representing Rio Tinto)

'There is so much corruption on the part of politicians and civil servants. A lot of revenue was lost on the London Mining agreement. It was not in consonance with provisions of the Mining Code.'

Government official, Ministry of Mines and Mineral Resources in Sierra Leone

This chapter explores activities in the mining sector in Colombia and Sierra Leone based on the field research. It also briefly looks at the extractives industry in other countries and the impact on the lives of ordinary citizens. Seventy people comprising local community members, local and national non-governmental organisations, academics, government officials, members of parliament, one private sector official, donors and international non-governmental organisations were involved in the field study.

3.1 Colombia

3.1.1 GENERAL CONTEXT

The Republic of Colombia is the third most populous country in Latin America, after Brazil and Mexico. In spite of its vast wealth the country continues to face large income disparities and inadequate social services. According to the UNDP Human Development Report for Colombia (2004), in 2003 the richest 20% of the population had a 62.7% share of income consumption while the poorest 20% had only about 2.5% of the income share.²⁷

Colombia has the largest coal reserves in Latin America and is the world's fourth largest coal exporter. It also has substantial reserves of iron ore (producing 0.7 million tonnes in 2003), nickel, gold and copper and smaller deposits of platinum, silver and bauxite. Colombia produces more than 90 percent of the world's emeralds. It is second only to Brazil in hydro-electric potential and also has large petroleum reserves.

²⁷ See *The Encyclopaedia of the Earth* – http://www.eoearth.org/article/Colombia's_Human_Development_Index_for_2004 – retrieved on 29th July 2011.

3.1.2 THE MINING SECTOR

This sector is regulated by the Mining Code of 2001. It includes some important provisions such as: the reduction of the role of the state from taking part in mining to just monitoring and regulating it; the introduction of clauses with more stringent financial requirements for taking part in mining activities and the promotion of large scale mining; and the provision that minerals of any type, located in the soil or sub-soil in any physical natural state, belong to the state, notwithstanding that the land belongs to a community, group or an individual. The Code provides that any major decisions surrounding mining activities, especially where they are likely to affect local communities, must be with the free prior informed consent of the relevant local community groups.

Most of the country's major mining resources, such as coal, nickel, gold and gem stones, can be found in the central and northern parts of the country. According to the Ministry of Mineral Resources, the mining sector constituted 4.5% of GDP and provided 24.8% of the country's total exports – or \$7.3 billion – in 2009.

The mining sector is dominated by private sector multinational companies. There are about ten big mining companies – from Australia, Canada, South Africa, the UK and the US – operating in the country presently.

Mining licences are issued by the Institute of Geology and Minerals INGEOMINAS. Between the period of 2002 and 2009, the areas conceded to mining companies went up from 1.9 million to 8.4 million hectares of land. Some of the mining titles are for areas considered to be natural reserves and parks that are not expected to be explored or exploited for mining purposes. In recent years, the mining sector has been plagued by allegations of corruption in the issuance of mining licences and the management of revenue generated through the sector.

In 2010, the government began to review its mining laws and also plans to introduce a national mining agency with the intent of improving the management of the mining sector and its revenue. Passage of the new provisions was stalled by the Constitutional Court earlier this year, on the grounds that the state failed to consult local communities on changes in the sector, and was thereby required to initiate consultations with those who are likely to be the most affected by the changes to the mining laws.

All mining companies are required to conduct an Environmental Impact Assessment (EIA) which involves the examination, analysis and assessment of planned activities with a view to ensuring environmentally sound and sustainable development.

Colombia is not one of the candidate countries for the EITI as it has not fulfilled the preliminary criteria for becoming a candidate – although Pacific Rubiales Energy, a Canadian energy company, recently became the first to implement EITI standards in the country.²⁸

Generally, there is a higher degree of knowledge of the extractives sector amongst academics and the print media than human rights and development NGOs in the country.

3.1.3 PAYMENT REGIMES

Royalties, taxes, and licences are the primary forms of payments made by companies for the extraction of minerals.

28 See press release 'Pacific Rubiales Supports the Extractive Industries Transparency Initiative' on 26th June 2011 <http://www.pacificrubiales.com/2011/246-22062011-pacific-rubiales-supports-the-extractive-industries-transparency-initiative.html> – retrieved on 25th July 2011

Royalties

Royalty payments for the mining of non-renewable resources by multinational companies were introduced in the Constitution of 1991. Royalties can be paid in cash or in kind and range from one to 12 percent, subject to the type and quantity of the mineral resource. For instance gold is 4%, while salt can be as high as 12%.

From 2000 the National Planning Department (DNP) assumed the monitoring and surveillance of royalties and in 2004 the Office for National Royalties was created with increased capacity to oversee the management and allocation of royalties across the country. Information about royalty payments can be obtained through the websites of INGEOMINAS and the Office for National Royalties.

The law stipulates that 80% of all royalties received go back to producing regions, with the remaining 20% going into a National Royalties Fund accessed by both producing and non-producing regions. Municipalities are encouraged to spend the money that is raised on key development priorities. However, the percentage that goes directly to producing regions will be reduced from the current 80% to 15% by 2015. The new provisions are to be based on the principles of intergenerational, social and regional equity.

Table 1 Functions carried out by agencies involved with royalties in Colombia

Ministry of Mining and Energy	Establishes policies for 'matters related to exploration, exploitation, transportation, refinement, processing, benefits, transformation and distribution of minerals and hydrocarbons.' It also carries out liquidations for the payment of royalties related to hydrocarbons.
ANH – Agencia Nacional de Hidrocarburos (National Agency of Hydrocarbons)	Administers hydrocarbon reserves belonging to the Nation. Responsible for raising and issuing State royalties and compensations. In addition retains amounts from holdings and royalties designated to the FAEP – Fondo de Ahorro y Estabilización Petrolera (Oil Stabilization and Savings Fund)
Ecopetrol SA	Carries out exploration, exploitation, transportation, storage, refinement, processing, distribution and commercialization of hydrocarbons.
INGEOMINAS	Promotes exploration and exploitation of the Nation's mining resources. Additionally carries out liquidation, raising and issuing of royalties pertaining to carbon, nickel, iron, copper, gold, silver, platinum, emeralds.
IFI – Concesión Salinas	Exploits and administers the country's surface and coastal salt flats according to Concesión Salinas contract signed in 1970. Additionally it carries out liquidations for the payment of royalties
Municipal Councils	Raise and liquidate royalties generated by limestone, sand, clay, gravel, and construction materials in general. Also inspect the production of precious metals.
Department of National Planning (DNP)	Controls and supervises the correct execution of resources derived from royalties and compensations as well as from allocations from the FNR. In addition, it is responsible for registering projects that have been approved by the ministries to be financed by the FNR. Begins corrective administrative procedures in order to establish if there has been an incorrect use of royalties' funds.
Department of Treasury and Public Credit	Raises and administers National Royalty Fund's resources.

Taxes and licences

Colombia requires payment of income, property, stamp, trade, industry and payroll taxes. Mining companies are also expected to pay a withholding tax on dividends, Value Added Tax (VAT) and import duties. Income tax is set as high as 35%, while the other forms of tax do not exceed 2%, except payroll tax and VAT which are 19% and 15% respectively.

Taxes are collected and managed by the Directorate of National Taxes and Customs (DIAN). Information about taxes is not easily accessible as they form part of the consolidated funds.

Mining companies operating in the country pay for exploration licences and exploitation licences, also known as the 'surface canon' or annual licence fees. Annual surface canon fees are payable to the Colombian government on the basis of one minimum daily salary per hectare/year (ie \$9.79 per hectare/year) for the first 2,000 hectares and two minimum daily salaries per hectare for the portion in excess of 2,000 hectares.

Mining revenue in Colombia at a glance

Article 360 of 1991 Constitution	Provides for an economic compensation for the extraction of non-renewable mining resources through the payment of royalties by mining multinationals and establishes the right to royalties by the departments and municipalities under which the exploitation takes place (ie producing regions), and for the ports through which the resource or the products derived from it are transmitted.
Royalties Law 141 of 1994	Makes provisions for the state to receive, administer and distribute royalties. Until the enactment of this Law, the exploitation of most minerals was exempt from royalties.
Political and administrative municipalities receiving royalties	There are 740 municipalities receiving royalties in Colombia. Of these, 180 – which make up the producing regions (departments and municipalities) – receive 99% of all royalties.
Distribution of royalties across departments and municipalities	Mineral producing regions receive 80% in direct royalties, while all regions (including mineral producing and non-producing regions) bid for the remaining 20% (called indirect royalties) through the Office for National Royalties.
Laws 715 of 2001 and 1176 of 2007	Require that departments and municipalities must spend at least 60% and 75% on the priority areas of health, education and child mortality or water, sanitation and hygiene. Departments and municipalities are allowed to spend what they receive on other priority projects in local development plans beyond these areas only if they have achieved a certain minimum in the priority areas each year.
Foreign Direct Investment (FDI)	To encourage FDI the government allows substantial tax deductions. It also gives subsidies (such as reducing petroleum prices in the La Guajira Peninsula and enabling mining companies to purchase petroleum products at reduced prices) and tax exemptions to mining multinationals operating in the country.

3.1.4 KNOWLEDGE OF REVENUE OBTAINED BY THE GOVERNMENT

Research respondents had varying degrees of knowledge about the types of payments made to the government. Academics were aware of all the payment streams. A few non-governmental organisations (NGOs) working on environmental issues were aware of royalties, income tax, goods and services taxes and the annual licence fees. Other NGOs knew of taxes and royalties, but not any specific types.

Academic and environmental NGO respondents claimed that the limited knowledge held by NGOs was because local and international organisations had spent much time in the past few decades focusing on human rights, social protection and issues of conflict. It is only recently that they started exploring issues of economic development as the country became more stable.

‘Too many Colombians do not understand what is going on in the mining sector and as a result they are not asking any questions.’

Mr Luis Alvaro Pardo – academic and former Director of Mines and Minerals in the Ministry of Mines and Energy

‘Not many other activists are working on this area. Most who are addressing mining issues are doing so from the environmental perspective. It is much easier to communicate this than these issues we are discussing which are about accountancy and tax law, but which are really very important for our country.’

Senator Jorge Robledo – Member of Colombian national parliament, Polo Democratico Alternativo

Issues in the mining sector

Members of the Chancleta community that took part in the field research were generally aware that the government received tax and royalties, but they did not know that a percentage of the royalties was intended to provide infrastructure and basic services to their communities.

3.1.5 ACCESS TO INFORMATION

It is difficult to access information

Academic and NGO respondents who are familiar with the mining industry expressed the view that most of the information on payments and activities of companies is difficult to access. They said that most times those who are seeking to understand the sector as well as challenge the government and multinationals on their activities have to use indirect means – such as leaked sources or trusted contacts – to access the information as it is not readily available. For example, respondents claimed they did not have easy access to information on the payment of licence fees, especially the surface canon.

‘Annual surface canon (licence) fees are payable to the Colombian government ... no one knows whether it is paid, who receives it and how it is spent. It could constitute one third of the environment budget. It is likely to be ten times more than what the mining authorities claim to be receiving at the moment. Our mining minister talks about a low budget, but from my own studies I know there is a lot of money coming from licensing.’

Professor Guillermo Rudas-Lleras – Professor in Environmental Economics at the Javeriana, National and Externado Universities of Colombia

Information that is available is not disaggregated

Wherever information was available, respondents claimed it was too general to allow them to effectively calculate what payments should be made to the government.

‘Royalties paid on coal and other forms of mining are not understandable. The information is not complete and this makes it unreliable. Sometimes even local officials (of municipalities) do not understand it.’

Elizabeth Ungar Bleier – Executive Director, Transparency International Colombia

Information pertaining to the percentages of royalties and sum of payments for each mineral resource, by department, is provided by INGEOMINAS. Table 2 is a sample of the information provided to the government on royalty payments. What academics and other interest groups focusing on the sector found to be missing was additional information that could help them to analyse whether the payments that companies were making were commensurate to their mining activities (for instance the production volumes) or whether what the government departments claimed to be receiving could be matched with the available records of companies.

Table 2 Minerals royalties – in millions of dollars

	2005	2006	2007	2008	2009	2010
Coal	\$263m	\$316m	\$361m	\$576m	\$732m	\$400m
Gold	\$22m	\$15m	\$17m	\$32m	\$52m	\$49m
Ferronickel	\$60m	\$76m	\$158m	\$98m	\$61m	\$75m
Emeralds	\$2m	\$3.1m	\$7m	\$3.8m	\$1.8m	\$2m
Iron	\$1m	\$2.1m	\$2.3m	\$1.3m	\$1.2m	\$0.46m
Salt	\$1m	\$1.1m	\$1m	\$1m	\$10m	\$1.5m
TOTAL	\$348m	\$413m	\$546m	\$712m	\$857m	\$528m

Source: Geology and Mines Institute (INGEOMINAS), Colombia. Approximate conversion to US dollars from Colombian pesos.

Information from mining companies is not reliable

Government, academic and NGO respondents generally expressed the view that they had little knowledge about the activities of multinational mining companies.

Companies are required by law to publish reports of their financial activities in Colombia, but most of what is available is aggregated information. There is a further challenge because of the inability of the government to independently verify a lot of the information that is provided. For instance, an official of INGEOMINAS said they did not know what quantities were produced and the real value of the minerals.

‘One of the big problems is that the information about tax payments companies make is not publicly available. The industry hopes that Colombians do not only know what is paid, but also how it is used.’

Mr Cesar Diaz – Executive Director, Colombian Chamber of Mining (also representing Rio Tinto)

‘There is a law that requires companies to publish what they pay, but these are aggregated figures. The reporting is patchy and the government does not seem to be able to verify the information.’

Mr Luis Alvaro Pardo – Academic and former Director of Mines and Minerals in the Ministry of Mines and Energy

The government is not publishing all the information that companies provide

The respondent representing private sector views argued that mining companies paid high sums of money in tax and licenses to the government, but as this information is not publicly available, companies tend to be wrongly accused of not putting their fair share back into the growth and development of countries in which they operate.

3.1.6 TRANSPARENCY AND PUBLIC ACCOUNTABILITY IN THE MANAGEMENT OF MINING REVENUE

‘I have spent years telling people we have a problem with auditing and controlling our extractives sector. This legislation is very important. We can’t win the argument or even begin to fix any of these problems if we don’t have the minimum information for the debate.’

Senator Jorge Robledo – Member of Colombian national parliament, Polo Democratico Alternativo

There were mixed views about transparency and accountability in the management of mining revenue. Most NGOs and academic respondents agreed that the royalties were poorly managed by producing regions. But local NGOs campaigning against the changes that would move the management of mining revenue from local to central government took the view that the central government was likely to do a poorer job. They argued that their local departments and municipalities had managed these revenues well.

According to the Office for National Royalties, there have been several cases of irregularities in the management of royalty payments received by producing regions. This has resulted in suspension of funds to the municipalities and regions concerned and in some cases Mayors of municipalities have been tried and jailed when found guilty of misappropriating royalty funds. Interestingly, the highest number of irregularities has been in La Guajira, the location that Tearfund visited.

‘Extractive industry goes hand in hand with corruption here. The public institutions managing the sector are influenced at the local and regional levels by parochial political interests.’

Elizabeth Ungar Bleier – Executive Director, Transparency International Colombia

Members of Chancleta community, based in La Guajira Department, were not aware of what the municipality was doing with all the royalties it had collected in the past. Surprisingly, they thought that it was the obligation of the mining company operating in their area to provide water, schools, health and infrastructural facilities. When asked about what they perceived the role of the government to be, two of the respondents stated that they had no confidence in politicians or bureaucrats because they were failing in their duties to hold companies to account on their corporate social responsibilities and they were also not rendering any basic services to the community.

The respondent from Monte Libano expressed similar views in terms of his knowledge of the role of the government. In his perception, the government had not done anything for the community. The tradition has been for community members to expect companies to provide water, health and educational services, amongst others.

‘We have lost hope in our leadership, so we don’t bother about them. Politicians are full of lies, they never fulfil their promises.’

Rosa Christina, Chancleta Community, in La Guajira Department, North East, Colombia

‘It would be great to have this type of information. It would make it easier for us to analyse the activities of companies and what the government actually receives and how it is spent. Ten years ago we used to think it was only the multinationals that are responsible, but now we are beginning to realise our government has responsibility too.’

Leader of an Iron-Nickel workers union in Monte Libano, North Colombia

The Executive Director of the Colombian Chamber of Mining took a strong view that there was a need for increased transparency and accountability from both mining companies and government departments in the country. He argued that many companies were fulfilling their tax and royalty obligations, but conceded that there were a few ‘bad’ companies that were not. However, he insisted that the main problem was the government not opening up its books rather than companies not fulfilling their tax, royalty and corporate social responsibility obligations.

3.1.7 MINING, REVENUE TRANSPARENCY AND COMMUNITY ACCESS TO BASIC SERVICES

All the categories of respondents, including the government, private sector, civil society groups and local communities, expressed strong views about the challenges of corruption, lack of information and mismanagement of mining revenues. According to the Office for National Royalties in the DNP, of the 740 municipalities in Colombia, about 250 currently have royalties payments suspended, some of them as far back as 2002.

Academic and NGO respondents alleged that even INGEOMINAS was guilty of corruption. It was accused of selling mining titles of protected areas to multinational companies in spite of the fact that the law forbids it.

Chanclleta and Monte Libano members who were involved in the study claimed that their municipalities had not been providing any basic services to them. For instance, Chanclleta, which is supposed to receive a relatively high amount of royalties due to its proximity to a big mining field, remains very poor, lacking in infrastructure and basic services such as schools and clinics.

The case of Greystar, a Canadian company involved in the mining of precious metal in Bucaramanga, the capital city of the department of Santander in north central Colombia, was cited by a member of the opposition in the national parliament and an environmental NGO respondent as an example of how transparency could enhance public accountability and the provision of public services. (See case study overleaf.)

Respondents had mixed views about the difference transparency in information could make. Academics, NGOs, the private sector and parliamentarians were optimistic that more transparency could lead to improved accountability and public service provision. This would suggest that there is a group of people who would use this information effectively, should legislation be enacted which made it more readily available. However, the communities that Tearfund visited felt that access to information about company activities and payments might not make much difference to them. This illustrates the need for information to be as clearly presented as possible, for intermediaries to interpret it in a way which makes sense to communities, and for levels of trust to be built up between communities and officials.

Professor Guillermo Rudas has spent many years trying to get the government to make mining policies and practice work for poor communities.



Greystar's Angostura Project

For 15 years Greystar had carried out mining exploratory activities on what it described as 'a wholly-owned multi-million ounce Angostura gold-silver deposit' in north-eastern Colombia. This was to be the first open-pit gold mine in Colombia. For most of the period, many people – particularly communities who were going to be impacted in California, Vetás, Surata, Matanza, Berlin and Charta – did not know if the mining activities in the area had any underlying implications, so they just allowed them to carry on. Greystar had carried out pre-feasibility studies in 2009 and envisioned average annual production of 511,000 ounces of gold and 2.3 million ounces of silver over a 15 year mine life.

Environmental NGOs and individual experts also carried out independent studies and discovered that the proposed mine was going to threaten the waters of a local aqueduct and produce tons of waste and cyanide. They also discovered that the mine was likely to provide 1,500 jobs, reducing to 554 once the mine was built, but that the company was paying a mere 3.2% in royalty payments and was receiving huge tax breaks. They felt that the costs in the medium to long term far outweighed the seeming benefits in the short term so they decided to use electronic and print media as well as campaigns to create awareness amongst the local population.

Based on the information that was provided, the affected communities objected to the continuation of the project. In the end Greystar was forced to withdraw its request for an environmental mining licence and is considering an application for an 'underground-only operation', subject to open consultations with all Colombia stakeholders, especially local communities.

3.1.8 OTHER ISSUES WITH THE MINING INDUSTRY

Besides the issues to do with knowledge of payments and activities of companies, as well as transparency and accountability in the sector, respondents cited several other issues with the management of the mining industry. These include the following:

Environmental damage

Colombia is the fifth most bio-diverse country in the world. It has a lot of water resources and natural habitats. Environmental NGOs and community respondents claimed that mining activities in areas such as La Guajira and Córdoba have had a major impact on the local environment, contaminating water sources and soil and rendering farming and other agricultural activities impossible.

In Chancleta, community members have limited access to safe drinking water, their livestock and water sources have depleted and they are also locked in a battle with the large multinational operating close to their community over an alleged plan to re-direct the main alternative source of water, the River Roihacha, by 26 kilometres.

Environmental NGOs also expressed concern that many community members did not fully understand the potential negative impacts of activities such as large open pit mining in gold, nickel and coal on their health and surroundings.

Loss of livelihoods and social impacts

In Montelibano, the respondents said many families have become displaced, living in confined quarters and often without a stable source of income as most of the land has been titled to a large multinational. There has been little or no compensation for the displaced families.

While mining has created jobs for some members of the community, it has also created social inequalities because of the disparities in payment between skilled and unskilled labour and between those holding jobs and those without jobs. This in turn has led to high levels of child prostitution, alcoholism and drug addiction with a negative impact on community relations and wellbeing.

Mining in Montelibano

Montelibano is the capital of Alto San Jorge municipality in the Cordoba Department of Colombia. With a population of 85,000 inhabitants, it is one of the major commercial centres of Colombia. It is also known to be constantly besieged by paramilitary forces and drug traffickers.

A big multinational started mining nickel and iron ore in the area in the 1970's. Until 1996, the mining concern was partly owned by the government and partly by private investors at a 30 to 70 ratio. In 1996 the government sold its shares to the company, which in turn sold the company to the present operators.

As a town close to a mine, Montelibano receives a high amount of royalty revenues, yet most of its inhabitants, especially the indigenous groups, remain very poor.

The multinational company set up a Foundation that should provide services to the communities in fulfilment of its social responsibility obligations. Community members claim that the Foundation is not doing anything. They say the government is not doing anything either. They do not know how the money the government receives is used – the only stories they hear about mining revenue is how often it goes missing. The town Mayor was jailed on allegations of corruption in the management of mining royalties and the municipality has not received any royalties for the past two years because of continued mismanagement.

One community respondent noted that many indigenous groups were displaced, child prostitution was high and the level of inequality between rich and poor was on the rise in Montelibano.

On the plan of the government to re-structure and centralise the management of funds, they said that 'Moving royalties from departments and municipalities to the central government will make things worse. It is currently robbery at the local level; it will become robbery at the central level.'

Displacement of local populations

According to Eva Maria Villate, an indigenous peoples' rights spokesperson, there are 84 indigenous communities in Colombia – all with different knowledge bases, customs and languages. There are also a lot of Afro-Colombians who live side-by-side with the indigenous communities. Many of these people are said to have a close spiritual connection with their land. She claims that they have not only been displaced because of what she described as the 'indiscriminate titling of land to mining companies', but their well-being has also been undermined by a state that appears to be more interested in protecting the interests of multinational mining companies than its own citizens.

In Chancleta, where Cerrejon²⁹ operates, the question was how much community members had benefited in terms of direct employment and other livelihood opportunities. One of the local workers in a nickel mine (Cerro Matoso) owned by BHP Billiton and operating close to the poor communities surrounding Montelibano claimed that the economic benefits of mining activities for local people have been overplayed. He had heard that the mining industry had only generated 3,000 direct jobs and 7,000 indirect jobs for Colombian nationals in the last ten years.

While this sounds like an understatement, most respondents agreed that access to more comprehensive information would help them to validate claims and counter claims and to better understand the contribution that the mining industry was or could be making to their overall wellbeing.

Low tax and low royalties

One of the biggest issues of concern for all the respondents, except the government and company participants in the research, was the low royalty and tax rates that mining companies enjoyed.

Mr Luis Alvaro Pardo, an academic and mining economy expert, noted that Colombia lost 1.3 trillion Colombian pesos or approximately \$720 million to tax exemptions alone. Some of the companies were also said to owe high sums of royalty to the state including big multinationals such as Cerro Matoso (owned by BHP Billiton) and Drummond. In addition, most respondents claimed that Colombia's royalty rates were too low compared to the strategic value of the minerals that were being exploited, and that the rates were also lower than those in other Latin American countries.

Some of the respondents pointed out that the government had often defended low tax and royalty rates on the grounds that the investment was going to create more jobs and sustained growth to the economy. However, as far as they could judge mining had not brought the high and sustained levels of employment that had been promised and even if it had led to growth in GDP, levels of inequality were still high and there were no substantial changes to the country's Gross National Product (GNP).

Illegal mining and paramilitary groups

Respondents in Chancleta cited illegal mining and activities of paramilitary groups as a major concern. They alleged that there was collusion between paramilitary groups, some government officials and private companies to intimidate local community members into silence. They were, apparently, not at ease meeting and talking to Tearfund staff as some of them claimed that they had been threatened because they had spoken up against the activities of companies in the past. The Executive Director of Amnesty International in Colombia corroborated the view that the mining sector is associated with illegal activities and drug traffickers, guerrillas and para-military groups all serving parochial interests.

²⁹ Cerrejon is a joint venture between BHP Billiton, Anglo American PLC and Glencore International AG. It carries out coal mining and is said to operate one of the biggest open mine pits in the world.

3.2 Sierra Leone

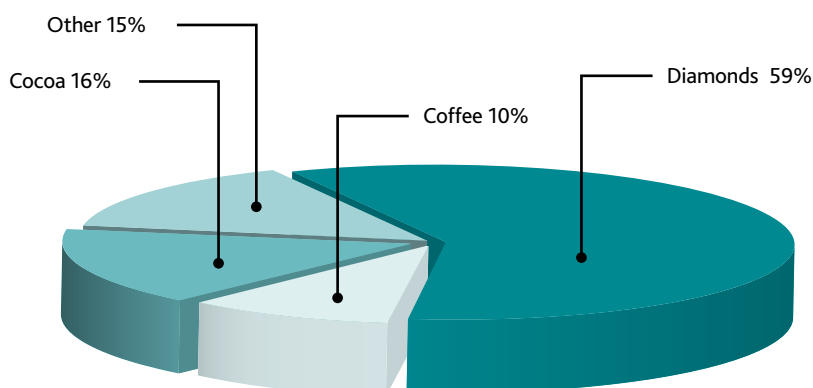
3.2.1 GENERAL CONTEXT

The Republic of Sierra Leone is a small country bordered by Guinea and Liberia in West Africa. It has a population of approximately six million people occupying an area of about 72,000 square kilometres.

In addition to lush foliage, beaches, wild life and a relatively small population, the country – paradoxically described as 'one of the poorest in the world'³⁰ and currently ranked 158 out of 169 countries on the UNDP Human Development Index (HDI)³¹ – is also home to large deposits of diamonds, gold, iron ore, titanium ore, bauxite and chromite. About 63% of the population live in extreme poverty³² and the country is heavily dependent on foreign aid, which constitutes about 60% percent of its annual budget.

Sierra Leone was embroiled in civil war from 1991 to 2002. Its huge diamond deposits are known to have played a major part in motivating and fuelling the war. As KM Powlick observes,³³ if large endowments of natural resources can be a 'blessing' or a 'curse', these resources, especially diamond deposits, have been a curse for Sierra Leone as they are for many countries that have found themselves caught up in wars over abundant resources.

Figure 2 Composition of Sierra Leone's exports – 2009



3.2.2 THE MINING SECTOR

Mining is regulated by the amended Mines and Mineral Act of 2009, which covers several issues not addressed by previous regulation such as health and safety, environmental protection and community development. Mining contributed more than 70% of the country's foreign exchange earnings and 20% of GDP and fiscal revenues during the 1960s and 70s.³⁴ Mineral exports reached more than

30 See <http://hdr.undp.org/en/reports/>

31 Ibid

32 UNDP (2010) *International Human Development Indicators* – <http://hdrstats.undp.org/en/countries/profiles/SLE.html> – accessed 25th July 2011

33 See KM Powlick (2005) *Natural Resources and Conflict: Diamonds in Sierra Leone*, p2 or <http://www.sierra-leone.org/aerial.html>

34 Coakey GJ (2004) *The Mineral Industry of Sierra Leone* p34.5 – can also be accessed at <http://minerals.usgs.gov/minerals/pubs/country/2004/slmyb04.pdf>

\$140 million in 2007. Revenue Watch Institute (RWI) notes that 'mining accounted for about 30% of GDP in 2007 and 80% of exports in 2008.'³⁵

Sierra Leone still relies heavily on mining, especially diamonds, for its economic base. The Apex bank, in its annual report of 2009 for Sierra Leone, draws attention to the fact that performance in the sector was mixed. The African Economic Outlook, a publication by African Development Bank, the Organisation for Economic Co-operation and Development (OECD) and the United Nations, highlights that Sierra Leone needs to ensure that a share of the profits from mining actually benefit the wider population and the communities in the vicinity of the mines.³⁶

The mineral sector consists of three sub-sectors covering precious, non-precious metals and the artisanal and small scale production of precious minerals, mainly diamonds. The country had a thriving artisanal community of miners before the war, most of whom were indigenous Sierra Leoneans. Since the war ended, most of the areas that were hitherto mined by local artisans have been titled to multinational companies.

Like Colombia, the Government of Sierra Leone is not directly involved in mining. It has a policy that is designed to encourage foreign direct investment in the sector. The main bodies involved in managing the mining industry and its revenues in Sierra Leone are shown in Table 3.

Table 3 Functions carried out by agencies involved with mining industry revenues in Sierra Leone

Ministry of Mineral Resources and Political Affairs (MMR)	Overseas and regulates the mining industry. Responsible for administration, issuing licences and monitoring and enforcement of rules and standards. Monitors licence and royalty payments for all minerals, except diamonds.
National Revenue Authority (NRA)	Co-leads, with the Ministry of Finance and Economic Development, the collection, management and disbursement of tax revenues from the sector.
Gold and Diamond Division (GDD)	A sub-division of the NRA tasked with the purchase and sale of diamonds and the valuation of both gold and diamonds.
Ministry of Finance and Economic Development	Co-leads, with the NRA, the collection, management and disbursement of tax revenues from the sector.
District Councils and Chiefdom Councils	In mineral producing areas, these councils receive allocations from the Diamond Area Community Development Fund (DACDF) and the Community Development Fund (CDF), to be used for the benefit of the community.

Sierra Leone is a signatory to the Kimberley Process Scheme and was one of the very early members. Also the country announced its intention to implement EITI in the mining sector in June 2006. The introduction of EITI has seen a surge in civil society activity to hold the government to account on the management of mineral resources. For instance, the World Bank³⁷ reports that civil society groups

35 See short article online – 'Transparency Snapshots' – <http://www.revenuewatch.org/our-work/countries/sierra-leone/transparency-snapshot> – retrieved on 12th August 2011

36 African Development Bank, OECD – Organisation for Economic Co-operation and Development, OECD, United Nations, *African Economic Outlook 2009: Country Notes: Volumes 1 and 2* accessed on 22nd July 2011

37 World Bank (2009) *Engagement with Civil Society: an EITI implementation case study*. Oil Gas and Mining Policy and Operations Unit

have been able to put pressure on the government to fulfil its EITI obligations. However, as at 2011, the country is still to achieve compliance status, although the EITI Board stated that it had made considerable progress towards becoming compliant.³⁸

Sierra Leone is in the process of reforming some of its other mining policies and very recently signed a Petroleum Bill into law. The passage of the Petroleum Bill has been laden with controversy. In its report on mining revenue streams, the Network Movement for Justice and Development (NMJD) notes that legislation on current revenue streams was enacted at various stages in Sierra Leone's mining history and as a result there is no coherent framework for the distribution of revenue to producing communities.³⁹

Most mining multinationals operating in the country are medium size enterprises. Some of the prominent ones are London Mining PLC, African Minerals Limited, Sierra Rutile Limited, Sierra Minerals Holdings and Koidu Holdings SA. Many of these enterprises are listed on the Alternative Investment Market (AIM) of the London Stock Exchange.

According to Amadu Sidi Bah,⁴⁰ there are no laws on underground mining, none on comprehensive blasting, no functioning institutions with the legal authority to monitor Environmental Impact Assessments (EIA) and no formal procedures for the relocation of communities in spite of the fact that this happens from time to time.

3.2.3 PAYMENT REGIMES

Generally, Sierra Leone's guidelines on tax and tariffs are guided by a West African core mining policy produced by the Economic Community of West African States (ECOWAS) in 2005, the Sierra Leone Income Tax Act of 2000 and the 2009 Mining Code. The principal revenue from mining comes in the form of licence fees (including mining, dealer and export licences), income and export taxes and royalties.

The Mining Code also stipulates that 'the Minister shall develop a framework for transparency in the reporting and disclosure by persons engaged in the extractives industry' (Article 159).

The responsibility for the collection and monitoring of royalties and taxes cuts across various departments. For instance, the MMR monitors licence and royalty payments for all minerals, except diamonds; the Customs and Excise office collects import duties; and the NRA is in charge of the collection of taxes, but does not provide a breakdown of what is collected. NGO respondents observed that there is no clarity on how the various types of payments are collected, allocated and managed.

Royalties

The Mining Code of 2009 increased royalties and theoretically increased the benefits going to local communities. Royalties for different types of minerals are based on the market value of each product. Special stones, such as some high-value diamonds, are valued at 15%; precious stones are valued at 6.5%; precious metals, including gold and iron ore, at 5%; and other minerals such as rutile and bauxite at 3%.

The National Advocacy Coalition on Extractives (NACE) observes that there are contradictory versions of how and where the royalties are allocated.⁴¹ It is also not clear how these royalty revenues are managed given that responsibility for their management cuts across various departments.

38 For more information, see the countries that are close to compliance on the EITI website – <http://eiti.org/news-events/eiti-board-decides-eiti-status-eight-countries> Accessed on 22nd July 2011

39 NMJD (2010) *Mining Revenue Streams and their Development Impact on Communities Affected by Mining in Sierra Leone*, p5

40 Bah AS (2010) *Policy Brief: Mining and Development in Sierra Leone*. Unpublished

41 See NACE (2009) *Sierra Leone at Crossroads: Seizing the chance to benefit from mining*, p7.

Diamond Area Community Development Fund (DACDF) and Community Development Fund (CDF)

The DACDF was conceived in 2001 to compensate communities that were affected by the civil war. The Fund is said to receive 25% of a 3% tax levied on the value of artisanal diamonds exported from Sierra Leone. The GDD has responsibility for depositing 0.75% of this export value to a joint MMR and Ministry of Local Government account which is registered with one of the local banks. Implementation of the Fund is led by Chiefdom Councils of diamond producing areas.

The government introduced the CDF as part of the Mining Code of 2009. Like the DACDF it is intended to enhance development efforts and compensate for mining impact in mineral producing communities. But the CDF is considerably different to the DACDF as it does not involve direct cash payments to communities and is also not limited to diamond producing communities. The law provides that the minimum contribution of a company is 0.1% of its gross annual turnover. It is yet to be implemented anywhere in Sierra Leone.

There are also other fund mechanisms, which include the Agricultural Development Fund and the Chiefdom Fund. In its study of funding streams,⁴² NMJD notes that it could find no data on these streams, which limited its study of revenue stream management in the sector.

Taxes and licences

The Income Tax Act of 2000 set Corporate Tax at 37.5% of income and taxes on interest and dividends as well as payments to resident and non-resident contractors.

The government applies tax exemptions on capital equipment deemed to be for prospecting and exploration purposes; it gives a tax concession of 100% of capital expenditure against tax in their start up phase. Individual mining agreements also have concessions – in some cases as high as 20%. The agreement between London Mining Limited and the Government of Sierra Leone is cited as an example where the company was paying less than 10% in income tax overall.

This floating structure, the size of a small office block, is dredging for rutile, the raw material from which titanium is produced.

Royalties on the extraction of rutile in Sierra Leone are set at 3% of the market value.

Jay Butcher / Tearfund



42 Op cit, p5

Mining companies also need to pay for a reconnaissance licence for the purposes of prospecting, and an annual licence fee for exploitation of minerals. The taxes that are levied on export arrangements vary depending on whether it is large scale or small scale mining.

Tax and non-tax revenue collection in the sector is the main responsibility of the NRA and the GDD and the Customs and Excise Departments support the execution of this function.

3.2.4 KNOWLEDGE OF REVENUE OBTAINED BY THE GOVERNMENT

Generally respondents' awareness of payments being made to their government was high amongst local NGOs working on mining and environmental issues. Respondents cited royalties, licence fees (including mining, export and reconnaissance and exploration) and taxes (including surface rents, income and goods and services) as the types of revenues generated from mining. They were not aware that royalties were deducted from other taxes. Virtually all respondents knew of the DACDF, but they did not associate it with royalties or taxes.

The communities visited were aware of the DACDF but they did not have any knowledge of or understand how other revenues were collected or allocated. The local chief in Sokogbeh said he knew of the DACDF which was held by the Chiefdom Council, but he did not know anything about other forms of revenue generated through mining.

The NGO and government respondents could say what the government receives in percentages in tax, but NGOs did not know the actual breakdown of the figures.

3.2.5 ACCESS TO INFORMATION

Access to information on taxes, licences and royalties

Interestingly, most respondents – including government officials, local NGOs and local community members – said they did not have access to information about what the government was receiving in royalties and taxes, although there was a relatively high degree of awareness of percentages received in royalties.

A senior member of staff at the MMR observed that the NRA led in the collection of most tax and non-tax revenue in the mining sector, and that the ministry did not have access to the information about what NRA collects.

'The Ministry of Mines and Mineral Resources does not have information on all tax payments – that is all managed by National Revenue Authorities.'

Mr Jonathan A Shatkah -Director of Mines, Ministry of Mines and Mineral Resources

Access to information on DACDF

Most respondents – including local community members, local NGOs and members of parliament – claimed they had some degree of access to information about DACDF.

Respondents attributed access to information in a limited number of areas to the system each Chiefdom Council within each local government council adopts in managing the funds. They stated

that while the law requires the setting up of different mechanisms for the management of DACDF, it is silent on making information about payments publicly available. So each Chiefdom Council has enough leverage to decide how much information they want to share on the funds they receive.

Development and environmental NGOs were particularly vocal about the level of secrecy and vagueness around the information that is available and accessible. Members of NACE said they did not fully understand how royalty funds were distributed amongst the MDAs, nor did they have access to any reliable information on how these funds are used. They argued that it is crucial for them to know this information and that while the EITI has helped them deepen their access to the key players in the sector, gaining access to financial information about both company activities and government revenue remains a huge challenge.

‘We do not know what the government is receiving. We want to know how much is collected, so that we can monitor how it is spent and how much companies are actually fulfilling their obligations.’

Aminata Kelly-Amin – Network Movement for Justice and Development

3.2.6 TRANSPARENCY AND PUBLIC ACCOUNTABILITY IN THE MANAGEMENT OF MINING REVENUE

Virtually all the respondents in Sierra Leone, except the Director of the Mines and Mineral Resources Department and a Member of Parliament from the ruling party, were of the opinion that there was a lack of transparency or public accountability in the way mining revenues were managed. Respondents gave different reasons for why they felt there was not enough transparency in the sector. These ranged from sheer lack of political will on the part of the government (politicians and bureaucrats) and corruption, to lack of government capacity to ensure the right payments were being made by mining companies.

‘Everyone is working for their pockets here. We are currently trying to establish a repository to make information publicly available. There is currently no information about how revenue generated from the sector is used. All we know is money goes into a consolidated fund managed by the Ministry of Finance.’

Senior government official at the Ministry of Mines and Mineral Resources

These views are partially supported by the first Sierra Leone EITI reconciliation report of 2010.⁴³ The report highlighted significant discrepancies in total payments received in 2006 and 2007 in some of the government’s main revenue streams which relate to the extractives industry (see Table 4). The main cause of the discrepancies was cited as ‘government entities failing to report revenue in their templates or their inability to substantiate payments reported by companies’. The report further noted that these significant variances ‘required further data analysis, numerous researches and adjustments to the amounts initially reported.’

43 Sierra Leone Extractive Industries Transparency Initiative (SLEITI) (March 2010) *First Sierra Leone EITI Reconciliation Report*. Published by Verdi Consulting

Table 4 Initial discrepancies for 2006 by revenue source

	Company reported		MDA reported		Variance	
	US\$	leones	US\$	leones	US\$	leones
Agricultural Development Fund	81,291	102,800,000	0	134,300,000	(81,291)	31,500,000
Alluvial Diamond Exporter's Licence	83,000	0	80,000	0	(3,000)	0
Corporate tax	71,728	0	0	211,181,813	(71,728)	211,181,813
Customs duties	639,375	1,014,763,556	245,313	738,390,624	(394,062)	(276,372,932)
Diamond Exporter Agent	35,000	13,200,000				(13,200,000)
Mining lease	602,680	0	579,396	0	(23,284)	0
Mining licence	844,235	0	787,045	0	(57,190)	0
National Social Security and Insurance Trust	0	2,783,618,595			(35,000)	(2,783,618,595)
Other	0	880,876,301	0	137,407,336	0	(743,468,965)
Royalty	4,323,577	0	3,897,625	0	(425,952)	0
Surface rent	481,364	16,104,290,260	54,568	1,004,573,684	(426,796)	(15,099,716,576)
Taxes from employees (PAYE)	0	2,502,802,812	0	1,197,744,340	0	(1,305,058,472)
Withholding tax	0	38,781,900	0	24,208,386	0	(14,573,514)
TOTAL	7,162,250	23,441,133,425	5,643,947	3,447,806,183	(1,518,303)	(19,993,327,241)

Source: SLEITI first data reconciliation report (2010)

Diamond revenues

Information published on the Ministry of Mineral Resources website indicates that approximately \$5.3 million was collected in 2006 as a result of diamond activity in Sierra Leone. Information provided to the International Monetary Fund (IMF) by the government indicated revenue from diamond activity of approximately Le 12,562m (\$4.2m) in 2006 and Le 16,266m (\$5.5m) in 2007 and royalty revenue of approximately Le 6,221m (\$2.6m) in 2006 and Le 6,156 (\$2,619,000) in 2007. These citations were the only sources of information provided on resource related revenue, but they cover only a portion of the total amount of resource activity.

Excerpts from the First Sierra Leone EITI Reconciliation Report – 2010

‘We always have to pass through the back door to get information.’

Aminata Kelly-Amin – Network Movement for Justice and Development

‘We don’t know what is going in and we don’t know what is coming out.’

Philip Tetema Tondoneh – Member of Parliament (Opposition Party) – from Constituency 24, Kono District

‘We analysed the information we were able to lay our hands on and found that there was a discrepancy of \$400,000 between what the government and companies reported. Note that the low figure is based on the fact that the total figures are low in themselves, as a result of companies paying low taxes and royalties. If there is transparency we can easily question the value of what Sierra Leone gets.’

Mr Sidi Bah – Coordinator, Budget Advocacy Network of Sierra Leone

3.2.7 MINING, REVENUE TRANSPARENCY AND COMMUNITY ACCESS TO BASIC SERVICES

Local NGOs and community respondents claimed that mining communities had implemented basic projects such as schools rehabilitation, local market construction, road improvement and agricultural projects. These projects were associated with the DACDF which, through its structure and management system, in some parts of Kono District enables community access to information on payments that are received by the Paramount Chief and the Chiefdom Project Committees. Nimikoro and Gbense Chiefdom areas in Kono District were cited as examples of where the funds are well managed.

Most respondents in Kono noted that the benefits to a number of other mineral producing communities were still minimal. This was generally attributed to the fact that the central government, through the Ministry of Mines and GDD, was not making information about the payments they make to Chiefdom Councils publicly available.

All the community respondents from Wordu and Sokogbeh in Tangboro Chiefdom area of Kono District claimed that they had not seen any direct benefits from other mining revenue received by the government. Kono district is the largest producer of diamonds in the country, and about ten years after the civil war several communities remain without electricity, safe drinking water, functioning schools or good roads.

3.2.8 OTHER ISSUES WITH THE MINING INDUSTRY

As in Colombia, respondents in Sierra Leone also cited a number of other issues in the mining sector, including the following:

Use of DACDF in Jaiama Nimikoro

Nimikoro is one of eight Chiefdom Councils that is a beneficiary of DACDF. It is well known for its effective utilisation of the Fund. The Chiefdom has implemented a number of projects which include school rehabilitation, road construction, public toilets and bridges.

When cheques for the Fund are issued by the GDD, a public announcement is made and the Chiefdom Development Committee (CDC) takes over management of the Fund. The CDC consists of residents from within the Chiefdom area from diverse backgrounds – including women, young people and Chiefdom authorities (the latter are predominantly men). The Chiefdom also has smaller committees dealing with specific areas such as procurement, land allocation, monitoring and evaluation, amongst others.

The CDC leads on conducting needs assessments and has to consult with the wider community before the disbursement of the Fund.

The monitoring committee is tasked with overseeing the various phases of projects implemented with the Fund. The committee conducts on the spot checks and where there are allegations of malpractice these are made known to the Paramount Chief and the public.

According to a Paramount Chief from one of the non-producing communities, 'Transparency, the existence of various committees, inclusion, information sharing, project monitoring and participation of community members are the secret behind the effective utilisation of the funds.'

With additional information from NMJD's report: 'Mining Revenue Streams and Their Development Impact on Communities Affected by Mining in Sierra Leone'. October 2010.

Mining agreements made outside of regulatory standards

All the respondents were of the opinion that the mining companies were currently gaining much from Sierra Leone with little to show in terms of benefits to the local population. NGO respondents expressed the view that the mining industry is dominated by multinational companies doing business under poorly regulated and implemented frameworks and policies. The government might stipulate one thing in its general regulatory standards, but then enter into an agreement that contradicts those standards.

For example, while the law provides for 37.5% income tax on mining companies, the government signed an agreement that allowed London Mining Limited to pay only 6%. The agreement was tabled in parliament under a 'Certificate of Urgency' so members of parliament were not able to consult with their constituencies before the agreement was endorsed.

Another example cited was the Petroleum Bill that was recently passed, where the corporate social responsibilities standards within the Bill did not echo the guiding laws and principles in the overarching law.

As such most civil society respondents (NGOs and key informants) said they lacked confidence in the laws and regulatory standards of the country because the government did not seem to follow the provisions in them when agreeing specific contracts with mining companies.

‘Multinational companies do not want to share information with us. They are always using Sierra Leone’s secrecy code as an excuse. The fact that the Freedom of Information Bill is yet to be signed into law after several years of campaigning has also made this easy for them.’

Aminate Kelly-Amin – Network Movement for Justice and Development

Displacement and loss of livelihoods hitting local communities

Community respondents in Sokogbeh, Wordu and a resettlement nearby narrated the ordeal they have faced since a big mining company, registered in the British Virgin Islands, resumed mining activities a few years after the war ended.

They claim to have lost their means of living – agriculture and livestock breeding – when the company started an open pit mine at the heart of the community. Some of them alleged that they had not been compensated. The nature of the agreement between the government and the company was not clear, and it was also not possible to secure the company’s response to the allegations that were made.

A number of families have been resettled in a place one community member described as ‘a desert’, and still close to where blasting often takes place. Many said they do not wish to move because they feel they are going to lose their small farms and access to other basic amenities which are visibly lacking in the resettlement area set up in 2003. In 2007, two community members allegedly died when they were hit by stray rocks when blasting was taking place.

Several local artisanal and alluvial miners who had licences lost their mining spots to large-scale multinational mining companies who were issued titles to mine in areas where they had been operating.

‘Multinationals are robbing us.’

Richard Boima – resident of Tankoro Chiefdom in Kono District of Sierra Leone

‘The blasting affects us seriously. When it starts we are not able to do anything and it is very distracting because it is also dangerous. You could get hit by a stray rock if you are not careful.’

Christina – 16 year old from Sokogbeh Community, Tankoro Chiefdom in Kono District of Sierra Leone

Low benefits and disaffected young people

Most community respondents felt that their government was entering into contractual deals with mining companies which were not really benefitting ordinary Sierra Leoneans. Particularly, there were concerns expressed about many young people who were not in school, did not have access to jobs and had no hope of entering the job market in the near future.

Undue haste?

'NACE has been following with keen interest the processes and procedures that culminated in the passing of the new Petroleum Bill into law. The rapidity with which the Bill was passed in Parliament underscores the numerous concerns by civil society organisations about poor due diligence and secrecy associated with the operations of the Petroleum Resources Sector within the Office of the President.

The Act passed on July 12, 2011 defies the minimum procedure meant for any bill to be tendered for a parliamentary debate. NACE questions the procedure the Office of the President used to tender the Petroleum Bill for discussion in Parliament.

NACE decries the manner in which Parliament conducted the debate and hastily passed the bill into law, under a Certificate of Emergency. The manner in which some segment of our parliament discussed the bill is a complete disappointment and a slap to the electorate.'

Excerpts from the NACE press release on the passage of the Petroleum Bill in Sierra Leone in July 2011

Many of the young people who argued that they were not being employed by the companies or supported by the government also stated that many in their age group do not have the requisite skills to take up some of the jobs on offer. They said they did not see any evidence that the government had any clear plans, or it had not implemented its plans, on how to help them acquire skills that would help them to get work. Young people in Wordu expressed that they were disappointed in the government and felt it should be using proceeds from mining in the area to help them to acquire education and life-long skills to be productive and self-sufficient.

Hopeful: Christiana would like to see the needs of communities put at the centre of decision-making on mining.

Abimibola Akinyemi / Tearfund



'All these companies have been in Kono District for so long, but we are not seeing the benefits really. Our government does not care. They should think about the consequences of so many disenfranchised youth.'

Mohammed Dauda – young Wordu Community member

Mechanisms, laws and standards are not working in the interests of citizens

Respondents who were familiar with the process of law-making in Sierra Leone were unhappy at the quality of the legislative process and the allegiance of members of parliament to their constituencies.

One Member of Parliament claimed that most mining bills were passed under a 'Certificate of Urgency' when there was no obvious need to rush the passage of the bill. This meant that MPs did not have enough time to consult with their constituents. This view was corroborated by NGOs working in the mining sector, who said that most of the legislation relating to the extractives sector had not been subjected to serious debate before being enacted into law.

Philip Tetema Tondoneh (MP) was most critical of his fellow parliamentarians who he said do not take time to read through the issues they are endorsing. He also deplored gaps in constitutional provisions which allow a party to easily divest a parliamentarian of their membership of a political party if they do not support any of the policies of the government.⁴⁴ All parliamentarians who are members of the ruling party are bound to support any bill introduced by the government, irrespective of whether their constituencies are in support or not.

The government does not have adequate information on company activities

Both bureaucrats and politicians who were respondents to the study highlighted that they did not have enough information on the activities of companies. They claimed that the government did not have sufficient capacity to verify information that the companies were providing on their mining activities, and that such information was often scanty and inaccurate.

Mr Jonathan Shaktah, the Director of Mines in the Ministry, said they were currently invoking the law to ask mining companies to provide information on areas such as production levels and number of staff. So far they are yet to be successful. However donors, including the Department for International Development (DFID) and organisations such as RWI, are helping them establish systems and processes to enable them to improve data collection.

⁴⁴ See section 77(K and L) of the 1991 Constitution of Sierra Leone. It states that '(K) A Member of Parliament shall vacate his seat in Parliament if he ceases to be a member of the political party of which he was a member at the time of his election to Parliament and he so informs the Speaker, or the Speaker is so informed by the Leader of that political party; or (L) if by his conduct in Parliament by sitting and voting with members of a different party, the Speaker is satisfied after consultation with the Leader of that Member's party that the Member is no longer a member of the political party under whose symbol he was elected to Parliament.'

‘Payments the government receives are based on disclosure by companies, but we do not know what is hidden by them as we currently do not have enough capacity to effectively monitor their activities.’

Chernor RM Bah – Member of Parliament (ruling party) and Chair of Select Committee on Natural Resources

3.3 Proposals for enabling the sector to make a greater contribution to poverty eradication

Bringing together the findings from both of these countries revealed some common themes in terms of the issues that need to be addressed to ensure that the extractives sector plays a greater role in lifting people out of poverty.

3.3.1 CREATION AND IMPLEMENTATION OF STRONG LAWS AND POLICIES ON MINING

The creation, implementation and adherence to policies that are citizen-centred and pro-poor were considered by civil society respondents in both countries to be essential. They argued that their governments were pursuing mining policies in order to attract foreign companies, but without properly considering whether the perceived economic benefits would really materialise in a way which would benefit the mining communities themselves and the wellbeing of everyone.

Colombian respondents felt that the government needs to increase its tax and royalty requirements and grant fewer exemptions to multinationals. They also argued that the government should reassess the standards for its Environmental Impact Assessment including how companies implement it, stop allowing multinationals to dictate mining policies, and stop flouting its own laws on the national parks and reserves – areas that are supposed to be excluded from mining.

This road sign, erected by the Anti-Corruption Commission of the Government of Sierra Leone, is one of many visible around the country.

Jay Butcher / Tearfund



Respondents in Sierra Leone called for a review and harmonisation of all mining policies to make them easier to understand. They also felt that parliamentary rules and procedures, with respect to mining, oil and gas agreements, need to be revisited as the current system inadvertently makes parliamentarians show greater allegiance to their parties than their constituencies.

Greater transparency about the taxes and revenues being raised by the government could help to encourage debate amongst civil society on whether the policies and laws currently in place are the right ones to ensure that the oil, gas and mining industries are making as much of an impact as possible on lifting people out of poverty.

3.3.2 PUBLICATION OF MINING CONTRACT INFORMATION IS ESSENTIAL

Closely linked to the point above, publication of contract information on mining agreements was another step that most respondents felt their governments needed to take to ensure improved accountability in the mining sector.

In particular, NGOs in both Colombia and Sierra Leone cited a number of agreements that they felt had been shrouded in secrecy, and which contravened mining laws. They emphasised that they had no objection to their governments trying to attract foreign investment, but not at the expense of the mining communities and citizens of their own countries, and not in contravention of laws which were enacted through a democratic process.

They particularly recommended that given the current upward surge in the prices of a number of precious stones and metals, not only should their governments be reviewing these contracts, but the contracts should also be subject to public scrutiny with communities directly impacted by mining activities having a say in their design.

A lot of revenue was lost on the London Mining agreement. The contract was not in consonance with provisions of the Sierra Leone Mining Code.'

Senior government official at the Ministry of Mines and Mineral Resources

3.3.3 AVAILABILITY AND ACCESS TO CREDIBLE AND DETAILED INFORMATION ABOUT GOVERNMENT REVENUE AND COMPANY ACTIVITIES

Government, academic, NGO and community respondents in Colombia and Sierra Leone underscored the need for more information about company payments and activities. Government respondents stated that information about volumes of production was essential to allow comparison with sales figures provided by companies. NGOs and academics cited a need for disaggregated information on taxes, licences and royalties.

In Sierra Leone, respondents emphasised the need for accessible and timely information on royalties and income taxes, while in Colombia there was an emphasis on annual exploitation (surface canon) and environmental licences. Local communities in both countries contested the view that companies were employing local residents and suggested that publicly available information and disaggregated figures on employment would be helpful to validate company and government claims.

'If this (EU) law passes, it will enable us to see how unfairly communities are being treated and it would give me tools to challenge the mining company operating in Chancleta from an informed position.'

Willman Palmezanoo Arregoces – President of the Federation of Communities Displaced by Mining, Chinkleta, La Guajira Department, Colombia

In both countries, a majority of the respondents were very supportive of legislation at the EU level. They acknowledged that not every single member of the public would be able to use the information generated; however, there are a lot of academics (in Colombia), practitioners (in Sierra Leone) and accounting gurus (in both countries) who could make use of this information in a way that would be helpful for citizens, particularly mining communities.

Respondents in both countries noted the power of the media in generating awareness and momentum on some of the issues where information was available in the past. The media played a key role in generating action on the Greystar case in Colombia and while the government of Sierra Leone was able to 'push' the passage of the Petroleum Bill into law, through extensive media and civil society action, the President of Sierra Leone is now under pressure not to sign the legislation.

'It would be great to have this type of information. It would make it easier for us to analyse the activities of companies and what the government actually receives and how it is spent. Ten years ago we used to think it was only the multinationals that are responsible, but now we are beginning to realise our government has responsibility too.'

President of an Iron-Nickel workers union in Cordoba, Colombia

Most respondents also cited the need to juxtapose and analyse the environmental impact of mining against the actual proceeds that are generated as a reason why it is crucial to introduce extra-territorial mandatory disclosure standards.

Respondents in both countries were of the view that additional information, beyond payments, is required to be able to do an effective cost-benefit analysis of the mining industry.

One respondent in Colombia said credible and disaggregated information would help to enhance his research activities and engagement with the government on improving environmental standards and the management of revenue generated from surface canon licences.

‘Transparency in information will help us to understand what is going on, analyse what is going on and assess what value the sector is bringing to Sierra Leoneans. It would help us judge whether we should be opening up the sector as much as we are doing at the moment. And transparency in figures will help us know how much is dedicated to essential service provision by our government as there is too much corruption in the sector now. The lack of information also puts companies in a difficult position.’

Mr Sidi Bah – Coordinator Budget Advocacy Network of Sierra Leone

3.3.4 INFORMATION IS NEEDED FROM LISTED AND NON-LISTED MULTINATIONAL COMPANIES

Many of the extractive companies in Sierra Leone are small to medium sized businesses. For instance, some of the well known ones, such as London Mining PLC and African Minerals Limited, are listed on the London Alternative Investment Market (AIM) of the LSE, but they are not listed directly on the stock exchanges anywhere else within the European Union or the US. London Mining PLC is quoted on the Oslo Stock Exchange and both African Minerals and London Mining are headquartered in the UK. Koidu Holdings, another oft cited mining company, is incorporated in British Virgin Islands, an off-shore financial centre.

Respondents in Sierra Leone said that, to really benefit them, companies operating in the AIM market would need to be covered by foreign legislation. And as US Senator Levin⁴⁵ observes, if smaller companies were exempted from disclosure, the large ones might attempt to engage in complex corporate manoeuvres to create affiliates that qualify for the exemption, making the creation of Section 1504 lose its essence.

3.3.5 PRIORITISING THE VOICE AND NEEDS OF LOCAL COMMUNITIES IN DECISION-MAKING ON MINING EXPLORATION AND EXPLOITATION

Following on from the last point, in both countries all civil society respondents – including NGOs, academics and local community members – emphasised the need to involve local communities in decision making related to the issuing of mining titles to companies, environmental assessments and corporate social responsibility implementation and standards.

In Colombia, respondents want to see a greater say for indigenous and Afro-Colombian communities living in most of the areas mined by multinational companies. They also want to see the government adhering to the provisions of ILO standard 169 that requires respect for the rights of indigenous groups.

‘The reality is that the mining operations offer only short-term employment, displace the dwellers who had previously lived on the land, and leave behind a tell-tale crater where a community once stood.’

From the article – ‘Gold Digging in Colombia: Latin America’. Council of Hemispheric Affairs, February 2011.

45 Senator Carl Levin is Chair of the Permanent Subcommittee on Investigations in the United States Senate.

'Local stakeholders are not involved in agreements with companies. No one follows the procedures outlined in the Mining Act. The first port of call is supposed to be the local community, but the investors are usually taken to see the Minister and President first. Once they have the endorsement of the President and the relevant Minister, the hands of the Paramount Chiefs are tied.'

Philip Tetema Tondoneh – Member of Parliament (Opposition Party) – from Constituency 24, Kono District

In Sierra Leone, community respondents want the government to demonstrate that they value local communities by not only seeking their prior informed consent before signing mining agreements, but also by making sure their interests are central to all decisions and actions that the government takes. If this engagement is going to be meaningful, it is vital that full and accurate information about payments made by companies to governments is freely available.

'The government is our papa; they should make sure things work well for our community. If they don't, we will continue to suffer from mining companies and a lack of access to basic services. We are now being asked to go and live somewhere else. We are not happy about being resettled. We have lived here all our lives, why must we be forced out because of company interests that we are not benefitting from.'

Christina – 16 year old from Sokogbeh Community, Tankoro Chiefdom in Kono District of Sierra Leone

3.3.6 STRENGTHENING PUBLIC ACCOUNTABILITY INSTITUTIONS

All the respondents in Sierra Leone and Colombia highlighted that transparency in information needed to be accompanied by strengthening accountability and justice institutions and respect for the rule of law. While they expressed strong views about the need for access to information that is timely, credible and easy to understand, they also recommended that the justice system needs to be effective and the rule of law needs to prevail.

Respondents added that the civil service needs to be strengthened and various civil society groups and forms need to be supported to acquire the skills and confidence to hold both governments and companies to account.

4 Stepping up the momentum to secure company disclosure legislation: challenge to the UK and EU policy makers

Evidence from research carried out in both Colombia and Sierra Leone indicates that there are people working on the ground trying to improve access to services and levels of wellbeing who would make very good use of more information to try to hold both governments and multinationals to account. Now is the time for policy makers in the EU to create strong legislation that would make it mandatory for companies to disclose information about their activities and payments to foreign governments at country and project levels.

From Tearfund's perspective, disclosure will be of great benefit to citizens, especially poor and vulnerable producing and non-producing communities, in resource-rich countries. It will also help to ensure that the proceeds of extractive industries are used in a way which helps to lift people out of poverty.

It is in the interest of countries within the European Union to act now and act boldly, ensuring a replication of Dodd-Frank standards as a bare minimum and exploring options for raising regulatory standards globally.

4.1 What does strong and comprehensive EU legislation stand to achieve?

4.1.1 HELP GOVERNMENTS AND CITIZENS TO VALUE THE COSTS AND BENEFITS OF MINING IN THEIR COUNTRIES

Governments and environmental NGOs would benefit from detailed information about companies' volumes of production. And information on pre-tax profits broken down into revenue and costs could help the public authorities (and other country-level stakeholders) to ascertain all the volumes and employment figures and statistics, in addition to helping them get a better picture of company activities and income generated from investing in their countries.

The Network Movement for Justice and Development of Sierra Leone's study⁴⁶ on the mining agreement between African Minerals Limited (AIM listed) and the Government of Sierra Leone underscores the essence of this type of disclosure. The organisation sought to carry out a cost and benefit analysis of the mining agreement between the government and African Minerals Limited, but were unable to carry out a full assessment 'because relevant information is not disclosed' and the process showed that 'the relevant government entities are not in possession of...or aware of core information...such as planned production figures, projected revenue and... the socio-economic benefits for Sierra Leone...'⁴⁷

Local NGOs and communities would benefit from information about labour costs and numbers. In Colombia, one respondent claimed that even though mining is supposed to be one of the five pillars of growth for Colombia, only about 10,000 jobs have been generated in the past ten years. This is an unsubstantiated claim and is based on information that he had only been able to find through leaks and trusted sources.

In Sierra Leone one of the big issues for producing communities is employment by the mining industry. Citizens' groups are not able to verify how much multinational companies are investing back into

46 NMJD (2010) *Cost Benefit Review of African Minerals Limited Mining Lease Agreement (Tonkolili)*

47 Ibid, p4

producing (and non-producing) communities through jobs. While it is not clear yet what level of information would be provided through any proposed EU legislation, it is clear that the more detailed the information, the more useful it will be.

4.1.2 COMPLEMENT DEMAND SIDE INITIATIVES OF BUILDING CIVIL SOCIETY CAPACITY

Over several years, the EU in general and the UK in particular, have supported state and civil society engagement programmes through such initiatives as 'Non-State Actor and Local Authorities' and 'Investing in People' at the EU level and 'Making Governance work for the Poor' and strong support to the EITI at the UK level. These are really positive steps, but efforts to build civil society and state capacity need to be supplemented by legislation which will provide the information that these groups need to tackle corruption effectively.

The EU is the home of many multinational extractive companies. In Colombia, large multinationals such as BHP Billiton, Glencore International PLC, Xstrata and Anglo American PLC are listed in stock exchanges in Europe (although BHP Billiton is also listed on the NYSE and would therefore be covered by US legislation). Most of the prominent multinationals in Sierra Leone are also listed on the Alternative Investment Market of the LSE. Creating strong company disclosure legislation would complement voluntary initiatives and further enhance the capacity of citizens groups to hold powerful institutions, in particular their own governments, to account.

4.1.3 MAKE AID MORE EFFECTIVE

The European Commission (the executive body of the EU) is the second largest donor of development aid worldwide as well as a growing source of aid for conflict prevention and post-conflict countries.⁴⁸

A miner in Sierra Leone holds a handful of processed rutile, ready to be sold on the international market and used to make titanium.

Jay Butcher / Tearfund



48 See web page 'The World Bank and The European Union' – <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/PARTNERS/WBEU/0,,contentMDK:20422226~menuPK:899651~pagePK:64137114~piPK:64136911~theSitePK:380823,00.html> – retrieved on 28th July 2011.

The UK is one of the biggest bilateral donors globally and has already committed to fulfilling the UN target of 0.7 per cent of its Gross National Income (GNI) by 2013.

Money given in aid to countries such as Sierra Leone, that remain heavily aid dependent yet resource-rich and potentially capable of making a great contribution to the welfare of their own people in the long-run, could be freed up to be invested in resource-poor low income countries, or other places in need. This would enhance the efforts of donors to make aid more effective.

4.1.4 ENHANCE THE EXTRACTIVE INDUSTRY TRANSPARENCY INITIATIVE (EITI)

Currently, ten countries within the EU are supporters of the EITI.⁴⁹ Creating high company disclosure standards will enhance the initiative. Peter Eigen, erstwhile chair of the EITI, expressed strong support for disclosure standards. Commenting on Dodd-Frank, he said that they are 'fully compatible with EITI and bolster EITI's aims'.⁵⁰ This view was supported in Sierra Leone, where NGO respondents expressed that the initiative had been a very good start, but they needed more than the EITI to be able to secure timely, high quality, detailed and consistent data.

The Executive Director of the mining chambers in Colombia said himself that companies should be made to publish all their activities, to 'help separate the good from the crooked ones' and ensure that citizens in producing countries are able to judge whether companies are doing enough, or if perhaps governments are the real culprits.

4.1.5 ENHANCE EFFORTS TO TACKLE BRIBERY AND CORRUPTION GLOBALLY

Introducing strong legislation on company disclosure standards will help to combat bribery and corruption globally.

Many donor nations and multi-lateral institutions have supported anti-corruption initiatives over the years. In 2010, the UK government through the International Development Minister, Andrew Mitchell, announced that 'This government has a zero tolerance approach to corruption.'⁵¹

In the course of the field research in Sierra Leone, one of the respondents from a local NGO in Kono District mentioned that the UK Bribery Act was landmark legislation. He felt that having disclosure legislation will facilitate the fight against bribery and corruption and promote public accountability.

Now is the time for the UK and the rest of the EU to demonstrate that they are genuinely committed to combating corruption domestically and internationally. The more information that is publicly available for scrutiny, the more governments and multinational companies are compelled to act with integrity in the extraction and management of natural resource proceeds.

4.1.6 CREATE A LEVEL PLAYING FIELD

The enactment of Dodd-Frank, primarily Section 1504, puts pressure on the EU and the UK to follow suit for a number of reasons:

49 See EITI web page – <http://eiti.org/supporters/countries> – retrieved on 28th July 2011.

50 Revenue Watch Institute (2011) *Dodd-Frank: the facts about disclosure requirements*

51 See interview with John Davison on UK Aid reform on 19th October 2010 – <http://webcache.googleusercontent.com/search?q=cache:ElMrVGbBIT0J:www.devex.com/en/articles/a-conversation-with-andrew-mitchell-on-uk-aid-reform+&cd=6&hl=en&ct=clnk&source=encrypted.google.com> – retrieved on 17th August 2011.

- First, some of the companies to be covered by the US SEC rules on Dodd-Frank – such as BP, Royal Dutch Shell, BHP Billiton, Randgold Resources and Rio Tinto – are listed on the LSE and in other parts of Europe. It would only be fair to make sure that the rules that cover them extend to other companies outside the jurisdiction of Dodd-Frank.
- Second, the recent study carried out by RWI⁵² shows that of the non-US exchanges examined, the euro zone controls €2.6 trillion in market value of the extractive industries and the UK LSE Group represents €1.2 trillion of the EU total figure. This is a huge sum of capital relative to the US which has a market value of €3.87 trillion. Therefore, it is imperative that the EU, and the UK within it, is seen to show leadership by taking measures to ensure similar legislation comes into force across Europe.

4.1.7 CHALLENGE 'CLOSED SOCIETIES' – SUCH AS CHINA

Fears have been expressed in many quarters that this legislation is unlikely to be effective if it does not encompass China. However, a counter argument is that China is likely to feel more pressured to raise its standards once the US and the EU take the lead.

China recently upped the bar of its anti-corruption standards at home. Furthermore, in its business dealings with the continent of Africa, it is known to adopt a model that allows it to trade for infrastructure development (not just give aid), thereby discouraging the loss of much needed revenue to public officials with questionable intentions.⁵³

Most Chinese extractive companies – Petro China Company Limited, Chinese National Offshore Oil Corporation, China Petroleum and Chemical Corporation and Chinalco – are already covered by Dodd-Frank. PWYP and Global Witness also write that Chinese companies are adopting international best practices on transparency and that those listed on the Hong Kong Stock Exchange are required to publish the payments they make.⁵⁴

China still needs to do more, but action on the part of the EU to create strong legislation should put more pressure on China to improve its standards and practice.

4.1.8 BE GOOD FOR INVESTORS

Much has been written about the benefits of disclosure rules for extractive companies. Beside the fact that it would give citizens in resource-rich countries more opportunities to enjoy the wealth under their feet, it would also help investors analyse the profile and potential risks in investing in a company, as well as enhancing the corporate governance and accountability of companies. It would be particularly helpful to companies who want to disclose information because it enhances their business interests to do so.

More compellingly, the Executive Director of the Mining Chamber of Colombia affirmed that it was in the interests of mining companies in Colombia for information about their activities and payments to the government to be published based on strong disclosure standards. He said he was taking this stand because mining companies pay high sums of money in tax and licenses to the government, but as this information is not publicly available, companies tend to be wrongly accused of not putting their fair share back into the growth and development of countries in which they operate.

52 Revenue Watch Institute (2011) *Extractive Companies Listed on the Global Stock Exchange*

53 Plowright M (2011) 'China and Africa: Law of the Land'. In *Emerging Markets: News analysis and opinion* <http://www.emergingmarkets.org/Article/2845582/CHINA-and-AFRICA-Law-of-the-land.html> – retrieved on 28th July 2011

54 PWYP and Global Witness (2010) *What about China?* Unpublished

4.1.9 IMPROVE CITIZEN ENGAGEMENT WITH THEIR GOVERNMENTS

In countries where the level of interaction between the state and its citizens is poor, having legislation that would make credible and timely information on extractive activities available could help to build a stronger and more effective relationship between them.

As Tearfund found in previous research in Peru, Zambia and Cambodia, communities stated that the poor management of natural resources was a driver of poor governance. They took the view that to address poor governance it was crucial to tackle what they described as a dysfunctional relationship between state actors in many low-middle income countries and their citizens, especially poor communities.

4.2 Taking action up to, over and beyond Dodd-Frank

From Tearfund's field research, it is evident that the EU and the UK cannot afford to cover anything less than what is in Section 1504 of Dodd-Frank, and should ideally go beyond it. Country-by-country reporting alone will not be sufficient and must be supplemented by project-level data in order for it to be useful to local communities.

Civil society stakeholders, especially mineral producing communities, would be reluctant to hold governments or companies to account on information they cannot unpack, understand or relate to their immediate environment or needs. This is further supported by evidence in the literature which has found that access to project level information can curtail the loss of resources and corruption. One of the well-documented examples is from Reinikka and Svensson (2005) where the publication of monthly education grants by the Ugandan government led to more than 80% of the grants reaching the schools in 2001, from just 24% in the mid 1990s.⁵⁵

However, the more crucial point is that the effect of available information is very much driven by the incentive to act upon it. Kolstad and Wiig illustrated a study carried out in Indonesia, where local residents were more inclined to report cases of corruption where it affected their income and livelihoods, than when the incident had to do with the loss of resources for a distant building.⁵⁶ They go on to argue that providing highly aggregate figures on extractive revenues or expenditures would result in sending out 'collective action problems', with little or no incentive to act on the information by stakeholders who cannot see the direct consequences or impact on their day-to-day lives.

On a much broader level, legislating on these areas would:

- help governments and citizens to see whether they are actually getting value for money in light of the tax exemptions, low royalty payments and other concessions that companies are given to attract FDI;
- help stakeholders analyse the cost of these investments against the environmental impacts;
- help to protect companies against unfounded allegations of corruption, secrecy and the shirking of their social responsibilities;
- help citizens to hold their governments accountable and reduce corruption as well as make governments more responsive to the needs of their own citizens;
- make extractive resources work for poor communities.

While it is true that transparency of information in and of itself is not sufficient to promote public accountability and improve services to local populations, it is a necessary first step in securing these. This view was echoed by academic and NGO research respondents in both Colombia and Sierra Leone.

55 Reinikka R, Svensson J (2005) 'Fighting corruption to improve schooling: evidence from a newspaper campaign in Uganda.' *Journal of the European Economic Association*, Vol 3, No 2/3, pp259–267

56 Kolstad and Wiig (2008), op cit, p525

5 Conclusions and recommendations

The global recession caused by the financial crisis of 2008 is a perfect lesson in the huge repercussions that are possible if multinational companies do not provide full, clear, consistent and reliable information on their activities on a regular basis. Extractive companies must be required to be open in the interest of enhancing efforts to make proceeds from oil, gas and minerals work for poor communities.

It is clear from this research that if more information was available there would be groups of academics, NGOs and civil society groups – as well as the media – who could use the information to increase accountability and access to services.

The EU must not shy away from being ambitious about company disclosure rules if it is sincere about promoting sustainable development globally – especially as it claims to have an agenda of promoting policy coherence for development.

As one of the most notable and respected champions of the EITI, and with a strong stance of zero tolerance against corruption, the UK government also needs to show bold leadership and clarity on how it intends to ensure legislation is secured as soon as possible.

The UK Government has announced its intention to work more proactively with the private sector in a way which benefits poor communities. In the Department for International Development's recent policy paper they state: 'Our new approach to working with the private sector will not compromise the principle that our aid is tied to poverty reduction.'⁵⁷ It has also taken a bold step in the decision to publish both country and project level information about UK aid investments. Taking action to champion strong legislation would be a litmus test of its commitment to promote transparency and accountability, tackle corruption and reduce poverty.

Furthermore, of all the policy intentions of the UK government, this is one area that could be used to positively influence multinational companies operating in the extractives industry through greater

Proceeds from the extractive industries must be made to work for poor communities.

Jay Butcher / Tearfund



57 DFID (2011) *The Engine of Development: The private sector and prosperity for poor people*

interaction and information sharing between the Department for Business Innovation and Skills (BIS), HM Treasury, DFID and the Ministry of Justice (MoJ); and through practical action in line with the UK's goals for international development.

5.1 Recommendations for the UK government, the EU and the G20

5.1.1 THE EU SHOULD...

- Establish legislation that would make it mandatory for oil, gas and mining companies to publish payments they make to foreign governments and other relevant financial information, disaggregated by project as well as by country. This should be in line with the reporting requirements of Section 1504 of the US Dodd-Frank legislation, but should also include other information that would enable citizens in developing countries to hold governments and companies to account, such as **production volumes, pre-tax profits, employee numbers and labour costs**.
- Ensure that the legislation has as wide a reach as possible by including non-listed companies as well as companies listed on stock exchanges. This will require amendment of both the Transparency Obligations Directive and the Accounting Directive.
- Encourage governments of resource-rich countries to disclose oil, gas and mining contracts with multinational companies.

5.1.2 THE UK GOVERNMENT SHOULD...

- Be a strong advocate of this legislation at the EU level and work with EU colleagues to ensure that the legislation is enacted as quickly as possible.
- Ensure that, once legislation is agreed at the EU level, make moves to apply it in the UK as quickly as possible – or go ahead and introduce UK legislation if progress is not made at the EU level.
- Ensure that DFID's private sector strategy delivers results for poor people, promotes corporate transparency and responsible investment, and is fully coordinated with the HM Treasury, Department for Business Innovations and Skills and the Ministry of Justice.
- Mandate DFID country offices to invest more in building the capacity of citizens to hold resource-rich governments to account. A new focus on citizen capacity building should be brought into their existing commitment to strengthen accountability in aid recipient countries (5% of Budget Support is already earmarked for this purpose).

5.1.3 THE G20 SHOULD...

- Bring forward mandatory disclosure measures in every G20 country.
- Provide global leadership, champion transparency and promote strong standards of disclosure across the extractives sector, making this issue a core focus of their work going forward.

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Annex

Definitions of some types of mining revenues that governments receive

- Royalty** A royalty is the price that the owner of a natural resource (the 'licensor') charges another (the 'licensee') for the right to develop the resource. Royalties could be in cash or kind. Generally, a royalty is not the same as a tax. But sometimes the line between a tax and a royalty is blurred as royalty arrangements can differ between governments. The main distinction is that royalties are associated with ownership, while taxes are levied to cover costs – eg export tax, income tax or goods and services tax.
- Tax** A tax is a fee or charge imposed by a government on a product, income or activity. Taxes consist of direct (paid directly by the person on whom it is imposed) and indirect (usually not paid directly by a person) forms of tax. Taxes are usually charged on mining activities that involve exploration, production, exportation and services. Examples are export, goods and services and profit taxes.
- Licence** A licence is granted as a permit to own, use or do something. In mining a licence could also be designated as fees. They are payments to a host government for receiving and/or commencing exploration; for the retention of a permit or concession (eg licence/concession fee); for continuing exploration work or collecting data (entry fees); for leasing or renting the concession or licence area.
- Bonuses** A bonus is a payment or a gift that is added beyond what would be expected. It could be given to motivate approval, increase outputs or enhance relationships. In mining, types of bonuses include signing, discovery and production bonuses etc. Bonuses could be issued at the achievement of certain production levels or certain targets and the discovery of additional mineral reserves/deposits.
- Dividends** This is a sum of money paid periodically to those who own shares in a company out of profits or reserves. With respect to mining, dividends would be paid to the host government as a shareholder in a national state-owned company. It could be for shares or profit distributions relating to any form of capital other than debt or loan capital.
- Production entitlements** **HOST GOVERNMENT** This is the host government's share of the total production. This production entitlement can either be transferred directly to the host government or to the national state-owned company. This can be in cash or kind.
- NATIONAL STATE-OWNED COMPANY** This is the national state-owned company's share of the total production. This production entitlement is derived from the national state-owned company's equity interest. This stream can be in kind and/or in cash.



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