**SLEITI Multi-stakeholder Group Comments on the Initial Data Collection and Stakeholder Consultation Assessment Report and the draft Validation Report**

(Please note that the MSG responses are provided underneath the comments from the reports and the MSG responses have been made bold with bullet pointsor numbering.

1. **Beneficial ownership disclosure (#2.5) -** 146Page 51or 52 – of Initial Assessment Report

**Documentation of Progress**

In November 2017 the Corporate Affairs Commission (CAC) published a draft of the National Corporate Governance Code.145 It mandates several new practices such as incorporation of BO into companies' annual filings with the CAC. However, there are also significant technical challenges as the CAC registry is not fully operational nor accessible online at the start of Validation, aside from basic searchability of names.

* **The National Corporate Governance Code was cabinet approved in September 2018. It is now an official Policy that applies to players in both the Private and Public sectors.**
* **Page 53 makes reference to Companies Act, 2014, please be reminded that it should read Companies Act, 2009**

1. **Barter and infrastructure transactions (#4.3)**

**Documentation of progress - Page 69**

According to the 2016 EITI Report, there were no infrastructure provisions or barter arrangements identified in existing contracts with mining companies (p.51), which is consistent with the IA’s ToR for 2016, where the IA was tasked to confirm the lack of such provisions (p.143).

Barters: The 2016 EITI Report states that there were no barter arrangements in Sierra Leone in 2016.

Infrastructure: The 2016 Report does not mention any specific agreement, while the scoping study does not make any reference to infrastructure nor barter arrangements.

* **No binding agreements bordering on infrastructure or barter arrangement were sighted by the IA either during the scoping or reconciliation phase of the exercise. In fact no such legally binding agreement was in existence.**

**Stakeholder views**

While the report states there were no infrastructure and barter arrangements, news outlets and stakeholder consultations were not as unequivocal in their views. According to several news outlets, the government signed a Memorandum of Understanding (MoU) with the China Kingho Energy Group in July 2013, which included an investment agreement for 250km of railway. The agreement conformed with several characteristics of infrastructure and barter arrangements, with the exception of the direct trade of mineral rights.

* **Legally MOUs are not legally binding in governmental circles as they could be discarded with the turn of events without consequential or punitive measures.**

However, the trade-off was corroborated by statements from several development partners and civil society organisations.

* **Were such corroborative statements written or documented proof or mere oral in nature?**

Judging by certificates of incorporation, the above-mentioned company was most likely affiliated with a material company, the Kingho Investment Company Limited (TIN 1013683-0). The same company was awarded two exploration licenses, EXPL 33A/2010 and EXPL 34A/2010 shortly following the signing of the MoU, in September 2013.

1. **The numbering system suggests that those mineral rights were either applied for or approved in the year 2010 three years before the signing of the MOU with Kingho Energy Group.**
2. **Allocation of exploration rights are on first come first basis (not competitive bidding) So one cannot trace the acquisition of mineral rights by Kingho to the MOU as nothing stops Kingho from taking advantage of their presence in Sierra Leone to further their investments in an area which is non-competitive but rather encouraged.**
3. **The cost of acquisition of exploration rights is very low compared with the quantum of benefits derivable by Sierra Leone.**
4. The barter issue raised is outside of the reporting scope.
5. **Some media reports and judgments are at best speculative and sometimes reflect the political polarisation of the time and thus need to be treated with circumspection.**

The licenses covered areas in Tonkolili in northern Sierra Leone – less than 20 kilometres from the railway project in Magburaka. Today the company does not hold any active licenses in the country. According to an August 2018 news article, Sierra Leone cancelled more than 40 licenses, mainly related to exploration, eleven of which were held by Kingho Investment Company Limited. The cancellations were related to claims of illegal mining activities for a period of four years, which would include the period under review.

* **If indeed the exploration rights were hinged on investments or under barter arrangement, then these licenses could not unilaterally be revoked without wholly or partially affecting the Kingho investments in Sierra Leone.**

Stakeholders from government constituencies and involved in data collection did not consider the MoU between the Chinese companies and GoSL as infrastructure arrangements as such since MoUs are not legally binding in the country. Several of them noted that the exploration licenses were not awarded in relation to the supposed investment deal and could therefore not be considered an infrastructure arrangement.

* **Under Requirement # 4.3 the IA and the MSG need to be well appraised with the following: *the terms of the relevant agreements and contracts, the parties involved, the resources which have been pledged by the state, the value of the balancing benefit stream (e.g. infrastructure works), and the materiality of these agreements relative to conventional contracts.* The terms of the agreement would have to stipulated. In the said MOU there were no agreement terms and no consideration (legal sense). An agreement or contract without terms or consideration is of no legal effect and thus void. The provision of these hard data and information concretize the agreement and moves it away from just MOU to a firm Parliamentary accent. Neither the resources pledged nor the value of the balancing benefit are ascertainable from the MOU. The MOU had no reference to the construction of an airport, development of a mine and port facility, construction of a power plant, construction of transport and logistics facility, construction of 250 km railway from Magburaka in the north to the coastal town of Sulima as projects in full or partial exchange of mineral rights or production resources. It is in this vein that this fall short of Requirement # 4.3.**

Consultations revealed a common understanding among stakeholders that, without Parliamentary approval, no legally binding agreement can be made in Sierra Leone. This approval would also make the agreements public documents.

However, stakeholders could not provide evidence that the MoU did not fit the definition of barters.

* **The burden of proof (evidential proof) is on the one who alleges and believes the MOU fits the barter definition.**

In fact, several representatives of civil society, development partners and industry experts raised general concerns that certain MoUs, particularly those involving Chinese-owned companies, contained provisions that conformed to the definition of infrastructure provisions and barter arrangements in the sense of Requirement 4.3. When questioned on this issue, company representatives were unable to dismiss this unequivocally.

**Initial assessment**

The International Secretariat’s initial assessment is that Sierra Leone has made inadequate progress in meeting this requirement. The report claims that there were no barter agreements or infrastructure provisions in 2016. There is no evidence from stakeholder consultations and MSG meeting to suggest that the MSG or other stakeholders have discussed these issues in detail. In fact, several stakeholders allude to the existence of infrastructure provision and barter arrangements, without providing specific details. Representatives from the companies involved could not confirm or deny the existence of such provisions in their agreements with the state.

* **The alleged MOU has not been categorical on the barter arrangement neither could any of these company representatives confirm such statement**

* **The lack of evidential proof by stakeholders places the assertion into the domain of speculations.**

**The burden of proof is on he who alleges. Rather the lack of categorical confirmation to such speculation shows that the assertion is empty and should be disregarded.**

In accordance with Requirement 4.3, Sierra Leone is required to consider whether any agreements, or set of agreements, involve the provisions of goods and services (including loans, grants and infrastructure works), in full or partial exchange for oil, gas or mining exploration or production rights.

**Agreeably, the 2016 EITI Standard requires the close scrutiny of binding agreements or sets of binding agreements and not mere statements of intentions as the latter is devoid of verifiable actions.**

**Inadequate Progress for req 4.3 is absolutely unsupported. There is no evidence from stakeholder consultations and MSG meeting to suggest that MSG or others have discussed these in detail is itself of no evidentiary value to warrant the conclusion or corresponding rating of inadequate progress.**

**Why should the MSG discuss an issue when there’s no point in doing so. The IA has confirmed from empirical studies that these variables do not exist in SL and therefore do not deserve space. At least all mining Agreements are accessible and none so far has provision on *infrastructure and barter arrangements*. Yet the raters are not convinced and would rather rely on stakeholders ‘gossip’ to cite just one ‘suspected case’ on something of national importance. Further why not use the same reasoning with African Minerals infrastructural project whose relationship with the rail service provider is comparable the Kingho Group.**

**The admission that the very stakeholders that ‘broke the news’ could not provide specific details was enough to have set it aside.**

**In short, it is compelling that this deserves ‘Not applicable’ and nothing else.**

To do so, the MSG and the Independent Administrator needs to gain a full understanding of the terms of any relevant agreement and contracts between the state and other parties involved, the value of such agreements, and the materiality of such agreements relative to conventional agreements. Where such agreements are material, the MSG and Independent Administrator should ensure that EITI Reports provide a level of detail and transparency commensurate with disclosures and reconciliation of other payments and revenue streams.

**MSG Conclusion on level of progress**

In the absence of categorical confirmation that there are no infrastructure and barter arrangements, there is insufficient publicly-accessible information to conclude that the requirement is **not applicable**.

**Subnational Direct Payments (#4.6):**

**Documentation of Progress -Page 72**

**Subnational Payments (#4.6)**

**Documentation of progress**

The Local Government Act 2004 provides the legal framework for the effective administration of local councils. It also gives both local and chiefdom councils power to raise revenue from local taxes, property rates, licenses, fees and to receive mining revenue, interests and dividends. Other legislation described in the report are the Chieftaincy Act 2009 and the Local Government Regulations 2004. Combined, these acts specify the devolution of some 80 functions from central to local government (p.13), which defines paramount chiefs, District Councils and Chiefdom Councils as local government.

The 2016 EITI Report provides evidence that petroleum companies do not make payments to subnational levels (pp.43-44). The report clarifies that local government units receive subnational payments from mining companies, in the form of surface rent as determined by surface rent agreements, Community Development Funds (CDF) as determined by Community Development Agreements (CDA) and the Diamond Area Community Development Fund (DACDF) (p.74). While all are **treated direct subnational payments in the report**, **marked.** Contributions to Community Development Fund (CDF) are made to nongovernment subnational entities and are treated as a mandatory social expenditure (see Requirement 6.1). Similarly, the Diamond Area Community Development Fund (DACDF) is paid centrally and further distributed, and is therefore assessed under requirement 5.2, as subnational transfers.

* **Section 9.0 of the 2016 report was talking generally about transfers and payments made to subnational entities and not strictly in accordance with EITI terminology or requirement 4.6. The introduction to section 9.0 also refers generally to mining revenues received by local government entities.(which includes subnational transfers and community development Fund) .For example although Community development fund has been captured in section 6.2 of the report as Mandatory social expenditure, section 9.0 was referred to and provided further details on payments made by Sierra Minerals Ltd.**

.An overview of the cashflow associated with each of these revenue streams is provided in Annex F: Cashflows from surface rent, community development funds, and diamond area community development fund.

Lastly, although local councils and chiefdoms also have the power to impose a variety of local taxes, including property rates, business licenses, and through dividends for equity shareholding, however these have been excluded from the scope of reporting on the basis that they are not considered extractive specific taxes and levies, not on the basis of materiality.

* **The Report does not assign any reason for its exclusion from the scope of reporting neither is the reason being its non-extractive specific. In fact, surface rents are not extractive specific being also paid by the agro industry but have been included in the scope of reporting. The fact is that until 2016, the local councils, chiefdoms have not recorded any consistent payments of these taxes and levies which the law mandates them to collect. The issue of materiality or otherwise would have been settled if the clear trend of such payments were established.**

Surface rents payments in Sierra Leone are mandatory payments based on individual agreements with companies. According to legislation, surface rent payments are mandatory but there are no statutory rates nor costs per area-unit. Therefore, several companies in Sierra Leone have entered into agreements either through mining license contracts or concessions, or through separate surface rent agreements. There is no single overview of all agreements and their affiliated companies.

* **As a follow up of the recommendations to streamline surface rents payment, the NMA confirms in Table 10.1 that “Section 35 of the Mines and Minerals stipulates the distribution of surface rent payment only. The recommendation for the cost per square kilometer to be indicated in Mining Lease Agreement is in place. This recommendation will be taken into consideration in the current review of the Core Minerals Policy and the Model Mine Development Agreement.**
* **It is not immediately clear why the legislation should stipulate the rates. It would have been helpful if international secretariat had confirmed that this is the norm. So far it is the view of this reviewer that the drafters may have had good intent not to legislate the rate for surface rent unlike in petroleum legislations. It could be the case that land use differentials and locational factors could be critical determinants of rent. Adopting a ‘one size fits all’ therefore could likely create more issues than resolve.**

The report indicates that the total surface rents must be distributed among different categories of beneficiaries according to a set distribution formula (p.74). Through its recommendations the report confirms that there is no statutory requirement for payments to be made either directly to subnational entities nor to central government agencies.

* **The report highlights the distribution formula but the law is not explicit on where to make the payments. It is against this backdrop that the Model Mine Development Agreement is currently being reviewed to address this anomaly.**

Therefore, the practice also varies (p.79). Although most stakeholders claim that NMA merely retains oversight of all contributions (see stakeholder views below), one company, Koidu Limited, is identified in the report as making all surface rent payments to MoLGRD who subsequently redistributes (see Requirement 5.2).

* **A central collection point may possibly be designated after the current review underway.**

According to the ASSL’s audit report for 2016, NMA is the agency responsible for managing surface rent agreements, notes that agreements are not available,

* **(unavailability for scrutiny is different from non-existent. The Audit report did not clarify and thus could not be assumed)**

and that there are significant underpayments of surface rents.

* **We need to delve further into the audit findings to ascertain whether the mentioned underpayments relate to part payments of such levies with the remainder yet to be paid or the underpayment relates to evasion.**

In terms of coverage, the MSG decided to only cover 35% surface rents in the scope of reconciliation, by only reporting for specific types of beneficiaries. The report excludes payments to individual landowners and paramount chiefs, which statutorily accounts for 65% of surface rent receipts for each surface rent agreement. The report explains this was done due to the sheer number of beneficiaries (p.74). While landowners are not government entities, and therefore not problematic to exclude, paramount chiefs are.

* **The exclusion of paramount chiefs was also on the basis of lack of formalized accounting structures at such outfits. The paramount ciesdo not have functioning accounting departments that can offer the necessary supporting documents for Audit Service of Sierra Leone (ASSL), certification**.

On this basis, the MSG decided to include receivables of District councils, Chiefdoms and Members of Parliament (also called constituency development funds) to be reconciled; hence the 35% coverage.

* **These are the available administrative structures to work with for now.**

All material companies were asked to report on direct subnational payments. In the end, three companies reported on surface rent payments.

* **EITI is still a voluntary initiative, and inspite of all efforts made by the MSG, some companies failed to report.**

The report provides the payments of Sierra Minerals Holdings No.1 Limited, Shandong Steel (on behalf of Tonkolili), and Koidu Limited (pp.74-75). The unilateral disclosures by these three companies also include payments outside the scope of reconciliation, to paramount chiefs and landowners.

* **Please note that Surface rent payments by companies that submitted templates were reconciled using templates submitted by District and Chiefdom councils.(see Tables 9.1. 9;2 and 9.3). See attached templates.**

The payments and receipts are disaggregated by recipients (and recipient category) for two of the three reporting companies (Sierra Minerals Holdings No.1 Limited and Koidu Limited). The fact that Shandong Steel made payments on behalf of its subsidiary Tonkolili Iron Ore (SL) Limited is noted as a gap in reporting, with associated recommendations reporting (pp.ix-x,56,82-83). Reconciliation of surface rent payments is included in Appendix 5, as part of per-company results of reconciliation (pp.110,113,115). As no surface rents are managed centrally, with the exception of Koidu Limited, total surface rent payments are unknown, and therefore also the actual coverage of the reconciled figures.

* **There is a lacuna in the arrangements with mining companies as it fails to specify where payments of surface rents are to be made. This is being addressed with a Regulation backed with Legislative Instruments (LI).**

**Stakeholder Views – Page 74**

Stakeholders, mainly from civil society, confirmed that surface rents were the only direct payments to subnational governments related to the extractives. All stakeholders claimed that NMA retained oversight over all these payments (with the exception of NMA themselves), albeit providing no evidence for this.

**Why should data collectors rely on other stakeholders who cannot substantiate their claim, but ignore the one who can? Seems paradoxical.**

Surface rents were described as paid directly to beneficiaries by companies, with rates subject to annual negotiation with communities directly. Stakeholders also confirmed that the total amount, which is defined by surface rent agreements, is then distributed amongst different categories of local government according to a predetermined distribution, as mandated by section 34 of the Mines and Minerals Act 2009 (p.74). In some cases stakeholders claimed these payments were codified as part of mining lease agreements with fixed totals (and set annual increases). Several industry stakeholders implied a preference for making all payments directly to central government agencies, although this was not considered possible under the current legislation. This view was also held for subnational transfers and social expenditures, such as DACDF and CDFs. Companies and civil society representatives alike implied that standard rates and centralised management of such payments would be preferable to the current procedures, which were considered challenging both for EITI reporting and, more importantly, for corporate and government oversight of such payments.

According to stakeholders from all constituencies, surface rent payments were largely made directly from companies directly to communities, with the exception of Koidu Holdings, which payed directly to Ministry of Local Government and Rural Development for subsequent redistribution to local governments. This claim contradicts report documentation.

* **(Reports have been consistent on the lack of central collection point for surface rents. In fact, it forms the basis of one of the 2016 recommendations)**

and is described in further detail under Requirement 5.2. However, none of the government stakeholders agreed on how the funds were managed, and none of the representatives of central government agencies consulted accepted responsibility for these payments.

* **The law does not identify any specific government agency responsible for collecting surface rents thus their responses are justified**

Regardless, all stakeholders agreed that all company payments of surface rent were done through annual events in each region, which were attended by representatives of local communities, CSOs, media, MoLGRD, NMA, NRA and SLEITI. Stakeholders from civil society, government and industry argued that total payments were publicly accessible as all events were public, although precise details of recipients and beneficiaries were not.

Stakeholders from all constituencies confirmed that surface rental agreements were not public,

* **This stems from current legal stipulations which empowers mining entities to negotiate with land owners. With this arrangement only the large mining companies would make public their surface agreements which they sign with private landowners**.

with no centralised management of funds or agreements. In response government stakeholders indicated that surface rent agreements were largely not signed or formalised, without further deliberation on status or form. Some claimed that NMA intended to ensure that agreements were signed in the case of all companies, and that they would be made publicly accessible, as was currently being implemented for CDAs (see Requirement 6.1).

* **There is a government review underway as stated by NMA to formalize these negotiations, payments and documentation**.

Some stakeholders also noted the Anti-Corruption Commission’s scrutiny of Paramount Chiefs. They argued Paramount Chiefs had refused to report on their use of surface rents, CDFs and DACDFs.

* **There are well laid down regulations on the disbursement and utilization of the DACF and oversight responsibilities in the case of CDF unlike the surface rents.** <http://documents.worldbank.org/curated/en/699581468167370138/pdf/523990BRI0P1131oor0Simplified0DACDF.pdf>

In addition, certain industry experts consulted indicated that an audit of these surface rents would soon be presented to Parliament and subsequently made public.

**Initial assessment**

The International Secretariat’s initial assessment is that Sierra Leone has made  towards meeting this requirement. Payments or other transactions to subnational government entities are widely considered one of the main challenges of Sierra Leone’s regulatory environment by all stakeholders, and subsequently for EITI Reporting. The report and stakeholder consultations are often contradictory regarding which government agencies are statutorily delegated to maintain oversight of subnational payments,

* **Reports have been consistent on the lack of central collection point for surface rents. In fact, it forms the basis of one of the 2016 recommendations**

and there are several concerns that no public overview is available for all subnational payments.

* **{Resulting from current legal dispensation}**

However, these views have not been well reflected in EITI Reports. Although the report describes surface rents, community development funds and diamond area community development **funds as direct subnational payments**,

* **Section 9.0 was discussing generally transfers and payments made to subnational entities and not strictly in accordance with EITI terminology or requirement 4.6. The introduction to section 9.0 also refers generally to mining revenues received by local government entities(which includes subnational transfers and community development Fund) .For example although Community development fund has been captured in section 6.2 of the report as Mandatory social expenditure, section 9.0 was referred to and provided further details on payments made by Sierra Minerals Ltd.**

only surface rent payments are made directly to subnational entities with the exception of payments from Koidu Limited**.{Explained Above}**

Also, several non-extractive specific revenues were excluded with no justification based on materiality.

* **The Report does not assign any reason for its exclusion from the scope of reporting neither is the reason being its non-extractive specific. In fact, surface rents are not extractive specific being also paid by the agro industry but have been included in the scope of reporting. The fact is that until 2016, the local councils, chiefdoms have not recorded any consistent payments of these taxes and levies which the law mandates them to collect. The issue of materiality or otherwise would have been settled if the clear trend of such payments were established.**

All companies were asked to report. But the multi-stakeholder group decided to reconcile surface rent received of Members of Parliament, District Councils and Chiefdom Councils only, excluding receipts from paramount chiefs and landowners.**{Explained above**} Although this choice is not made on the basis of materiality, surface rent payments to landowners is not required as these are non-government entities.**{ Explained above}** However, paramount chiefs are and therefore their exclusion from the report is not sufficiently justified; it is not based on materiality thresholds. **{Explained above}**In the end, only three companies reported, and Members of Parliament did not submit their receipts of surface rents for reconciliation. In view of the lack of overview of either statutory rules

* **{Statutory rules on surface rents have been adequately highlighted in the report} or existence of agreements,{ the lack of existence of surface rents agreements reflect the ambiguities and lacunas in the current law and not sheer administrative lapses ]**

and not the report clarifies that it is not possible to provide an assessment of surface rent coverage as compared to totals. Lastly, payments reported by Shandong Steel (SL) Limited are made on behalf of another material company, Tonkolili Iron Ore Limited, which is not clarified in the report.

* **Please see section 7.3.1 of the 2016 report. Tonkolili mine is a subsidiary of Shandon Steel Ltd.{ This has been highlighted in the recommendation under parent/holding companies and extractive sector payments}**

The company’s payments were not disaggregated by government recipient as required.

* **This has been furnished under Appendix 5 – Details of Reconciliation**

In accordance with Requirement 4.6, Sierra Leone should undertake a comprehensive review of which direct taxes and levies extractive companies are subject to at subnational level.

* **This comprehensive review has been done together with the other taxes realizable from local government which is the subject of your concern**

Sierra Leone should ensure that reporting mechanisms are established which allow for estimation of total subnational payments in Sierra Leone, to determining whether payments are material.

* **The total subnational payments including surface rents which is the subject of concern is determinable each year despite the challenges imposed by the legal regime.**
* **Whilst this position makes sense, the corresponding ‘initial assessment’ of ‘inadequate progress’ seems disproportionate.**

The MSG should provide a comprehensive explanation of how such payments are determined, paid, and managed.

* **Currently the MSG would work to facilitate the legal review which would bolster the smooth administration of such payments**
* **Given that SLEITI Report 2016 has made recommendations that have the tendency to surmount the barriers on the way to fulfilling EITI Req 4.6.**

Where material, the Sierra Leone should ensure that reconciled information on all companies’ payments to subnational government entities and the collection of payments are publicly accessible.

* **Save the circumstantial challenges of non-reporting by some large mining companies effort has been made to make public all material payments through EITI reporting. Distinct and contrasted from the hundreds of minor companies and individual mining companies, effort has also been made to highlight all information available to the extent possible in the circumstance.**

**The report also provided a recommendation on how to improve transparency in surface rent reportage, by suggesting that a central collection agency should receive surface rents from companies and distribute same to beneficiaries. This will ensure that in situations were companies do not participate in the reconciliation process (or for that matter even mainstreaming process) the central collection agency can make this information available.**

**Thus as far as the current legislation on surface rent is concerned the report provided the necessary information.**

It **would have been fair if MSG is allowed time to implement the said recommendations against the background that the objective of the validation exercise is not to frustrate efforts at embracing governance in settings where the governance of the extractive sector is still in its infancy.**

**MSG Conclusion on level of progress**

**In conclusion, it is our belief that coverage of surface rent should be marked satisfactory as there was reconciliation for all the companies that participated (submitted templates) and were required to pay surface rents (Requirement 4.6) and in accordance with the Terms of reference and MSG’S decisions.**

**Sub-national transfers (#5.2) Page 88**

**Documentation of progress**

Section 9.1 of the 2016 EITI Report (pp.75-76) describes the statutory functioning of the Diamond Area Community Development Fund (DACDF), although it does not specifically identify allocation of the DACDF as subnational transfers but rather as subnational payments.

* **Section 9.0 was talking generally about transfers and payments made to subnational entities and strictly in accordance with EITI terminology or requirement 4.6. The introduction to section 9.0 also refers generally to mining revenues received by local government entities.(which includes subnational transfers and community development Fund) For example although Community development fund has been captured in section 6.2 of the report as Mandatory social expenditure, section 9.0 was referred to and provided further details on payments made by Sierra Minerals Ltd.**

In addition, surface rents of Koidu Limited to MoLGRD are also covered here, as this is the only arrangement where a government agency has taken it upon themselves to distribute payments of companies to subnational entities. The statutory revenue sharing formula associated with surface rents are applicable also to Koidu Limited’s payments, although the funds pass through MoLGRD for redistribution. Assuming the total surface rent payments of Koidu Limited are correct (p.75), the distribution presented on the same page also follows the revenue-sharing formula noted in the report (p.74).

On DACDF, the report describes the statutory rules for how funds enter the DACDF (the fund) and how they are subsequently allocated through the revenue-sharing formula toward district councils and chiefdoms. However, some of the formula is quite complicated to calculate, as it depends on the amount of ASM licenses at a particular time. For a visual representation of how these revenues flow through the DACDF and are disbursed, please refer to Annex F: Cashflows from surface rent, community development funds, and diamond area community development fund.

* **Please note that community development fund was reconciled in the report, although requirement 6.1 indicates that reconciliation should only be done where possible. This is because the report reconciled the Sierra Minerals Ltd payments to Moyamba District Council’s receipts or otherwise(see table 9.4). Also Surface rent payments by companies that submitted templates were reconciled using templates submitted by District and Chiefdom councils.(see Tables 9.1. 9;2 and 9.3). See Appendix……**

These transfers were not reconciled in the report (p.76). According to the report, the DACDF is jointly managed by MMMR and MoLGRD (p.75).

Revenues distributed from the DACDF are summarised for multiple years in Appendix 7 (p.120). Payment vouchers for 2015 transfers are detailed disaggregated by local government in Appendix 8 (pp.121-129) but no summary or details for 2016 transfers are disclosed**.**

* **The EITI reporting format data, relies on cash basis. The report provided details of transfers that were received and signed off in 2016(see Appendix 8). These were related to payments made in 2015. This is because the year 2015 has to come to an end before computations can be made. Consequently 2016 transfers will be received in 2017 and reported in the 2017 EITI report**

**In addition, the** report lacks disclosure of notional or estimated transfers as based on the revenue-sharing formula. The report itself highlights that MoLGRD and MMMR do not publish any information on notional transfers due to a lack of “primary data” (p.83), recommending that the MoLGRD and MMMR should systematically and publicly disclose how such calculation are made, as well as the notional value of transfers according to calculations based on the revenue-sharing formula.

* **Recommendation on the DACDF in the report addresses this shortfall.**

It is possible to calculate how much certain beneficiaries are supposed to receive, e.g. how much of the total should be directed towards District Councils (20% of DACDF). According to the report, the government collected SLL 14.6bn235 in revenues from export duties on diamonds (p.51). The aggregate value of revenues that should have been transferred to the DACDF for subnational transfers can be

When using the exchange rate provided in the report of USD 1 = SLL 6 200 calculated as about SLL 3.65bn based on the formula provided in the report. According to Appendix 7, this is approximately in line with the value of revenues entering the DACDF in 2016. However, it is not possible to calculate the value of notional subnational transfers to each of the beneficiary local governments based on data in the report, and actual subnational transfers in 2016 are not disclosed.

**The requirement (5.2) specifies that this should be calculated for each relevant subnational entity. Which is only possible when all artisanal licences held and operated are known.**

**Stakeholder views**

Government stakeholders confirmed that DACDF was responsible for making subnational transfers. According to stakeholders, mainly from government, the notional value of revenues to be transferred is calculated by the NMA, while the MMMR and MoLGRD manage the disbursements from the fund. However, several stakeholders expressed uncertainty over the precise division of responsibilities between different ministries in managing the DACDF.

All stakeholders confirmed that NMA receives the 3% export duties on diamond exports. 25% of the 3% are then transferred to an account maintained by the MMMR. According to stakeholders from several constituencies, MMMR requested NMA to calculate how funds should be distributed approximately every six months, based on the geographic distribution of ASM licenses according to NMA’s cadastre data. NMA provides calculations of notional subnational transfers, but government and civil society stakeholders indicated that there were consistent differences between the value of notional subnational transfers calculated according to the revenue-sharing formula and actual subnational transfers.

* **The difference might be due to the shift in focus of mining activity within an area. This happens under some jurisdictions in Africa**

The same stakeholders confirmed that revenues accrued to District Councils are possible to calculate based on total cashflow into the fund.

**The requirement(5.2) specifies that this should be calculated for each relevant subnational entity. Which is only possible when all artisanal licences held and operated are known.**

However, the calculation based on ASM licenses in each district, which determines the total funds to Chiefdom Councils, is not possible based on current public information. Also, government stakeholders highlighted that there was no overview of how much funds indeed exist within the DACDF, and therefore the total values to transfer is not sufficiently clear either. Stakeholders agreed that while the EITI Report did help clarify the value of revenues transferred to the DACDF for subnational transfers, there were still significant uncertainties surrounding the management of the fund .According to some government stakeholders, the DACDF was systematically scrutinised by the Anti Corruption Commission (ACC), although others considered the ACC’s oversight to be limited to the precise disbursements towards the communities and local beneficiaries rather than extending to an investigation of discrepancies with what should have been transferred according to the revenue-sharing formula. Some stakeholders within the government noted that the DACDF was subject to annual audits, which was confirmed by the coverage of the DACDF in the Annual Report on the Accounts of Sierra Leone 2016. Others in the same constituency claimed that the management of the DACDF was one of the least transparent aspects of extractive revenue management, calling for more regular and extensive reporting on the fund’s operations.

None of the stakeholders expressed any views on the lack of data on executed subnational transfers in 2016. All stakeholders agreed that the main area of difficulty was related to subnational reporting. Transactions through surface rents, the CDFs and DACDFs are particularly difficult to collect, due to a lack of accounting systems on local levels. Certain stakeholders also confirmed that annual SLEITI reporting is slowly contributing to a change in accounting procedures, also at a subnational level. This is still limited to local councils, rather than among Paramount Chiefdoms and District Councils. Several industry stakeholders implied a preference for making all payments directly to central government agencies, although this was not considered possible under the current legislation.

* **It is expected that the new Minerals policy and the review to the Model Mine Development Agreement would address this anomaly**

**Initial Assessment**

The International Secretariat’s initial assessment is that Sierra Leone has made **inadequate progress** towards meeting this requirement. The 2016 EITI Report does include the value of Koidu Limited’s surface rent payments, managed and redistributed by the Ministry of Local Government and Rural Development, as well as ensuring that comparison between notional and actual transfers are possible.

* **The 2016 report reconciles fully, the amount of surface rent payments indicated on Koidu Limited’s reporting template. Koidu reported surface rent payment of US$68,372. This figure was reconciled in the report using templates received from District and chiefdom councils.**

In addition, the report presents total extractive revenues transferred to the Diamond Area Community Development Fund for subsequent redistribution as subnational transfers, as well as the statutory revenue-sharing formula. However, the report did not provide the value of executed subnational transfers in 2016, providing only figures for 2015 transfers.

* **The EITI reporting format data, relies on cash basis. The report provided details of transfers that were received and signed off in 2016(see Appendix 8). These were related to payments made in 2015. This is because the year 2015 has to end before computations can be made. Consequently 2016 transfers will be received, signed off and reported 2017 EITI report.**

The report does not provide the value of national subnational transfers in 2016 according to calculations based on the statutory revenue-sharing formula.

In accordance with **Requirement 5.2**, Sierra Leone should ensure that subnational transfers of extractive sector revenues are publicly disclosed, when such transfers are mandated by national law or other revenue sharing mechanism. In addition, Sierra Leone should publish the detailed transfer amounts calculated in accordance with the relevant revenue formulas to each subnational entity under both the Diamond Area Community Development Fund (DACDF) and surface rent payments that are distributed by central government agencies.

* **In order to compute the amounts due each subnational entity for the DACDF using the sharing formala, the total number of artisanal mining licences within each subnational entity should be known. This should be based on the actual number of licences held and operated within the year and not estimated figures.**
* **For surface rent payments, the amounts paid by reporting companies were duly computed according to formula and reconciled using templates submitted by District and chiefdom councils.**

Lastly, Sierra Leone should ensure actual transfers are disclosed in detail, reconciled and summarised, highlighting any deviation from statutory calculations.

* **As indicated earlier, surface rent payments were duly reconciled for all the recipients decided by the MSG.**
* **For the DACDF, requirement 5.2 under subnational transfers stipulates that the MSG is only encouraged to reconcile these transfers (Not required)The MSG has provided total amounts of DACDF in 2014, 2015 and 2016. In addition it has also provided the actual amounts of DACDF received by each Subnational entity in 2016. This is in fulfilment of requirement 5.2.**

**MSG Conclusion on level of progress**

* **In conclusion, it is our belief that coverage of surface rent should be marked satisfactory as requirement 5.2 has fully been complied with, based on the current legislation and rules pertaining in Sierra Leone.**

### **Social expenditures (#6.1)**

#### **Documentation of progress**

For oil and gas, the 2016 EITI Report confirms the lack of payments overall, including mandatory social expenditures, by oil companies in 2016 (p.50).

The report identifies payments to Community Development Funds (CDF), payments arising from mandatory Community Development Agreements (CDAs), as mandatory social expenditures for mining companies. Each of the funds are jointly managed by local councils and the companies in unison by so-called “joint fund managers”. The report describes legislation requiring all mining companies (except ASM) to conclude a CDA with local communities affected by the mining project, with statutory minimum annual contributions of at least 0.01% of gross revenues (pp.39-40,77). As part of its description, the report highlights five conditions that companies must satisfy in order to conclude a CDA. The ToR for the IA stipulated that CDF payments are not to be reconciled as there is no current reporting nor monitoring system on the part of government (p.145). However, there is publicly-accessible evidence that companies are obliged to report to the NMA annually on their community development activities, through form C-20.[[1]](#footnote-1) The report does not mention these forms or reporting structures. Agriculture Development Funds were, according to the report, replaced by the CDFs and therefore there were no registered payments towards these funds. Nonetheless, the ToR for the IA states that subnational entities were asked to report on payments both to the Agriculture Development Funds *and* CDF (pp.144-145).

According to the report, only one of the eight reporting companies (Sierra Minerals Holdings No.1 Limited) reported payments to the CDF, totaling USD 113 691 (p.75). The report explains that the counterpart, the joint fund managers of the CDF for Sierra Minerals Holdings No.1’s contributions, did not report to the EITI and therefore there were no reconciliation nor data on revenues by beneficiaries. The report provides no explanation or justification for the lack of reporting of mandatory social expenditures by the other seven reporting companies, nor any description of the MSG’s review of the number of material companies that had concluded CDAs as of 2016.Requirement 6.1 requires that only transactions mandated social expenditures that occurred in 2016 are indicated. In 2016 only Sierra Minerals Ltd, made mandatory social expenditures, and these payments were reported. The report does not cover any voluntary social expenditures. The MSG determined that there were no material discretionary expenditures in 2016.

#### **Stakeholder views**

Stakeholders from most constituencies clarified that as the CDF payments were formalised largely to ensure standardised corporate social responsibility payments in Sierra Leone. Thus, stakeholders explained that there are limited *voluntary* payments that fall outside of CDAs and surface rent agreements. Government stakeholders confirmed that mandatory social expenditures were paid by companies in line with their CDAs, although whether paid directly to subnational funds or a beneficiary tends to vary. There is no evidence of any mandatory social expenditures apart from the one involving Sierra Minerals Ltd, that was reported in the report. Stakeholders claimed all companies had concluded CDAs as of 2017, but that these were not publicly available. Several representatives from civil society, companies and industry experts also highlighted the provisions under Section 140 of the Mines and Minerals Act 2009, which prescribes the contents of CDAs that obliged companies and communities to agree on measures for mine closures, sometimes labelled “mine closure funds”. However, the same stakeholders indicated that there had been little or no follow up on this section of the Act and lamented the lack of coverage of this issue in EITI Reports aside from a cursory description of contents of CDAs (see 2016 Report p.77). Stakeholders also mentioned Community Development Action Plans, which were meant to ensure environmental and social impact assessments were actually implemented to mitigate the adverse impacts of mining operations. However, most government stakeholders and all civil society and industry stakeholders claimed that the action plans were subordinate to the CDAs, meaning that CDAs were seen as rendering action plans void.

There were different views on the level of government oversight of expenditures under CDAs on the part of stakeholders. According to several stakeholders from government, industry and civil society, no government agency maintained full oversight of these expenditures, although they noted that 'disbursement events' held by individual companies were widely publicised in media. However, there does not appear to be any publicly-accessible documentation of such events held in 2016.According to most stakeholders, CDA-related activities including disbursement of funds were undertaken by companies, under MMMR and MoLGRD oversight. Other government and corporate stakeholders claimed there was no involvement in oversight of CDA-related activities by neither MMMR nor MoLGRD.

Stakeholders from both industry and civil society confirmed that individual CDAs were normally not publicly available. These stakeholders argued that CDFs would also benefit from statutory requirements imposed by government to *publish* these agreements, thereby clarifying the terms and commitments of contributions to communities by companies. Several company representatives indicated a preference towards mandatory social expenditures that were not subject left to discretion or outcome of negotiations with communities. According to some civil society members CDAs were originally created to replace voluntary social expenditures undertaken by companies, although they admitted that there had been deficiencies in the current regulatory and monitoring framework, in particular related to government oversight and companies’ ability to manage CDAs alongside all other commitments. Several industry stakeholders implied a preference for making all payments directly to central government agencies, although this was not considered possible under the current legislation.

#### **Initial Assessment**

The International Secretariat’s initial assessment is that Sierra Leone has made inadequate progress towards meeting this requirement. The 2016 EITI Report does provide evidence of an attempt to unilaterally disclose mandatory social expenditures under Community Development Agreements by companies. In the end, only one of the eight reporting companies, Sierra Minerals Holding No.1 Limited, disclosed the SLL and USD equivalents of three separate payments to the jointly managed Community Development Fund of Sierra Minerals and the Moyamba District Council. Still, there were no reported disbursement nor information on further allocation from the Community Development Fund. Requirement 6.1 is about disclosing mandated social payments/expenditures by companies and reconciling where possible. The requirement does not mention further allocation of mandated payments. There is no explanation for the lack of disclosures by the other seven reporting companies and the information on mandatory social expenditures is not reconciled. This is because no mandated social expenditures were made by the other companies. The report does not provide any information on voluntary social expenditures. The MSG determined that there were no material discretionary expenditures in 2016.

In accordance with Requirement 6.1, Sierra Leone should ensure mandatory social expenditures, such as expenditures under Community Development Agreements, are comprehensively disclosed each reporting year. For all material mandatory social expenditures, companies are required to disclose the nature and value of transactions, whether in cash or in kind, and ensure that disclosures be disaggregated by non-government beneficiary with information on the names and functions of third-party beneficiaries. Sierra Leone is encouraged to reconcile mandatory social expenditures and consider disclosing information on companies’ voluntary social expenditures. **Please note that community development fund was reconciled in the report, although requirement 6.1 indicates that reconciliation should only be done where possible. This is because the report reconciled the Sierra Minerals Ltd payments to Moyamba District Council’s receipts or otherwise (see table 9.4). The MSG determined that there were no material discretionary expenditures in 2016.**

To support the efforts to address the corrective action on Requirement 6.1, government disclosures of community development contributions, SLEITI may wish to work closely with the National Minerals Agency and the Ministry of Mines and Mineral Resources to ensure that all Community Development Agreements and companies’ annual filings of C-20 forms to the National Minerals Agency - *Form to accompany an annual report on community development activities* – are systematically disclosed on the agency’s website and systematically undergoes quality assurances.

1. As noted above the report provided details about community development fund (CDF), and the conditions under which companies are required to make such payments. See sections 5.1.1(v);section 6.2 and section 9.0; and Table 9.4
2. The requirement that mandated social expenditures should be disclosed was met. Only one company made the mandated payment/expenditure and this was disclosed. The only CDF (agreement) that was in force/ operational in 2016 and the accompanying payments/expenditures have been disclosed.
3. Although the reconciliation of the community development fund was not mandatory, the report nevertheless reconciled. The fact that Moyamba District Council did not disclose any receipt does not make the disclosure unilateral.
4. There is no evidence that other companies apart from Sierra Minerals Ltd paid CDF in 2016.
5. The 2016 report also provides a copious recommendation on improving the community development fund disclosure, and also mentions that only one company made the mandatory social expenditure.

**MSG Conclusion on level of progress**

We belief that this requirement should be marked **satisfactory**.

**Outcomes and impact of implementation (#7.4) -** Page 106

The assessment of the 2017 annual progress report shows that it provides an adequate overview of activities carried out in 2017. Some of the activities include proving input to the National Corporate Governance Code281 which led to the reviews of the Companies Act 2014282, Mines and Minerals Act 2009283 and National Minerals Agency Act 2012284 to include provisions on BO. Other activities include workshop on good financial governance in the extractive sector.

* **Companies (Amendment) Act, 2014 has never been reviewed, on the contrary it is an amendment of Companies Act, 2009. There is a suggestion that Companies Act 2009 must be reviewed to provide for disclosure of Beneficial Ownership. CAC has made it clear that future amendment of the act can only be done holistically.**

**Executive Summary of the Independent Validator’s Report:**

* **Tax and royalty system – Page 3**

Lastly, Sierra Rutile Limited’s tax and royalty payments increased significantly over the same period, as the sole large-scale rutile producer in Sierra Leone.

**Executive Summary of the Independent Validator’s Report:**

* The government reaffirmed their commitment in October 2010 and on 22 February 2008 Sierra Leone was accepted as an EITI Candidate at the 4th EITI Board Meeting in Accra, Ghana.
* The Validator has downgraded industry engagement (#1.2) from meaningful progress to inadequate progress.
* Yet some efforts *are* directly linked to EITI. A draft Minerals Policy was awaiting Parliamentary approval at the start of Validation, which in line with the ruling party’s February 2018 manifesto calls for reform of mining sector legislation to explicitly cover several aspects of EITI Requirements such as contract disclosure.
* In accordance with **Requirement 2.2**, Sierra Leone should publicly disclose the procedures for awarding and transferring all extractives licenses, including specific technical and financial criteria and any non-trivial deviations from the applicable legal and regulatory framework.
* **Executive Summary of the Independent Validator’s Report:**
* **Progress in EITI Implementation**

Renewal of industry representatives and certain government representatives took place in 2018 ahead of commencement of Validation, although thus far industry representatives have not reached their full potential for engagement as there is no functioning Chamber of Mines or similar forum to ensure wider engagement of extractive companies. Significant concerns remain regarding civil society representation on the SLEITI MSG, as civil society have not held an open and transparent process for refreshing their members since the MSG was first constituted in 2006.

**Executive Summary of the Independent Validator’s Report:**

The government reaffirmed their commitment in October 2010 and on 22 February 2008 Sierra Leone was accepted as an EITI Candidate at the 4th EITI Board Meeting in Accra, Ghana.

. The Validator has downgraded industry engagement (#1.2) from meaningful progress to inadequate progress.

However, in 2014 the country was again faced with crisis, the Ebola virus outbreak which affected the country, leading to 14,124 cases and 3,956 deaths, while commodity prices plummeted globally at the same time.

The commencement of production at several iron ore mines in 2010-2012 contributed significantly to the country’s economic growth.

Yet some efforts *are* directly linked to EITI. A draft Minerals Policy was awaiting Parliamentary approval at the start of Validation, which in line with the ruling party’s February 2018 manifesto calls for reform of mining sector legislation to explicitly cover several aspects of EITI Requirements such as contract disclosure.

In accordance with **Requirement 2.2**, Sierra Leone should publicly disclose the procedures for awarding and transferring all extractives licenses, including specific technical and financial criteria and any non-trivial deviations from the applicable legal and regulatory framework.

1. National Minerals Agency (2018), ‘C-20: Form to accompany an annual report on community development activities’, accessed on 28 November 2018. Available at: <https://gims.nma.gov.sl/sites/default/files/downloads/C20%20Third%20Schedule_yearly_report_communitydevelopment_form.pdf> [↑](#footnote-ref-1)