ADVANCING THE EITI IN THE MINING SECTOR

A consultation with stakeholders
The Extractive Industries Transparency Initiative (EITI) is a globally developed standard that promotes revenue transparency at the local level. It is a coalition of governments, companies, civil society, investors and international organisations. Through robust yet flexible methodology company payments and government revenues from oil, gas and mining are published, and discrepancies are reduced. Although the EITI Board and the International Secretariat are the custodians of the EITI process, implementation takes place at the country level, in a process that emphasises multi-stakeholder participation.

www.eitransparency.org

Advancing the EITI in the Mining Sector
A consultation with stakeholders

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Photography on the cover by Karl Schoemaker, courtesy of AngloGold Ashanti
ADVANCING THE EITI IN THE MINING SECTOR

A consultation with stakeholders
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FOREWORD

14 out of the 24 EITI Candidate countries are mining countries and 23 out of 40 companies supporting the EITI are mining companies. Although the EITI methodology applies well to the mining sector, more can be done to refine the EITI process to improve implementation in the mining context. We in the EITI, together with many of our stakeholders, are pleased to present this publication. It is part of our efforts to further the understanding of the sector and respond to the mining-specific challenges for EITI implementation. Much can be learned through sharing experiences from early EITI implementation in mining countries and from discussing these issues with mining stakeholders.

The mining sector is complex. Different taxation regimes, great diversity of minerals, diverse geology, numerous companies of varying size and often with greater local impact than oil and gas companies, among other specific issues, pose unique challenges when working to improve transparency in the revenue flows that the sector generates. The EITI has been well aware of these challenges since the beginning, when they were highlighted by the EITI International Advisory Group.

Many people and organisations have contributed to this effort. We are much obliged to all contributors for their time and effort in producing this volume. We wish to acknowledge the support from Paul Mitchell who chaired the consultative meetings and helped in editing this volume. We are grateful to a partial financial contribution by the International Council on Mining and Metals. We also wish to thank AngloGold Ashanti, ArcelorMittal, AusAID, Cerrejon, George Forrest International, International Finance Corporation and Newmont Mining Corporation, for providing us with photographs to illustrate the publication.

Issues covered include taxation regimes, dealing with in-kind contributions, materiality, small scale mining, and sub-national flows. The case studies bring important lessons: implementing the initiative in post-conflict countries, ensuring stakeholder engagement including companies' commitment and civil society's effective participation, the importance of stressing local involvement in the implementation and how transparency is addressed in developed countries.

Three publications were launched in 2008 aimed at providing guidance to EITI practitioners: the World Bank's Implementing the Extractive Industries Transparency Initiative, the Revenue Watch Institute's Drilling Down, and the EITI’s Business Guide. The last three chapters of this volume provide supplementary guidance tailored to mining contexts to match these three publications. The EITI has also continued to provide additional guidance in other relevant aspects to implementing the initiative. Concurrently with this publication we are launching Talking transparency: How to communicate the EITI, which will provide mining stakeholders with more guidance on the difficult task of communicating the complexities of this sector.

The next 12 months are crucial for the first Candidate countries to complete the Validation process. All of us involved in producing this publication hope that it will be helpful in mineral-rich countries' efforts to implement the EITI and become EITI Compliant. The EITI International Secretariat looks forward to continuing collaboration with mining stakeholders to ensure the EITI becomes a global standard and useful tool for improving transparency in the extractive industries.

Jonas Moberg
Head of the EITI International Secretariat

February 2009
ABOUT THIS PUBLICATION

The idea
In 2006, the EITI International Advisory Group identified several challenges ahead for the EITI. Paying more attention to the specific context of the mining sector was among them.\(^1\)

Following on this, when the EITI International Secretariat opened in Oslo in September 2007, addressing the mining context for the EITI was included in the 2008 Work plan.\(^2\)

This publication is the first outcome of the consultative process we began in order to further our understanding of the EITI within the context of the mining sector.

Our purpose was to discuss mining-specific issues with mining stakeholders, share lessons learned and identify possible refinements to the implementation of the EITI in a mining context. We invited over 20 stakeholders from companies, civil society organisations and practitioners directly involved in EITI implementation, to take part in informal discussions and to collaborate in the production of this publication. This volume is the outcome of this consultative process.

The consultation process
We held various teleconferences and met in Washington, DC on the margins of the IMF’s conference on mining taxation in September 2008. We agreed that this first consultation would result in a publication with three main parts: the mining context in which the EITI is implemented today, case studies from around the world and guidance to implementation.

Although not exhaustive, this publication includes contributions from companies, civil society and practitioners at country level in Africa, Asia and in North and Latin America and both EITI implementing, supporting and potential EITI countries. The sample of the EITI universe represented here is broad and we hope it encourages other organisations, countries and stakeholders to take part in the future about expanding and enhancing the EITI model.

The production
Production of this document was coordinated by Francisco Paris at the EITI International Secretariat.\(^3\) Opinions expressed in each contribution reflect those of each author and not necessarily those of the EITI International Secretariat. This publication does not constitute EITI formal policy and should be read as a collection of viewpoints that enrich the debate about transparency in the extractive sector and will inform further refinements to the EITI model.

Photographs
Photographs for chapters 3, 6 and 10 are courtesy of AngloGold Ashanti, for Chapter 9 of ArcelorMittal, for Chapter 15 of AusAID, for Chapter 12 of Cerrejon, for Chapters 7, 16 and 17 and Introduction of George Forrest International, for Chapter 11 and 18 of the International Finance Corporation, for Chapter 8 of Newmont. The rest of the pictures were taken by the EITI in a visit to Ghana in February 2008.

\(^2\) See Section 4.2. of the EITI Secretariat Workplan 2008
\(^3\) Jonas Moberg, Eddie Rich, Tim Bittiger, Sam Bartlett and Anders Kräkenes provided useful input throughout the production of the volume.
This chapter is neither as dispassionate nor analytical as some of those which follow. Rather, it is a personal exposition of the case for the EITI from the perspective of someone from the mining industry who has been involved since its launch at the World Summit on Sustainable Development in Johannesburg in 2002. I served on the initial reference group of companies and NGOs convened by the UK Department for International Development as they sought to turn a concept into an international multi-stakeholder initiative, and on the International Advisory Group that recommended how the EITI should be constituted and governed, and then on the EITI Board from 2006-9.

During the last seven years the EITI has, through the goodwill and shared objectives of the unique coalition which supports it, matured, gained strength and legitimacy, and become a de facto international standard. It is too early to say whether it has effected a major change in the way in which resource revenues that are generated for the public purse are used – that may not be apparent for another three to five years. However, we can say that the growing traction of the EITI has coincided with a period of high commodity prices in which, as far as we can see – as the cycle comes to an abrupt end – the manifestations of a “resource curse” have been much less evident than in comparable periods in the past.

The key tests of whether the EITI is successful at a macro-level should be: whether the embezzlement of resource revenues by corrupt elites has been halted or significantly reduced; and whether the multi-stakeholder discussion about the use to which those revenues are put is contributing to greater trust, consensus and, ultimately, social and economic development.

What makes the extractive sector different?
In the margins of the Johannesburg Summit, British Government officials solicited Anglo American’s support for the planned announcement of the Initiative by Prime Minister Tony Blair. One of the ripostes was that it was couched too negatively around the potential pitfalls of resource development rather than emphasising their potential to promote growth and poverty alleviation. Certainly, mining and oil and gas present some specific challenges, but these industries are by no means unique in this respect. Thus, I continue to believe that the approach is as valid for other sectors which either exploit a natural resource – like fishing or forestry – involve significant government procurements – such as infrastructure construction or the defence industries – or generate significant rents for governments – like mobile telephony or some utilities.

And although these other sectors were not initially in the frame, it was important for mining companies to be seen to be taking our share of leadership in addressing problems within our sector.

The extractive industries have a number of distinctive features which make them controversial in the eyes of some stakeholders and create specific challenges for companies seeking to build and maintain long-term businesses.

These include:

• mining companies’ choice of where to invest is largely dictated by geology and the identification of economically viable mineral deposits. Such deposits are increasingly likely to be found in stable OECD and other developed economies;
• the development of mineral resources typically involves a
lengthy period of exploration and project development involving a large up-front capital investment. Thereafter, such investments are immobile and assets are difficult to dispose of for value where the seller is distressed or where political stability has significantly deteriorated;

- mining companies exploit a publicly owned asset – part of the national patrimony of our host countries – and the resource is non-renewable;

- experience has shown that economies with a high dependence upon natural resources often face specific macro-economic challenges related to, for example, the volatility of commodity prices; there is a tendency for such commodities to dominate export earnings and to increase the host country’s exchange rate so as to reduce the competitiveness of other exports;

- in fragile states, a lack of identification with State institutions which may spark conflict can be exacerbated if warring factions are able to access resource revenues to fund their campaigns; and

- the large social and environmental footprint of extractive operations can lead to adverse outcomes for local people unless these impacts are actively mitigated through good environmental stewardship and measures to equip people for jobs or to increase linkages into the local economy.

These factors lead to five conclusions.

- First, that the long-term nature of the investment and the public ownership of the underlying resource make it inevitable that mining companies must take an active interest in governance issues.

- Second, most leading mining companies are engaged around their operations in seeking to maximise their development contribution. However, the impact of such measures will be greatly reduced if there is little trust between the company and local stakeholders, or if the government is essentially predatory in its use of revenues.

- Third, one of the biggest contributions that most mines will make to sustainable development – through building social, human and manufactured capital while extracting a non-renewable resource – will be through paying tax. If taxes and royalties are not properly accounted for or invested wisely, then the relevant country or region may miss out on a unique opportunity to spark wider development through inward investment.

- Fourth, societal expectations of corporate behaviour have become increasingly expansive. While we cannot easily be held accountable for how our host governments spend the revenues that we generate, many people will expect us to play a part in making the misappropriation of such revenues as difficult as possible.

- Finally, the fact that we know that mining can create great benefits for host countries – as has been shown by countries like Botswana or Chile – or contribute to poor development outcomes is cause for us to be active in promoting practices that are most likely to lead to good outcomes. The International Council on Mining and Metals, for example, has led a major research project, supported by the World Bank, UNCTAD and a number of NGOs, into how to ensure that mineral wealth becomes an endowment rather than a curse. At the heart of its findings is that the most fundamental factor is effective reform of a small number of key policies – macroeconomic, and land and contract law – which all contribute to improved governance. Transparency is not by itself a sufficient condition to guarantee success, but it is an important contributor to better governance. Indeed, this is partly a matter of self-interest. It is more likely that we will gain access to resources in the future if our industry is seen to make the lives of ordinary people better and to contribute to the realisation of the Millennium Development Goals.

Thus, going back to 2002, when at short notice the Anglo American Executive Committee was asked to give its endorsement of the fledgling Initiative, it was prepared to give it. The counter argument broadly went that in those countries that choose to identify individual company contributions rather than to aggregate them, and where the political environment tends towards the populist, there is a danger of a poorly informed debate comparing the tax paid by different operations without understanding the finer points of geology, fiscal rules, or payback periods. This, it was feared, could lead to a competitive bidding up of tax burdens. Conversely, the winning argument was that as long-term investors we benefit from stable regimes and good governance, and that the risks involved in supporting this objective through the EITI were not disproportionate to the potential gain. Moreover, our experience is that in many countries the public significantly underestimate the amount of tax which mining companies pay. Thus, when the time came for Mr Blair to make his speech, Anglo, Rio Tinto and BHP Billiton were all lined up to give the idea their backing.

Regrettably, not all the governmental diplomatic niceties were followed. The fact that the South African Government, as conference hosts, felt themselves to have been partially blind-sided by the announcement caused an impression of an initial lack of “Southern” ownership. This has led to a discourse in some Southern African countries that the EITI is “neo-imperialist”. The riposte to this critique has been some time in coming, but is manifest in the fact that it has been endorsed by the G20 and has now been recognised in a UN General Assembly resolution. Norway is now leading the way among “Northern” resource-rich countries in joining the ranks of would-be implementers.

What has made the EITI distinctive?

Undoubtedly, progress has been much slower than any of us imagined in 2002. That is in large part because we
underestimated the scale of the task and the complexity of aligning systems and stakeholders at a national level. Building structures that command trust in countries where trust is in short supply takes time – as the Peruvian experience, in particular, has shown. Moreover, at the international level it has taken time to move from implementing principles to a workflow that can be consistently validated country by country. By early 2010 we will be able to judge how many Candidate Countries will have completed their implementation programmes and be ready for full Validation.

I would highlight two aspects of the EITI’s approach for would-be participants. First, although the Initiative brings together a diverse group of stakeholders at the international level – participating governments, supporting countries, NGOs, oil companies, mining companies and investors – what has been striking is the very constructive nature of the international engagement. People and organisations come to the Initiative from very different directions, and yet the EITI is an example of what can be done to build consensus around carefully targeted objectives.

Moreover, some companies are uneasy about an active involvement in debate around governance and public policy issues; and some reticence in this respect is justified. We do not have a mandate or necessarily the legitimacy to define what constitutes good governance. We can, however, more easily contribute in these areas as part of a multi-stakeholder process.

Second, an important element of the EITI’s relative success is that, while there is an overarching set of international principles, the model for implementation is nationally led and owned – allowing national level stakeholders to adapt the process according to local needs and priorities. The in-country focus is also a key difference between the EITI and the Publish What You Pay approach. The former is able to compare payments in-country directly with what the host government claims to have received and to investigate the reasons for any discrepancies. The latter may find ways of getting companies to disgorge details of their payments internationally, but without the support of an in-country process for examining the figures it is of less practical value. I should mention in this respect that, in common with Rio Tinto, Anglo American voluntarily declares our tax payments by country for the dozen or so most important countries where we operate, in our annual “Report to Society”.

**The EITI’s relevance to the mining sector**

The most infamous examples of the large-scale embezzlement of resource revenues by corrupt elites have been in the oil and gas sector. Moreover, because the revenues generated by oil and gas tend to be significantly larger than for mining, the economic management aspects of the “resource curse” have tended to be greater in that sector. Thus, much of the media and political commentary around the launch of the EITI focused solely on oil and gas. In addition, the two most prominent would-be implementers were oil-rich states, Nigeria and Azerbaijan.

However, through the efforts of companies and civil society groups and the holding of workshops aimed at the mining sector, this situation has been largely turned around. Among the major mining jurisdictions where the EITI is now being implemented are Ghana, Guinea, the Democratic Republic of Congo, Liberia, the Kyrgyz Republic, Mauritania, Mongolia, Peru, and Sierra Leone. Others who have expressed substantive interest in the potential of the process include Botswana, Indonesia, Zambia, Tanzania and Colombia.

Mining is also distinct from oil and gas in that our local impacts – for good or ill – tend to be more concentrated. Thus, those stakeholders with an interest in mining have been particularly keen to understand how the principles of transparency might be extended to a sub-national level. This is particularly the case where some countries have laws – or constitutional provisions – whereby a proportion of mining revenues is supposed to be returned to the producing regions. Often, because of a lack of transparency, people in the region do not know whether any taxes or royalties have actually reached the national capital, or, if they have, what happened to them at that point and how they were spent, or, if they were returned, to whom and for what purpose they have been earmarked.

Sub-national flows are one of the EITI’s international work streams and the World Bank is helpfully working to produce a suitable mining reporting template. Sub-national flows have already been established, inter alia, as a particular point of concern in Peru, the DRC and Ghana. There remains, however, some further work to be done.

**What does success look like?**

Revenue transparency is increasingly becoming a significant sustainable development issue for the mining sector. The EITI is not a silver bullet which will end corruption and solve all the problems of resource revenue management. Rather, on the basis of still early evidence, it is proving to be a useful contribution to making corruption more difficult and to improving accountability. From the perspective of mining companies, the Initiative presents an opportunity for us to contribute to better governance, to explain the contribution we make to our host countries’ finances, and to build trust through greater openness – especially if transparency around sub-national flows gains traction. Opening the books is a step forward in itself, but the real gains are most likely to come through the dialogue that EITI implementation processes create around sustainable development and the proper use of mining revenues.

Edward Bickham is the Executive Vice President of External Affairs for Anglo American plc and Member of the EITI International Board.
2 THE EITI AND THE MINING SECTOR TODAY

FRANCISCO PARIS and SAM BARTLETT

Executive summary

The mining sector is well represented in the EITI: fourteen out of the 24 EITI “Candidate Countries” are mining countries and 58% of EITI supporting companies are from the mining industry. There has been a general perception that the EITI is intended mainly for the oil and gas sectors. This chapter, however, illustrates how the EITI methodology can be applied as easily to the mining sector. Many of the activities in the mining sector can be covered by the current formal structure of the Initiative. Other chapters in this publication will address issues that are specific to the mining sector and offer suggestions on how the EITI model could be further refined.

Introduction

In the earlier years of the EITI’s existence as an initiative, there was some perception that it was not “proceeding well” in mining countries. This was in part due to the fact that early progress was made in oil and gas countries leading the development of the EITI (such as Azerbaijan and Nigeria), while progress in mining countries such as Ghana, the Kyrgyz Republic and Peru was initially slow. That picture has now changed. Of the 24 EITI Candidate Countries, 14 of them have reported or will be reporting on mining sector revenues. Relative to the overall number of resource-rich countries, there is now proportionately much greater adherence to the EITI in mineral-rich countries than in oil and gas rich countries.

The core characteristics that define the EITI are that the Initiative is voluntary, based on the collaboration of three main stakeholders (governments, companies and civil society) and focused on the disclosure of revenues accrued to governments as a result of the exploitation of mineral resources.

As was shown in the previous chapter, the Initiative has followed extensive piloting, consultation and careful elaboration of a methodology in order to incorporate two basic aspects: the need for flexibility in their execution in response to the varied conditions in which mining occurs, and the need to maintain credible, rigorous and sustainable standards in the implementation of the Initiative.

This methodology is summarised in the Validation Grid and thoroughly explained in the Validation Guide. This basic set of rules emphasises the broader crucial conditions in which an EITI
process should take place and the key outcomes that should be produced. These conditions are the sustained commitment and active participation of all three main stakeholders (i.e. continuous political and technical support from governments, active collaboration from companies and active involvement of civil society along the process).

The key outcomes of an EITI process are the disclosure of companies’ payments and government’s receipts, their reconciliation, and the dissemination of these data. These minimum requirements are the stamp of an EITI process and make no distinction between the types of mineral resources being extracted. The EITI allows ample room for adapting each country’s resources profile and economic, social and political conditions to the EITI process. Countries vary in their tax regimes, stages in the production cycle, portfolio of exploitable resources and the geological and more technical characteristics of their extractive sector’s reserves, as it is shown in the next chapter.

An improved understanding and a clear description and revelation of the revenues generated by the extractive industry is central to the EITI process, both in the mining and in the hydrocarbon context. The rest of this chapter discusses some aspects of the economics of the mining sector. This brief review is followed by a description of how the EITI has performed so far in mining countries and with respect to mining companies. It also highlights how EITI Validation, the “quality control” mechanism of the Initiative, equally serves countries with different natural resource portfolios. Finally, it examines the future direction of the Initiative in light of this broader discussion.

The economic significance of the mining sector and the “resource curse”

The degree to which the economies of resource-rich countries depend on their extractive sector varies immensely. When the exploitation of natural resources is put into context with the rest of the economy, one can observe that the impact of the extractive sector can be very different in each case. In most hydrocarbon-rich countries the oil and gas industry dominates the export sector of the economy. Nearly half of the hydrocarbon-rich countries listed by the IMF depend on oil and gas for more than 80% of their exports; the average of all listed hydrocarbon-rich countries is 71%. In addition, these governments are fiscally dependent on the extractive sector, as earnings from the oil and gas sectors account for an average 55% of fiscal revenues.

The situation in mining countries is similar. Mining exports average almost 50% of total exports in many mineral-rich countries, highlighting the fact that these economies tend to be dominated by their resources. However, the contribution of the mining sector to fiscal revenues is much smaller than in hydrocarbon-rich countries: revenues from the mining industry average just 12.8% of total fiscal revenues in mineral-rich countries. This stark contrast between the fiscal impacts of the mining sector and the hydrocarbons sector largely explains the perception that mining is less important than oil and gas. However, as global demand for raw materials continues to increase, revenues generated by the sector are likely to increase (corrected by the level of commodities prices). Additionally, new or expanded operations in countries with untapped resources will increase the number of countries with mining operations.

Does this difference in overall economic impact mean that mineral-rich countries are less exposed to the “resource curse” or other negative developmental outcomes?

The smaller impact of the mining sector on fiscal and export revenues in mineral-rich countries compared to their hydrocarbon-rich counterparts does not imply that these countries are not significantly affected by mining industry activities. According to a joint World Bank, UNCTAD and ICMM paper, “the idea that mineral resources constitute a curse has gained prominence in policy debates”. It is recognised, as well, that initiatives such as the EITI “have induced greater transparency in revenue flows and highlighted the need to improve the public financial management of resource rents”.

The impact of the mining sector is often greater and more focused on the local communities and regions where mineral resources are located. Issues such as sub-national flows and direct contribution to local communities (i.e. in-kind or non-cash payments) become more salient in mining countries. In addition, the reduced fiscal contribution of mining is due to the lower profit margins and volumes related to mining when compared to oil. In some countries, artisanal mining output is small and does not appear in official statistics. These are important and distinctive issues on which the EITI could refine their guidelines.

The EITI provides a platform for addressing these particular issues as well as the core question of revenue disclosure. Subsequent chapters touch upon these matters. As the EITI process is implemented in more mining countries, and Candidate Countries go through more iterations of EITI reporting, valuable empirical evidence will supplement the ideas debated here and inform further refinements of the EITI methodology.

EITI Validation

Validation has two critical functions. First, it promotes dialogue and learning at the country level. Second, it safeguards the EITI brand by holding all EITI implementing countries to the same global standard.

Validation is not an audit. It does not repeat the disclosure and reconciliation work that is carried out to produce EITI reports. Validation has broader objectives: it evaluates EITI implementation in consultation with stakeholders, it verifies achievements with reference to the EITI global standard, and it
Table 1. Hydrocarbon-rich countries, 2000-05

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<td>97.1</td>
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<td>97.2</td>
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<td>Yemen</td>
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<td>Average</td>
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<td>20.6</td>
<td>71.1</td>
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</table>

Countries with potentially large medium- and long-term hydrocarbon revenue

<table>
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<td>Chad 8/</td>
<td>31.0</td>
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<td>80.8</td>
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<td>Mauritania*</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>Sao Tome and</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>Principe 7/</td>
<td>57.7</td>
<td>73.4</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>Timor-Leste</td>
<td>63.8</td>
<td>38.8</td>
<td>72.1</td>
<td>26.0</td>
<td>...</td>
</tr>
</tbody>
</table>

Sources: Executive Board documents, WEO database, and IMF staff estimates; World Bank Development Indicators.

1/ For countries with an asterisk (*), a fiscal Report on the Observance of Standards and Codes (ROSC) has been published by the IMF.
2/ Table 1 includes all countries that are considered rich in hydrocarbons resources on the basis of the following criteria: (i) an average share of hydrocarbon-generated revenues of at least 25% of total fiscal revenues during the period 2000-2005; or (ii) hydrocarbon exports account for at least 25% of total exports in the period 2000-2005.
3/ Revenues including grants.
4/ World Bank Development Indicators definition: Energy depletion is equal to the product of unit resource rents and the physical quantities of energy extracted. It covers coal, crude oil, and natural gas.
7/ Information available for 2005.
identifies opportunities to strengthen the EITI process going forward. The EITI Board uses Validation reports to determine a country’s Candidate or Compliant status.

Candidate Countries are required to complete Validation within two years. Countries that demonstrate their compliance with the EITI (or demonstrate substantive progress towards achieving this goal) will receive international recognition for their efforts and achievements. If Validation is not completed, or if the Validation shows that there has been no meaningful progress towards achieving EITI compliance, the EITI Board will revoke that country’s Candidate status. Validation thereby ensures that free riders do not undermine the EITI.

The Validation process is undertaken at the country level, overseen by the multi-stakeholder Group. The implementing country appoints, procures and pays for the Validation. This ensures that there is strong implementing country ownership of the process. At the same time, the EITI Board requires that the work is carried out by one of seven accredited firms. These firms were selected by the Board via a competitive international bidding process. This approach ensures that the work is carried out to a consistently high standard across all countries.

Assessing compliance via the Validation Grid
The Validator meets with the multi-stakeholder group, the organisation contracted to reconcile the figures disclosed by companies and the government and other key stakeholders (including companies and civil society not on the multi-stakeholder group).

At the heart of the process is the EITI Validation Grid. It comprises 20 indicators: 18 which should be assessed as met or unmet, and two that are addressed in the Validator’s narrative report. The indicators are linked to the EITI Criteria. The Validator assesses EITI compliance in consultation with all the key stakeholders, taking into account prevailing circumstances and challenges. To guide the Validator, the Validation Guide includes a series of Indicator Assessment Tools (IATs). The IATs provide additional guidance to the Validator in situations where the indicator is more complex or subjective.

The Validator’s report is then submitted to the national government, the multi-stakeholder Group, and the EITI Board for approval. If there is disagreement regarding the Validation process, it is dealt with in the first instance locally, with the EITI Board only called in to help in cases of serious dispute.
Validation in the mining sector

To date, no country has completed the Validation process. The EITI Board agreed the procedures for procuring a Validator in March 2008. It subsequently established a Validation deadline for the first 22 Candidate Countries of 9 March 2010. The deadline for new Candidate Countries is set two years from the date on which they attain Candidacy. Two Candidate Countries – Azerbaijan and Liberia – have formally initiated the Validation process with a view to completing the process in the first quarter of 2009.

The Validation process and the Validation Grid have been designed so that they can be applied in both the mining and the oil and gas sectors. There are no mining-specific indicators and obligations, nor any requirements specific to oil and gas. While the Validation indicators are clearly linked with the EITI criteria, the framework is flexible enough to accommodate different EITI programmes. For example, the process is equally applicable to countries with disaggregated (revenue and payment figures are broken down) or aggregated (revenue and payment figures are presented as one figure). The Validation does not assess the merits of these two approaches – it focuses on the consultative process which stakeholders undertook to agree on the approach adopted. The same applies to other aspects of disclosure, reconciliation and reporting, such as establishing what is a material payment, agreeing which organisation will reconcile the figures, and so forth.

In addition to the completed Validation Grid, the Validator’s final report will also include: i) a short narrative report on progress against the country work plan, ii) a narrative report on company implementation, and iii) an overall assessment of the implementation of the EITI. The Validation report will also contain lessons learned, document concerns expressed by stakeholders, and make recommendations for future implementation of the EITI. There is ample opportunity for stakeholders to comment on industry-specific challenges and opportunities. Validation therefore promises to make an important contribution to ensuring that the EITI has an enduring impact in implementing countries.

EITI mining countries

EITI Candidate Countries whose extractive industries include mining or both mining and oil and gas are: the Central African Republic, the Democratic Republic of Congo, Gabon, Ghana, Guinea, Kyrgyzstan, Liberia, Madagascar, Mali, Mauritania, Mongolia, Niger, Peru and Sierra Leone.

Six (out of ten) of these countries have produced one or more EITI report; these are discussed in the following section. Liberia is close to producing its first report and is preparing for subsequent Validation. Mongolia has undergone a self-assessment exercise in its preparation for Validation as well. Peru is also preparing its first report and has also piloted the application of EITI principles at municipal level (as Chapter 11 illustrates), while other countries, such as Zambia and Indonesia, have gone through recent consultations among stakeholders on joining the EITI. The case studies section includes chapters on these two interesting countries.

Traditional mining-developed countries, such as Australia and Canada, are supporters of the EITI. Their experiences in dealing with vast mining sectors are valuable to the Initiative. They not only contribute financially to the Multi-Donor Trust Fund administered by the World Bank (which provides extensive technical assistance in mining countries) but stand ready to share their experience with other mining countries. The case studies on Australia and Canada in this publication illustrate these contributions.
## EITI MINING COUNTRIES

<table>
<thead>
<tr>
<th>Country</th>
<th>EITI status</th>
<th>Mining industry</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central African Republic</td>
<td>Candidate: November 2008 Validation by: 20 Nov 2010</td>
<td>Production of gold and diamond was estimated in about 420,000 carats in 2006 and 383,294 carats in 2005. Mineral resource endowment includes copper, diamond, gold, graphite, ilmenite, iron ore, kaolin, kyanite, lignite, limestone, manganese, monazite, quartz, rutile, salt, tin, and uranium.</td>
</tr>
<tr>
<td>Democratic Republic of Congo</td>
<td>Candidate: February 2008 Validation by: 9 Mar 2010</td>
<td>Production: cobalt, columbium (niobium) and tantalum, copper, germanium, gold, tin, and zinc ores, and small amounts of steel and refined cobalt. The country also produced cement, crushed stone, diamond and coloured gemstones, coal, and crude petroleum. The mining sector accounted for 10% of the GDP.</td>
</tr>
<tr>
<td>Gabon</td>
<td>Candidate: 2007 Validation by: 9 Mar 2010</td>
<td>Gabon’s mineral industry was dominated by crude petroleum and manganese production. Other non-fuel mineral commodities included cement, diamond, and gold. Undeveloped resources included iron ore, niobium (columbium), and phosphate rock. In 2006 it produced 3,000 thousands metric tons of manganese (third among the world’s leading producers).</td>
</tr>
<tr>
<td>Ghana</td>
<td>Candidate: 2007 Validation by: 9 Mar 2010</td>
<td>Production of bauxite was 667,000 and 842,000 metric tons in 2005 and 2006 respectively. In 2006, diamond and silver production was 973,000 carats and 3,142 kilograms respectively, and gold production was 66,205 kilograms.</td>
</tr>
<tr>
<td>Guinea</td>
<td>Candidate: 2007 Validation by: 9 Mar 2010</td>
<td>Guinea was among the world’s leading producers of bauxite, ranking fourth after Australia, Brazil, and China. In 2006, production of calcined bauxite was 567,000 metric tons, and 730,000 t in 2005. Other commodities produced in the country were cement, diamond, gold, and salt. Undeveloped mineral resources included graphite, iron ore, limestone, manganese, nickel, and uranium.</td>
</tr>
<tr>
<td>Kyrgyzstan</td>
<td>Candidate: 2007 Validation by: 9 Mar 2010</td>
<td>It produces molybdenum, refined gold, and uranium. Kara-Balta had produced about 450 t/yr of U3O8 from uranium concentrate (provided by the Stepnoye and the Tsentralkoye Mining Directorates in Kazakhstan). As of December 31 2005, proven and probable reserves at the Kumtor gold deposit were reported by Centerra Gold to be 154 t.</td>
</tr>
<tr>
<td>Liberia</td>
<td>Candidate: September 2007 Validation by: 9 Mar 2010</td>
<td>Liberia produced in 2006 154,990 metric tons of cement, 220,000 metric tons of sand and 6,000 metric tons of crushed stone. In 2002 it was estimated it produced 80,000 carats of diamonds. The New Liberty Mine was estimated to have about 13.5 million metric tons of gold. In 2005, Mittal Steel (now Arcelor Mittal) signed an agreement for the mining of about 1 billion metric tons of iron ore.</td>
</tr>
<tr>
<td>Madagascar</td>
<td>Candidate: February 2008 Validation by: 9 Mar 2010</td>
<td>Madagascar produces gemstones and graphite (in 2006, Madagascar was the world’s top-ranked sapphire producer). Other domestically significant minerals produced included chromite and ornamental stones. In recent years, the production of chromite, labradorite, and salt have increased sharply.</td>
</tr>
<tr>
<td>Mali</td>
<td>Candidate: 10 Mar 2008 Validation by: 9 Mar 2010</td>
<td>Mali produced 51,957 and 44,230 kg of gold in 2006 and 2005 respectively. No other mineral commodities were produced in significant quantities in the country with the exception of diamond, rock salt, and semiprecious stones, such as amethyst, epidote, garnet, prehnite, and quartz. The government estimated the total artisanal production of semiprecious stones to be about 10,000 metric tons per year.</td>
</tr>
<tr>
<td>Mauritania</td>
<td>Candidate: 2007 Validation by: 9 Mar 2010</td>
<td>Mauritania’s mineral sector was dominated by iron ore mining and beneficiation. Other commodities produced included cement, gypsum, and salt. The country produced 10,600 thousands metric tons of iron ore in 2003.</td>
</tr>
<tr>
<td>Mongolia</td>
<td>Candidate: 2007 Validation by: 9 Mar 2010</td>
<td>Mongolia’s mineral resources include coal, copper, fluor spar, gold, iron, lead, molybdenum, silver, tungsten, uranium, and zinc. Production of cement, coal, and petroleum was mostly for domestic consumption. Owing to increased foreign direct investment, production of coal, gold, petroleum, and zinc has gradually increased during the past several years.</td>
</tr>
<tr>
<td>Niger</td>
<td>Candidate: September 2007 Validation by: 9 Mar 2010</td>
<td>Mineral commodities include cement, coal, gold, gypsum, limestone, salt, silver, tin, and uranium. In 2006, Niger was the world’s fourth-ranked producer of uranium, produced by Areva NC, Bayswater Uranium Corp – a group of companies led by China National Uranium Corp – and North Atlantic Resources Ltd.</td>
</tr>
<tr>
<td>Peru</td>
<td>Candidate: 2007 Validation by: 9 Mar 2010</td>
<td>Peru is a top producer of arsenic trioxide, bismuth, copper, gold, lead, molybdenum, rhenium, silver, tin, and zinc. In 2006, the value of Peruvian minerals (metals, industrial minerals, and fuels) production amounted to US$6.5 billion. It also has vast reservoirs of natural gas. Mineral outputs increased from 2005 to 2006, due mainly to natural gas (77%), molybdenum (22%), gold (20%), crude oil (18%), and iron (8%).</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>Candidate: February 2008 Validation by: 9 Mar 2010</td>
<td>Diamond is the most significant mineral commodity, although its production was severely affected by the violent conflicts of recent years. Other mineral commodities produced in the country included bauxite, cement, gold, gypsum, ilmenite, and rutile.</td>
</tr>
</tbody>
</table>
**EITI reports from mining countries**

To date, six EITI Candidate mining countries have issued one report or more. These are: Gabon, Ghana, Guinea, Kyrgyzstan, Mauritania and Mongolia. A review of these reports shows that the EITI is a nationally driven effort. The flexibility embedded in the EITI allows countries to adapt their EITI processes to their local conditions and possibilities. The reports support the “national ownership” assertion that is a primary guideline to the work of the International Secretariat.

These reports reveal how countries dealt with issues such as aggregation or disaggregation of data, scoping in terms of type of revenues to include in the reports, level of materiality for payments, naming companies not participating in the reporting, auditing or reconciliation of the figures, and discrepancies and additions to the basic disclosure established in the EITI methodology, such as in the case of Ghana, that included the utilisation of revenues at local level (District Assemblies).

**REPORTS**

<table>
<thead>
<tr>
<th>Country</th>
<th>Highlights</th>
</tr>
</thead>
</table>
| Gabon         | • Data presented in aggregated form for the year 2006  
• Cover both petroleum and mining sector  
• Prepared by Ernst & Young (E&Y), Paris  
• 10 mining companies reported (and 13 didn’t participate in the mining reporting). E&Y was satisfied that the main companies participated in the report.  
• Six different types of taxes and fees were included (royalties, corporate tax, dividends, mining duties, and extraction and surface fees)  
• No discrepancies were found |
| Ghana         | • Data presented in aggregated form for the years 2004 and 2005  
• Prepared by Boas & Associates, Accra  
• High levels of materiality (i.e. companies reporting account for a very significant share of the total)  
• Aggregator performed both process and financial audit  
• Six different types of fiscal revenues were included (mineral right licenses, mineral royalties, ground rent, property rate, corporate rate and dividends). Voluntary contributions were considered.  
• Some discrepancies were found  
• Report included utilisation of revenues by District Assemblies |
| Guinea        | • Data presented in aggregated form for the year 2005  
• Prepared by KPMG, Paris  
• Six companies reported  
• Five different types of fiscal revenues were included (mining taxes, income tax, property tax, local taxes and import taxes). Extraordinary revenues were considered.  
• Some discrepancies were found but deemed immaterial  
• Production figures by companies were included |
| Kyrgyzstan    | • Data presented in aggregated form for the year 2004 (first half), corresponding only to company payments  
• 12 different types of fiscal revenues were included (profit tax, property tax, custom duty, mineral resource tax, concession, royalties, dividends, license/permit fees, rent and lease, sale of equity, interest, contributions to social fund). Extraordinary revenues were considered |
| Mauritania    | • Data presented in aggregated form for the years 2005 and 2006  
• Cover both petroleum and mining sector  
• Prepared by Ernst & Young (E&Y), Paris  
• Seven mining companies reported (and 12 didn’t participate in the mining reporting) in 2005. In 2006, 17 companies reported and only four did not participate  
• Four different types of fiscal revenues were included (remuneration fee, annual fee, single annual fee, dividends)  
• Some discrepancies were found but deemed immaterial |
| Mongolia      | • Data presented in disaggregated form the year 2006 (aggregate payments for 2007)  
• Prepared by Crane White & Associates  
• Level for material payments was set (200 million tugriks). The 25 of the largest mining companies met that criterion  
• The reconciliation was not a traditional financial audit  
• Six different types of fiscal revenues were included (taxes, fees, charges, dividends, payments and donations).  
• Significant discrepancies were found  
• Voluntary payments (donations) were reported |

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16 ADVANCING THE EITI IN THE MINING SECTOR
EITI mining companies
The International Council on Mining and Metals (ICMM), the industry association that represents most of the leading companies in the sector, is one of the most active partner organisations of the EITI and its president has been a member of the EITI International Board since its inception in 2006. The following table shows the mining companies that currently support the EITI.

<table>
<thead>
<tr>
<th>EITI Supporting Company*</th>
<th>Home country</th>
<th>EITI rank</th>
<th>Selected countries in which the company operates:</th>
</tr>
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<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>(1) Resource-rich countries (according to the IMF)</td>
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<tr>
<td></td>
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<td></td>
<td>(2) Other countries</td>
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<td>Alcoa</td>
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<td>(1) Ghana, Guinea, Trinidad and Tobago, Venezuela</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>(2) Australia, Brazil, Canada, Denmark, Jamaica, Iceland, Italy, Norway, Spain, Suriname</td>
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<tr>
<td>Anglo-American</td>
<td>UK</td>
<td>4</td>
<td>(1) Angola, Botswana, Chile, Colombia, DRC, Mexico, Namibia, Peru, Russia, South Africa, UAE, Venezuela</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(2) Australia, Brazil, Canada, China, Czech Republic, France, Germany, Italy, Ireland, Luxembourg, Philippines, Poland, Romania, Spain, Tanzania, US, Zimbabwe</td>
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<tr>
<td>AngloGold</td>
<td>South Africa</td>
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<td>(1) Colombia, DRC, Ghana, Guinea, Mali, Namibia, Russia</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(2) Argentina, Australia, Brazil, Laos, Philippines, Tanzania, US</td>
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<tr>
<td>Areva</td>
<td>France</td>
<td>11</td>
<td>(1) Chile, Indonesia, Namibia, South Africa, Colombia, Kazakhstan, Mexico, Sudan, UAE, Venezuela</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(2) Argentina, Australia, Austria, Belgium, Brazil, Canada, Central African Rep, China, Egypt, Germany, Greece, Hungary, India, Italy, Ivory Coast, Japan, Malaysia, Netherlands, Niger, Norway, Pakistan, Poland, Russia, Singapore, South Korea, Spain, Sweden, Switzerland, Slovakia, Thailand, Turkey, UK, US</td>
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<tr>
<td>Barrick Gold</td>
<td>Canada</td>
<td>25</td>
<td>(1) Chile, Peru, Papua New Guinea, Russia, South Africa</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>(2) Argentina, Australia, Canada, Dominican Rep, Pakistan, Tanzania, US</td>
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<tr>
<td>BHP Billiton</td>
<td>Australia</td>
<td>3</td>
<td>(1) Algeria, Angola, Chile, Colombia, Guinea, Indonesia, Iraq, Peru, Papua New Guinea, South Africa, Trinidad and Tobago</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>(2) Brazil, Canada, China, Mozambique, Pakistan, Suriname, UK, US</td>
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<td>DeBeers</td>
<td>Botswana</td>
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<td>(1) Angola, DRC, Namibia, Norway, Russia, South Africa</td>
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<td></td>
<td></td>
<td>(2) Canada, China, India, Japan, Luxembourg, Spain, Tanzania, UK, US</td>
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<td>Freeport-McMoRan Copper &amp; Gold</td>
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<td>(1) Chile, DRC, Indonesia, Peru</td>
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<td>Gold Fields</td>
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<td></td>
<td></td>
<td></td>
<td>(2) Australia, Burkina Faso, Canada, China, Dominican Rep, Finland, US</td>
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<td>Lihir Gold</td>
<td>Papua New Guinea</td>
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<td></td>
<td></td>
<td></td>
<td>(2) Australia, Ivory Coast</td>
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<td>Katanga Mining Limited</td>
<td>UK</td>
<td>68</td>
<td>(1) DRC</td>
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<td></td>
<td></td>
<td>(2) Canada</td>
</tr>
<tr>
<td>Lonmin</td>
<td>UK</td>
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<td>(1) South Africa</td>
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<td>Mitsubishi Materials</td>
<td>Japan</td>
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<td>(1) Chile, Indonesia, Mexico, Russia, Vietnam</td>
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<td></td>
<td></td>
<td></td>
<td>(2) Australia, Brazil, Canada, China, France, Germany, India, Italy, Luxembourg, Malaysia, Netherlands, Singapore, South Korea, Thailand, UK, US</td>
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<td>Newmont</td>
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<td>(1) Bolivia, Ghana, Indonesia, Mexico, Peru</td>
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<td></td>
<td></td>
<td></td>
<td>(2) Australia, Canada, New Zealand</td>
</tr>
<tr>
<td>Nippon Mining &amp; Metals</td>
<td>Japan</td>
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<td>(1) Chile, Peru</td>
</tr>
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<td></td>
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<td>(2) Australia, China, Germany, Korea, Malaysia, Philippines, Singapore, US</td>
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<td>Oxus Gold</td>
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<tr>
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<td></td>
<td></td>
<td>(2) Argentina, Brazil, Canada, France, India, Madagascar, New Zealand, US</td>
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<td>62</td>
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<td>Brazil</td>
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<td>(2) Argentina, Australia, Brazil, Canada, Dominican Rep, Germany, Jamaica, New Caledonia, Tanzania, Spain, UK, US</td>
</tr>
</tbody>
</table>

Note: Selection of companies follows an internal compilation based on reported company revenues in 2007. List of countries is merely illustrative and not intended to be a comprehensive listing of all company operations.

*ArcelorMittal became an EITI supporter on January 20, 2009
The future of the EITI in the mining sector
As the EITI consolidates as a global standard, the Initiative accumulates valuable lessons that facilitate its strengthening and further development. The EITI methodology has been shown to be flexible enough to accommodate variations not only across the mining and oil and gas sectors, but also across countries. However, ample scope remains for further expanding the range of countries and companies engaging in the EITI process, and for fine-tuning EITI implementation.

New countries
It is encouraging that important mining countries such as Botswana, Indonesia and Zambia have advanced considerably in their process of preparing for EITI candidacy. The Secretariat (in coordination with the World Bank through the EITI Multi-Donor Trust Fund) remains in contact with other key mining countries such as Chile, Papua New Guinea and South Africa to ensure that the EITI is being considered as a valuable tool for all these countries.

Additionally, there are implementing countries such as Cameroon, Côte d’Ivoire and Kazakhstan in which oil and gas dominates the extractive sector but there are also significant mining operations. The Secretariat is ready to assist the local EITI committees to further study their mining sectors and discuss the benefits of expanding their EITI processes to include mining operations.

The Secretariat has initiated a dialogue with some of these countries, and remains attentive with others, to explore how their experiences in managing mineral wealth can contribute to the enrichment of the EITI and how these countries can benefit from increased transparency.

Chapters 15 and 16 in the Case Study section describe how developed countries such as Australia and Canada address transparency for their mining sectors. Other countries not listed in the IMF tables, such as Philippines, Argentina, Burkina Faso, Cambodia, Dominican Republic, French Guiana, Jamaica, Laos, Malaysia, Morocco, Mozambique, Pakistan, Suriname, Uganda and Zimbabwe, remain a segment of the mining universe that needs further consideration.

New companies
A total of 23 mining companies are formal supporters of the EITI. Of these, 13 are among the top 25 and 19 are among the 70 largest global mining companies ranked by revenues. However, the mining industry is much more diverse than the oil and gas industry. In many countries and in many mining subsectors there are a large number of companies operating (not to mention that much mineral exploitation is carried out by small-scale production units), that, although not important in terms of volume, are important sources of local employment. This aspect of the mining industry poses a further challenge for the Initiative in terms of expanding its support among smaller mining operators. In 2008, the Secretariat, together with supporting institutional investors, developed a campaign to reach out to a large number of companies in the sector in order to boost company support for the Initiative.

Much work remains to be done to expand support among mining companies. This will need to be taken on by all EITI partners at the international, national, and local levels. To illustrate the large number of mining companies operating around the world, the table below shows the main companies operating in both resource-rich countries and other countries with important mining sectors.

Tailoring the EITI to the mining sector
The International Advisory Board’s report in 2006 identified the need for “a tailored approach that properly addresses the particular circumstances of the mining sector”, and recommended that key mining industry actors should be engaged to bring broader expertise in responding to the “needs to adapt the EITI model to this sector”. On the other hand, as was highlighted earlier in this chapter, the current EITI Methodology is sufficiently flexible to accommodate many of the specific needs related to local and structural conditions of the mining sector.

Moreover, the EITI is currently mid-way into the first significant batch of Validations. These processes will provide useful lessons on the use of the current EITI methodology. This feedback, together with continuous consultations with mining stakeholders, will put the EITI in a much better position to incorporate any refinements into the methodology to better serve the mining industry.

This publication is the result of consultations with mining stakeholders. The next section provides a discussion on the background upon which the EITI is implemented in the mining sector. A subsequent section brings several case studies that illustrate different facets of the diverse issues that affect the implementation of the EITI in mining countries. It also brings experiences, through 10 country case studies, from traditional and important mining countries. Finally, three important pieces of guidance of EITI implementation – the EITI Business Guide, the Civil Society Guide to the EITI and the World Bank’s Guide on Implementing the EITI – are supplemented, addressing particular issues to the sector. These include materiality, social contributions, artisanal mining and the important issue of sub-national flows that often affect mining countries.

The important observations and discussions offered in this publication, and their further discussion, will contribute to the further progress of the Initiative and will ultimately move countries closer to the goal of ensuring that natural wealth turns into equitable growth and sustainable development.

Dr Francisco Paris is the Regional Director for Latin America and responsible for mining issues and Dr Sam Bartlett is the Regional Director for Asia-Pacific, both, at the EITI International Secretariat in Oslo.
<table>
<thead>
<tr>
<th>Country</th>
<th>Mining industry</th>
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<td>Algeria</td>
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<td>Bolivia</td>
<td>Glencore, Newmont, Pan American Silver Corporation</td>
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<tr>
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<td>Côte d’Ivoire</td>
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<td>French Guiana</td>
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<td>Gabon</td>
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<td>Mauritania</td>
<td>First Quantum Minerals, Red Back Mining Inc</td>
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### SELECTED MINING COUNTRIES AND MAIN OPERATORS

<table>
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<td>Rio Tinto, Vale</td>
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<td>Niger</td>
<td>Areva, Societe Semafo</td>
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<td>Lafarge, Moto Gold Mines</td>
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### Other references

### Notes
3 Idem.
4 The Validation Grid can be found in the Validation Guide on the EITI’s website.
5 http://eitimongolia.mn/index.php
6 http://minerals.usgs.gov/
7 According to ranking prepared internally in the Secretariat based on reported revenues in 2007.
8 See the tables at the end of this chapter.
9 EITI, “Report of the International Advisory Board”.
10 Idem.
There are a number of ways by which the structure of the mining sector can be described. The two most common, by the minerals cycle and the industry structure, are outlined in the following sections.

The minerals cycle
The minerals cycle is illustrated in Figure 1. It commences with society’s demand for mineral products and ends with either the disposal or re-use of final products. Although the cycle is common to all minerals, they are not homogenous substances and they are normally divided into four classes, namely:

- metalliferous minerals, including base and ferrous metals, precious metals and minor metals;
- energy minerals;
- industrial and construction minerals; and
- diamonds and precious gems.

Some minerals are reasonably abundant in the Earth’s crust; for instance, aluminium and iron make up 8% and 4% by mass respectively. But most minerals are concentrated in relatively few deposits that have resulted from distinctive formative processes – geological, fluvial and biological.

The concentration of mineral deposits is one of the key determinants of their economic potential for extraction. Minerals are normally classified according to their in-situ concentration, with resources being subdivided according to increasing levels of geological confidence into inferred, indicated and measured classes. Beyond geological classification, deposits are further classified after consideration of technical and financial factors to define the mineable portion, and this is known as the measured or indicated resource.

Minerals are produced in many countries, but this varies over time as quality deposits in developing countries become depleted and international investment conditions change. Between 1990 and 2005, the share of world mining output increased in Australasia, Asia (especially China) and Latin America, while it fell in Africa, Europe, North America and the Commonwealth of Independent States (CIS). It is difficult to predict with certainty the locations of future mining activity, but a guide can be obtained from construction and exploration spending. Table 1 shows recent trends and forecasts of future activity. It can be seen that Australia, North America and other traditional mining centres will remain important, Latin America’s share will increase, and there will be growth elsewhere, but shares on a global scale will be relatively small.

In volumetric terms, production of construction materials, such as sand and gravel, constitute by far the largest volumes mined, with world production exceeding 15 billion tonnes annually; base metals, particularly iron ore and bauxite (aluminium), are next, but the volumes are much smaller, with typical annual steel production being 800 million tonnes, and aluminium about 28 million tonnes. Production of rare metals, such as platinum, is a small fraction of these figures, being typically less than 200 tonnes per annum.

The minerals cycle results in a characteristic financial cycle for mining projects: risk expenditure for exploration, further expenditure for planning, feasibility and development, then a profitable operations phase, and finally a cost phase for closure.
Figure 1. The minerals cycle

Table 1. Regional production and prospective investment

<table>
<thead>
<tr>
<th>2005</th>
<th>1990 Mine production¹</th>
<th>2005 Mine production</th>
<th>Construction underway²</th>
<th>Pipeline projects tracked</th>
<th>Planned exploration spending³</th>
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</thead>
<tbody>
<tr>
<td>Region</td>
<td>% Share</td>
<td>% Share</td>
<td>% Share</td>
<td>% Share</td>
<td>% Share</td>
</tr>
<tr>
<td>Africa</td>
<td>11</td>
<td>7</td>
<td>10</td>
<td>16</td>
<td>17</td>
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<td>Australasia</td>
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<td>30</td>
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<td>20</td>
<td>34</td>
<td>32</td>
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<td>24</td>
<td>15</td>
<td>13</td>
<td>12</td>
<td>32</td>
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<tr>
<td>Rest of world</td>
<td>38</td>
<td>41</td>
<td>14</td>
<td>19</td>
<td>16</td>
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<tr>
<td>China</td>
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<td>17</td>
<td>5</td>
<td>2</td>
<td>3</td>
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<tr>
<td>Other Asia</td>
<td>7</td>
<td>10</td>
<td>2</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td>Europe + CIS</td>
<td>23</td>
<td>14</td>
<td>7</td>
<td>8</td>
<td>10</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
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</table>

Source: Commodities Research Unit, London; Raw Materials Group, Stockholm; Metals Economics Group, Canada

Source: Adapted from a diagram produced by Natural Resources Canada
Although this financial cycle is common to all mining projects, the diversity of the minerals cycle means that the actual financial circumstances of projects varies widely from deposit to deposit, according to location, type of mineral, and over time as conditions at a particular mine change. Among other things, this makes it difficult to impose uniform taxation rules, and some flexibility is often required, as is discussed in the next chapter.

**Industry structure**

At first glance the wide range of organisations that make up the mining industry seem fragmented and disorganised. Organisations range from small entrepreneurial exploration companies – “juniors” – to major multinational companies. However, history has shown that the industry’s structure is, in fact, an integrated and efficient production system with different types of companies occupying niches that are responsive to specific needs, opportunities and risks. Junior companies find new ore bodies and sell them to larger companies; “intermediates” are typically formed to exploit a single deposit but often grow over time; intermediates offer potential for growth through mergers and may eventually become “seniors”, which provide the expertise, capital and risk management capacity to develop and operate major mines around the world. The industry structure described above is shown in Figure 2.

In recent years there has been significant merger and acquisition activity in the mining industry, with resultant concerns about concentration of control of reserves and production capacity. There has been an increase in corporate concentration for most major minerals during the period 1975 to 2005, as Table 2 shows. However, this has been balanced by growth in market size and the emergence of new mining majors, particularly from developing countries, with Vale (Brazil), Vedanta and ArcelorMittal (India), and United Aluminium and Norilsk (Russia) being good examples. This means that corporate concentration has not been great enough to affect the competitiveness of markets. Even in highly concentrated markets, such as for platinum, there is little sign that miners can exploit market power.

**Figure 2. Global corporate mining section – firm size and organisational focus**
According to the Raw Materials Group (RMG, 2006) excessive concentration is also not evident when assessed according to relative company size. In 2006, the 10 largest companies accounted for 27% of the value of total world production. Again, growth in the size of the sector and new entrants have had mitigating effects.

A further significant feature of the current industry structure is that the share held by private investors is now at its highest level for 50 years (see Figure 3). This reflects ongoing State withdrawal from ownership of mines, which has been particularly marked in Russia, India, and Central Asia and is beginning to occur in China. It means that much more of the industry is subject to market discipline, and also a need for both effective regulation and better government/industry/civil society collaboration.

### Table 2. Mining sector concentration by company 1975-2005

<table>
<thead>
<tr>
<th>Sector</th>
<th>Top 5 producers % 2005</th>
<th>Top 5 producers % 1975</th>
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<tr>
<td>Gold Mining</td>
<td>33.9</td>
<td>54.8</td>
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<tr>
<td>Platinum Mining</td>
<td>86.6</td>
<td>63.3</td>
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<tr>
<td>Copper Mining</td>
<td>39.1</td>
<td>29.7</td>
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<td>Iron Ore</td>
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<td>Aluminium</td>
<td>46.9</td>
<td>38.9</td>
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<tr>
<td>Bauxite Mining</td>
<td>47.3</td>
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<td>Nickel Mining</td>
<td>53.3</td>
<td>51.5</td>
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<tr>
<td>Lead Mining</td>
<td>28.9</td>
<td>22.9</td>
</tr>
<tr>
<td>Zinc Mining</td>
<td>27.3</td>
<td>21.7</td>
</tr>
</tbody>
</table>

Source: Raw Materials Group, Stockholm

Many of the factors described above, particularly the greater liberalisation of mining investment conditions in developing countries, mean that large segments of the industry are truly global. While this is not the case for commonly occurring large-volume construction materials, it is certainly so for the many minerals that are traded in global markets. This means that today companies are increasingly comparing investment opportunities across a wide range of countries, and governments have become more aware that they are operating in a competitive international marketplace. This has implications for countries mining administration systems generally, including their taxation regimes.

### Mining industry risks

Many commentators believe that the mining industry has a number of risks that distinguish it from other sectors and may make business conditions more challenging. These risks can be summarised as follows:

- **The fixed location of resources**: financially viable mining can only occur where appropriate resources are located, and, as explained above, this is a function of geology. Increasingly, as accessible quality deposits are depleted, mines are developed in more distant locations and increasingly in developing countries. Because assets are immobile they are exposed to socio-political risks including coercive changes to tax regimes.

- **Mineral resources are natural capital**: the geological resources of nations are a significant component of their non-renewable natural capital. Societies expect that these resources will be transformed into human capital in a way that produces tangible benefits for affected communities. Disquiet and instability can be expected when communities see little benefit, particularly when operations are profitable and are conducted by international companies.

- **Macro-economic risks**: large resource-based revenues can hinder economic competitiveness. The major causes are typically high exchange rates, movement of capital away...
from other productive sectors, bloated and inefficient public sectors supported by large resource revenues, and wide fluctuations in revenue streams due to changes in commodity prices. While not inevitable, as the experience of successful resource-endowed countries shows, dealing with macro-economic risks does pose particular challenges for the nations concerned.

- **The scale and long-term nature of investments:** of necessity, mineral resource investments are long term, extending through exploration, planning and feasibility, commissioning and operations, and rehabilitation and post-closure phases. In fact, each of the above phases is risky, bringing, for example, chances of exploration failure, variability of resource quality during operations, and extended post-closure liabilities such as unforeseen acid rock drainage. Also, mining investments are frequently large, especially in the early stages when construction of substantial transportation, processing and community infrastructure is necessary; this means that investments often have long pay-back periods and require fiscal stability for success.

- **Social, safety and environmental risks:** by its very nature mining must cause some environmental and social disruption. The industry also has inherent safety risks, with some claiming that it is the most dangerous of all industry sectors. These impacts can normally be responsibly managed, but the risks can never be removed, and when incidents occur they can lead to an unravelling of worker, community and political support, which disrupts production.

The magnitude of the above risks varies from situation to situation and according to the experience and capacity of the operating company. Greenfield exploration, for example, relies on the prediction of ore genesis to identify areas of prospective mineralisation. While the rewards may be great, the chances of success are low; in the gold industry, the rate is about one in 1,000 drill holes, and in base metals it ranges from one in 50 to one in 100.

Such risks have wide implications for all involved in the sector: for financiers who provide capital, insurers who underwrite risks, mining companies who borrow or use their own capital, the shareholders or owners of these companies, governments that depend on taxes and other payments from mining, and communities that depend on mining for jobs and other public goods.

A particularly relevant risk in the EITI context is loss of political or community support, which normally occurs when affected parties believe they are not receiving a fair return for the exploitation of their non-renewable natural capital. It is generally accepted that greater transparency is part of the solution to this risk. To be effective, however, such transparency needs to be accompanied by informed stakeholders who understand the minerals cycle and the industry structure; trust among the parties; and governments’ effectiveness in providing public goods financed by mining revenues.

**Conclusions**

The mining sector is diverse in many ways: by commodity and geography, and by size, type and capacity of company. Notwithstanding this, it shares common minerals production and financial cycles. Overlying these two cycles are various risks which can affect output and profitability, and therefore public revenues.

The industry is based on the exploitation of nations’ non-renewable capital, and thus social expectations are greater than for most other industry sectors. This means there is a need for collaboration, trust and understanding among stakeholders, so that realistic goals are set and beneficial outcomes are achieved for all parties. One particularly important area is the design and administration of taxation systems – the subject of the next chapter.

Paul Mitchell is Director of Mitchell McLennan Pty Ltd, a specialist environment and planning consultancy in Australia and former President of the International Council on Mining and Metals (ICMM) and former Member of the EITI International Board.
References


Notes
1 Commodities Research Unit, London. Non-weighted average share of output of six metals (gold, copper, zinc, iron ore, nickel, lead).

2 Raw Materials Group, Stockholm. Note: data base is likely to understate prospective brownfield investments and prospective investments by State and quasi-State companies (e.g. in China).

3 Metals Economics Group, Canada. 2005 Corporate Exploration Strategies.
The role of tax in investment decisions
Mining is a cyclical industry, and investment in exploration and mine development follows these cycles. All regions of the world are affected by this cyclicity, and, as mentioned in the previous chapter, companies usually compare numerous development options internationally, and screen these options to obtain the best balance between risk and reward. The key factor determining investment decisions is the geological potential of a site, but it is strongly offset by fiscal and socio-political considerations, with the former including tax rates and the latter the stability of the tax system. Table 1 below details the most important criteria which companies consider in making investment decisions, and it can be seen that more than a third relate to taxation.

Designing mining tax systems
The ultimate goal of any government’s mining tax system is to ensure the greatest possible benefit for the public while simultaneously encouraging investment in the sector. Achieving this requires realistic consideration and careful balancing of the objectives of the two key players: companies and governments. For companies, the overall level of tax, including royalties, influences incentives to explore and develop. Higher taxation levels are likely to reduce incentives to invest, and, in marginal cases, even to keep some mines operating. The timing of tax charges also influences investment patterns. Raising tax rates will increase government receipts in the short term, but if an increase is too high it will discourage exploration and development, thus reducing the tax revenues generated by the sector over the longer term.

Different types of taxes influence investment behaviour and government administration. For instance, taxes based on units of production irrespective of profitability may create economic inefficiencies by discouraging the exploitation of lower grade ore and shortening the life span of some mines. Conversely, taxes on corporate profits (and to a lesser degree incomes) are more efficient and recognise the inherent risks in mining operations, particularly wide fluctuations in international minerals prices and the difficulties of anticipating all geological, technical, financial and political factors over a mine’s lifetime.
Further, profits-based taxes tend to distribute these risks more evenly between companies and the state. While perhaps economically superior, the challenge with profit-based systems is their greater complexity, which may be a genuine constraint in developing countries with limited administrative capacity. Also, more complex profit-based systems have greater potential for corruption and tax fraud – key concerns in the EITI context.

When deciding whether or not to invest, companies consider not only the expected rate of return (or profitability) but also the associated risks of a new project. An important risk consideration is the perceived stability of a tax regime over time. Perceived stability is also important for governments. This is because of the risk–return trade-off: where companies perceive greater risks, they and their financiers will demand a higher return, thus lowering the returns available to the government when determining the required profitability of a new project. Therefore, tax systems play an important role for the government in terms of influencing the relative attractiveness of a jurisdiction for investors.

To summarise: a government’s objective for the minerals sector is to obtain an appropriate share of income and to foster development, while companies want an adequate return on investment. Thus, it is in the interests of both parties to facilitate projects that are successful for their full potential life-spans.

**Key issues affecting taxation systems**

A number of factors that are unique to the mining sector need full consideration in the design of mining tax regimes. The primary one is the characteristic minerals and financial cycle that was discussed in Chapter 3. The cycle means that different mines have differing capacities to pay taxes at various points, as is explained below.

- **Exploration:** this is a substantial cost phase without any income and is highly risky. Governments typically respond by allowing losses to be carried forward and to be off-set against profits in the production phase. This has the secondary benefit of encouraging firms to continue beyond exploration to development.

- **Mine development:** this too is a high-cost phase requiring the purchase of substantial capital inputs, most of which need to be imported. Typical responses are to enable accelerated recovery (depreciation) of capital costs once production begins, and to have low import duties and value added taxes (VATs).

- **Production:** minerals production is the longest and most profitable phase in the cycle and is usually when payments to the government begin to be generated. However, minerals are sold into competitive markets and prices fluctuate, meaning that governments often provide flexibility, such as relief from export duties and VATs, or, in more serious cases, relief from other more substantive taxes.

- **Post-mining:** after mining ceases and there is no income, projects often incur significant rehabilitation costs and also in some instances extended liabilities for site management. The typical response is to provide tax deductibility to encourage companies to set aside funds progressively during the production phase. Some have suggested that tax relief for such funds should not apply because rehabilitation is a social responsibility

Some mines are large in scale and have long life spans, and these need specific consideration. Such large, long-life mines may operate through many political regimes and economic cycles, and can involve numerous laws. A common response in these circumstances is to negotiate specific agreements which provide some stability for key items like tax terms.

A further consideration is that minerals are a finite resource and are subject to property rights laws – in most countries minerals are owned by the state. To compensate for lost property rights many nations impose royalties, or encourage companies to invest in infrastructure and other public goods. To accommodate variations in the value of different minerals and in the scale of mining operations, tax systems often vary royalties according to mine scale and commodity value.

Other factors require consideration. Companies can pay taxes or reduce the tax payable by investing in additional infrastructure and other public goods – how does a tax system

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**Table 1. Top ten company decision criteria in mining investments**

<table>
<thead>
<tr>
<th>Rank</th>
<th>Decision Criteria</th>
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<tbody>
<tr>
<td>1</td>
<td>Geological potential for target mineral</td>
</tr>
<tr>
<td>2</td>
<td>Profitability of potential operations</td>
</tr>
<tr>
<td>3</td>
<td>Security of tenure and permitting</td>
</tr>
<tr>
<td>4</td>
<td>Ability to repatriate profits</td>
</tr>
<tr>
<td>5</td>
<td>Consistency of minerals policies</td>
</tr>
<tr>
<td>6</td>
<td>Realistic foreign exchange controls</td>
</tr>
<tr>
<td>7</td>
<td>Stability of exploration terms and conditions</td>
</tr>
<tr>
<td>8</td>
<td>Ability to pre-determine environmental obligations</td>
</tr>
<tr>
<td>9</td>
<td>Ability to pre-determine tax liability</td>
</tr>
<tr>
<td>10</td>
<td>Stability of tax regime</td>
</tr>
</tbody>
</table>

**Bold:** tax-dependent. **Italic:** tax-related.


Notes: the survey included a total of 62 factors, not necessarily in the numerical order given.
balance these trade-offs? Minerals must be processed after extraction – how should a tax system encourage greater domestic processing?

It is important to note the above distinctive features of the mining industry and how they affect taxation. There is however an opposite argument which says that tax systems should be uniform across all industry sectors. Uniformity encourages economic efficiency where investment attractiveness is not distorted by government incentives, reduces the potential for harmful special-case lobbying by industry, and reduces administrative complexity.

All these factors mean that designing good tax systems for the minerals sector is challenging. In practice, perhaps the best systems are those which are essentially uniform across all industry sectors but which recognise some distinctive features of mining and provide some flexibility, such as flexible profit-based royalties. The designing of royalty regimes is not without its challenges however. Systems based on economic theory often incorporate technical considerations (e.g. geology) and sophisticated calculations. In practice, some of the necessary inputs for these models are hard to obtain. This difficulty often leads governments to use royalties systems that are simpler to administer, especially administrations that do not have the technical capacity to manage the complex mechanisms required for optimal royalties calculations.

Governments need to understand the effects of their tax systems on investment and respond accordingly. Fortunately, there is a ready measure that they can use, which is based on relative exploration expenditure: all things being equal (including tax), a country should attract exploration investment proportional to its international geological attractiveness rating. If investment is less, it implies other faults in the investment climate, such as excessive tax. However, if investment is greater than geological potential, investment conditions may be overly generous.

**Evaluating a tax system**

Given the sensitivity and importance of minerals taxation as a public policy issue, it is essential that key stakeholders consider it to be fair and reasonable. Inclusive procedures for objective evaluation are needed. Here, the main questions are:

- Are payments to society adequate?
- Are investors receiving a fair return?
- Is the system competitive with those of other nations or provinces?

It is essential to address two factors for any evaluations to be legitimate. First, evaluations must incorporate all applicable taxes and fees; one measure of this is the Effective Tax Rate or ETR (Otto, J., 2005, unpublished) – the value of all payments to governments divided by the value of gross or pre-tax profits.

The second factor is the need to understand as clearly as possible the particular financial circumstances that apply in the mining sector being evaluated, so that its capacity to pay is realistically known. In theory this can be obtained by building models of all (or typical) mines’ cash flows in the jurisdiction concerned. In practice such an exercise may be impractical, as such models must incorporate assumptions about prices, costs and production volumes, etc., which will change over time. Notwithstanding these challenges, for public policy to be effective and credible, decision-makers must understand the impacts of changing tax rates, adding or deleting a tax, offering incentives, or any combination of these, before policy changes are made.

It is instructive to note what has emerged as most common international practice in regard to ETRs. Figure 1 below shows comparative ETRs for a hypothetical copper mine, but uses actual taxes applicable in major mining countries. It can be seen that the majority of countries fall within the range of 40-50% ETR. This implies that tax and company profit would be about equal over the life of a mine. With an ETR of 50% and a typical cost structure for a 20-year medium-sized copper mine, this would imply 17% of gross revenues going to corporate profits and the same figure going to taxes (see Figure 2).

**An effective tax system**

Given the diversity of operations in the mining sector, it is impossible to define an ideal tax system for all jurisdictions. There is, however, a common objective of encouraging successful and sustainable projects that exploit resources fully while avoiding social costs. In this context, four observations can be made about a good tax system.

*Tax levels and transparency.* Governments should try to maximise tax revenues over the longer term by encouraging investment in their jurisdiction and a profitable and technologically advanced industry. To do this they need to institute tax systems that are neutral or progressive to motivate corporate innovation and profit-seeking. Regressive taxes that take increasing shares of profits and discourage investment should be avoided.

Given that any set of tax rates and the mix of taxes will be based on assumptions about future prices and costs, and that these will inevitably change over time, there should be a preference for transparency. This can be implemented by establishing multi-stakeholder bodies to conduct regular reviews of key assumptions, so that any policy change is predictable and decision-making is consensual.

*Mix of taxes.* Previous discussion has shown that the mining industry is often subject to many taxes, frequently levied by different levels of government. This is counter to the objectives of simplicity and uniformity in taxation systems to ease administrative burdens and reduce the risks of corruption, poor policy and fragmented public expenditure. Also, taxes should be responsive to fluctuations in minerals prices. In combination these factors suggest that preference should be given to centralised direct taxes, based on profit or income, while reliance on indirect taxes, such as units of production or
Figure 1. Model copper mine: comparative effective tax rates

Figure 2. Division of mine revenues

20 year typical medium sized copper mine
Gross revenue: US$3.3 billion
(50% Effective Tax Rate)
value-based taxes, should be minimised. **Uniformity across sectors.** Many countries have special tax systems for their mining industry, and, as stated previously, this adds complexity, costs and risks. It is feasible and preferable for mining companies to be subject to a country’s general tax system, perhaps incorporating a few special allowances such as a royalty. Putting all tax-payers on an equal footing can provide greater certainty, stability and efficiency, and increase incentives for governments to improve tax administration and fiscal policy-making more generally. For industry, one important benefit is the reduction in pressures for coercive taxation once capital investments have been made and thus become immobile.

**Distribution of tax revenues.** The allocation of revenues between different tiers of government is a long-standing and increasingly important issue. Here, experience to date about development impacts is inconclusive, implying that there is no clear-cut finding for or against fiscal decentralisation. Nevertheless, it seems sensible for companies to cultivate constructive relations with all tiers of government, and to encourage collaboration and capacity-building for all relevant parties in proportion to their influence.

**Conclusions**

The taxing of mining activities is an important public policy issue that raises questions of fairness about the exploitation of nations’ natural capital. Unfortunately, the sector is so diverse that it is not possible to specify an optimum tax system that can be used as a model, although certain universal characteristics of good systems can be defined. Given that any system will be based on a set of assumptions about the future that will change, a fundamental principle is that there is a strong case for transparency and inclusiveness. All stakeholders share a common goal of seeking successful and sustainable projects that foster development. In seeking to achieve this goal, it is essential for all to realise that the tax system is only a part of the challenge: as tax systems increasingly converge, the question of whether mining tax revenues are being properly utilised will become more important than the division of wealth between companies and the state.

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References


The extraction, processing and export of natural resources have the potential to be a significant source of economic growth in developing countries. But historically, natural resource abundance, including mineral wealth, has paradoxically undermined economic growth and development in most developing countries. For multilateral development banks (MDBs) engaged in the mining sector in developing countries, it becomes critical to ensure that their financing discourages, rather than encourages, the various macro-economic and governance failures associated with the “resource curse”. This chapter will provide a case study of the African Development Bank (AfDB) relevant to the mining sector as a means to identify some of the challenges that may influence EITI implementation in the internal operations of MDBs. This entails designing policies and procedures which condition financing to private mining operators on the disclosure of revenue payments to governments, and financing to governments on making their revenue receipts from minerals extraction and production public.

Apart from the EITI, several other initiatives and directives, pushed by civil society, call on MDBs to pay closer attention to transparency when providing project financing to the mining sector. Revenue Watch, the Publish What You Pay coalition, and the Revenue Transparency Project led by Transparency International (TI), have all brought considerable attention to the issue. In addition, local communities in host countries have demanded a greater share in the benefits of mines, and called for more transparency and influence in licensing and revenue management. In 2004, an independent review of the World Bank's support to the extractive industries – the Extractive Industries Review – recommended that it should strengthen governance systems before investing, and require project operators to obtain the free, prior and informed consent of indigenous peoples and local communities before financing an extractive investment. In response, the World Bank committed to work to make revenues more transparent both through projects and through support for broader initiatives (such as the EITI), and while falling short of requiring “consent”, pledged to ensure that projects enjoy “broad community support” as a condition for investment.

At the inter-governmental level, numerous declarations of support for the EITI have been issued. In September 2008, the UN General Assembly voted in favour of a resolution to strengthen transparency in industry, taking note of the EITI as one relevant initiative. Subsequently, a recent African Union (AU) meeting of mining ministers encouraged all countries to participate in the EITI. The G8 and its member countries have frequently called on MDBs to develop international standards and codes to be voluntarily adopted by borrower countries, and provide technical assistance in support of EITI implementation. (See Box 1.) Moreover, in July 2008, the US Treasury announced the expansion of an existing US legislative mandate which called on MDBs to select, structure, and design extractive industries projects so as to meet the criteria of demonstrating that the country has in place functioning systems for accounting, auditing, verification and dissemination. (See Box 2.) In addition, proposed legislation has been introduced in both the US House...
of Representatives and the US Senate that would require publicly listed extractive companies to disclose revenue payments to governments.\textsuperscript{10} As part of the latter, a congressional report was commissioned which recommended that the World Bank and the regional development banks should step up their efforts on governance and anti-corruption in countries with significant extractive industries.\textsuperscript{11}

While sound and transparent revenue management provides the basis for people to benefit from the mineral wealth of their country, an underlying premise of the analysis is that promoting transparency also has a purely commercial justification, as evidenced by the number of signatories to the Investors’ Statement on Transparency in the Extractives Sector and corporate contributions to the GRI Mining and Metals Sector Supplement.\textsuperscript{12} Opacity can expose operators, and by extension investors, to reputational risks in cases where public dissatisfaction with national governments fuels speculation about the volume and use of revenues derived from mining operations and results in illegitimate accusations against responsible mining operators. In addition, transparency of revenue payments is a critical aspect to securing a “social license to operate” from local communities, reducing the risk that local protests cause disruptions to the construction and operation of a mine.\textsuperscript{13} Moreover, transparency can also help reduce the political risks associated with a mining project as it provides the basis for achieving a broad political consensus on revenue allocations, reducing the likelihood that future governments find it necessary to renegotiate contracts, and thereby undermine long-term financial plans for the project.\textsuperscript{14}

**Multilateral financing to the mining sector**

Given their public mandate and the nature of their operations, MDBs are well positioned to undertake the necessary interventions that can enhance governance of extractive industries and increase the positive development impact of mining. In most low-income countries, multilateral financing plays a critical role in mobilising additional capital from private investors and providing both financial and non-financial support for governments to expand the extraction, production, and export of minerals. Yet, despite their missions to promote sustainable development, there are many examples of extractive industries projects, including mining, which have benefited from MDB support but failed to produce sustainable benefits to host countries because of mismanagement and misappropriation of resource rents.

With the exception of the Inter-American Development Bank (IDB), all MDBs have subscribed to the EITI and its principles and serve as observers on its Board.\textsuperscript{15} In doing so, they have pledged to support the EITI in their respective borrower countries by encouraging governments to adopt the framework and provide technical assistance for capacity-building if needed. In general, MDBs have established generic policies that identify the benefits of transparency and good governance, and view frameworks such as the EITI as a complementary framework that can help sharpen their focus and actualise these commitments in the extractive industries, including mining. However, while a process of harmonisation in policy approaches seems to be taking place, more could be done to integrate the EITI into lending and non-lending activities in the mining sector.\textsuperscript{16}

Among the MDBs, the World Bank is the most influential in the mining sector, by virtue of its financing volumes and its role as an administrator of the Multi-Donor Trust Fund (MDTF) for EITI. The fund was created to provide technical and financial assistance to countries implementing or considering implementing the EITI, and makes EITI advisers and consultants available to governments to assist them in implementation, encourage the sharing of international best practices, and provide grants to governments to help support EITI implementation. Several African countries have received funding for EITI implementation, and have reported preliminary results back to the World Bank. The International Finance Corporation (IFC), the World Bank’s private sector lending arm, has broken new ground by committing itself to require all the investors it supports to make public their payments to governments from their operations, regardless of whether the

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**Box 1: G8 Action Plan**

The German government opted for the promotion of good governance in Africa as the focus of the development policy outreach during its G8 presidency in 2007-8. In May 2007, the G8 finance ministers agreed an action plan with finance ministers from South Africa, Nigeria, Ghana, Cameroon, and Mozambique.

The section on “increasing accountability for revenues from extractive industries” stated:

- **(A)** We give our full backing to the EITI and support it in its efforts to optimise its implementation and monitoring mechanisms and to contribute to enhanced participation by all stakeholders.
- **(B)** We encourage other resource-dependent countries and industries from the extractive sector, especially from emerging market economies, to participate in the EITI.


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**Box 2: US Legislative Mandate**

When financing extractive industries projects, MDBs need to demonstrate that countries of operation have, or are in the process of establishing, functioning systems for:

- **(A)** accurately accounting for payments for companies involved in the extraction and export of natural resources;
- **(B)** the independent auditing of accounts receiving such payments and the widespread public dissemination of the findings of such audits; and
- **(C)** verifying government receipts against company payments including widespread dissemination of such payment information.

project was located in a non-implementing country. For each Summary of Project Information (SPI) disclosed during project preparation, the IFC identifies how EITI-related risks were assessed and whether the client will be obliged to disclose material payments to host countries. This systematic approach is a first among MDBs; however, the information often fails to identify where and how the client will or should make such disclosures.

A case study of the African Development Bank
Established in 1964, the African Development Bank Group is a multilateral development bank that provides debt financing and grants to African governments and private companies investing in the region. It operates with three lending windows. The African Development Bank (ADB) raises capital from capital markets to provide non-concessional loans to the region’s middle-income countries, such as Gabon, Morocco, South Africa, and Tunisia. In contrast, the African Development Fund (ADF) offers grants and interest-free loans with long maturities to the low-income countries with limited access to long-term financing from private sources. Similar to the World Bank Group’s International Development Association (IDA), the ADF is periodically replenished by member countries. The third lending window – the Nigeria Trust Fund (NTF) – is a special fund with a remit similar to the ADF but operating with less concessional lending terms and a substantially smaller lending mandate.

As part of its corporate plan, the AfDB has significantly augmented investment flows to the private sector in recent years, growing seven-fold between 2004 and 2007. (See Figure 1.) A large part of this increase can be attributed to growth in financing to the extractive industries, including mining. Its financing operations to the mining sector consist of direct investments to private mining companies to develop and enhance productivity, technical assistance to governments for capacity-building, and support for undertaking feasibility studies. (See Box 3.)

The AfDB’s policies towards the extractive industries
Since its inception, the AfDB has developed a number of sector policies, strategies, and guidelines to guide its investments in natural resources sub-sectors. However, due to a lack of a single policy that encompasses all categories of natural resources, AfDB’s activities in this broad area have not always been implemented in a coherent manner. To address this, the AfDB is currently in the process of developing its Natural Resources Management Policy, which will outline a comprehensive approach for its interventions in this sector in order to enhance their effectiveness. As such, its current policies relevant to the extractive industries are those considering the importance of governance to public and private sector operations in general terms, and those identifying its environmental and social standards and procedures.

Prior to the late 1990s, the AfDB’s engagement with reforming national policies and laws governing the extractive industries was largely driven by economic and political imperatives associated with structural adjustment. The emphasis was put on scaling back government ownership and regulation so as to make the mining sector attractive to foreign investors. In November 1999, it released a “Good Governance Policy” (GGP), reflecting the growing attention given to the issue among multilateral and bilateral donors. Overall, the GGP concluded that governance issues had not been given “due priority and importance”, and stated, “it is time to tackle the issue of governance in a much more proactive, direct, and integrated manner”. Subsequently, in 2001, it released “Operational Guidelines for Good Governance”, and made the theme the central focus of its annual flagship publication, the African Development Report.

The AfDB’s operational policies and procedures on environmental and social assessment contain standards and procedures directly relevant to the mining sector, but they do not commonly address revenue transparency and management. Its “Environmental and Social Assessment Procedures” (ESAP), which are due to be updated in 2009, include a requirement to identify and assess national policies, laws, and regulations that address human rights, inequalities, primary education, preventive health care, and nutrition programmes, as well as

Box 3: AfDB’s private sector approvals in the mining sector, 2006-08

- Guinea, Guinea Alumina, US$200 million to majority owners GAC and BHP Billiton
- DRC, The Tenke Fungurume project, US$100 million to majority owners Freeport McMoRan and Tenke Mining (2007)

Figure 1: AfDB Group – Total Private Sector Approvals, 2004-07 (in US$ millions)

as the quality and capacity of government institutions and administrative structures. Its “Environmental Policy” pledges support for “environmental control measures to reduce the adverse effects from industrial, mining, and energy resource and utilisation projects.” Furthermore, it notes that sustainable development can be achieved only “where there is good governance, including transparency, accountability, a participatory approach, and decentralisation.” While the AfDB does not have a full range of thematic sustainability policies akin to the IFC’s “Performance Standards” (and by extension the adoptees of the Equator Principles), it has developed policies in a few areas relevant to mining, including involuntary resettlement. In addition, the AfDB operates with eleven guidelines for addressing environmental and social impacts in projects across various sectors such as water, agriculture, power/dams, and roads. In 2009, it plans to develop an operational guidance note for the sound and transparent management of extractive industries projects as a supplement to the NRMP.

In 2005, Mr. Donald Kaberuka assumed the presidency of the AfDB and identified the promotion of good governance and combating corruption as central elements of a new distinctive role for the bank within the global financial architecture. In 2006, it committed to provide EITI implementation support to selected regional member countries, and established the OSGE – an internal department charged with strengthening capacity to improve governance at the country level. The OSGE also assists the development of the extractive industries by providing country-level support to implement economic and financial reforms through policy-based operations, as well as through institutional support projects. For example, in 2008, it provided financing in support of EITI implementation in Botswana, Central African Republic, Liberia, and Madagascar. Moreover, the AfDB has worked to establish an African Legal Support Facility to provide technical support to regional member countries for undertaking reviews of legal systems and preparing new laws and regulations in support of transparent and accountable natural resource management. In addition, the facility would support capacity-building for legal and financial advisers in preparing and negotiating contracts with private mining operators.

Consistent with its mandate to support development financing in resource-rich countries, the AfDB set up an internal cross-departmental Task Force Regarding Bank Engagement in the Extractive Industries, to review the AfDB’s prior involvement with financing extractive industries projects in regional member countries. In an honest assessment of past failures, it concluded that, historically, “extractive industries in Africa have been tainted by human exploitation, environmental destruction, civil war, economic imbalance, and governmental destabilisation”, and recommended that the AfDB “develop a corporate strategy for its increased engagement in the extractive industries sector.” The AfDB’s “Corporate Governance Strategy” also recommends that it should promote the establishment of integrated and coherent legislative and policy frameworks in regional member countries, and support the introduction of basic standards of corporate social responsibility as part of corporate governance legislation and regulation. And in 2008, it released the “Governance Strategic Directions and Action Plan (GAP) 2008-2012”, which charted the AfDB’s medium-term approach to addressing governance in its lending and non-lending activities, including mining.

Challenges to implementing the EITI in internal operations

Most of the AfDB’s project-level financing to the mining sector is channelled to private mining companies. Similar to other MDBs, the AfDB operates with a formal project cycle that defines the process through which investment projects are identified, selected, reviewed, and approved. Generally, the main responsibilities for preparing project documentation for private sector projects and managing the internal review process lie with sector departments (of which one is in charge of all private sector operations) charged with identifying, preparing and implementing projects across industry sectors. In terms of private sector operations, the purpose of other departments, including those with environmental, social, and governance expertise, is to review project documentation and identify any outstanding issues that have not been satisfactorily addressed.

As such, their role in the project cycle is to support the Private Sector Department by ensuring that projects comply with the operational policies and fulfil the AfDB’s overall mandate. As noted above, the AfDB has recently issued a host of policies and strategies that emphasise the need to more systematically consider governance risks in private sector operations. With regard to implementing these in internal operations, decisions regarding the AfDB’s lending and non-lending activities in the mining sector largely depend on the outcomes of a series of internal review, approval, and clearance processes, in which staff outside of the Private Sector Department review project documentation and provide input. For example, project documentation is systematically reviewed and cleared during the project cycle by a senior-level Operations Committee to ensure that they comply with internal policies and review procedures. In addition, Country Teams consider whether projects under review fit the priorities laid out in country strategies, and a Quality Assurance and Results Department undertakes a readiness review of project documents against a checklist. Similar to other MDBs, all projects are subject to Board approval, which means that the nature of AfDB involvement in the mining sector in large part reflects the interest of shareholder governments.

The AfDB’s experience with private sector mining projects reveals three distinct challenges to implementing the EITI in
First, while staff from other departments are involved in the project cycle, primary responsibilities for structuring the AfDB's private sector lending activities rest with the Private Sector Department. By implication, the systematic integration of governance concerns into mining projects depends on greater collaboration between the operational staff in the Private Sector Department in charge of project preparation and governance specialists in other departments with expertise in revenue transparency and management. In the case of the AfDB, the project cycle does include various internal reviews of project documentation that provide governance specialists with an opportunity to consider whether governance risks have been adequately addressed in project documentation. Yet, current review procedures do not ensure that governance risks are given special attention in the context of the extractive industries. More broadly, it remains a challenge to design and implement processes that make use of the knowledge of governance specialists earlier in the project cycle, in order to make the integration more efficient and effective.

Secondly, EITI implementation would also benefit from changes to internal log frames and project assessment methodologies. In the case of the AfDB, reporting templates for project documents consider governance issues largely as additional items of information, rather than a critical part of the project design. This is particularly problematic in relation to mining projects, as the absence of strong governance systems at the time of investment can severely undermine development outcomes. Moreover, while the AfDB requires internal ex-ante assessments of development outcomes for all projects, these are not commonly conducted by staff with significant governance expertise and do not include indicators directly related to revenue transparency and management. The AfDB is currently experimenting with an ex-ante Additionality and Development Outcome Assessment (ADOA) conducted by the Office of the Chief Economist late in the project cycle, and meant to induce operational staff to select projects more aligned with its mandate to alleviate poverty. However, the current methodology does not directly assess governance issues.

Thirdly, assessing a country’s legal and regulatory framework and capacity for managing revenues from mining projects is both time-consuming and resource-intensive. While borrowers commonly assume the cost of undertaking environmental and social assessments, they are not expected to (nor likely willing to) finance impact studies evaluating the national governance context (in specific sectors) and identifying how lenders can make improvements. Therefore, funding such work depends to a large extent on donor funds, which are not always readily available for these specific purposes. In the case of the AfDB, the shortage of available capacity and funds for undertaking governance studies, and including governance specialists on field missions to project sites, provides an obstacle to more systematically addressing the governance context of mining projects under consideration. However, to support this effort, it is in the process of developing a framework and tool-kit to assess and address governance and corruption risk in sectors in general and across sectors, including the extractive industries.

Conclusion: strengthening multilateral support for sustainable mining

The AfDB is well positioned to promote revenue transparency and management in the mining sector in African countries. Its support for the EITI, the release of the GAP 2008-12, and the upcoming publication of a Natural Resources Management Policy, all point to a growing commitment among senior management for the need to more strongly address governance issues in private sector operations. Moreover, the AfDB is in the process of scaling up its support for transparency and accountability in the management of public resources, including natural resources, and increasing its support for strengthening audit and accounting capacities in several African countries. This includes providing technical and financial assistance for countries that are implementing the EITI. Furthermore, to translate policy commitments into changes in internal practices, the AfDB plans to produce distinctive staff guidance notes for each category of natural resources that will identify how its staff can ensure sound and sustainable management of the natural resource sectors in the Bank’s lending operations, particularly in private sector operations.

However, for the AfDB and the multilateral sector as a whole, it remains a challenge to restructure internal operations so as to ensure that investments in mining contribute to sustainable development. This means assisting countries to develop strong systems of governance for managing resource rents prior to the disbursement of financing. Internally, implementing the EITI in mining operations requires new mechanisms, procedures, and structures that improve coordination between professional staff engaged in private sector operations and public sector reform, and embed mining investments in broader national development plans. This not only points to the integration of analysis across different disciplines (political science, economics, and finance), but also across different levels of analysis (project-level, sector-level, and country-level). In addition, new metrics may need to be added that do not simply measure the volume of resource rents flowing to governments but also consider whether governments use them to promote long-term sustainable development.

More broadly, the boom in commodity prices and the growing demand for minerals provided favourable economic conditions for resource-rich countries to develop their mining sectors. Amid this expansion, there was growing pressure on MDBs to address the macro-economic and governance failures associated with the ‘resource curse’. Moreover, the more recent...
A decrease in commodity prices has likewise raised the importance of managing scarce resources wisely. Indeed, the demand for greater attention to these issues comes from resource-rich countries in need of capacity and resources to implement the EITI. As the interests among donors for supporting the natural resource sector continue to grow, greater coordination between MDBs is critical to ensuring uniform and effective implementation of the EITI in resource-rich countries. Currently, all MDBs that support the EITI claim to address it in negotiations with private mining companies (and governments, in the case of public sector operations) in EITI-implementing countries. However, practice in non-EITI countries diverges, and remains somewhat unclear, with some being hesitant to make compliance with a voluntary framework mandatory. The ADB evaluates the need to comply with EITI standards on a case-by-case basis, and claims it will insist on compliance in resource-rich countries with governance issues, even if they are not implementing the EITI. Given these disparities, it is therefore encouraging thatMDBs recently agreed to harmonise their initiatives in the area of transparency and the extractive industries. As part of the process, MDBs will hold a meeting in 2009 to take the agenda forward, and, in a process led by the IFC, discuss a coordinated response to the US Congress on recent legislative initiatives on transparency in the extractive industries sector.

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Notes
1 This chapter has been commissioned by the African Development Bank’s Governance, Economic and Financial Management Department (OSGE) with support from the AFD–DFID Trust Fund on Governance. The lead author is Dr. Christopher Wright, Research Fellow at the London School of Economics (LSE) and Visiting Researcher, Centre for Development and the Environment (SUM), University of Oslo, under the guidance of the African Development Bank’s Extractive Industries Working Group. However, the views expressed herein do not necessarily reflect those of the AFD’s Boards of Directors or the countries they represent.


11 For example, a recent report on the World Bank’s practices observes that the disclosure of contracts associated with extractive industries projects is highly variable, and it is identified as a programme benchmark in only 19% of country lending programmes and in 21% of country strategies in resource-rich countries. See “Assessment of International Monetary Fund and World Bank Group Extractive Industries Transparency Implementation”, Bank Information Centre and Global Witness, October 2008.

12 “Policyon Social and Environmental Sustainability”, International Finance Corporation (IFC), Section III.22.


21 The AfDB currently operates with nine sector departments: Agriculture and Agro-industry (OSAN), Human Development (OSHD), Governance, Economic, and Financial Management (OSGE), Fragile States (OSFU), Gender, Climate, and Sustainable Development (OSUS), Infrastructure (OINF), Private Sector (OPSM), Water and Sanitation (OWAS), and NEPAD, Regional Integration, and Trade (ONRI).


23 In part to overcome this challenge, the World Bank Group created an entirely separate division for the extractive industries – the Oil, Gas, Mining and Chemicals Department (OGMC) – which embeds the private sector operations of the International Finance Corporation (IFC) with the public sector specialists of the World Bank.

24 However, it may allow for exceptions in cases where countries are not yet implementing the EITI but are generally recognised as having strong systems of laws and regulations, or in countries that are not by definition “resource rich” and thus not expected to implement the Initiative.

25 The agreement was reached at a meeting convened by the EITI between MDBs held in conjunction with the 13th International Anti-Corruption Conference (IACC) in Athens, Greece, 29 October-3 November 2008.
Introduction
This chapter provides an introduction to the context in which the EITI operates and how it fits into the broader array of efforts currently in practice or in development that are relevant to the extractive sector. As a multi-stakeholder initiative, the EITI benefits its constituencies in different, though complementary, ways. It is therefore important to understand how different groups benefit from the EITI and how it relates to other initiatives, in order to ensure that complementarity is achieved and that a duplication of efforts is avoided.

This chapter introduces some of the most important initiatives relating to the EITI which are aimed at improving governance and sustainability in the mining sector. Some of these initiatives focus on the mining industry specifically and even particular minerals. One example is the Kimberly Process, which traces the trade in rough diamonds. Other initiatives concern general corporate accountability and social responsibility and, while not mining industry-specific, many mining companies have joined them. An example here is the UN Global Compact. Additionally, the World Bank has and continues to play an important role in supporting client countries with expertise and advice on transparency and governance issues.

In the last decade, the demand for higher standards of transparency and accountability in the mining sector has gained momentum with governments, companies and international finance and development institutions. As a result, a number of initiatives have been developed in order to achieve these higher standards. Some of these are simply platforms for sharing good
practices based on agreed principles of intention, but without mechanisms for holding companies or governments to account. Other initiatives, such as the EITI, employ a soft law approach with relatively detailed sanctions and grievance mechanisms. Not covered in this chapter are the many legislative and other efforts undertaken by governments to ensure that mining activities are conducted in a responsible manner and with transparent revenue flows.2

Concerns over the economic, social and political impacts of mining go beyond issues of financial disclosure. Mineral-producing countries, too, often suffer from corruption, economic mismanagement, civil conflict, human rights abuses, and environmental degradation that revenue transparency efforts alone cannot address. In addition to the EITI, the international community has responded to these problems with a number of governance-related initiatives that provide guidelines and standards for extractive companies and governments.

The list of individual or collective efforts surveyed here is in no way exhaustive. This chapter aims to highlight those initiatives closer to the mining sector and most relevant to the EITI core principles. Additionally, the chapter will include a detailed case study of the Global Reporting Initiative’s (GRI) efforts to develop a mining industry-specific supplement to complement their general reporting guidelines.

Implementing countries
For implementing countries, the EITI often sits alongside other government-led efforts to ensure that it manages the country’s natural resources well. These efforts are often led by the mining ministry or other government authorities overseeing mining activities. From an EITI-implementing country perspective, the EITI often forms part of broader budget and financial transparency reforms. Such reforms tend to be overseen by ministries of finance.

The Kimberley Process
The Kimberley Process Certification Scheme is similar to the EITI in that it is also a government-led multi-stakeholder initiative. It imposes extensive requirements on its members to trace and certify the origins of traded rough diamonds to ensure they do not come from conflict zones. The disclosure of statistical data regarding the import and export of rough diamonds is at the heart of the Kimberley Process. By tracing the origination of diamonds and their flow to markets, diamonds are certified as ‘conflict-free’. It is a voluntary initiative that involves governments, industry and civil society in the implementation and certification process. The success of this initiative, which at its core is founded on the transparency of statistical information and multi-stakeholder oversight, is reflected by the fact that conflict diamonds are now only a fraction of 1% of the world diamond trade, down from 15% in the 1990s.

World Bank involvement
Developing countries rich in natural resources have long worked with the World Bank and other development institutions in improving natural resource management. An important process by the World Bank was its Extractive Industries Review, announced in 2000 and led by Dr Emil Salim. Under the auspices of this review, a range of initiatives was considered and stakeholders consulted. The World Bank Group Board noted when it considered the Review’s outcomes in 2004 “… that while extractive industries’ investments can contribute to sustainable development, the WBG [the World Bank Group] should further enhance its efforts in several areas: more explicitly identifying and tracking poverty reduction associated with its projects; the overall quality of governance in host countries; broader inclusion of local stakeholders; transparency of revenue management and project documents; and the promotion of renewable energy and cleaner fuel alternatives”.

Many of the efforts led by implementing countries are, like the EITI, addressing sector-specific challenges. One such initiative is the Communities and Small-Scale Mining (CASM). With an estimated 13 to 20 million people, many of whom are children, working as artisanal and small-scale miners, it is an important development challenge to address their needs. CASM was launched by the World Bank and others to address the complex social and environmental challenges facing artisanal and small-scale mining communities. The World Bank and other development actors such as the UK Department for International Development also seek to improve dialogue between governments through the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development.

As a major provider of funds for large development projects, including mining projects, the World Bank developed Safeguard Policies to eliminate or mitigate the social and environmental harm these projects might create in the absence of effective protection measures. The Safeguard Policies cover a broad range of issues including environmental assessments to take into account natural habitats, forests, proper pest management, guidelines for involuntary resettlement, and safety requirements for dams.

In addition to the Safeguard Policies, the World Bank Group has strict information disclosure policies, which, since 2004, include a requirement for revenue transparency for all new projects. Though the World Bank Group includes the International Finance Corporation (IFC), there are some differences in policy due to the IFC’s role as investor in private ventures. The IFC’s policy states that “clients of all IFC-financed extractive industry projects [should] publicly disclose their material payments from those projects to the host governments”.

Supporting countries
Countries supporting the EITI often do so as part of their broader development policies, and involvement may come
Through a development ministry. In such circumstances, the EITI may receive support alongside, for example, the CASM.

In other cases, involvement is part of efforts to create an enabling environment for corporate citizenship. In such circumstances, involvement with the EITI may be alongside the Voluntary Principles, the Kimberley Process, or with the UN Special Representative on Business and Human Rights, John Ruggie. In these circumstances, it is more likely to be a foreign, or possibly trade, ministry that is working with the EITI.

Supporting companies

In 1999 nine of the world’s largest mining companies launched the Global Mining Initiative (GMI), in preparation of the World Summit on Sustainable Development in 2002. The GMI intended to look at the broader societal impact of mining operations. This later led the International Institute for Environment and Development to undertake the comprehensive Mining, Minerals and Sustainable Development Project (MMSD). This extensive research and consultation exercise coincided in 2001 with the industry deciding to establish the International Council on Mining and Metals (ICMM). The ICMM, along with many of its members, are supporters of the EITI, and commit to ten principles for sustainable development. Just as with the UN Global Compact, support for the EITI can be seen as a concrete action to support the broader context of sustainable development.

EITI support by companies tends to be part of wide-ranging efforts to ensure that they conduct their business operations in an efficient manner while at the same time being good corporate citizens. For them, supporting the EITI can be an illustration of their broader commitment to the UN Global Compact and its tenth principle, relating to fighting corruption.

As an issue-specific initiative, the EITI has, from a corporate perspective, extensive similarities to the Voluntary Principles on Security and Human Rights. The Voluntary Principles process was an important catalyst in creating the multi-stakeholder coalition that grew into the EITI. Many of the companies supporting the EITI also support the Voluntary Principles. The Voluntary Principles guide extractive companies in maintaining safety and security in their operations while ensuring respect for human rights and fundamental freedoms in the places where they operate.

Communicating and reporting becomes an integral part of a company’s efforts to be transparent and accountable. The sustainable development or corporate social responsibility (CSR) reports that many public and private companies now routinely produce are a reflection of this. Although this kind of non-financial reporting is essentially voluntary, there has been a rapid qualitative progression from early reporting efforts in the 1990s. In addition to rising stakeholder expectations, some stock exchanges (e.g. the London Stock Exchange) have provided further impetus by requiring public reporting on measures to control sustainability risks as a condition of listing.

Initially, a company’s reporting was focused mainly on environmental issues surrounding their operations. Over time these reports developed and expanded to include issues relating to poverty, health and human rights. Demand from consumers and company shareholders slowly grew and put pressure on companies to go beyond simple public relations exercises to more robust reporting on a company’s social and environmental practices. Issues relating to good governance are perhaps the latest development in company reporting, as corruption is being seen as a major impediment to development.

The increase in reporting has been facilitated by the emergence of multi-stakeholder efforts such as the Global Reporting Initiative (GRI), aiming at creating standardised approaches for companies to report on the economic, environmental, and social dimensions of their activities, products, and services. Recognising the importance reporting has in ensuring corporate transparency, this chapter includes a case study on the GRI’s efforts to tailor their reporting guidance to mining companies.

Civil society

Alongside the EITI, Publish What You Pay (PWYP) has been a prominent advocate of greater revenue transparency in the mining sector. The EITI and PWYP both support voluntary approaches to extractive revenue transparency, but PWYP also promotes mandatory approaches including accounting standards and stock exchange listing requirements.

The Revenue Watch Institute (RWI), another strong supporter of the EITI, is also focusing on transparency in the extractive sector. In collaboration with Save the Children and Transparency International they have developed the project “Promoting Revenue Transparency” to assess transparency in extractive companies. A report was launched in 2008 ranking oil and gas companies, and the analytical framework is being expanded to include more countries and the mining sector in future reports.

Environmental and human rights issues related to mining have been extensively covered by numerous organisations and initiatives. New mechanisms are continuously being developed to comprehensively tackle the multitude of issues surrounding the mining sector. The Framework for Responsible Mining (FRM) is a case in point. It is part of an ongoing multi-stakeholder effort to define responsible mining practices. The framework, which is still at draft stage, aims to provide a best-practice reference for discussions among stakeholders interested in improving the mining sector’s performance with regards to environmental, human rights and social issues. The FRM also attempts to unify civil society’s approach towards improving mining standards based on existing initiatives, including the Global Reporting Initiative, the UN Global Compact, the EITI, and Publish What You Pay.
The FRM emphasises the need to streamline transparency and accountability as core principles for mining activities. The framework supports independent monitoring and oversight as a means of ensuring accountability, as well as promoting a more effective use of public resources. Although the framework is still a work in progress, civil society organisations have embraced it as a way to strengthen sustainability and good governance in the mining sector.

CASE STUDY: Mining in the Global Reporting Initiative (GRI)

The GRI

**Similarities and differences between the EITI and the GRI**

Both the Global Reporting Initiative (GRI) and the Extractive Industries Transparency Initiative (EITI) are tools for voluntary disclosure. The GRI was started in 1997 and officially inaugurated as an independent body in 2001; the EITI was first announced by Tony Blair in 2002 and officially launched in London 2003 at the first EITI Plenary Conference. Like the EITI, the GRI is centred on transparent multi-stakeholder decision-making processes.

Both initiatives are global in nature, but while the EITI advances transparency in public payments of the extractives industries per country of operation, the GRI advances corporate-level transparency on sustainability topics including economic, environmental and social performance in all types of companies and organisations in all sectors. The aim of the GRI is to ensure that public reporting on these issues becomes as common as financial reporting.

**A reporting framework**

To communicate clearly and openly about sustainability, a globally shared framework of concepts, consistent language, and metrics is required. It is the GRI’s mission to fulfil this need by providing a trusted and credible framework for sustainability reporting that can be used by organisations of any size, sector, or location.

Today, the GRI’s latest version of the Sustainability Reporting Guidelines – G3 – provides the world’s most widely used framework for sustainability reporting. The GRI G3 Guidelines contain principles and guidance as well as standard disclosures. These add up to a disclosure framework that organisations can voluntarily, flexibly, and incrementally adopt. The Guidelines are made freely available as a public good for companies and other organisations globally.

**GRI reporter**

A company can use the GRI guidelines in various ways. Some companies only make a reference to the Guidelines in the text of their sustainability report. However, the Guidelines advise companies to include a GRI content index in the report, to refer to the pages or location where information corresponding to GRI indicators can be found, and to state a level of application. For its own statistics, the GRI only counts the reports in which both a GRI content index and an application level are declared. The table below shows the extent of reporting against the G3 Guidelines for each of the GRI self-application levels.

**Supplements**

Some sectors face unique needs that require specialised guidance in addition to the universally applicable core guidelines. Sector Supplements respond to these needs and constitute a key part of the Reporting Framework.

Sector Supplements hold sector-specific reporting guidance integrated in the Guidelines. This is to provide companies in the sector with one document that holds both the general guidance and the sector-specific guidance. The sector-specific content in a
Supplement usually contains an introduction, sector-specific commentaries to Guideline disclosures, and new sector-specific disclosures. The Supplement developed for the mining and metals sector was published in 2005.

**Development of the Pilot GRI Mining Supplement**

In 2004 the GRI convened a multi-stakeholder Working Group with the ICMM as co-convening partner. In a series of meetings the GRI Mining and Metals Working Group developed a draft which was posted for public comment. Numerous comments were received.

The GRI Mining and Metals Sector Supplement was released in October 2005.

**Use of the Mining Sector Supplement**

The GRI found 18 mining and metals company sustainability reports referring to the Pilot Sector Supplement in their GRI content index, in July 2007. The quality of the reports and the quantity of indicators was not assessed. But in a survey conducted by SD3 and ICMM later that year, opinions were collected on the quality of the reporting indicators in the Supplement. This survey revealed that while some mining specific indicators were perceived as useful in helping mining companies to improve their sustainability reporting and performance, other reporting indicators in the supplement had room for improvement. Using this feedback, the ICMM and GRI formed a new Working Group to develop the pilot version of the mining supplement into a final version.

**Development of the GRI Mining Supplement Final**

The new Working Group members were surveyed for their opinions on the mining-specific indicators and content in the pilot version of the mining supplement. A consultant brought all these opinions together and produced a draft final version in line with the G3 Guidelines. This draft final version was discussed and further developed in a two-day meeting in October 2008. The group agreed on a final draft for public comment, which was approved by the GRI Technical Advisory Committee. The three-month comment period will end in the second quarter of 2009, after which the Working Group will review the comments and make decisions on a final version of the GRI Mining and Metals Sector Supplement.

The GRI and the ICMM are aiming for a life span of at least five years for the Mining and Metals Sector Supplement.

**The EITI in the Mining Supplement**

When GRI started the development of the Mining and Metals Sector Supplement back in 2004, the EITI was still in its early set-up phase. But even at that stage the Working Group discussed whether a reference to EITI should be made. At the time it was decided not to make a reference, due to the early phase of the EITI’s set-up at the time.

EITI Criterion 1 asks companies to regularly publicise all material payments to governments but does not stipulate any further. Specifically, it does not prescribe the need for disaggregated information. Quite a few G3 reporting indicators are linked to the information that an EITI-supporting company can use to report to the national government in the country of operation.

While the final GRI Mining and Metals Sector Supplement is still under development, the draft for public comment makes clear reference to, and even asks for information on, which countries of operation are subscribers to the EITI.

The mining-specific reference to the EITI is made at G3 indicator EC1: “Direct economic value generated and distributed, including revenues, operating costs, employee compensation, donations and other community investments, retained earnings, and payments to capital providers and governments.”

In the indicator protocol compilation section, the mining and metals commentary reads: “report countries of operation that are subscribers to the Extractive Industries Transparency Initiative (EITI).” This reference to the EITI is likely to stay in the final GRI Mining and Metals Sector Supplement.

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**GRI Mining and Metals Working Group 2004/2005**

- Alcoa
- Anglo American
- BHP Billiton
- Council for Responsible Jewellery Practices
- First Point Minerals Corporation
- Henderson Global Investors (now ABP)
- IFC / World Bank Group
- IUCN Southern Africa Programme
- National Union of Mineworkers of South Africa
- Newmont Mining Corporation
- Noranda Inc / Falconbridge Limited
- Oxfam International
- Placer Dome (now Barrick Gold)
- Rio Tinto
- Standard Life Investments
- Sumitomo Metal Mining
- Umicore
- World Wildlife Fund

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**GRI Mining and Metals Working Group 2008/2009**

- Ambatovy Nickel and Cobalt Project
- Anglo American
- BHP Billiton
- Centre for Human Rights and Environment
- European Nickel PLC
- First Peoples Worldwide
- Flora and Fauna International
- Goldman Sachs
- International Federation of Chemical, Energy, Mine and General Workers’ Unions (ICEM)
- International Union for the Conservation of Nature (IUCN)
- National Union of Mine Workers
- South Africa
- Newmont Mining
- Rio Tinto
- Standard Life Investments
- Teck Cominco
- Vale
- World Bank
**EITI reporting topics in the GRI G3 guidelines**

The EITI and the GRI have overlap on a number of indicators, as shown in Box 4.

**EITI supporters and GRI reporters**

The EITI is implemented by governments, who then ask mining companies to disclose payments to them. For the purpose of this article, the GRI listed the EITI supporters and checked whether these companies are GRI reporters, and if so, at which application level of transparency.

In the global mining and metals sector, 11 of the top 20 largest mining companies (as defined by Forbes) are EITI supporters and 13 of the top 20 are GRI reporters. Only two of the top 20 largest companies in this sector are a GRI reporter but not officially a supporter of EITI.

As of 15 October 2008, 39 EITI company supporters were identified from the EITI website. Of the 36 EITI company supporters, three are non-GRI reporters; all others report with the GRI and 14 report with the GRI Guidelines on the highest level of transparency (self-application level A). Half these companies are in the mining and metals sector and the other half in the oil and gas sector (as defined by Forbes).

Of the 63 known GRI 2007 reporters (known by GRI at 15 October 2008) in the mining and metals sector, 15 companies are supporting the EITI. This shows that almost all EITI supporting companies are GRI reporters, but only a quarter of the GRI reporters in the mining and metals sector are formal EITI supporters.

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**Company Name**

**EITI supporter in all extractive sectors (as of 15 October 2008)**

<table>
<thead>
<tr>
<th>COMPANY NAME</th>
<th>Type of corporate sustainability report</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcoa</td>
<td>G3 Undeclared</td>
</tr>
<tr>
<td>Anglo American</td>
<td>G3 A+</td>
</tr>
<tr>
<td>AngloGold Ashanti</td>
<td>G3 A+</td>
</tr>
<tr>
<td>Areva</td>
<td>Activity and Sustainable Development Report – GRI reference</td>
</tr>
<tr>
<td>Barrick Gold</td>
<td>G3 A+</td>
</tr>
<tr>
<td>BG Group</td>
<td>G3 Undeclared</td>
</tr>
<tr>
<td>BHP Billiton</td>
<td>G3 A+</td>
</tr>
<tr>
<td>BP</td>
<td>G3 A+</td>
</tr>
<tr>
<td>Chevron Corporation</td>
<td>G3 Undeclared</td>
</tr>
<tr>
<td>ConocoPhillips</td>
<td>G2 Undeclared</td>
</tr>
<tr>
<td>DeBeers</td>
<td>G3 A+</td>
</tr>
<tr>
<td>Eni</td>
<td>G3 Undeclared</td>
</tr>
<tr>
<td>ExxonMobil</td>
<td>G3 Undeclared</td>
</tr>
<tr>
<td>Freeport-McMoRan Copper and Gold</td>
<td>G2 In Accordance</td>
</tr>
<tr>
<td>Gold Fields</td>
<td>G2 CI</td>
</tr>
<tr>
<td>Hess Corporation</td>
<td>G3 B+</td>
</tr>
<tr>
<td>Katanga Mining Limited</td>
<td>Corporate Responsibility section on website</td>
</tr>
<tr>
<td>Lonmin</td>
<td>G3 C</td>
</tr>
<tr>
<td>Marathon</td>
<td>G3 Undeclared</td>
</tr>
<tr>
<td>Mitsubishi Materials</td>
<td>G2 CI</td>
</tr>
<tr>
<td>Newmont</td>
<td>G3 A+</td>
</tr>
<tr>
<td>Nippon Mining and Metals</td>
<td>Sustainability Report</td>
</tr>
<tr>
<td>Norsk Hydro</td>
<td>G3 B+</td>
</tr>
<tr>
<td>OZ Minerals</td>
<td>G3 B (Oxiana)</td>
</tr>
<tr>
<td>Pemex</td>
<td>G3 A+</td>
</tr>
<tr>
<td>Petrobras</td>
<td>G3 A+</td>
</tr>
<tr>
<td>Repsol YPF</td>
<td>G3 A+</td>
</tr>
<tr>
<td>Rio Tinto</td>
<td>G3 A+</td>
</tr>
<tr>
<td>Shell</td>
<td>G3 A+</td>
</tr>
<tr>
<td>StatoilHydro</td>
<td>G2 CI</td>
</tr>
<tr>
<td>Sumitomo Metal Mining</td>
<td>G2 CI</td>
</tr>
<tr>
<td>Talisman Energy</td>
<td>G3 A+</td>
</tr>
<tr>
<td>Teck Cominco</td>
<td>G3 B</td>
</tr>
<tr>
<td>TOTAL</td>
<td>G3 Undeclared</td>
</tr>
<tr>
<td>Woodside</td>
<td>G3 C</td>
</tr>
<tr>
<td>Xstrata</td>
<td>G3 A+</td>
</tr>
</tbody>
</table>

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**Box 4. EITI Criteria for supporting companies**

<table>
<thead>
<tr>
<th><strong>EITI</strong></th>
<th><strong>GRI G3 indicator reference</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong></td>
<td>Regular publication of all material oil, gas and mining payments by companies to governments (&quot;payments&quot;) and all material revenues received by governments from oil, gas and mining companies (&quot;revenues&quot;) to a wide audience in a publicly accessible, comprehensive and comprehensible manner. <strong>EC1, EC4, EC8, SO6, PR9</strong></td>
</tr>
<tr>
<td><strong>2</strong></td>
<td>Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit applying international auditing standards. <strong>PD 4.14, 4.16, 4.17</strong></td>
</tr>
<tr>
<td><strong>3</strong></td>
<td>Payments and revenues are reconciled by a credible, independent administrator applying international auditing standards, and with publication of the administrator’s opinion regarding that reconciliation, including discrepancies, should any be identified. <strong>PD 4.14, 4.16, 4.17</strong></td>
</tr>
<tr>
<td><strong>4</strong></td>
<td>This approach is extended to all companies, including state-owned enterprises. <strong>PD 4.14, 4.16, 4.17</strong></td>
</tr>
<tr>
<td><strong>5</strong></td>
<td>Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate. <strong>PD 4.14, 4.16, 4.17</strong></td>
</tr>
<tr>
<td><strong>6</strong></td>
<td>A public, financially sustainable work plan for all the above is developed by the host government, with assistance from the international financial institutions where required, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints. <strong>PD 4.14, 4.16, 4.17</strong></td>
</tr>
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</table>
Conclusion

The EITI and the GRI both seek to promote transparency through multi-stakeholder processes. The scope of the GRI is broader and incorporates social and environmental issues as well as financial transparency. The EITI is focused exclusively on the reporting of revenues from extractive industries and is more technical in nature, requiring independent audits of revenue flows between governments and companies to be considered an EITI Compliant Country. Additionally, governments are the main drivers of EITI implementation in a country-led process. Reference to the EITI is made in the draft GRI Mining and Metals Sector Supplement under development, as a consequence of the growing importance of the EITI in the mining and metals sector.

Almost all the EITI supporting companies are GRI reporters, but only a quarter of the GRI reporters in the mining and metals sector are official supporters of the EITI. Experienced GRI-reporting companies are used to collecting and publishing information on sustainability topics, and used to communicating with (local as well as regional) stakeholder groups. Transparency on public payments could thus perhaps be considered easier for GRI reporters, and for this reason there is a potential EITI supporter base in the GRI reporting community.

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Notes

1 The first part of this chapter was written by Jonas Moberg and Juan Carlos Quiróz with editorial support from Francisco Paris and Christopher Eads. The authors also acknowledge comments provided by Aidan Davy from the ICMM. Maaike Fleur wrote the GRI’s case study. Paul Mitchell provided comments to this case study.

2 For example, Senator Lugar and Representative Barney Frank from the US Congress have proposed legislative measures to improve transparency in extractive companies’ reporting.

3 The ICMM is a strong supporter of the EITI, and it has collaborated extensively in this volume.

4 The RWI has also contributed to this volume. See Chapter 18 for extensive guidelines for civil society involvement in the EITI.
Introduction and background
Post-conflict states implementing the EITI are faced with a peculiar political problem that distinguishes them from other Implementing Countries. Legacies of distrust and hostility within society undermine the ability of the post-conflict state to generate consensus around fundamental policies, particularly on resource allocation. In the absence of a robust social fabric, post-conflict governments are faced with the temptation of taking the path of least resistance and of avoiding policies that could potentially disturb the fragile power equilibrium. It is therefore likely that only inoffensive policies are adopted, with a low propensity for leading to any meaningful change.

The EITI implementation process in post-conflict DRChas been marred by this peculiarity. Building consensus around the national EITI programme has proven difficult and initially led to an all-inclusive “catch-all” solution, characterised by a vast sectoral scope and an inflated implementation structure. The case of this vast and resource-rich country reveals how suspicion and distrust in a post-conflict environment can become serious challenges, but also how solutions can be found for the Initiative to succeed despite the post-conflict context.

EITI implementation in the DRC
EITI implementation in the DRC has been marked by several phases that have accommodated the post-conflict realities of the country. In the beginning of the implementation process, the focus was put very much on trust-building between and within the EITI stakeholder groups – government, companies and civil society – by means of extensive stakeholder engagement, referred to in this paper as the “catch-all” approach. That approach succeeded in bringing initially hostile groups to the table to agree and work jointly on the implementation of the Initiative. After this trust-building exercise, a certain rationalisation of the structure was needed in order to ensure the timely and effective Validation of the process.

The institutional set-up: the trust-building phase
The start of the EITI implementation process in the DRC in 2005 was obstructed by general distrust between stakeholders, which had a considerable negative impact on the institutional set-up phase. The high degree of suspicion between and within stakeholder groups led decision-makers to set up an immense multi-stakeholder structure as well as to define a large sectoral scope. The structure needed to be as inclusive as possible to avoid excluding actors that might potentially block the process and would not trust anybody else to represent their interests. The range of natural resource sectors in the country had to be taken into account. This “catch-all” approach had two major impacts on EITI implementation in the DRC.

First, the “catch-all” approach meant that extensive stakeholder engagement was required to overcome certain obstacles to dialogue and to create some initial momentum. The government of the DRC opted for bicameralism for the EITI implementation structure, outlined in a 2007 presidential decree, modifying and completing a preceding 2005 presidential decree (see Chart 1). Totalling 68 multi-stakeholder representatives in the two committees, and five permanent staff in the
secretariat, the structure strongly emphasised the concept of multi-stakeholder representation on the one hand, but was quite heavy in personnel on the other. Accommodating different interests went as far as distributing the posts in the permanent secretariat with respect to stakeholder affiliation.

Second, the “catch-all” approach resulted in a very wide scope of the Initiative, both in terms of the definition of the extractive sector and in terms of the concerned revenue streams. The 2007 Presidential Decree determines that the EITI will have to cover mining, oil and gas, as well as forestry – the documenting of all revenue streams from these sectors was envisaged.

The “catch-all” approach contributed to success in establishing the EITI structure, and secured DRC acceptance as an EITI Candidate Country in February 2008. However, following this initial progress, EITI implementation in the DRC slowed considerably due to two major factors.

**Striving for results: the rationalisation phase**

First, the selection procedure of the National Coordinator ran counter to the intention of the “catch-all” approach, and hampered efforts towards building trust from the beginning. Given the mood of mutual suspicion, the National Coordinator needed to play an integrating role. EITI Criterion No. 3 simply requires a government to appoint “a senior individual to lead on EITI implementation”. The EITI Presidential Decree in the DRC, however, demands that the National Coordinator to be chosen by government alone, from the 23 government representatives in the technical committee. This regulation is excluding all other stakeholder groups from that important personnel decision and limits the credibility, neutrality and ability to build trust in the National Coordinator.

Second, the “catch-all” approach itself eventually showed its limits. After the successful establishment of the EITI implementation structure, some difficulties became apparent. The heavy structure proved inadequate for taking the necessary decisions and to prepare for the compilation of the first EITI report. Hence it became more and more obvious that the degree of stakeholder representation had to be weighed against the effectiveness of the structure.

The basic premise of the EITI is to build trust among stakeholders by means of transparency of revenue streams from the extractive sector to government. The DRC case clearly shows how a lack of technical progress in that respect had a negative impact on the building of trust between groups. In consideration of the impending Validation of the process in the DRC, due by March 2010, the lack of substantial progress with regard to the publication of the first EITI report was becoming more and more worrying to the national EITI committee and to the Minister of Planning, who is the President of the national EITI committee and ‘National Champion’ of the EITI process in the DRC. The lack of results led to increased mistrust and accusations between the stakeholder groups. Quick progress was needed in order to allow a continuation of the process.

In response to these negative developments, and with the assistance of a World Bank consultant, an analysis of the implementation structure was therefore conducted in November 2008 in order to identify obstacles to the Validation of the DRC before March 2010. The analysis itself was therefore carried out in the fashion of a “micro-Validation”, meaning that the legal structure was tested against EITI criteria, the quality of already accomplished steps was tested, and the general assessment of the process by stakeholders was explored. The final report of that analysis revived the stalled dialogue and led to steps aiming at rationalising the structure. In late 2008, the pursuit of “quick wins” became the leading principle for necessary changes.

First, the analysis concluded that a simplification of the structure to only one committee with fewer members was necessary. Second, a restriction of the first report’s scope to the industrial mining sector was proposed. Finally, the analysis concluded that a public tender for the staff of the permanent secretariat could ensure quality services and the neutrality of the permanent secretariat.

Even though the implementation of these recommendations is complicated by a very descriptive EITI legislation, the Minister of Planning adhered to the recommendations of the report. The national EITI committee debated the way forward at the end of November 2008. An amendment of the legislation in order to successfully pass Validation by March 2010 was convened, and a priority action plan was adopted.

A realistic approach in terms of structure and scope has been fundamental at this stage. The existing bicameral structure of more than 68 members will be simplified, to consist of only one multi-stakeholder steering committee of 19 representatives (see Chart 2). The National Coordinator will not be simply appointed by government anymore. Instead, an invitation to tender will be issued to find the right person. The scope of the first EITI report will be reduced to industrial copper/cobalt extraction in the main mining province of Katanga, as well as to oil extraction.

**The way forward: Validation looming**

The year 2009 will be crucial for EITI implementation in the DRC. After the removal of the aforementioned structural obstacles to implementation, the process needs to concentrate on activities that lead to the publication of the first EITI report and subsequent Validation before March 2010. In this respect Validation has certainly been a “pull-factor” for EITI implementation in recent times.

The very dense priority action plan spanning the period from January 2009 to March 2010 is focused almost entirely on the indicators for Validation. With the decision on the scope of reporting (limitation to industrial mining) now taken, the next step will be to develop and adopt reporting templates. Once that has been done, the independent administrator can start his
mission to reconcile figures of the tax administration and extracting companies in the copper/cobalt as well as oil sector. The first EITI report is expected to be published in October 2009. After the publication, the EITI in the DRC intends to start the Validation process.

Specific lessons learned from EITI implementation in a post-conflict context

Phasing the process – from trust-building to publication

The main lesson learned from EITI implementation in the post-conflict context of the DRC is that it is necessary to find equilibrium between a politically necessary “catch-all” approach and a method that will ensure “quick wins”. Trust can be built in the beginning, allowing for the subsequent simplification of the structure and finally achieving more tangible results. Sequencing of EITI implementation will therefore accommodate the trust-building issues of a post-conflict context most appropriately.

As a general observation, trust between stakeholders has generally been low during the first phase of EITI implementation. A very inclusive approach will be necessary to avoid excluding actors that will not trust anybody to represent their interests and might potentially obstruct the implementation process. The basic decisions like the work plan will need to be taken by a wide range of stakeholders in order to ensure long-term commitment.

That being said, the case of the DRC also exemplifies the weaknesses of the “catch-all” approach with regard to producing results. The inclusion of a wide range of stakeholders in a lethargic and unproductive process will again lead to frustration and mutual accusations. An enabling environment and structure for “quick wins” is therefore important to keep the momentum of implementation.

The trust-building phase should hence be followed by a rationalisation phase. A small steering committee, consisting of highly motivated stakeholders, is needed to lead the process to the timely publication of the first EITI report. The National Coordinator must play a crucial role here as a neutral broker of interests.

This sequenced approach will be best facilitated by legislation that is not overly prescriptive in terms of structure, but rather defines an enabling implementation environment. Decisions on scope and structure will need to be left to the multi-stakeholder group rather than to the legislator, for instance by leaving all operational and scope decisions to internal regulations to be adopted by the steering committee.

If the legal framework defines the EITI programme too narrowly, phasing the process will prove difficult. Legislation
needs to leave some margin for the application of lessons learned and the continuous improvement of the national EITI programme and structure without having to re-legislate.

**Donor support – come in early and come back later**

In the DRC, donor support has been based on two parallel strategies: permanent and short-term. On the one hand, a permanent adviser to the EITI “Champion”, the Minister of Planning, was sent in order to act as a neutral broker of interests until the National Coordinator was able to play that role himself. This approach demands a long-term commitment from donors, particularly in the beginning of EITI implementation when capacity constraints and the lack of trust are most severe. Early decisions, particularly on legislation and the work plan, require experience and trust, and a neutral honest broker is very valuable in this regard.

Another lesson that can be drawn from EITI experiences in the DRC is the need for donor support in the process of gradually focusing EITI implementation in post-conflict countries. The transition from the trust-building phase to the rationalisation phase will be politically very difficult to sustain for the national EITI “Champion”; timing will be crucial. The transition should be made at the break-even point where sufficient trust has been built up and the need for results is pressing. An external consultant who will conduct a “Validation” of the national EITI process will be best placed to identify the break-even point where the transition from the first to the second phase should be made.

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**Notes**

1 The present essay will only deal with challenges posed to EITI implementation by a post-conflict context. More general challenges such as low administrative capacity will not be discussed here, even though they might be more severe in adding to difficulties faced by the Implementing Country.

2 Oil was chosen because it represents a low effort/high reward activity, as there are currently only two oil companies extracting in the DRC and together they contribute an estimated US$150m to the national budget.
Introduction
There are several reasons why Ghana constitutes an important case to be considered in any account of the EITI and mining. For one, Ghana was one of the first countries to adopt the voluntary initiative in 2003 and, in fact, constitutes the first Candidate Country to deal with the mining sector only. Second, Ghana extended its EITI reporting requirements to the sub-national level at an early stage and thus offers important insights in terms of good practices of extending EITI to sub-national revenue flows. Against this background, this paper analyses the achievements and challenges of EITI implementation in Ghana. As of 2008, our findings are twofold: on the one hand, substantial achievements have been made in increasing transparency of the country’s mineral revenue flows, and most EITI criteria have been fulfilled. On the other hand, however, there remain important challenges that need to be addressed. The most important of these are the improvement of the sub-national implementation of the scheme, the timely publication of EITI audit reports – a central feature of any well-functioning EITI process – and the extension of the initiative’s scope to the Minerals Development Fund (MDF), which is currently not being covered by the EITI in Ghana.

This paper is based on interviews with government, industry and civil society representatives, whose support in writing this paper has been immense.

Background
Ghana has always been well known for its mineral abundance, with the first discovery of gold dating back more than five centuries. Today, the extractive sector continues to play an important role for the growth and development of the country, with mining accounting for about 35% of total foreign exchange earnings and 5.5% of Ghana’s GDP. Government revenue from the mining sector accounts for about 2.5% of GDP. Gold remains the most important mineral and the country’s largest export earner after cocoa and timber. Other natural resources include manganese, diamond and bauxite.

Since the 1980s, the Ghanaian government has progressively privatised the mining industry and now plays a mainly regulatory role. The Minerals and Mining Act of 2006 increased fiscal incentives for foreign investments and has kept the minimum royalty rate at 3%. At present, the industry is dominated by 13 large-scale mining companies from South Africa, Australia, Canada and the United States, with the largest of them being the gold producers Gold Fields, Newmont, AngloGold Ashanti and Golden Star Resources. In addition, over 300 small-scale mining companies operate in the country.

In Ghana, efforts to increase transparency in the revenue flows of the country’s extractive sector did not commence with the government’s commitment to participate in the EITI. Prior to 2003, members of the Chamber of Mines voluntarily disclosed information about their royalty, tax and ground rent payments to the Chamber, which then published the information in national and local newspapers; information on payments was...
also reported to the Minerals Commission. This information, however, referred only to the payments made by companies and did not include the independent audit or reconciliation of payments undertaken under current EITI practices. Hence, while transparency in the extractive sector in Ghana did not start from scratch with the EITI, the Initiative has led to a much higher degree of transparency in mineral revenue flows than previous efforts have afforded.

Reviewing EITI implementation in Ghana: achievements and challenges

Ghana announced its intention to adopt the EITI in 2003 and thus constitutes an early participant from whom extensive lessons can be drawn. While significant improvements have been made in increasing the transparency of the country’s mining revenue flows through participation in the programme, the initiative’s implementation also leaves room for improvements, and points to several important challenges that need to be addressed.

Ghana’s 2003 commitment to participate in the Extractive Industry Transparency Initiative was spearheaded by the ministries of Finance and Mines. Under their auspices, two central bodies were created to promote the implementation of the scheme, the first being the National Steering Committee (NSC), the governing board of the EITI in Ghana. Chaired by the Ministry of Finance, the NSC reflects the multi-stakeholder character of the initiative by bringing together various government, industry and civil society representatives. The second body is the GHEITI Secretariat, which holds responsibility for implementing, monitoring and evaluating the national programme and, as such, enforces the decisions made by the NSC. While the Secretariat was first set up within the Ministry of Mines, it was later relocated to the Ministry of Finance to ensure better and faster availability of funding. This relocation facilitated the day-to-day operation of the Secretariat, but has subsequently also led to concerns from civil society and other domestic stakeholders who demand more autonomy and criticise the Secretariat’s embeddedness within the Ministry, as EITI issues may not be completely insulated from government politics. After the formal EITI structure was set up, an independent aggregator was chosen to conduct the audit and disclosure of revenues and payments, to check the adherence to international accounting standards, and to formulate recommendations to improve the EITI process.

Today, nearly half a decade after the government announced its commitment to the EITI, Ghana’s achievements in implementing the scheme have been substantial. In addition to increasing the transparency of mining revenue flows, the initiative has managed to bring together major stakeholders and has raised the country’s credibility in furthering its good governance agenda. With regard to EITI guidelines, the implementation process in Ghana has also been well established and has made considerable progress towards fulfilling the six EITI criteria. Since 2003, three audit reports have been published, which have created a much higher degree of transparency in the revenue flows of the country’s extractive sector. As postulated by the EITI criteria, the reports provide an independent and credible audit of the following transfers: (i) payments made by companies, (ii) revenues received by the government, and (iii) disbursements made by the government to local communities affected by mining activities. Like Nigeria, Ghana has also chosen to disaggregate the published payments by company and revenue type.

Second, as demanded by the Initiative’s criteria, the reports also include the reconciliation of these transfers and indicate possible discrepancies. Here, the results are as follows: while the reports find that in general payments and revenues have been well accounted for, they also indicate deviations in payments and receipts of corporate taxes, dividends and ground rents in 2004 and 2005. Moreover, the reports find several shortcomings in the disbursements of mining benefits to local communities (a point that will be elaborated later). In addition to distributing the audit reports at workshops and other events, an EITI website was launched in 2007 to make the audit reports, the work plan and related documents available to the general public.

Third, the EITI process in Ghana also fulfills the requirements of active civil society involvement and complete industry participation – both of which constitute clear strengths of the implementation strategy developed by the NSC.

Despite these achievements, however, the implementation of the EITI in Ghana also leaves room for improvements, and points to three major challenges that need to be addressed. The first of these challenges is to ensure that the initiative’s implementation is moved forward in a quick and timely manner. In the past, this has not always been the case. While the government decided to join the EITI as early as 2003, it was not until 2006 that the independent aggregator was chosen, and not until 2007 that the first audit report was actually published by the aggregator. More importantly, this delay, which is often attributed to inadequate funding, has contributed to the three-year time-lag that continues to exist in documenting mining revenue flows (e.g. the 2008 audit report covers data for 2005). Arguably, this lag reduces the ability of parliament and civil society stakeholders to enhance government accountability and improve development outcomes from benefits paid by the extractive industry, and hence needs to be urgently addressed.

The second challenge for the EITI in Ghana is its application to the sub-national level, which has been voluntarily adopted by the government. Recently, much of the public debate over mining has focused on the industry’s impact on local communities. To compensate districts for the impacts of the more negative aspects of mining activity, Ghanaian law stipulates that 9% of mining royalties are to be allocated to the communities from which the minerals are extracted.
The disbursement procedure consists of two stages. In the first stage, the Internal Revenue Service (IRS) transfers the appropriate share of revenues to the Head Office of the Administrator of Stool Lands (OASL), which then forwards the funds to its regional offices. In the second stage, the regional OASL offices distribute the money to the actual beneficiaries in the mining communities: district assemblies, traditional authorities, and stools. To extend EITI reporting requirements to the sub-national level and to improve the transparency of disbursement flows, specific reporting templates were designed for the district assemblies. These, apart from capturing all disbursement flows, also record the utilisation of funds on the local level. In practice, however, extending the EITI to both stages of the disbursement process is hampered by several obstacles. First, the audit report for the year 2004 indicates that there existed shortages in the payments made from the IRS to the Head Office of the OASL. Although these shortages were not significant compared to the overall amount, they imply that mining communities were being deprived of development funds by the government. Moreover, the reports show that some of the disbursements were significantly delayed or split into two transfers.

More importantly, however, there seem to be particular problems in increasing transparency in the second stage of the disbursement process – that is, the payments going from the regional OASL offices to district assemblies, stools and traditional authorities. For one, not all the local beneficiaries are captured by the EITI reporting process. The reporting templates, which capture the receipt and utilisation of disbursements, are only completed by district assemblies and not by the stools or traditional authorities, which receive 45% of the revenues earmarked for local communities. Hence, the audit reports can only refer to transfers that go to district assemblies and do not contain any information on how much the other stakeholders receive at what point in time.

Secondly, while transparency in disbursement flows is limited to the payments made to district assemblies, only a few assemblies are in fact captured by the audit reports, with many left out. The most recent audit report, for instance, for the year 2005, only lists disbursements made to two district assemblies, while at the time there existed eight major mining sites in the country. According to the independent aggregator, the underlying reason for this limited scope is that most district assemblies do not possess bank accounts or budgets and hence do not have the necessary information to fill out the reporting templates. Clearly, this significantly limits the scope of the EITI in Ghana and should be addressed so that all district assemblies can be covered by the audit reports. In addition, where bank accounts and budgets existed, the reconciliation of disbursements was rather difficult, as the regional OASL offices did not provide accurate information on the sources of the revenues, nor the formulae with which the disbursed amounts were calculated.

These shortcomings of the sub-national implementation suggest that more needs to be done to improve the EITI in Ghana. Payments going to stools and traditional authorities should be captured by the audit reports, and all recipient district assemblies should be covered, to provide full transparency of the revenue flows to local communities.

A third challenge for the EITI in Ghana is to extend the scope of the initiative to the Minerals Development Fund (MDF), to which 10% of all mineral royalties are allocated. While the purpose of the MDF is to assist the development of the Ghanaian mining sector, neither the revenues that flow into it, nor the use of funds, is currently being covered by the EITI. Given the large share of royalties that go into the Fund, this weakness should be urgently addressed to increase the overall transparency of mining revenue flows in Ghana.

The future of the EITI in Ghana

There are a number of future challenges that constitute important opportunities for improving and reinvigorating the EITI in Ghana. The previous section has identified three major challenges relating to the current state of the scheme: first, ensuring the quick and timely implementation of the Initiative, with specific emphasis on addressing the three-year time-lag that continues to exist in documenting revenue flows; second, improving the sub-national implementation of the EITI; and third, to extend the EITI to the royalties flowing into the Minerals Development Fund (MDF).

In addition to these three, another big challenge will be to incorporate the oil and gas industry into the EITI scheme as there have been recent discoveries of significant amounts of offshore oil and gas. This necessitates the extension of EITI reporting coverage and stakeholder representation. Here, a fundamental decision needs to be made and institutional arrangements need to be prepared. Interviewees suggested that a good start could be to invite the two main International Oil Companies (IOCs) in Ghana – Tullow Oil and Kosmos Energy – to sit on the NSC, and possibly to extend this membership to the Ghana National Petroleum Corporation (GNPC). If more oil companies come to Ghana and are willing to join GHEITI, it may also become necessary to establish an industry association or chamber that can represent all oil companies accordingly.

Similarly, the 2008 decision to extend the scope of the EITI to the forestry sector has yet to be implemented, which again requires a discussion on the scope of reporting and representation of stakeholders in the NSC. It should be noted that this extension of the EITI will pose formidable challenges for the capacity of existing EITI structures, as it entails the inclusion of numerous smaller companies that operate in the forestry sector.

In addition to these major challenges, domestic stakeholders have also cited the need to improve communication (especially within the NSC) and to further implement the recommendations...
made by the independent aggregator. And last, there have also been voices demanding a more formal discussion on whether or not Ghana should follow Nigeria's path of providing a legal backing to the EITI.

**Lessons learned**

Since Ghana first joined the EITI, it has been cited as a good performer in implementing the scheme. Not only was Ghana the first Candidate Country to deal with mining only, it also extended EITI reporting requirements to the sub-national level at an early stage in the process. The extensive experience with the EITI in Ghana provides a number of lessons for other countries yet to sign on to the EITI scheme.

The first of these lessons is that the sub-national implementation of the EITI should be dealt with early on in the process. Despite the current problems with improving the transparency of revenue flows to local communities, Ghana has planned and communicated sub-national implementation right from the beginning, which proved to be a great advantage. Once the formal EITI structure was set up, four types of reporting templates were designed, with one aimed specifically at capturing revenue flows at the district level. Part of the weakness of the current sub-national implementation seems to be that the reporting templates are only considered by district assemblies and not by the stools and traditional authorities, who also receive significant disbursements from the government.

The second lesson to be drawn is that the EITI process should be moved forward in a quick and timely manner. In Ghana, progress has been slow, particularly in the early years of EITI implementation. While the government decided to join the EITI in 2003, the first audit report was not published until 2007 and the aggregator not chosen before 2006. This initial delay has not only slowed down the overall implementation process but has also contributed to a three-year time-lag in documenting revenue flows, which clearly limits the Initiative's potential for increased accountability.

Third, as stakeholder engagement is a key indicator for ensuring the successful implementation of the EITI, another lesson is to make sure stakeholders are committed to the Initiative. In Ghana, government commitment was reflected in public statements as well as in the use of country resources to fund the implementation of the EITI. In addition to the government, commitment has also been strong from civil society and the extractive sector. Civil society has been raising public awareness and driving the discussion through its voice, knowledge and capacity. CSO representatives must make sure to be a legitimate voice by reaching out to a broader set of CSOs and seeking their opinions. Represented by the Chamber of Mines, the major mining companies in Ghana have also been supportive from the very beginning. Generally, in order to ensure commitment, much attention should be paid to effective communication within the NSC, so that the different expectations and working mentalities of civil society, government and industry are taken into account.

Last but not least, an important lesson is that the EITI process should remain manageable, in terms of both decision-making and implementing capacities. The EITI experience in Ghana has demonstrated that the focus should not be on building extensive governance structures but on finding the simplest way to move the Initiative's implementation forward in a quick and timely manner. Hence, while discussing the size of the steering committee may be useful to ensure the proper operation of the body, it should not be granted too much attention in light of the numerous challenges that constitute important opportunities to further improve the EITI in Ghana.

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References


EITI Website: www.eitransparency.org

Ghana EITI Website: www.geiti.gov.gh

Ghana Chamber of Mines Website: www.ghanachamberofmines.org

Notes

1 This article has been produced by David Nguyen-Thanh and Maya Schnell in the context of German Technical Cooperation (GTZ) Support to the EITI implementation in Ghana; GTZ is commissioned by the German Federal Ministry of Economic Cooperation and Development (BMZ). However, the views expressed therein do not necessarily reflect those of GTZ or BMZ. Any comments can be sent to the corresponding author: david.nguyen-thanh@gtz.de

2 Specifically, we would like to thank Chris Anderson from Newmont Ghana, Sulemanu Koney from the Ghana Chamber of Mines, Franklin Ashiadey from the Ministry of Finance and Economic Planning (MoFEP), Kwaku Boas-Ampomsem from BOAS & Associates, Amponsah Tawiah from the Minerals Commission, Steve Mantew from ISODEC, Dr. Gad Akwensivie from the Office of the Administrator of Stool Lands (OASL), Stefan Bauchowitz and Ruby Bentsi from DFID Ghana for their insights and helpful comments on earlier draft versions of this paper. All errors remain ours.

3 While private companies operate in the gold, bauxite and manganese sector, the diamond industry is dominated by a State-owned enterprise.

4 As of 2008, government agencies represented in the NSC include the Ministry of Finance and Economic Planning, the Ministry of Mines, Forestry and Lands, the Minerals Commission, the Internal Revenue Service (IRS) and the Office of the Administrator of Stool Lands (OASL). The industry is represented by the Chamber of Mines, while ISODEC (an umbrella organisation for about twenty regional CSOs) acts on behalf of civil society.

5 The first audit report was published in 2007 and covers January to June 2004, with July to December 2004 being covered by a second report published later in the same year. By April 2008, the third audit report was released, analysing data for January to December 2005.

6 www.geiti.gov.gh

7 Companies participating in the audits for the years 2004 and 2005 provided 99% of all mining revenues to the government of Ghana – a contribution that we believe fulfills the criteria of complete industry participation.

8 In Ghana, mineral royalties are distributed as follows: 80% go to the Consolidated Fund (the term that describes the general State account), 10% are dedicated to the Minerals Development Fund, which will assist the development of the mining sector in Ghana, 1% goes to the Administrator of Stool Lands for administrative purposes, and the remaining 9% of royalties are allocated to the local districts that provide the minerals.

9 The practice of extending the EITI to the sub-national level reflects the Ghanaian understanding that local districts act as independent “agents of development” whose revenue receipt and utilisation should be transparent.

10 The two districts covered by the report are the Obuasi Municipal Assembly and the Wassa West District Assembly.

11 A more general question – although not directly related to the mandate of the EITI – is what broader effect the EITI has for improving good governance and accountability in the country. That is, how does improved transparency affect the utilisation of revenues? In Ghana, the implementation of the EITI draws a mixed picture. On the one hand, civil society is actively involved in reporting on EITI issues, which has significantly increased accountability. On the other hand, however, legislators – who could use the released data for influencing revenue spending and to press for improved government accountability – are not involved much in the EITI process. While most MPs lack basic information on the country’s participation in the Initiative, the legislature is also not represented in the National Steering Committee (NSC) that governs the Initiative’s implementation.
Summary
This case study shows how a large metals and mining company is addressing the risks of operating in a traditionally less-transparent, low-capacity and post-conflict country. Liberia is a country where multinational corporations could be viewed suspiciously as having just one motive: taking away natural resources while providing little or no benefits to its citizens.

For Liberia, a country ravaged by 14 years of civil war, attracting responsible foreign investment is vital for urgent reconstruction requirements and long-term development. However, the ardent desire for foreign investment is not considered without caution. The recent history of Liberia shows that far from benefiting Liberians, the activities of many foreign companies have worsened already poor living conditions and ultimately contributed to the recent war that further ravaged the nation. It was against this backdrop that ArcelorMittal entered the Liberian extractive sector.

Hence, for ArcelorMittal, the first major foreign investor in country since the war, its iron ore mining project represents more than an important part of its business strategy. It is an opportunity to showcase how responsible and transparent business practices can benefit both the company and the host country, bringing about mutual understanding and trust, which in turn can increase stability in the investment climate.

Background
The Republic of Liberia, a country on the west coast of Africa, is home to around 3.5 million people. Rich in iron ore, gold, diamonds and forestry resources, but devastated by two civil wars between 1989 and 2003, the country’s economy and infrastructure had been destroyed. Instead of contributing to Liberia’s development, past revenues from the extractive sector merely fuelled the conflict. Post-war, nearly 85% of its citizens are unemployed and 75% have to try to survive on less than US$1 per day.

ArcelorMittal is the world’s leading steel company, with over 320,000 employees in more than 60 countries, and an industrial presence in 28 countries spanning four continents. It is the leader in all major global steel markets, including automotive, construction, and household appliances, with leading research and development (R&D) and technology, as well as sizeable captive supplies of raw materials and a large distribution network.

In December 2006, the government of Liberia and ArcelorMittal announced the successful conclusion of the review of a mining development agreement (MDA) signed in 2005. The landmark agreement will bring the country investment of over US$1.5 billion. The Liberian project is hugely important to ArcelorMittal, playing a significant part in the Group’s upstream mining growth strategy. ArcelorMittal has targeted this project to produce over 15 million tonnes of iron ore a year. The overall construction phase is expected to take four years to get to full capacity, but a programme is in place to begin iron ore shipments during 2011.

The project consists of reopening mines in Nimba County, rehabilitating an abandoned 300-kilometre railway and developing the Buchanan port for shipping traffic. In addition, the entire infrastructure at the townships at Yekepa and...
peacekeeping force kept a fragile peace. Infrastructural decline and a 15,000-strong UN peacekeeping force kept a fragile peace. Infrastructure was in decline and a 15,000-strong UN peacekeeping force kept a fragile peace. Furthermore, the country’s road and other basic infrastructure was in decline and a 15,000-strong UN peacekeeping force kept a fragile peace.

Liberia is blessed with abundant mineral, fishery and forest resources that have helped fuel the civil conflict. As the country slowly transitions from war to stability and development, the government of Liberia and its international partners are keen to ensure that the use of these natural resources provides direct and tangible benefits to the 3.5 million residents of Liberia. Initiatives and programmes such as the Liberia Extractive Industries Transparency Initiative are key tools in this regard.

ArcelorMittal’s role and ambition in Liberia

The ArcelorMittal US$1.5 billion iron ore project in Liberia could not have come at a better time for a country striving to attract foreign investment to help jumpstart an economy devastated by fourteen years of civil conflict. Since the start of operations in 2006, ArcelorMittal Liberia has provided nearly 500 jobs directly, and, through contractors, provided employment for 2,100 Liberians. There has been significant progress in rebuilding the mining and social infrastructure in the areas of operations. After the rehabilitation of the railroad shipment of the first consignment of iron ore is expected to start afterwards in 2011.

Throughout ArcelorMittal’s investment in Liberia, there has been an aim to demonstrate leadership in contributing to the socioeconomic development of the country. The MDA obliges ArcelorMittal to provide more than US$75 million to support socioeconomic development in Liberia during the lifetime of the investment. This is unprecedented in the industrial history of Liberia, and it will lead to significant improvements in the communities where the company is operating.

ArcelorMittal Liberia has also reopened two hospitals in Yekepa and Buchanan to provide medical care to its employees and local residents. With a staff of highly qualified teachers and administrators, the schools in Yekepa provide free education to the children of ArcelorMittal Liberia employees and subsidised education to the residents of surrounding communities.

The company also has one of the most dynamic community engagement programmes in the country. Through proactive engagement, using international best practices, the company is engaging with local communities that are directly or indirectly affected by our operations.

Clearly ArcelorMittal Liberia has recognised that developing excellent relations and dialogue with the government of Liberia is crucial to the success of the project. Over the past two years a relationship has been built based on the shared mutual goal of economic development powered by a thriving private sector. Through this collaboration, the government of Liberia has established a national coordinating body (Dedicated Funds Committee) to oversee the management of the annual US$3 million county social development fund. At the county level, the government established Development Management Committees in Nimba, Bong and Grand Bassa to supervise the implementation of projects and programmes funded by the development fund.

ArcelorMittal’s philosophy and values recognise that its position in the steel industry brings unique responsibilities, with a goal to provide the leadership that will transform tomorrow’s steel industry. The company has a clear vision of the future, underpinned by a consistent set of values: sustainability, quality and leadership. For the Liberia project, leadership constitutes responsible mining policies, community support, and transparency and openness.

Extractives Industries Transparency Initiative in Liberia (LEITI) and ArcelorMittal Liberia

The government of Liberia is committed to developing an extractives industries sector that is grounded in transparency and accountability in both the allocation and utilisation of its natural resources. Only by doing this can the country be sure of maximising the development impact of the sector, and ensuring that mineral revenues are not used for destructive purposes – which they have been in the past. The mineral wealth of Liberia must be used for the development of all, not for the personal benefit of a few. With this philosophy in mind the government...
of Liberia has committed to implementing the EITI, viewing it as an important foundation for achieving transparency and accountability in the sector.

Consistent with the international EITI criteria, the main objectives of the LEITI programme are to:

1. ensure that the awarding of resource rights is undertaken transparently, and in the interests of the Liberian people;
2. regularly publish all payments made to all levels of the government from resource companies, and detail all revenues received;
3. ensure that the payment and revenue information disclosed is the subject of a credible, independent audit, applying international audit standards.

The cornerstone of the LEITI is a commitment to developing the approach in close collaboration with partners from civil society and the private sector. Hence, to oversee the development of the Initiative, a multi-stakeholder working group has been established. The working group is chaired by the Minister of Finance of Liberia and the Minister of Lands, Mines and Energy. In addition to ArcelorMittal Liberia, other members of the group include the Liberia Timbers Association, the Miners and Brokers Association, and a number of civil society organisations including the Publish What You Pay Liberia Coalition, the National Council of Chiefs and Traditional Leaders, and the Liberia National Bar Association.

ArcelorMittal Liberia’s philosophy mirrors that of the LEITI and is consistent with the ArcelorMittal Group’s commitment to transparent governance practices. For the company the LEITI is seen as a key forum for ensuring accountability and transparency in the utilisation of revenues and other proceeds generated from Liberia’s natural resources. As a responsible investor, ArcelorMittal is committed to cooperate in whatever manner possible to ensure that the LEITI achieves its objectives. In line with these commitments, the company has participated in the launch, meetings, seminars and other public forums organised by the LEITI.

The company provides information where required by the LEITI. Most recently, in October 2008, company representatives attended LEITI stakeholder meetings in the capital, Monrovia, and community consultation meetings in Grand Bassa County. The meeting was intended to introduce community leaders and local authorities to the objectives, mandate and programmes of the LEITI. The outreach efforts also targeted elders, chiefs, youth and women’s groups, and other mining and logging companies. One outcome and recommendation from the stakeholder exercise, endorsed by ArcelorMittal Liberia, is to hold regular “town hall” meetings to further improve dialogue. Relevant individuals from the company including Community Liaison Officers (CLOs) will be key to improving this process.

To ArcelorMittal Liberia the principles of the EITI reflect more than just revenue transparency; it is about effective stakeholder dialogue and responsible business practices. For this reason the EITI has been seen as symptomatic of the wider approach to corporate responsibility within the company in Liberia and across all global operations since the ArcelorMittal Group was formed in 2006. As such, a Community Engagement Standard is now in place which defines minimum community engagement requirements that all major subsidiaries – including ArcelorMittal Liberia – shall meet. The standard is reinforced through a Community Engagement manual, currently being rolled out across the Group. The guidance explains the why and how of engagement, as well as sharing good experiences and ideas gleaned from work already done in this area in other locations.

Other processes are in place in Liberia. For example, the management of ArcelorMittal Liberia encourages employees to report fraud, corruption, theft, and other misconduct and violations of laws and regulations via the company’s Fraud hotline, to enable an ethical working environment.

**Next steps and expectations**

Following the necessary preparatory works, including stakeholder engagement and community outreach, the LEITI is due to publish its first EITI Report in early February 2009. An external organisation administrator has been appointed as the LEITI Administrator, and has begun work on the inaugural report.

ArcelorMittal has received the necessary templates along with instructions for reporting all payments made to all agencies and officials of the government of Liberia during the period 1 July 2007 up to and including 30 June 2008. ArcelorMittal is committed to completing and submitting its payment reports by the designated deadline of 7 January 2009, and thereafter to remain engaged with the LEITI and the Administrator during the reconciliation process.

Achieving the LEITI’s objective of good resource governance requires more than just the disclosure and publication of payment and revenue data: it entails the wide dissemination and discussion of the reports. Key to the success of the Initiative is therefore a deliberative process of discussion, disclosure and evaluation of payment and revenue data.

Moving forward, ArcelorMittal plans to enhance its participation in and contribution to the implementation of the LEITI. The enhanced contribution and participation will include:

- sustained engagement with other stakeholders, both in terms of effective and regular participation in the LEITI steering group and interaction with other companies in the mining sector;
- initiating discussions with other companies on the formation of a corporate responsibility forum that will share best practices on corporate responsibility and engagement with many stakeholders. The main topics will include promoting the benefits of transparency and meaningful community engagement;
• in keeping with its business principles and code of conduct, the company will ensure that all transactions with national authorities and community leaders are transparent and consistent with the intent and spirit of the LEITI;
• supporting LEITI implementation, including, if requested, contributing to the budget of the LEITI or any of its core activities.

Arcelor and Mittal Steel merged in 2006 to become the world’s largest steel company. In 2007, the newly merged ArcelorMittal launched its new brand, “transforming tomorrow”, developed to promote consistently high standards across the business. As one of the world’s largest companies its position in the industry brings unique responsibilities. Nowhere is this more relevant than in Liberia. By leading by example, ArcelorMittal can promote responsible and transparent operations in a post-conflict country, enhancing good resource governance which will ultimately benefit the company, the host government, and the communities and citizens of Liberia.

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Notes
1 This article has been produced by ArcelorMittal. The lead authors are Steve John (ArcelorMittal) and Marcus Weh (ArcelorMittal Liberia). The authors are extremely grateful to T. Negbalee Warner, Head of Secretariat for the LEITI, for his advice, comments and contributions. Any comments on this article can be directed to steve.john@arcelormittal.com and marcus.weh@arcelormittal.com.
Introduction
This case study focuses on the role civil society in Mongolia has played in influencing mining policies and adopting and advancing the Extractive Industries Transparency Initiative. While the EITI is only one of several initiatives to promote transparency and build dialogue in the mining sector, its multi-stakeholder approach and focus on concrete deliverables make it distinct from other initiatives and gives civil society a very clear and substantive role to influence mining sector development. But challenges remain to make civil society participation more effective, including building its capacity, ensuring more formal participation, providing financial support and requiring accountability and independence.

Background
Mongolia is a vast landlocked country in Central Asia, bordering with Russia on the north and China on the south. It has made a rapid transition from a Soviet satellite, centrally planned economy to a growing democracy and a market-driven economy over the past 18 years. GDP per capita has almost tripled from 2002-2007, reaching about US$1,500 in 2007. Many challenges remain, however, in strengthening the newly established democratic and market institutions. Despite a healthy 9% average growth of the economy over the past four years, 32% of Mongolia’s population of 2.7 million people officially remain mired in poverty. The country is ranked 114th in the world (as of 2005) by the UNDP human development index. Traditionally, the country’s economy has been based on agriculture dominated by pasture-based animal husbandry. However, in recent years mining has become the centrepiece of the economy, forcing the government, business community and ordinary people to adjust their preferences and lifestyles in line with the realities of a resource-rich state.

One such reality has been a growing divide in society on the role of mining in the economy and society as a whole, in light of the visible damage mining is causing to environment, settlement patterns and perceived government behaviour. Most of the criticisms surrounding the government’s handling of the sector and mining companies’ actions come from opposition political parties, civil society organisations, local citizens affected by mining, and ordinary citizens worried about the negative effects of mining.

The emergence of civil society in Mongolia
Transition to a democratic state was partly characterised by the emergence of a dynamic civil society in Mongolia in 1990s. Traditionally government-supported, communist-oriented, non-governmental organisations ceded the stage to a large number of interest groups with both professional and social agendas. However, the initial emergence of civil society groups went through a filtration process when financing, organisational and political limitations forced many organisations to stop their activities. Overall, a core of strong civil society groups passed the test of time and now play an active role in social life and political processes in the country. The government has throughout civil society’s evolution also learned more about how to deal with the civil society sector, and employs a cooperative rather than confrontational approach, with mixed success.
One of the indications of the growth of civil society activity over the past two decades is the increased number of registered non-governmental organisations (NGOs), which grew from 1,075 in 1998 to over 6,000 in 2007; the number of people employed in the sector also grew steadily, from only about 2,000 people to about 15,000, as shown in Figure 1. Although many of these registered organisations are inactive, or operate non-permanently, this growth is in itself quite significant. Of these organisations, less than 200 are thought to be permanently active and represent “true” civil society, as opposed to groups representing industry, political, and governmental interests.

Over 70% of the registered NGOs operate in the capital city, Ulaanbaatar. NGOs are active in the areas of gender and family, child and youth development, education and science, culture, health, human rights, the environment, and many others.

Recent years saw a rapid rise in environmental- and mining-related activism among civil society organisations. While the growing emphasis on this issue can partially be attributed to political events such as elections and the desire of politicians to use mining-related issues as a centrepiece of their agendas, the main reason for this rise in activism was a sense that the mining sector was being poorly managed and was not benefiting the Mongolian society as a whole.

The rise of civil society activism around mining
Like many countries trying to revive their economy and lure foreign investors in the early 1990s, Mongolia adopted a very competitive tax and foreign investment regime, especially in mining, and formally supported the industry through a so-called ‘Gold’ programme. This resulted in a large inflow of foreign and domestic investments in the mining sector, both for new exploration and exploitation of discoveries made in the Soviet era. Gold production soared, and so did the production of other minerals such as coal, fluor spar and iron ore, to name a few.

Overall, Mongolia’s mining sector grew from 10.1% of GDP in 2002 to about 30% in 2007, while the traditionally largest sector of the economy, agriculture, remained stable at about 20% of GDP.

As mining became the dominant industry and commodity prices began to rise, issues relating to economic benefits and inequality began to be raised by the public. It became evident that poverty, including in mining regions, was not subsiding. Citizens and policymakers began to ask whether Mongolia was getting its fair share from mining operations, either through taxation, royalties, or government dividends in mining enterprises. There was particular interest in one major gold-mining contract related to a Canadian mining company, Boroo Gold, according to which Mongolia received only a small share of the total proceeds from the mine. The Mongolian public perceived a lack of transparency around the signing and implementing of this contract to be the main reason behind the government’s signing what they felt was a bad deal. Civil society groups emerged demanding transparency about contracts and full disclosure of what Mongolia receives in compensation for its extractive resources.

Another major mining issue raised by Mongolian civil society was the environmental destruction which mining operations can cause. Companies neglected environmental standards, and fared poorly on rehabilitation. Use of poor technology and obsolete equipment, the tendency of placer gold mines to be located in river basins, the use of river water for gold extraction and putting waste into rivers resulted in numerous reported cases of pollution and some rivers drying up. This, combined with the low regulatory enforcement capacity of the government, led to environmental problems which started affecting rural livestock herders as pastures and water resources became scarce. Many civil society groups, especially at the grassroots level, emerged in reaction to environmental concerns around mining, and ultimately some of these groups went beyond environmental issues in their quest to bring about more responsible mining practices.

Figure 1. The number of registered NGOs in Mongolia, official statistics

![Graph showing the number of NGOs and employees over time from 1998 to 2006. The x-axis represents the years from 1998 to 2006, and the y-axis represents the number of NGOs and employees. The graph shows a significant increase in the number of NGOs and employees over the years.]
Additional issues that prompted civil society activism on mining issues include:

• an interest in more transparent and equitable schemes for sharing revenues from mining between central government and the provinces;
• corrupt behaviour of local government administrations in their relationships with mining companies;
• low levels of job creation and local content/hiring by mining industry; and
• large inflows of people to mining regions from elsewhere in the country, including informal artisanal miners, and related increased burdens on the social infrastructure of mining areas.

In this light, the initial rapid emergence of different civil society groups working on mining issues received wide support from the public, and campaigns included public demonstrations and the use of media outlets for voicing their concerns. This activism became more organised over time and evolved into more sophisticated policy discussions and advocacy efforts on the part of civil society. The government and the industry in turn had to come up with strategies to interact and build dialogue with these new stakeholders. A responsible mining initiative was conceived to promote high standards and multi-stakeholder discourse: the so-called “river movements”, which are grassroots environmental movements, joined forces and organised the Land of My Mongolia coalition, to advocate for better environmental standards and practices. In 2006, the government, parliament and industry organised multi-stakeholder discussions and hearings before Mongolia’s new Minerals Law was adopted. This was the first time discussions of this sort were organised around the mining sector, and came about at the height of civil society activism on mining issues. In this context, Mongolia’s adoption of the EITI was a natural next step, given the high demand from the public for greater mining transparency, and the interest of government, parliament and industry in more formally engaging citizens in mining policy formulation and oversight.

The EITI and civil society

The Mongolian government endorsed the EITI in early 2006, following significant advocacy efforts by some civil society groups, headed by Open Society Forum. At the same time, a multi-stakeholder National Council to organise and oversee EITI implementation in Mongolia was established, and three civil society representatives were included. In August 2006, 16 non-governmental organisations decided to establish a formal civil society coalition, Publish What You Pay and Earn (PWYP Mongolia), to coordinate their efforts in participating in and advancing the EITI. The PWYP Mongolia coalition received invaluable support and advice from the international PWYP and its regional networks, as well as through Revenue Watch Institute and Open Society Institute partners. Especially valuable were the learning, sharing and capacity-building experiences with civil society groups in other countries, as well as the access to first-class experts to share lessons learned. Five representatives of this coalition were included in the multi-stakeholder working group established to support the EITI National Council. It is notable that the EITI Working Group includes two other civil society members who are not in the PWYP coalition.

Arguably, civil society was largely responsible for the government endorsing the EITI in Mongolia, complemented by the efforts of the World Bank and others. The Open Society Forum discussed the possibility of Mongolia joining the EITI with several parliamentarians, and arranged visits for the heads of parliament standing committees on fiscal and economic policies to visit Kyrgyzstan, one of the early endorsers of the EITI, to learn from their experience. These two standing committees then organised a joint session in which they recommended that the government consider endorsing the initiative. This approach by civil society was motivated by the fact that the parliament traditionally has a strong influence on the executive branch of the government in Mongolia. Support by the parliament was especially important, in that they would later include a clause in Minerals Law, as demanded by certain civil society groups, which requires mining companies to publish their financial payments to the government publically. This has proved vital for civil society in its arguments with the industry and the government to implement the EITI and adopt disaggregated reporting.

Through National Council participation, and especially effective participation in the Working Group, civil society was able to influence most of the critical issues in implementing the EITI. For instance, the coalition received draft templates for EITI reporting, and successfully argued for the inclusion of all effective taxes, payments and fees that companies pay to the government, and for reporting on all donations and grants to central and local governments, which are often a subject for alleged corruption and non-transparent use. Even VAT payments and reimbursements were included in the initial templates.

The PWYP Mongolia coalition paid special attention to promoting the EITI to the general public, especially in mining regions. Even before the first official EITI report was produced, the civil society coalition organised a series of multi-stakeholder events in major mining provinces, in effect launching the EITI during these events, as companies operating in the region, and local governments, reported their financial payments and receipts. Largely focusing on the EITI, these events also allowed participants to highlight issues going beyond the EITI, such as contract and licensing transparency, effective use of mining revenues, and even environmental issues. The coalition also used the media to promote EITI principles in general and bring the public’s attention to certain controversial issues.

The first EITI Mongolia report, produced in January 2008, provided civil society with the opportunity to engage in a
dialogue with the government and companies over substantive issues in the mining sector. The report identified important shortcomings, such as gaps in reporting and communications between different levels of government and different government agencies, and a large number of payments unrecorded in government books. The report also provided a general sense of what mining companies contribute to the economic and social development of the country. PWYP coalition members discussed these results with the local communities and general public, and also demanded further action on investigating and explaining the reasons for the gaps in the government and company reports. In response, the National Council turned to the National Audit Office to audit the report in more detail. In short, the report provides a variety of opportunities for civil society to engage in constructive dialogue and analytical work, and push for specific changes in policies governing the mining sector.

The future of civil society activism on mining and the EITI in Mongolia

Going forward, the issue of how civil society engages in the EITI in Mongolia is of key importance. At present there are questions about whether the national PWYP coalition truly represents civil society, and whether there is room for other civil society actors to meaningfully engage in the EITI. This is especially important, given the large number of civil society organisations focusing on different mining issues, and also that there are competing international agencies and organisations supporting civil society activities relating to mining. The obvious example is the emergence of the Responsible Mining Initiative, which also employs a multi-stakeholder approach and focuses on the principles of transparency in the sector, including licensing, contracting and revenue transparency – the initiative is supported by the Asia Foundation, a significant international non-governmental organisation active in Mongolia. Although it shares the objectives and principles of the EITI, the Responsible Mining Initiative does not make the EITI its focus, or mention it in its documents. At the same time, the PWYP coalition is the only one represented on the EITI National Council, so other civil society groups may feel disenfranchised in terms of the EITI. In that sense, both the government and the PWYP coalition will need to ensure that other civil society groups feel welcome to participate in the EITI, given the abundance of civil society engagement on mining issues and various related initiatives.

In a recent public opinion survey, conducted in Ulaanbaatar City, on the role civil society organisations play in the mining sector, 53% of the respondents supported the engagement of civil society in the mining sector issues, while another 37% would support it depending on the issue on the agenda. Reflecting upon their own engagement, one quarter of civil society mining activists think their engagement has had a positive impact, while another quarter considers it negative, and another quarter is undecided (the fourth quarter had no opinion). Opposition likely comes from the fact that some civil society groups employed certain confrontational methods in advancing their agenda – demonstrations, non-substantiated accusations, etc. – that have not sat well with many peoples.

On specific ways for civil society to engage in mining issues, only 6% support demonstrations, and only about 10% support any litigation actions against mining companies or the government through the court system. About half of those questioned would support more constructive ways of engagement, such as conducting research, preparing policy recommendations for the government, monitoring government actions, distributing information to citizens and collaboration with the government. Of those surveyed, 80% believe that the government is most responsible for delays in investments in mining projects in recent years (as opposed to civil society); however, about 34% think that civil society organisations have also contributed to investment delays due to outright opposition and unconstructive engagement.

While these results are from a survey that considered the involvement of civil society in mining issues broadly, the EITI’s constructive multi-stakeholder approach appears to be squarely in line with public preferences.

Going beyond the EITI

There are important mining-related areas where civil society in Mongolia would like to achieve greater transparency and openness. One area that has been a subject of much controversy is the licensing stage in the mining value chain. Due to the very liberal mining regime established in late 1990s, Mongolia at some point licensed about 42% of its territory, either for exploration or mining activities. Currently, about 5,000 licenses are held by companies from around the world. Mongolia’s proximity to China, the main market for its commodities, and the abundance of already discovered natural resources, makes Mongolia an attractive destination for mining investments. Despite some improvements, the licensing process remains non-transparent, and the selling and buying of licenses takes place without government or public control, creating suspicions of corruption.

Another area where civil society is interested in seeing more transparency is in stability and investment agreements over the use of major mining deposits. These agreements are especially important for government revenues and in terms of the public having some sense that Mongolia is getting its fair share of the wealth derived from mining activities. Many Mongolian mining activists believe these contracts should be made public. Some civil society groups, including the PWYP coalition, are currently trying to monitor licensing movements and advocate for contract transparency. Civil society would like to play a meaningful role even before licenses are issued or contracts are signed, which is their main challenge in Mongolia today.
How revenues received from mining are used is also under increasing scrutiny by civil society, as governments tend to use large windfalls for their political aspirations, leaving serious questions about the efficiency and stability of expenditure programmes. At the same time, inter-governmental revenue distribution – between different levels of government and between mining and non-mining regions and the central government – is emerging as a significant issue as mining revenues increase. Civil society sees a need for engagement here, as certain mining provinces will have significant revenues to spend while their capacity, planning, and transparency practices remain limited. Additionally, non-mining regions are at risk of lagging behind in development. Budget expenditure issues, and monitoring of revenue allocations and expenditures at the sub-national level, pose new challenges for civil society, in terms of capacity, skills, resources and a legal environment for meaningful engagement.

It remains to be seen in Mongolia whether these issues will be addressed under the current EITI structure, taking advantage of its multi-stakeholder approach, or whether other forms of oversight and reporting mechanisms will be created to address concerns in other areas of Mongolia’s extractive value chain.

Lessons learned
Civil society engagement in the EITI has been especially productive, as the way the EITI is set up provides an opportunity for equal participation from industry and government representatives, with civil society as a major driving force behind the whole initiative. Many issues and challenges have been highlighted during the EITI process, and the following are a few of the most important lessons learned for civil society from implementing the EITI in Mongolia.

Are there limits to coalition-building? Mongolian civil society is dynamic and diverse, and employs different methods to achieve its objectives. The PWYP coalition was especially careful in having its message and EITI engagement coordinated, so that certain groups do not ‘free-ride’, and others do not abuse the coalition and its name for their own organisation’s purposes. Yet other important groups with related agendas remain outside the EITI fold, and it remains to be seen whether working together is possible and preferable in advancing the mining transparency and accountability agenda in Mongolia.

Can civil society outside the coalition get involved in the EITI, either through joining the coalition or independently? Trying to include every civil society in the EITI process is simply not feasible. On the other hand, unless the coalition is open to everybody, and its management is transparent and dynamic, other civil society groups and stakeholders will not accept the coalition as true representatives of civil society. Especially with mining, there are often a large number of environmental, social and human rights interest groups that may not be part of revenue transparency coalitions but have a stake in the EITI.

It can be a good idea to have doors open for non-coalition civil society actors to EITI structures such as the National Council and Working Group.

Is there a legal basis to support the EITI? Working with legislature, Mongolian civil society has achieved two objectives: the endorsement of the EITI by the government, and a legal basis for implementing the EITI in the form of a legal clause requiring transparency of payments. This is essential, especially in the mining sector, where there are many actors in the industry and not all companies would voluntarily join the EITI or agree to the level of disaggregation in EITI reports.

Is civil society considered a serious partner? There are many instances, such as commenting on templates, scoping the EITI, selecting audits, monitoring implementation, etc., where civil society has opportunities to engage in dialogue and decision-making, but it should be well prepared to add value to the process in a constructive manner. In that sense, civil society, which has less expertise in mining than government officials and industry representatives, needs to constantly improve its own capacity. Building international networks, with such organisations as PWYP International and major institutions like the Revenue Watch Institute, the Open Society Institute, the World Bank and the EITI International Secretariat, is crucial for this purpose.

Does the EITI matter at the grassroots level? Reaching mining communities in major mining regions has been an important issue for the PWYP coalition in Mongolia. At the end of the day, when local citizens – who experience the many negative effects of mining at first hand – see the benefits they receive from mining, they will issue their “social license” for the industry to operate, thus making the industry sustainable and responsible. Also, an EITI framework at the local level would provide an important mechanism to address issues such as licensing, contract transparency, and spending of mining revenues.

Is civil society a leader in the EITI process? Even though the EITI is a multi-stakeholder process, it is often civil society that drives the process. Civil society must always be an active driver if the EITI is to achieve meaningful results. Unless civil society is active and constructive, it will lose its momentum and credibility. Finally, the EITI provides an opportunity for civil society to engage as equal partners in policy issues going beyond the EITI. Many other issues, including non-mining issues, could be addressed using the EITI multi-stakeholder approach. This approach would bring a new way of governance in addressing public policy issues. That should remain a focus of civil society.

Dorjdarj Namkhajantsan is the Manager for Economic Policy Issues at the Open Society Forum in the Mongolian Foundation for Open Society.

Notes
Background

Gold mining by Newmont Minera Yanacocha (MY) in the Department of Cajamarca, northern Peru, has been going on since 1992. The vast open-pit mine has been extremely profitable, particularly in the last few years. To the delight of shareholders, between 2005 and 2006 pre-tax net income amounted to US$1.6 billion. Nonetheless, living standards were not improving for a significant proportion of the people living in the area. They remained poor, and felt they were getting little return from the significant wealth they saw being taken from their soil. Understandably, by 2004 feeling in Cajamarca was highly polarised in favour of and against the mine.

Revenues from the mine contribute significantly to the national government’s income, as it takes 30% of the mine’s profits. As of July 2001, when the Mining Canon Law was enacted, 50% of these tax revenues have been transferred to regional and local governments around the mine to be invested in local projects. The idea behind these transfers is straightforward: the local population should benefit from the presence and operation of a mine in their area.

There was no doubt that the operations of MY represented enormous potential for economic and social development at the local level. However, it was recognised early that this would not be achieved automatically and that the availability of financial resources in itself was not sufficient. Investment had to be undertaken by local governments with very weak administrative capacity, and this meant that in spite of receiving resources, the municipalities close to the mine were unable to take advantage of them. Much needed to be done to ensure that local governments were in a position to effectively turn those resources into works that could improve people’s lives.

Thus, while the availability of resources created a potentially significant opportunity to promote development, there was also the risk of resources being squandered. Contributing to this risk was the fact that civil society in a provincial setting was too weak to exercise effective social accountability. In Cajamarca there was very low awareness on the part of citizens of their rights to information and participation, let alone any effective exercising of such rights. There were extremely low levels of understanding on the part of the local population of the resources available and what was being done with them. All this meant that local government officials lacked adequate incentives to adopt the necessary reforms and ensure that their institutions quickly and effectively made use of resources to improve the delivery of public services to their constituents.

Recognising that the efforts to build capacity in local governments needed to be complemented with demand-driven governance initiatives, the International Finance Corporation (IFC), which holds a 5% stake in Yanacocha, initiated a pilot project which had two components. The first helped municipalities build investment capacity. The second helped civil society organisations (CSOs) to become more active and effective in monitoring mining revenue transfers and investment, engaging local governments, and demanding social accountability on the part of their local authorities.

The fact that some municipalities had been receiving, and will continue to receive, significant amounts of resources was seen as an important opportunity to bring the EITI to the municipal
government level, where decisions on how to use the resources are made. In Peru the right ingredients were in place: a Transparency Law, requiring public information to be made available; a Participatory Budgeting Law, allowing communities to identify the projects they need and to have them placed in the local investment budget; and the necessary legal grounding for Vigilance Committees to be established by community representatives (which, in general, had not been effective). The question was how best to take the spirit of the EITI to the local level.

Part of the answer, at least in the case of Peru and from the IFC’s perspective, was to place more weight on publicising the availability of resources and to help civil society establish conditions for them to be well spent, rather than simply verifying that the right amounts were being transferred. It is against this backdrop that the IFC decided to undertake a pilot project in Cajamarca. The project, know as MIM, started operating in October 2005 from an office at the National University in Cajamarca. The pilot stage was finalised in October 2007.

Present

The objective

The objective of the pilot was to establish and support the operation of a mechanism that could promote greater local government accountability and demand-driven improvements in local governance. This would lead to local governments improving their investment capacity and increasingly focusing investment on meeting the needs of local populations and delivering improved services.

The challenges and approach

From the outset it was recognised that the challenge required going beyond merely providing information. A new dynamic in the way local authorities and citizens relate needed to be introduced. To accomplish this, it was recognised that there was a need for an integrated approach which would: i) facilitate two-way information flows from local governments to citizens, and ii) promote a much needed local debate to generate a better understanding of what the resources meant and to discuss the best uses for such resources.

To tackle these challenges effectively, the pilot sought to ensure that: i) the initiative was independent of the polarising discussion around the mine, ii) neutral with respect to how municipalities were approached, avoiding a vigilante attitude that focused exclusively on identifying questionable issues, and iii) the role of facilitating information flows and greater understanding would stop short of engaging in advocacy, to avoid potential conflicts of interest.

The IFC designed a pilot project to help implement a CSO-based independent mechanism in Cajamarca which involved structuring an MIM that could effectively undertake three recurring actions to bridge the distance between municipal authorities and citizens. The three actions – to disseminate information, provide feedback, and stimulate a local debate – would combine to generate greater accountability. As the diagram below illustrates, the effort of disseminating municipal information helped to inform the population and provide authorities with a way to communicate what was being done with the resources. The feedback given to authorities was a way of providing citizens with a means to voice their opinions, while providing municipal authorities with community input into policy planning.

The MIM was structured so that it could:

1. undertake systematic monitoring of mining revenue flows and municipal investment;
2. inform the population in general as to the magnitude of resources received and how they were used;
3. provide systematic feedback to mayors as to how their management of investment was perceived by the population; and
4. promote an open debate so as to achieve greater understanding of the mining canon and municipal investments, and engage civil society and authorities in a discussion to identify different options and evaluate their merits.

The pilot MIM covered two municipalities, the provincial municipality of Cajamarca and the district municipality of Baños del Inca. This enabled comparisons that would act as references and promote healthy competition.

Towards social accountability

Promoting an informed local public debate and facilitating dialogue between civil society organisations and local government
What it did and how it worked
The pilot project, and how it operated, can be described in terms of five building blocks: the institutional arrangement, the treatment of information, the approach to disseminating information, the manner in which feedback was generated, and the promotion of debate.

Institutional arrangement
The institutional structure of the project comprised a Board composed of representatives of the participating local civil society institutions, a three-person technical team of young local professionals, and an Advisory Board composed of invited reputable personalities. The IFC provided support in the form of technical assistance for the organisation of the MIM, the development of the methodology, and guidance for the operation of the MIM. In recognition of its relationship to the EITI strategy being discussed in Peru at the time, an agreement with the Ministry of Energy and Mines (MEM) was signed and the initiative was recognised in Peru’s Action Plan for EITI implementation.

The project explored new ground in its selection of local partners to generate the credibility it needed. Local well-established civil society organisations with recognised technical capacity and an interest in enriching the debate (without an agenda-driven position for or against mining) were chosen. As a result, rather than NGOs, the project recruited key entities from academia (the public National University in Cajamarca and the private University Santiago Urelo), business associations (the Cajamarca Chamber of Commerce), and professional associations (architects, economists, sociologists and engineers).

Treatment of information
From the outset it was clear that there was a need to make it much easier for the local population to access information. It was also important to focus on the “right” information, recognising that more is not necessarily better, and on how to present it. While collecting and systematising canon transfers and municipal investment information is a necessary and demanding activity, it had to be guided by the answers to basic criteria questions: What are the questions on people’s minds? What are their areas of concern? What data is of interest and of use to them?

The approach adopted was based on a simple idea: to develop two “snapshots”, as a way of synthesising key information that could answer the most basic questions people had. The mining canon snapshot provided information that answered three questions: How much mining revenue did the municipality receive? How much did it use? And how much was left (or accumulated)? The investment snapshot focused on providing data to shed light on a similar set of basic questions: What is the size of the investment programme (in number of projects and total amount)? Where is the money going to (what are the revealed priorities in terms of sectors)? How quickly is investment progressing? The comparison of such snapshots over time allows people to get a sense of progress made and how things evolve.

Dissemination of information
The dissemination of information started in a somewhat traditional manner, with periodic printed bulletins and popular reports being distributed. The former, more demanding documents were aimed at a relatively sophisticated urban audience, while the latter, simpler material had a significantly wider distribution. The different options for putting material out, as well as the targeting of specific audiences, evolved over time. Media releases became important as a means of generating a more permanent presence and getting the media involved. Interested citizens could register to receive frequent updates on “findings”, and “education pills”, by email, the latter providing brief explanations of basic concepts. The development of a web page made all this information available on demand and brought the possibility of consulting certain municipal data. Finally, to reach rural audiences more effectively an agreement with a radio station to have a short weekly programme was made, and visits to communities were scheduled to coincide with meetings between leaders of communities of the same river basin.

Providing feedback
To bring authorities and citizens into a more productive dialogue, a mechanism for the population to express their questions and concerns was put in place which included different options for providing relevant and useful feedback to authorities. The main component was a grading system, in the manner of an aggregate citizens report card, whereby people assigned scores of their local authorities’ general performance and investment performance. The scores, based on representative surveys, were published biannually. In addition, the MIM’s publications provided discussion spaces for the populace and civil society organisations to express their opinions and pose questions to their mayors. As a way to promote dialogue, this evolved into a more structured practice that involves the MIM’s Technical Team collecting, systematising and presenting to municipalities the questions and concerns expressed by the local population.

Promotion of debate
Without a doubt the biggest challenge was to find ways of ensuring that the information being made available could be put to use. There was a clear need to find a way of shaking off public apathy and moving from an absence of open public discussion to an active attitude. With this aim the MIM organised workshops with mayors, thus engaging them directly in discussions while providing them with an opportunity to clarify and add relevant considerations for proper interpretation of the results of the monitoring effort. The results of the monitoring effort were also publicly presented to large audiences and the media. The media
was further engaged with training workshops, with the double objective of explaining the material being put out and generating greater interest on their part. That effort was complemented with the practice of publishing interviews of recognised citizens reacting to the MIM’s information, thus allowing different voices to be brought into the discussion.

Initial accomplishments
Between 2006 and mid-2007 the MIM pilot in Cajamarca had started to successfully increase civil society’s access to information on mining revenues (from 39% to 60%), the population’s understanding of mining royalties and their use (from 37% to 44%), and the population’s awareness of their right to request information on the use of mining royalties flows (from 46% to 59%). As a result, an open discussion on municipal investment had slowly started to take place. The mayors were aware they were being monitored, and consequently started to be more responsive to the populace at large.

In the course of its work the MIM pilot has successfully positioned itself as the local reference on municipal investment in several ways: i) it has been accepted by authorities, with mayors or their key staff actively participating in the MIM’s workshops, ii) media coverage has greatly increased, iii) it frequently receives requests for municipal investment information (from, among others, candidates for the mayoralcy during the previous electoral campaign), iv) Cajamarca’s Regional President asked the MIM to consider monitoring his administration, and v) the MIM’s list of citizens that register in its “Network of Informed Citizens” to receive periodic information has been growing. It also helped to shift the discussion from what the mine did to how best to take advantage of the public resources it generated.

Future
Given the mining tradition of the country and its proven potential, it is clear that mining is in Peru to stay, and, given current legislation, its contributions to sub-national budgets to remain significant. In 2007 income taxes collected from mining companies amounted to approximately US$3.44 billion, of which US$430 million was transferred to regional governments and US$1.29 billion to local or municipal governments. Clearly the need to strengthen sub-national governments as well as CSOs will remain a significant challenge and should receive a very high priority.9

The IFC has developed and is now implementing the “Strengthening Social Accountability to Improve the Impact of the Mining Canon” project in Peru (MIM Peru for short), which takes the Cajamarca pilot experience with civil society organisations to four additional regions that together with the Department of Cajamarca receive 80% of all mining revenue payments in Peru. The project is improving the methodology tested in the pilot by incorporating the lessons learned while developing standardised tools. The project is also promoting an institutional network that now integrates 28 local institutions from five MIMs covering 12 municipalities. Over time the new MIMs, which cover two municipalities each, are expected to grow as the Cajamarca MIM has grown (it now covers four municipalities). In recognition of the merits of the project, its innovative approach, and the potentially high impact it can have, three important donor agencies, the DFID, CIDA and USAID, expressed their support by joining the project as strategic partners. As this effort grows, the challenge will be to integrate it with other national and regional level initiatives and to move ahead with some of the ideas proposed for making the initiative sustainable over the long run.

Building on this experience, the IFC has started to work with four Comités de Regalías overseeing 11 municipalities in Colombia to help them adopt the methodology and lessons from Cajamarca. The IFC has now started to evaluate the extent to which this experience and methodology – together with the lessons from other demand-driven governance reform efforts of the WBG – might be applicable and could be brought to countries in Africa and Asia where extractive industry activity is significant and where an important share of resources is channelled back to sub-national levels.

Lessons
Taking the spirit of the EITI to the local level introduces new issues and requires new approaches. In the Cajamarca pilot the focus was shifted to how the money was being used and to generating conditions for a closer relationship between citizens and authorities. Many lessons have been learned which have been incorporated in the MIM Peru project in the form of practices. Some of these are mentioned below.

Lessons for improving the methodology
• Remaining on public agenda
  – It is essential to have a continuous presence so as to maintain interest. Rather than putting out information periodically, therefore, a continual flow of information should be generated. MIMs now disseminate “findings” on a weekly basis, in addition to other more elaborated materials, and offer information on demand via a web platform.
  – The need to innovate beyond traditional dissemination practices has proven particularly useful at the local level. Be open to exploring alternative means of disseminating information to get the message out.
• Providing focused (action-oriented) feedback to mayors
  – Periodically providing a general grading of municipal performance, as well as other survey information, is useful to mayors and brings them to attention. This general grading can be complemented with municipal service report cards providing more focused feedback that can identify, in a more actionable manner, investment needs.

• Promoting a culture of social accountability
  – Establish trust with municipal authorities and officials, making it clear that a two-way flow of information is in their interest.
  – Provide and publish a measure of social accountability reflecting the degree to which the population feels informed by authorities.

Lessons that contribute to success

• Select the right partners and building capacity
  – Work with local institutions that are sold on the idea and see it as a voluntary contribution, not those that seek to reap a benefit. Work on maintaining the commitment and enthusiasm of those involved.
  – Break down the idea of “promoting accountability” into smaller pieces: information processing, information dissemination, providing feedback to authorities, and generating debate. Identify the tasks involved in each of these, and the technical abilities needed to undertake them successfully. Develop and establish procedures for each piece, and put together Technical Teams according to the abilities required.

• MIM works best when there is a complementary effort to provide support to municipalities
  – Municipalities desperately need to improve their capacity. An effort to promote accountability and good use of resources will only go so far if municipalities do not have access to methodologies, advice, and other initiatives that can help them strengthen their investment capacity. In Peru the IFC has a sister project to provide municipalities with such resources.
  – Information is key, though sometimes it is not provided – not because of a desire to hide it but because it is not readily available.

• The importance of a national network
  – The sense of “not being alone” that comes with participation in a structured network of people fighting the same battle provides significant stimulus to those people involved in the project. A network also allows for sharing experiences and learning from each other, a great source of ideas and improvements.

• Benchmarking and competition
  – Ranking local government, based on how their performance is rated by their citizens, and publicising the results, is a powerful tool for generating a response.

Competition by comparison can go a long way in translating the message from civil society to authorities into action.

  – Similarly, performance comparisons, in terms of outputs and outcomes, across MIMs can work very well to identify good and bad practices and to motivate weak performers into being more effective.

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Notes

1 The Senior Operations Officer, IFC Office of Advisory Services in Latin America and the Caribbean, was the person in charge of the pilot project. The author is grateful to comments made by a reviewer. Any comments on this chapter can be sent to the author at fruizmier@ifc.org

2 Figure based on the mining canon reported by Yanacocha for the two years, representing 50% of income tax paid, which is 30% of pre-tax net income (http://www.yanacocha.com.pe/plantilla.asp?v_men=7&v_pla=1&v_tipo=M&id=M&idi=E).

3 These transfers have become generally known as mining canon.

4 With respect to investment, development planning, and project design, implementation was particularly weak. More important than verifying the exact amounts transferred under well-defined – albeit complex and often-changing – rules, was ensuring good use of the resources that were accumulating. An acronym for both Mecanismo Independiente de Monitoreo (Independent Monitoring Mechanism) and Mejorando la Inversión Municipal (Improving Municipal Investment).

5 The basic premise of the project was that, in order to be in a position to contribute, the population needed not only to be informed but also to understand the nature of the MC and of municipal investment, as well as the context in which decisions had to be made. It was further recognised that ordinary citizens also needed an incentive to make the necessary effort to go over the information and understand it. This incentive takes the form of the chance to voice an opinion that can be heard, can be taken into account, and, potentially, can help to induce changes that will improve government practices.

6 The two mayors of the municipalities being monitored assisted these workshops about half the time. When they could not attend they always sent a team headed by the municipal manager, which included managers of key areas.

7 While some assistance has been provided, it is clear that more is needed and various groups have lobbied the World Bank seeking bank involvement in Peru’s mining sector.

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Introduction
This chapter examines Cerrejón’s transparency initiatives in La Guajira, a province in the north of Colombia. Carbones del Cerrejón Ltd., owned by Anglo American, BHP Billiton and Xstrata, operates one of the largest open pit coal mines in the world. Its current coal production, 32 million tons, is sold in the international market and represents 6% of Colombia’s exports, 0.8% of national GDP and 51% of La Guajira’s GDP.1 A decade ago, amid the escalation of armed conflict, government and large extractive businesses became highly concerned with the transparent and effective use of oil and mining royalties by local provinces and municipalities. Local administrations had become a target of illegal armed groups intertwined with public corruption. Colombia was not a traditional resource-rich country, but the political economy of conflict called for stricter controls on royalties. The case identifies opportunities for businesses to promote transparency, through institution-building, information disclosure and citizen oversight. The issue of transparency is becoming increasingly relevant for Colombia, as the oil and mining sectors rapidly expand.

Background
In the 1990s, Colombia’s armed conflict escalated, reaching critical security problems in 2000-2002 when the peace negotiations between the Andrés Pastrana administration and the major left-wing guerrilla group, the Fuerzas Armadas Revolucionarias de Colombia (FARC), stalled and failed. Conflict had begun in the 1960s, with the emergence of several Marxist guerrilla organisations. Later on, extreme right-wing illegal armed groups, the so called paramilitary, mushroomed throughout the country to counterbalance guerrillas and make up for state weaknesses. The Colombian public was well aware that armed groups had used the illegal drug business and kidnapping to fund the war machine. Lesser known, however, was the alternative source of money and political control: oil and mining royalties paid by companies to the national government, the majority of which, according to legislation, were transferred to local provinces and municipalities for social and infrastructure investment.

It was Occidental Petroleum’s tragedy in the oil-rich province of Arauca that first raised awareness among Colombian authorities and paved the way for concerned extractive industry companies to do more about transparency and revenue management. For years, the Ejército de Liberación Nacional (ELN), the second largest guerrilla group in Colombia, had used coercion and co-option to tap into Arauca’s royalties, managed by provincial and municipal officials. They would rely on corrupt or sympathetic officials to inflate the real costs of contracts allocated to build schools, hospitals and roads, or threaten officials and contractors, asking for security payments in exchange for a “safe” operating environment. In 2001 the FARC and the ELN began competing over the royalties, which unleashed an unprecedented spate of attacks, 171 in one year, against the Caño Limón oil pipeline.2 The situation uncovered the nefarious links between extractives, corruption and armed groups that undermined the well-being of communities, the interests of extractive companies, and peace.3 Several extractive
multinationals exercised strong leadership by drawing the attention of the national government and encouraged immediate oversight and intervention. Subsequently, new initiatives were launched to protect local administrations. These were based on a key paradigm shift among oil and mining companies in Colombia: that the appropriate use of royalties by local authorities was in their interest. It became apparent that companies’ security and scope of action to maintain a social license to operate necessitated “going beyond the fence”. In the future, transparency and institution-building to strengthen the State, not replace it, would become a common feature of corporate social responsibility strategies in the industry.

Key features of the mining tax regime and implications for transparency
The mining and oil tax regimes in Colombia are different but have important similarities: both favour sub-national earnings in rural, less developed regions where resources are produced and transported. This approach was introduced by the 1991 Constitution, which sought, among other things, to deepen democracy by empowering sub-national administrations. Companies pay several taxes at the national and sub-national levels for various concepts (income, assets, use of vehicles, port security, environmental compensation, contributions to public institutions, import and export tariffs). In addition, they pay direct and indirect royalties. The former are disbursed to a national-level agency that transfers money to entitled provinces and municipalities. The latter go into national-level funds that invest in special development projects elsewhere or in the same resource-rich regions.

Current regulation stipulates that the royalties must be used to achieve basic social performance indicators related to health coverage, education, clean water supply and sewerage and drainage systems and to priority development projects approved by local administrations. Royalties are therefore the main mechanism through which local communities benefit from the exploitation of non-renewable natural resources. Extractive companies usually complement this contribution with social investment implemented either by Community or Public Affairs departments or, in the case of Colombia, through foundations. It is important to note that, given the percentages of royalties and taxes payable, the monies that companies allocate to social projects are considerably smaller than royalties. The bulk of the financial transfers from companies to the country and to the communities are the sub-national level royalties and taxes. This explains the strategic relevance of efficient and transparent local revenue management in Colombia.

The national government activates controls
As of 2002-2003, the national government activated three types of control measures on extractive revenue management by local provinces and municipalities:

- First, it opened disciplinary and penal investigations against public officials. These were carried out by special teams from the Procuraduría (in charge of inspecting the conduct of public servants), the Contraloría (National Comptroller’s Office in charge of inspecting public accounting) and the Fiscalía (the Attorney General’s Office).

- Second, it used the National Planning Department’s power to withhold the transfer of royalties to sub-national level agencies. Subsequently, this pressure mechanism was institutionalised and introduced clear rules for provinces and municipalities as well as the option to temporarily assign the responsibility of revenue management to an alternative body altogether in cases of extreme vulnerability to the action of illegal armed groups or repeated failures in the appropriate investment of the funds.5

- Third, it supported the creation of local transparency and accountability committees with the participation of extractive companies, national and provincial control agencies, local governors and mayors, and civil society, the so called Comités de Seguimiento y Evaluación a la Inversión de las Regalías.6

Business leadership was indispensable. It materialised in the form of awareness-raising within the extractive industry; encouraging cooperation among public agencies; lobbying to prevent investigations being obstructed by red tape; public political backing; information campaigns raising awareness about royalties and community rights; logistical assistance to State control agencies (transportation, computers, office space in remote operation zones) and to the Comités de Seguimiento.

Cerrejón’s transparency initiatives in La Guajira
Coal production in La Guajira began in 1984 with an association contract between the State-owned Carbocol and Intercon, an Exxon subsidiary. In 2000, Colombia sold Carbocol and in 2002 Exxon sold its part. The mine later merged with other four neighbouring operations to form Carbones del Cerrejón. The mining area and the exporting maritime port occupy 68,600 hectares, about 3.3% of land in La Guajira.

Compared to other regions in Colombia, La Guajira had less presence of guerrillas and paramilitaries. Nevertheless, it was not exempt from the problems of corruption and conflict that were visible elsewhere. As coal production increased and prices rose, Cerrejón became especially concerned with the issue of royalties: local authorities would receive greater funds and attract greedy illegal combatants and unscrupulous officials. In the 1990s, the mine produced on average 16 million tons per year and paid in total US$334 million in the form of various taxes, of which 50% alone were royalties to La Guajira. By 2005, the mine was producing 26 million tons and generating a similar amount of taxes for one single year. Moreover, data indicated that despite employment, company funded community projects, taxes and, above all, a steady stream
of direct royalties, La Guajira remained one of the poorest provinces in Colombia. Some stakeholders had begun to question Cerrejón’s corporate social responsibility, at times confusing royalties with company-funded programmes. In contrast, other members of the community had more trust in the company and requested it replace local public administrations in the management of these resources. Either way, public expectations were calling for greater, not less, business intervention.

Cerrejón’s transparency programmes have gone through three phases:

**Supporting grassroots accountability**

In 2002, the company began informing employees and the union of the amount of royalties paid in La Guajira. Surprised by the large flow of monies and the ongoing development challenges in La Guajira, a group of concerned employees, who also exercised community leadership, decided to form citizen oversight committees (veedurías). Cerrejón supported the idea and funded capacity-building workshops for community leaders.

**Lessons learned**

The impact of such committees was limited. According to one member, they lacked convening power and incentives to engage local public officials, politicians and control agencies as well as resources to travel inside the region, hold meetings, review relevant projects and widely disseminate information.

**Tripartite collaboration between business, public authorities and civil society**

In 2004, Cerrejón adopted the Comités de Seguimiento model, which was originally created to manage Arauca’s problem with oil resources and conflict. The committee functioned through a formal agreement with the Contraloría and Procuraduría offices at the national level and participation included the Governor, province council members, mayors and municipal council members, provincial-level control agencies, the provincial environmental control agency (Corpoguajira), community leaders and Cerrejón staff. It also featured a technical secretariat led by the local Chamber of Commerce and funded by the company.

**Lessons learned**

The results of this transparency exercise were mixed. In 2005, initiatives in the municipality of Hatonuevo were nominated by the Contraloría as a successful case. This model achieved results owing mainly to appropriate funding, the leadership of business and national-level agencies to convene public meetings and raise awareness, as well as to dialogue between citizens and relevant control agencies. The Committee and its civil society component detected irregularities in the allocation of monies to the indigenous reservation of Lomanto. The information led to the suspension of the mayor, and greater efforts to educate and empower the indigenous Wayuu communities entitled to royalties, and it added momentum to transparency efforts. However, the effect and legitimacy of the committee eventually waned. Political and personal interests, expressed through the presence of local public officials on the Committee, worked to decrease transparency efforts. Incentives to identify real problems diminished. In 2007, the Committee was dissolved.

**Boosting business leadership and quality oversight**

In 2007, Cerrejón, through a renewed corporate social responsibility strategy, intensified its involvement with regional actors in an effort to increase trust between the company and the communities in its operating areas. The broader strategy was based on the premise that fulfilling Colombian legal requirements was not enough: Cerrejón had to do “the maximum possible” and follow international best practice. After several consultations, in 2008, the company launched four foundations to assist La Guajira in solving its most pressing needs, such as access to water (as this is a desert zone), employment not dependent on coal, improvement of the socio-economic standards of the Wayuu indigenous community (almost half of La Guajira’s population) and improvement of local revenue spending of royalties through transparency and capacity-building of local governments and community members.

The Foundation for Institutional Strengthening of La Guajira is in charge of transparency programmes and operates with a lean yet high-powered structure. Its main activities have been to promote participatory public auditing through the Visible Audits and transparency pacts scheme institutionalised by the Colombian Vice-presidency’s anti-corruption office, and to provide numerous training opportunities to local authorities. The Contraloría, the National Planning Department (which today has an improved royalties unit) and Transparency for Colombia have been other key allies.

**Lessons learned and existing best practice**

The Foundation has facilitated initiatives that follow some of the main accountability elements of the past: business endorsement, multi-actor oversight committees, active civil society participation, engagement of public officials and politicians involved in revenue management and spending, cooperation with national-level control agencies and disclosure of paid royalties, funded projects and public contracting. However, it has introduced several changes to the strategy:

- **Strong public business leadership.** In the past, Cerrejón facilitated initiatives while keeping a low public profile. Today, its role is explicit, publicised and exercised by staff that devote their full time to the issue. Moreover, to guide
and provide political backing to its initiatives, the Foundation has a six-member board, including Cerrejón’s CEO and two highly reputed external members that have worked in the public sector.

- **High-level attention by the national government.** Activities have involved high-level government officials who have travelled frequently to La Guajira to attend meetings, speak at conferences and lead capacity-building seminars and workshops. This seems to have increased the political and legal costs of corruption and improved efficiency of local officials. Still, the degree of pressure on local administrations needs to be balanced with positive incentives to prevent bureaucratic and political paralysis as well as social tensions.

- **Greater expertise.** Oversight is based now on better technical expertise. The director of the Foundation is a former law school dean familiar with public spending regulation, and the staff includes a political scientist and a civil engineer to help detect problems in the construction of schools, public housing and health facilities, which make up an important portion of revenue spending. The Foundation focuses on such resources to act as the Technical Secretariat of the Visible Audits. Oversight has also drawn from government technical expertise on local public administration and development, especially by the National Planning Department, one of the leading technocratic bodies of the Colombian State. In addition, Cerrejón has established a working relationship with the Deutsche Gessellschaft fuer Technische Zusammenarbeit (GTZ) and is looking forward to expanded work by the World Bank.¹⁴

- **Focused social and fiscal control.** The Visible Audits sessions have focused on only a few, though key, emblematic projects worth US$26.5 million. These include a water pipeline across Chorreras, Barrancas and Hatonuevo; low-income housing and a park in Albania; and renovations of the Paulo VI School in Barrancas, the Alfonso López Pamarejo Public School in Uribia, and the Nuestra Señora del Carmen School in Hatonuevo. As a follow-up to the audits, there is ongoing close participatory monitoring until issues are resolved or projects are concluded.

- **Prevention through technical training.** Cerrejón has strengthened capacity-building to local public officials, which it funds and facilitates in collaboration with government agencies, experts, NGOs and foreign donors. The rationale of intense training is to enable corrective actions that can actually solve problems in revenue management projects. It is also meant to provide appropriate tools to local administrations, seeking a long-term impact on the quality of public social investment.

- **Wide civil society participation.** The Visible Audits have assembled between 150 and 400 people at a time, opening participation to a wider range of civil society actors. This favours transparency and reduces the possible effects of local clientelism.

- **Awareness-raising through the media.** Cerrejón has invited local and Bogotá-based journalists to write about royalties and the Visible Audits programme, maintaining momentum for transparency and increasing opportunities for stakeholders to better understand their rights.

**The road ahead**

**Institutionalising multi-stakeholder approaches to transparency**

As is shown through Cerrejón’s case, businesses have plenty of roles to play in the promotion of transparency. Private companies can and must lead or facilitate initiatives, given their skills and interests. However, they should not act on their own if the aim is to foster an enabling environment in which societies and businesses are sustainable. Collaboration with public institutions and civil society is thus indispensable. Good governance as related to revenue management in local administration ultimately requires institutionalised procedures, technical capacity, means to dissuade bad conduct through disciplinary and penal action (which presumes the existence of judicial institutions and control agencies) and, if there is a violent context, protection from criminals and illegal armed groups. Civil society, be it through community leaders or NGOs, has a special ability to monitor the conduct of public officials through a deep knowledge of local dynamics and political legitimacy.

Collaboration, however, is not always easy, and actors need to develop common understandings of each other’s unique contribution to the process. Challenges related to violent conflict, such as trust and security, also need to be addressed to foster multi-stakeholder interaction. NGOs with larger capacity and with experience on multi-stakeholder interaction could lead the way for those NGOs that view multinationals with scepticism and discard cooperation.

**International grounding**

The Colombian government has done robust work on the issue of royalties and transparency. This enabling context has allowed private sector extractive companies, such as Cerrejón, to innovate on ways to contribute to efficient revenue management. Globalisation, however, requires another layer of interaction and legitimacy, as global networks draw threads between small villages in the developing world, international markets and the political processes in the capitals of industrialised nations. Frameworks such as the EITI provide this international grounding.

- Adjustments to sub-national public management and revenue management procedures

Colombia has gone a long way in establishing a thoughtful framework for the investment of royalties. Still there are
ongoing debates, technical and political, suggesting reforms. Whatever these may be, adjustments should improve long-term development planning by local governments, find ways to counteract possible negative impacts derived from the volatility of commodity prices, diversify away from complete local economic dependence on natural resources, and improve the planning and auditing capacity of local administrations.

**Meaningful information**
National agencies involved in the collection and transfer of royalties disclose payments made by businesses. Most companies also do so and inform local communities regularly of accumulated and monthly royalties paid to local administrations. However, there is still much work ahead in widely disseminating information on the nature and amount of royalties, community and indigenous peoples’ rights with regard to their allocation, and showing figures in a way that makes sense to non-expert stakeholders.

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**ROYALTIES**
Cerrejón’s payments of royalties and compensations are regulated by different contracts that followed old legislation (Law 141, 1994). This regulation enabled the State, through the Ministry of Mines, to negotiate various types of agreements depending on the nation’s interests and to the proposals by foreign investors. Since Cerrejón is the merger of five different operations, the company’s payment of royalties is calculated according to five different formulas based, mainly, on the value of production quantities. Royalties range form 8.3% to 15% of production. New legislation was introduced in 2002 (Law 756, 2002), establishing blanket parameters for all contracts, making accounting and accountability easier.15

Once the royalties are paid, they are distributed as follows:

**Direct royalties**
- 42% for La Guajira province
- 32% for each producing municipality
- 10% for the port municipality (in this case, Uribia)

**Indirect royalties**
- 16% for the National Royalties Fund, managed by the National Planning Department

**Total royalties and compensations (in US million $)**
Notes
1 Fundación Cerrejón para el Fortalecimiento Institucional de La Guajira, “La contribución fiscal de Cerrejón a las finanzas públicas nacionales y territoriales 2008”, Bogotá, December 2008. According to Colombia’s Central Bank statistics, total exports of non-renewable resources represent 7.5% of GDP.


4 Law 756 of 2002 states that when basic social indicators have not been achieved, provinces must allocate 54% of royalties to projects aimed at reaching such goals, otherwise 90% can be invested in priority development projects of their choosing. Municipalities must follow the same procedure, only with a higher required investment percentage, 67.5%.


6 See details of current State control efforts and challenges in Amparo García, “Control a las regalías en tiempo real y con auditores visibles”, and John Albert Restrepo et al., “El control fiscal a las regalías”, in Economía Colombiana no. 324, 2008.


8 Cerrejón employs more than 10,800 people, of which 60% are from La Guajira.

9 Regalías y control ciudadano, internal document, Communications Division, Cerrejón, no date, possibly written in 2005.

10 One of the experts that provided training was the sociologist and university professor Alfredo Correa de Andreis, assassinated in 2004 by paramilitaries in Barranquilla. ‘Ordenó ‘Jorge 40’ el asesinato de Correa de Andreis’, in www.verdadabierta.com, September 11, 2008.

11 Interview with Cerrejón employee Iván Rodríguez, January 6, 2008.


13 The Visible Audit methodology is based on committing local administrations to publish investment plans and public contracting, gaining civil society access to mandatory auditing, national and local government participation in open accountability meetings with civil society and other agencies, and commitments by local governments to the design and implement corrective actions.

14 In September 2008, a mission by the World Bank visited Colombia to identify options for technical assistance in the EITI plus activities.

15 Exact formulas consider other factors. This is a simplified version of the payment scheme.
Introduction
This chapter looks at the experience of successfully assisting Indonesia in considering whether to join the EITI. Findings are that a long lead time and much patience are required to bring large states like Indonesia into the EITI. The fact that developed states are absent from the ranks of EITI Candidates makes the job of facilitators more difficult. However, enlisting the help of respected, effective, independent and reform-oriented figures makes the job of facilitators easier. In the case of Indonesia, mining firms have been the strong proponents of the EITI.

Background
Indonesia is the world’s most populous extractives-rich nation and the only country in the world characterised by the IMF as being both oil and gas-rich and minerals-rich.¹ The nation is endowed with some of the world’s largest copper, coal, nickel and tin reserves, and ranks among the world’s largest producers of these commodities. In recent years, mining has directly and indirectly accounted for 10% of Indonesia’s economic growth.

While Indonesia is consistently ranked among the top nations for its mineral and coal reserves and production, the regulatory environment of its mining sector is ranked among the world’s worst and no major new minerals investment has occurred in the past decade.² Since the fall of the Suharto government, the country’s rapid and all-encompassing decentralisation process has posed a range of challenges, especially in the mining sector. Growth in mining has been hindered by sub-optimal governance and a lack of clarity regarding legal mandates. The recent passage of a new mining law adds considerably to the climate of regulatory uncertainty.

The collection, redistribution and publication of accurate and timely revenue information also remains a challenge for civil servants. At the national level the collection of mining royalties is the responsibility of the Ministry of Energy and Mineral Resources, while the collection of mining taxes is the responsibility of the Ministry of Finance. Royalties collected by the former are then directly distributed back to local governments by the latter. Half of all royalties paid by coal firms to the central government are eligible to be redistributed back to the districts in which such coal is produced, but in practice the mechanism by which district governments can in theory avail themselves of these Coal Development Fees is not well understood. While representations of revenue sharing with provinces and districts are available on the Ministry of Finance’s website, the data is not available until after the budget cycle and, according to many local government officials, does not necessarily correspond to actual revenue transfers, creating distrust towards the national government.

On the other hand, the national government also distrusts resource-rich local governments. Many local governments have interpreted their new mandate after decentralisation to include the awarding of small mining licenses, and have issued an estimated 2,000 such licenses, spread across as many as 10,000 parcels of land, often within the boundaries of larger, previously existing, nationally authorised mining licenses. From a national perspective, some local mining licenses are illegal. The Ministry of Energy and Mineral Resources has not been able to collect revenues from most of these local firms, or even
obtain definitive information about who many are or where they are located.

Relationships between mining firms and the government are also often strained. A recent case of interest in terms of revenue transparency involves transfer-pricing by some large domestically owned coal companies. Their coal-mining subsidiaries tend to over-declare the cost of producing coal and “sell” that coal to their overseas marketing arms at artificially low prices. The overseas marketing arms then go on to sell the coal onto the world market at the real price. Through this artifice, some coal companies are able to capture the full world price for the coal they sell, while successfully pretending to be less profitable than they really are and short-changing the government on income taxes. Another matter worth noting concerns certain large coal producers who believe that the structure of their individual contracts of work entitles them to obtain value added tax (VAT) refunds, which the Ministry of Finance contests. As a result, these firms withhold royalty payments to government to compensate themselves for the unreimbursed VAT. The Ministry of Finance has responded by having international travel bans placed on the heads of many of the coal firms concerned. The matter remains unresolved.1

Civil society also has grievances concerning the transparency of revenues in the mining sector. Some civil society figures point to the fact that mining operations tend to cause negative social and environmental impacts, while at the same time most resource-rich districts have failed to improve public services or reduce poverty with the windfall revenues they receive from the sector. Although it remains macro-economically sound, Indonesia has not fared well in terms of development: its Human Development Index is only 0.728, ranking it 107th out of 175 countries; 122 million of Indonesia’s people (52.4% of the population) live on less than two dollars a day. Civil society believes that extractive industry revenue transparency could help improve this situation, especially by curbing corruption and improving accountability.

Much of the lack of trust between and/or among government, industry and civil society revolves around how extractive industry revenues are paid, collected and redistributed. At present, no single forum exists in Indonesia within which the extractive industries and the various agencies that regulate them can sit down to settle unresolved revenue issues. However, Indonesian stakeholders are beginning to understand that the Extractive Industries Transparency Initiative (EITI) could serve as such a forum.

EITI progress in Indonesia

Indonesia’s support of the idea of transparency of extractive industries revenues is long standing. In 2003, a deputy minister of Environment told a London conference that Indonesia “would like to do its utmost to implement” the EITI.4 The conversation regarding the EITI has also taken place in the midst of wider fiscal reform efforts in Indonesia. The IMF’s 2006 Report on the Observance of Standards and Codes (ROSC) for Indonesia praised the government of Indonesia for national reforms to improve transparency, such as the State Finance Law, the Treasury Law, and the State Audit Law. However, it also highlighted the lack of transparency in extractive industries’ revenues, and refers the government to the EITI as an option for reform.5 Because of advocacy from EITI board members, Indonesian and international civil society and the donor community, plus active support from some mining companies and the continuous work of an EITI representative based in Jakarta, Indonesia finally endorsed the EITI in late 2008. This was made possible through steadily increasing support for the EITI from most stakeholders.

Civil society advocacy

In mid-2007, board members of Transparency International Indonesia visited the Minister of Finance to discuss the EITI, and later reported that the Minister “supports the transparency initiative in the extractive industries sector.”6 The Minister of Energy and Mineral Resources also revealed in meetings that he was favourably inclined towards the EITI.7 When the EITI Chairman, Peter Eigen, met with President Yudhoyono in late 2007, the President insisted that his administration intended to be a bulwark against the country’s legacy of corruption.8 Finally, in November 2007, 43 NGOs from seven resource-rich Indonesian provinces came together to form the Publish What You Pay Indonesia coalition. Its declaration to the media announced that one of its main agendas was to promote the EITI in Indonesia. The coalition has continued to advocate for the EITI throughout 2008 and is engaging with a number of resource-rich local governments who have informally professed support for the EITI and are looking for ways to move forward.

Support from mining companies

In September 2007, the EITI together with the World Bank and the IFC sponsored a national oil, gas and mining investment climate discussion. The Indonesian Mining Association sent a speaker to the forum (while the Indonesian Petroleum Association declined to do so). The published proceedings of the forum argued that the EITI would improve the investment climate for the extractive industries as follows:

If Indonesia were to adopt EITI, and through that process it was made clear which types of taxes, royalties and production sharing are currently conveyed by firms to the government, this would contribute to a more predictable business environment, and information costs would be lowered for new investors. More new investment would take place.

The head of the Indonesian Mining Association has also written a personal note to his membership, explaining why he believes it is vital to the well-being of the mineral industry for Indonesia to join the EITI. A number of major companies such as Rio Tinto,
Newmont and Freeport have publicly supported the EITI. In fact, both Newmont and Freeport regularly report their payments to the government publicly on a quarterly basis.

**Developments within the Indonesian government**

The EITI, civil society and companies have intensively engaged with relevant government departments and ministries for the last two years, and real progress has been made. Important milestones include:

**August, 2007:** The Presidential Adviser for the Environment – a respected and reform-orientated figure – after receiving a briefing on the EITI from civil society and the EITI representative, obtained an agreement from the Minister of Energy and Mineral Resources to adopt the EITI on behalf of the government of Indonesia at the then-upcoming UNFCCC COP XIII meeting in Bali at the end of the year. However, this never transpired.

**December, 2007:** The Anti-Corruption Commission finalised a draft of an EITI Presidential Regulation. The draft regulation sanctioned the formation of an EITI Steering Group, specified which government agencies and industrial associations would belong to it, provided NGOs with the latitude to select their own representatives to the Group, called for the formation of an EITI National Secretariat to support the Steering Group, and identified the types of revenue streams that should be considered for an EITI process in Indonesia. All stakeholders, including companies and civil society organisations, were consulted in the drafting of this regulation.

**May, 2008:**

- The Coordinating Minister for Economic Affairs, the Minister of Energy and Mineral Resources and the Minister of Finance sat down together in a closed meeting, and a decision was taken that the latter would lead on the Initiative, assuming the President agreed to Indonesia’s joining the EITI.
- The Coordinating Ministry for Economic Affairs convened an inter-agency working group which deliberated the contents of the draft EITI Presidential Regulation prepared earlier by the Anti-Corruption Commission (see above).
- Before Indonesia had a chance to join the EITI, the Coordinating Minister for the Economy moved across to assume the governorship of the Indonesian Central Bank.
- As one of his last acts in office, the Coordinating Minister for the Economy issued and the President signed an Instruction which directed, among many other things, that by June 2009 the Minister of Finance and the Minister for Energy and Mineral Resources would formulate a joint decree for “enhancing transparency in oil, gas and mining management.”

**July, 2008:**

- The Coordinating Ministry for Economic Affairs called together 33 representatives of oil, gas and mining companies to ask their views on the EITI. Representatives of large mining firms were uniformly supportive in their public statements on the Initiative. The Executive Chairman of the Indonesian Petroleum Association was more circumspect, stating only that the IPA would support the initiative if instructed to do so by the government. This was in spite of the fact that a majority of the firms sitting on the Executive Board of the IPA (seven out of 13) endorse the EITI at their headquarters levels.

**December, 2008:** With the emergence of the global financial crisis, a realisation emerged within the Coordinating Ministry for Economic Affairs that extra measures needed to be taken to reassure the international financial community that Indonesia’s fiscal house was in order. On the last day of the year in 2008, the Coordinating Minister for Economic Affairs sent a letter to the EITI Secretariat indicating the Republic of Indonesia’s intention to implement the EITI.

These milestones have been influenced by various actors and events. The EITI representative in Jakarta provided dozens of briefings to director- and director-general-level officials throughout 2007, and finally, in February and March 2008, was able to deliver detailed briefings on the EITI directly to the Ministers of Energy and Mineral Resources and to the Coordinating Ministry for Economic Affairs. Government interest in the EITI at the ministerial level also seems to have received a boost from the visit of the former Minister of Finance of Nigeria (a current Managing Director of the World Bank), who had a long and positive discussion about the EITI with the Indonesian Minister of Finance.

Progress was also influenced by civil society efforts to reach out to the Presidential Adviser for the Environment, Dr. Emil Salim, a well-respected reformer in the extractive industries sector globally and nationally. Dr. Salim played an important role in continuously bringing the EITI to the attention of the three most relevant ministries: Energy and Mineral Resources; Finance; and Economic Affairs. This eventually resulted in the EITI being discussed at the cabinet level.

**The future**

With the Coordinating Minister for Economic Affairs having sent a letter to the EITI Secretariat indicating the Republic of Indonesia’s intention to implement EITI, the path forward will still be long, but is now clearer and more certain.

Special attention will need to be given to the formation of a multi-stakeholder Steering Group (SG). A challenge will be to ensure that all stakeholders are represented at the table in the SG, and equally able to partake in decision-making processes and to support EITI implementation. The foundation for this is quite solidly in place due to the interaction among all stakeholders in the last two years. Looking even further to the future, the real benefits to Indonesia from the EITI will be in three areas: (i) trust-building and economic growth, (ii) fiscal stability, and (iii) improved government accountability and corruption prevention.
Trust-building and economic growth: When the EITI gets underway in Indonesia, it will serve as a forum in which trust will be built between government and industry, and even between different levels of government. With increased trust, many of the thorny issues pertaining to the payment, collection and redistribution of oil, gas and mining revenues will be addressed in a more efficient and less confrontational manner. To the extent that some of these issues can be resolved, the investment climate will improve, more new investments will be made, more minerals will be produced, and the economy will grow.

Fiscal stability: If the EITI is implemented in Indonesia, fiscal stability will also improve and revenues will be enhanced. Currently, the way in which extractive industry revenue streams are managed lacks clarity. The physical sharing of oil by producers with government is one case in point. This revenue stream fell from US$13.9 billion in 2006 to only US$10.4 billion in 2007, in spite of the fact that international oil prices rose during that year. Although some of this fall in revenue can be explained by the rising cost of recovery and declining production, approximately US$1.5 billion of this loss evades explanation. With more transparency, it will be easier to understand which parties are responsible for unduly precipitous declines in some oil, gas and mineral revenues, and hopefully this trend can be mitigated.

Improved accountability: From the civil society perspective, the EITI will provide a forum for dialogue to continuously improve the governance of the extractive industries, and, especially in the mining sector, provide citizens with a clearer picture of revenue flows into the coffers of the government and enable citizens to ask for accountability in the delivery of public services and facilities. Civil society is also optimistic that, by joining the EITI, Indonesia will be able to begin addressing and preventing corruption in the country’s oil and gas and mining sectors.

Lessons from Indonesia

A number of lessons can be drawn from Indonesia’s experience in considering the EITI.

A first lesson is that it takes a long time for a large country to decide to join the EITI. The process of bringing discussions by local stakeholders to the point where a populous state decides to join the Initiative will typically be very long, and requires hard and diligent work. Bilateral and multilateral agencies that typically finance this type of work need to understand that a long lead-in time will be needed before their investment shows results.

A second lesson is that the facilitation of discussions with large potential EITI member states requires patience and humility. As the chronology earlier in this chapter shows, two setbacks were experienced along the road toward Indonesian endorsement: first, when assurances were made that the Minister of Energy and Mineral Resources would serve as the Champion for the EITI; and second, when assurances were made that the former Coordinating Minister for the Economy would do the same. Neither assurance was realised. Patience was required, and ultimately rewarded, when the government finally did join the EITI.

A third lesson is that facilitating discussions with government, industry and NGOs is not enough. What Indonesia shows is that in large states, especially those new to democracy, one must also cultivate the nation’s most respected, effective, independent and reform-oriented figures. For example, the intervention of the Presidential Adviser for the Environment was essential for the Minister of Energy and Mineral Resources, and later the Coordinating Minister for the Environment, to agree to support the Initiative. The conversation of the reformist former Finance Minister of Nigeria with the current Minister of Finance of Indonesia is said, by those who were there, to have been important. Other reform-oriented figures whose support has proved crucial were the two former senior figures in the Anti-Corruption Commission who sponsored the drafting of an EITI Presidential Regulation. What all these figures have in common is the fact that they are respected enough to interact on a semi-regular basis with ministers, and are reformist enough in their orientation to be willing to expend personal political capital to try to persuade ministers to support the EITI.

A fourth lesson is that it would be easier to convince large states like Indonesia to join the EITI if there were some developed nations that were also EITI Candidates. With the exception of the most broad-minded, Indonesians tend, to varying degrees, to be resentful of the fact that only developing and emerging states belong to the EITI, and not developed nations. The fact that no developed Western nation (except Norway) is currently classified by the IMF as being extractives-rich is not a satisfactory answer for Indonesians, and nor is the notion that developed states already have alternative mechanisms of transparency in place.

A final lesson is that mining firms may be a more reliable partner in the lead up to endorsement than oil and gas firms. In Indonesia, mining firms have been willing to push harder for EITI adoption than oil and gas firms. The party line of oil and gas companies in Indonesia, even those that support the Initiative at their headquarters levels, tends to be that they will be happy to support the initiative if the government tells them to do so. The support from minerals producers and the Indonesian Mining Association tends to be more unequivocal. Thus, while the Indonesian Petroleum Association refused to send a representative to speak at an EITI-sponsored forum on the extractives industries investment climate held in September 2007 (see above), the Indonesian Mining Association willingly sent a speaker.

Why miners in Indonesia have been more willing to engage in public discourse on regulatory issues than oil and gas
companies is an interesting question. The answer may lie in the fact that mining contracts were, prior to the passage of the new mining law in December 2008, more secure than oil and gas contracts. Under the old system, once mining Contracts of Work were approved, they ran for 30 years. Any disagreements with government over the terms of these contracts could be settled through neutral international arbitration. Oil and gas contractors, on the other hand, although allowed to keep a percentage of what they produce, have their operations owned by the State. Moreover, in any given year, simply to stay operational, oil and gas contractors must seek dozens of individual permits from the Executive Agency for Upstream Oil and Gas Business Development (BP MIGAS). The fact that oil and gas firms are (or at least were) more structurally constrained than mining firms may explain why the former are less willing to engage on public discourse than the latter.

Looking to the future, it is of paramount importance that all Indonesian stakeholders can be brought together to make the EITI work to the maximum benefit of the nation, including its poorest citizens.

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Notes
3 The passage of a long-awaited Mining Bill on 16 December 2008 will do little to resolve most of these misunderstandings, and if anything will probably add to them, at least until its implementing regulations are enacted.
7 Mohamad Ikhsan, “Should We Renegotiate Contracts?” Tempo, 3 September 2007.
8 Peter Eigen, Jakarta Post, 29 November 2007.
Introduction
Zambia is rich in mineral resources, with copper and cobalt being the predominant metals produced. The Copperbelt Province has been the main centre of mining activity in Zambia where large-scale mining is over 100 years old. For several decades the country has been among the top producers of copper and cobalt in the world.

Mining has been the major industry in the country, and the engine for national economic development. Metal exports constitute the main foreign exchange earnings, constituting around 64% of total exports.

Over the years the Zambian mining industry has gone through a full cycle of ownership: privately owned from the early 1900s to the 1980s, nationalised throughout the 1980s and 1990s, and returned to private ownership from 2000.

The current main large-scale mining companies are as follows:
- Konkola Copper Mines plc – Vedanta Resources plc
- Mopani Copper Mines plc – Glencore International AG and First Quantum Minerals Ltd
- Kansanshi Mines plc – First Quantum Minerals Ltd
- First Quantum Minerals and Operations Ltd – First Quantum Minerals Ltd
- Chibuluma Mines plc – Metorex plc
- Luanshya Copper Mines plc – J & W
- Chambishi Metals plc – J & W
- NFC Africa Mining plc – China Non-Ferrous
- Lumwana Mining Ltd – Equinox Minerals Ltd
- Albidon Zambia Ltd – Albidon Ltd.

Following the completion of privatisation in 2000, the industry is private-sector driven. Since then the mining industry has received over US$3 billion in foreign direct investment. This investment has funded new projects and the modernisation of old mines.

The investment has enabled the development of new mines in non-traditional mining provinces of Zambia, thus fulfilling the national programme of diversification within the mining industry. Examples include the Lumwana Copper Mine by Equinox Minerals Ltd, the Kansanshi Copper Mine by First Quantum Minerals Ltd in North-Western Province, and the Munali Nickel Mine by Albidon Zambia Ltd in Southern Province.

Furthermore, major expansion projects have been undertaken on the Copperbelt Province mines. These include the Mufilira Smelter by Mopani Copper Mines plc, the Konkola Deep Mining Project and Nchanga Copper Smelter by Konkola Copper Mines plc, and the Chambishi Copper Smelter by NFC.

It has been clearly demonstrated that Zambia has been able to attract foreign direct investment because of its investor-friendly policies, strong legal and fiscal regulatory frameworks and political stability.

It is against this setting that the Zambia Chamber of Mines has emerged as a key player in the development of the mining industry. The idea of implementing the EITI in Zambia has been promoted by the Chamber of Mines.

The importance of the EITI to Zambia
Implementing the EITI in Zambia will enhance stakeholders’ understanding of the mining industry and benefit the development of the sector in several ways. It will:
• enhance broader transparency in licensing, monitoring and sharing the benefits of the mining sector;
• promote good governance in managing mineral resources;
• create better awareness by the citizenry of the mining industry’s contribution to national economic development;
• promote a good image of both government and the mining industry;
• make it difficult for corruption to take root in the industry;
• consolidate the Public–Private Partnership approach as a good model for sustainable national economic development;
• enhance the country’s international standing as a good destination for foreign direct investment; and
• promote the growth of the mining industry.

Roadmap of implementing EITI

Background
The Zambian government plays a regulatory role in the mining industry. The legislative framework promotes good corporate governance, environmental stewardship and best practices in occupational health and safety. Tax arrangements are covered under an investor-friendly fiscal regime.

The mining companies enjoy good relations with government, as exemplified by the promotion of Public–Private Partnership, characterised by a dialogic approach to issues of common interest.

Mining companies have invested heavily in Corporate Social Responsibility (CSR), in addition to contributing to government revenue through taxes. CSR activities include education, health, local business development, and sports and community development. However, despite this massive investment, there is a notable lack of appreciation by some stakeholders of the mining industry’s contribution to the national economy.

It is against this background that the Chamber of Mines initiated the idea of adopting the EITI as a framework to further enhance better understanding by all Zambian stakeholders of the mining industry’s contribution to national economic development, and to build trust between civil society groups, the government, and mining companies, through greater transparency and accountability.

Implementation process

Scoping study
In April 2007, the government of the Republic of Zambia (GRZ) wrote to the World Bank requesting support to carry out a scoping study on the EITI. The purpose of the study was to assist the GRZ in identifying the potential benefits of implementing the EITI and deciding whether or not to implement the initiative.

The scoping study was funded by the EITI Multi-Donor Trust Fund administered by the World Bank, and had two main objectives:
• to assess stakeholder (government agencies, mining companies and civil society groups) attitudes towards governance of the mining sector in Zambia, and
• to provide practical guidance to government on how to implement the EITI programme in the case that the government decided to commit to the EITI.

The consultative process was all-inclusive, and interviews were conducted with a wide range of stakeholders within government, civil society, mining companies and development agencies.

Findings of the scoping study
The main findings of the scoping study were:
• that there was a broad consensus by stakeholders in Zambia that an EITI programme would be both possible and beneficial; and
• there would be a need for the multi-stakeholder group – civil society, government, and mining companies – to participate in the implementation process.

Multi-stakeholder consensus-building workshop
In July 2008, the Zambian government in collaboration with the World Bank Group, the EITI International Secretariat and other cooperating partners, held a multi-stakeholder consensus-building workshop in Lusaka.

The key outcomes included the following:
• government, the Chamber of Mines, civil society and members of parliament unanimously resolved to adopt the EITI;
• government issued an statement of its intention and commitment to sign up for the EITI;
• consensus on the composition of the tripartite Zambia EITI Council. The Council would comprise an equal number of representatives from government, mining companies and civil society;
• adoption of the Secretary to the Treasury as the EITI Champion;
• the Ministry of Mines and Minerals Development would host the EITI Secretariat;
• the EITI Draft Charter was adopted and would be reviewed and approved by the Zambia EITI Council; and
• the Draft Work Plan was adopted for further review and approval by the Zambia EITI Council.

Way forward – main strategic directions
The Draft Work Plan is to be approved and published by the Zambia EITI Council:
• The application to sign up for country candidacy is to be submitted to the EITI International Secretariat, following the completion of the process by the Zambia EITI Council;
• Undertake an EITI Outreach Campaign to raise public awareness of the initiative;
• Once the country becomes a Candidate Country, the Zambia
EITI Council will proceed with EITI implementation, resulting in the publication of the first EITI Report; and

• The Validation process will follow thereafter, to enable Zambia achieve EITI Compliant status.

**Key lessons**

The main lesson learned has been that the involvement of all key stakeholders in the EITI process, from the conceptual stage to implementation, increases acceptance, support and the potential for the success of the programme.

The stakeholders identified the following elements as the main reasons for their strong support for implementation of the EITI in Zambia:

• the Public–Private Partnership approach is an excellent model to employ in implementing EITI;
• the engagement of political leadership to lead the process ensures government commitment and leadership to drive the process to fruition; and
• the EITI framework is generic, and as such each country can implement the Initiative in a way that allows for each country’s unique national circumstances to be taken into account.

**Public–Private Partnership in implementing EITI**

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Introduction
Australia is a mineral resource-rich state long established in the extraction and export of these commodities. Consequently, Australia has considerable expertise that can be applied to resource management and transparency promotion for development outcomes in partner countries. Australia’s expertise in these areas has been promoted globally with the success of major Australian mining corporations. The overseas approaches of companies in terms of their efforts to promote development have also in part been influenced by their Australian domestic experience.

The mining sector is a major contributor to the Australian economy. The Australian Bureau of Agricultural and Resource Economics has forecast that in 2008-09, earnings from Australian energy and mineral exports will be worth more than AUS$150 billion. Key mineral exports for Australia in 2008-09 include thermal coal, metallurgical coal, iron ore, alumina and uranium.¹

The importance of extractive industries to Australian State and Federal revenue has led to the development of strong and effective regulation (including extraterritorial) and revenue management systems over the past 100 years. An outline of best practice approaches to extractives revenue collection and management follows, including the work of State and Federal government departments with particular expertise in the minerals sector.

Australian Government and State Revenue Powers
One of the challenges accompanying Australia’s federation was the creation of a two-tier system of government that centralised control of some functions while allowing each State-sufficient autonomy to meet the social preferences of its constituency. The Australian constitution specifically enumerates areas of legislative power to the Australian (national) government, leaving the majority of expenditure responsibilities to the States as residual powers.

Australia has a complex array of tax and non-tax revenue-raising instruments that it applies to the mining industry. Different resource taxes, royalties and payment arrangements are imposed across different resources, and on the same type of resource depending on its location. Further, mineral resources are subject to different royalty arrangements across the States, including ad valorem royalties, specific royalties, profit royalties, or a combination of these types of royalties.

Each revenue collection method (and those used in other countries) can result in different effective tax or revenue outcomes, depending on the resource’s price and the rate of return to the private sector. It should be noted that the Australian Government generally imposes its taxes in offshore areas (i.e. waters administered by the national government), whereas state governments impose their royalty charges on shore. There are, however, exceptions to this where there are revenue-sharing arrangements between the Australian Government and the Western Australian (WA) State Government.
Australian Government Corporate Taxation and Mining Royalty

Expenditure of government revenue and accountability measures

Company tax is administered and collected by the Australian Taxation Office, an administrative arm of the Australian Government, and Commonwealth royalty is jointly administered and collected by the Department of Resources, Energy and Tourism and the WA State Government. Each of these revenue items is paid into a Consolidated Revenue Fund and then appropriated for any number of Australian Government expenditure commitments.

Estimated revenue for each item is reported in the Annual Budget papers, and actual revenue reported in the Final Budget Outcome. Legislation giving effect to each of the items is as follows: company tax – Income Tax Assessment Act 1997 and Income Tax Assessment Act 1936; PRRT – Petroleum Resource Rent Tax Assessment Act 1987; Commonwealth royalty – Offshore Petroleum Act 2006; and crude oil excise – Excise Tariff Act 1921. This legislation is freely available through the Australian Government’s Australian law website, http://www.comlaw.gov.au/.

The Australian Government allocates the expenditure of consolidated revenue through Appropriation Bills as part of the Australian Government’s annual Budget. Australian Government agencies are accountable under the Financial Management Accountability Act 1997, which sets out the financial management, accountability and audit obligations of Australian Government agencies, in particular for managing public resources efficiently, effectively and ethically, and for maintaining proper accounts and records of the receipt and expenditure of public money.

All Australian Government agencies are required to comply fully with internationally accepted accounting standards and are subject to audit by the Australian National Audit Office.

Company taxation

Company taxation is tax payable by companies and paid on a quarterly basis to the Australian Taxation Office. Company income tax is levied at a rate of 30% of the taxable income of Australian companies, including incorporated and unincorporated associations, limited partnerships, and some corporate unit trusts and public trading trusts.

Company income tax has two basic roles: i) as a withholding tax on income earned by Australian residents through shares in a resident (Australian) company; and ii) as a final tax on (generally Australian-source) income earned by non-residents through shares in an Australian company or a non-resident company’s branch in Australia. The design of Australia’s company income tax system has historically taken account of both these roles. This has influenced decisions about the company income tax rate, base, and other rules, and the interaction of company income tax with the taxation of resident and non-resident shareholders.

The calculation of taxable income for companies is generally the same as for individuals, but with some significant exceptions. These exceptions include that companies do not benefit from any discount on their net capital gains and that companies alone receive research and development tax concessions, among other tax concessions. Further, most income from direct offshore investment by an Australian resident company is exempt from company income tax, regardless of whether it is retained off shore, paid as a dividend to the company, or realised as a capital gain.

Mining taxation, royalty and excise

The Australian Government and state governments generally own, on behalf of the Australian community, mineral and petroleum resources in Australia and impose charges on mineral extraction and petroleum production to ensure that the Australian community receives a benefit from their development. The Australian Government receives mining, taxation, royalty, and excise revenue.

Corporate disclosure

Under the Corporations Act 2001, companies listed on the Australian Securities Exchange must keep financial records and prepare financial reports. Listed companies are required to prepare half-year as well as annual financial reports, which must be independently audited and include an auditor’s report. Additionally, listed companies must prepare an annual report and lodge it with the Australian Securities and Investment Commission (ASIC). ASIC is tasked with upholding the law under the Corporations Act 2001, in addition to promoting confident and informed participation by investors and consumers in the financial system. Finally, the Australian Accounting Standards Board issues Australian versions of International Accounting Standards Board standards, which have the force of company law for listed companies’ prepared financial statements under the law.

State Mining Royalties

Introduction

Each State and Territory in Australia has in place its own royalty arrangements applying to mining tenements within its respective jurisdiction, and is governed by legislation and regulations as they apply to each jurisdiction. As most jurisdictions adopt production-based royalty regimes (rather than profit-based), the State of Western Australia (WA) will be used to illustrate how a State or Territory jurisdiction applies its royalty arrangements, with some reference to other jurisdictions where appropriate. It should be noted that there are a number of differences between jurisdictions with regard to allowable deductions for mining tenement holders, for royalty calculation purposes.
Expenditure of Government revenue and accountability measures

Generally, State and Territory royalty revenue is not used for the purposes of carrying out the activities of a jurisdiction’s mining Department, or to contribute to any specific mineral-based activity. Rather, royalty revenue forms part of each jurisdiction’s consolidated revenue and is distributed as part of each jurisdiction’s annual budgetary process. However, there is at least one exception: the South Australian Government contributes a portion of the royalties collected to the Extractive Areas Rehabilitation Fund. This Fund is designed to facilitate environmental rehabilitation of extractive mineral leases.

Western Australia royalty arrangements

WA’s primary legislation governing mining is the Mining Act 1978 (WA), which states that royalties are payable on all minerals. A mineral is defined as a naturally occurring substance, including evaporites, limestone, rock, gravel, sand and clay. The definition of “mineral” excludes the following where they occur on private land:

- limestone, rock or gravel shale, other than oil shale;
- sand, other than mineral sands, silica sand or garnet sand; and
- clay, other than kaolin, bentonite, attapulgite, or montmorillonite.

Private landholders may extract these resources and sell them without paying a royalty to government. They may also allow others to extract the resources and obtain a type of royalty payment. The specific petroleum royalty applied by WA is based on the wellhead system for minerals – a production based ad valorem royalty (rather than the profit-based PRRT). An ad valorem or value-based royalty is calculated as a proportion of the “royalty value” of the mineral. The royalty value is defined by the Government of Western Australia Department of Mines and Petroleum as: “in relation to a mineral other than gold, means the gross invoice value of the mineral less any allowable deductions for the mineral”. Both the “gross invoice value” and “allowable deductions” are defined in the Mining Regulations 1981 (WA) as follows:

- **Gross invoice value**: in relation to a mineral, means the amount, in Australian currency, obtained by multiplying the quantity of the mineral, in the form in which it is first sold, for which payment is to be made (as set in invoices relating to the sale) by the price for the mineral in that form (as set out in those invoices).
- **Allowable deductions**: in relation to a mineral, means the amount, in Australian currency, of any costs in transporting the mineral, in the form in which it is first sold, incurred after the shipment date by the person liable to pay the royalty for the mineral; and if the mineral is not exported from Australia, the price, in Australian currency, paid or to be paid by the person liable to pay the royalty for the mineral, for packaging materials used in transporting the mineral, in the form in which it is first sold.

Corporate disclosure

The Mining Act 1978 (WA) requires mining tenement holders to keep records so that royalty details can be verified at their offices. This includes records on production, revenue, and cost documentation. Officers from the WA State Government have the authority to enter projects/offices of project holders to verify documentation. Tenement holders are required to lodge periodic production reports showing volumes produced and estimated value.

The Mining Act 1978 (WA) also requires the payment of royalty as a condition of the lease, sets out royalty rates and systems that apply to minerals or petroleum, including the requirements for lodging royalties (i.e. royalty reports and royalty payments), and sets a fair market price if transfer pricing occurs or the sale is not at arm’s length. If royalty is unpaid or the calculation of royalty is not correct, a process is undertaken to estimate or correct any royalty calculation errors. Penalties apply for unpaid or late royalty payments.

Project holders are monitored to ensure that production and royalty reports are received. When production and royalty reports are received they are checked by the WA State Government; these checks include mining tenement site visits to verify the information reported by projects in the reports. Any adjustments to royalty that may be required due to errors found during the verification process are made in the next royalty period.

Within 30 days after the expiry of the first quarter during which any mineral is produced or obtained from a mining tenement, the mining tenement holder shall, unless the Director General of Mines (WA) in a particular case otherwise approves, furnish the Director General of Mines with a quarterly production report and continue to furnish the Director General of Mines with a quarterly production reports within 30 days after the expiry of each subsequent quarter (whether or not any mineral is produced or obtained from that mining tenement or land in that quarter).

The mining tenement holder is required to submit a royalty return with each royalty payment 30 days after each quarter. The return must be in an approved form, showing where relevant: the quantity of the mineral; details of any sale, transfer, shipment or disposal of the mineral; the royalty value of the mineral; the gross invoice value of the mineral, when it was paid, and any allowable deductions for the mineral; and the rate of royalty used.

The WA State Government performs desk audits of all royalty returns received as follows:

- ensuring all royalty returns are checked for computational accuracy and that the applied royalty and any deductions are in accordance with the Mining Regulations and any other
applicable legislation under which returns are provided;
• verifying any supporting documentation, such as invoices and other documentation that is provided with the royalty return to ensure that all the relevant receipts and deductions are reasonable and the correct royalty has been paid;
• ensuring any adjustment arising out of desk audits is discussed and agreed with the royalty payer and is included in the next royalty return;
• maintaining an audit plan and endeavouring to carry out all audits in accordance with the plan; and
• WA State Government officials preparing an audit report within 14 working days of the audit.
Audits are also carried out at the company offices of mining tenement holders. The WA State Government ensures that all royalty payers are visited for audits at the company office where royalty records are maintained, with the following frequency:
• major royalty payers, that is where the royalties received amount to more than $1,000,000 per year, are visited at least once per financial year;
• medium royalty payers, that is where the royalties received amount to between $30,000 to $100,000 per year, are visited at least once every two years; and
• for minor royalty payers, that is where the royalties received are under $30,000 per year, the WA State Government will endeavour to visit these payers once every three years.

The WA State Government maintains an audit plan and endeavours to carry out all audits in accordance with this plan. This includes verifying supporting documentation, such as invoices and copies of cost invoices and other documentation, to ensure that all relevant receipts have been provided, deductions are reasonable, and the correct royalty has been paid. An audit report is then prepared within 14 working days of the audit.
During the royalty assessment and audit process, the WA State Government ensures that all receipts are at an arm’s-length price and represent a fair market value, and maintains and monitors all major traded commodity prices to ensure that royalty values reflected in the royalty returns are reasonable.

The holder of a mining tenement must keep all records that are necessary to give a true and complete indication of the quantity of the mineral and any sale, transfer, shipment or disposal of the mineral, including time, destination, value and quantity of each sale, transfer, shipment, or other disposal. All records must be kept for a period of seven years.

Extractive Industry transparency through resources-reporting
A further way Australia promotes transparency in extractive industries is through placing requirements on resources companies listed on the Australian Securities Exchange to report publicly information on their resources production and reserves not yet developed.

JORC Code
Following an Australian mining stock crash in 1969-70 that was brought about by extraordinary and excessive speculation on nickel prices, considerable concern arose regarding unacceptable resource-reporting practices. Responding to the resulting challenge and opportunity to self-regulate, the Australian Mining Industry Council (now the Minerals Council of Australia), established a committee to examine the issue. It was joined by the Australasian Institute of Mining and Metallurgy. These two organisations formed the Australasian Joint Ore Reserves Committee (JORC). Other organisations are now represented, including the Australian Institute of Geoscientists, the Australian Stock Exchange and the Financial Services Institute of Australasia. Subsequently, JORC was established as a permanent committee, and has been in existence since 1971.

Between 1972 and 1989, a number of reports were issued by JORC that made recommendations on public reporting and Ore Reserve classification. These recommendations formed the basis for the principles now incorporated in the JORC Code. The original recommendations only had the status of guidelines, but over time were gradually adopted by most Australasian mining and exploration companies.

The purpose of the JORC Code is to provide a minimum standard for the reporting of Exploration Results, Mineral Resources and Ore Reserves in Australasia, and to ensure that public reports on these matters contain all the information which investors and their advisers would reasonably require for the purpose of making a balanced judgement regarding the results and estimating being reported. In part, the JORC achieves these aims by:
• establishing and prescribing the minimum standards for public reporting of Exploration Results, Mineral Resources and Ore Reserves in Australasia; and
• setting out a system for the classification of tonnage (or volume) and grade (or quality) estimates as either Mineral Resources or Ore Reserves, and for the subdivision of each into categories which reflect different levels of certainty or confidence.

The principles of the JORC Code are summarised in Clause 4 of the 1999 Code as “Transparency, Materiality and Competence”:
• “Transparency” requires that a public report contains sufficient information, the presentation of which is clear and unambiguous, so that a reader is able to understand the report and is not misled.
• “Materiality” requires that a public report contain all the relevant information which a reader could reasonably be expected to need in order to make a balanced judgement about the matters being reported.
• “Competence” requires that the public report be based on
work which is the responsibility of a suitably qualified and experienced person who is subject to an enforceable professional code of ethics; that is, that public reports are based on work undertaken or supervised by a Competent Person.

The Australian Securities Exchange and the New Zealand Stock Exchange have, since 1989 and 1992 respectively, incorporated the Code into their listing rules. Under these listing rules, a Public Report must be prepared in accordance with the Code if it includes a statement on Exploration Results, Mineral Resources, or Ore Reserves.

Reasons for the success of the JORC Code in Australasia include:
- the regulatory backing;
- the intentional avoidance of over-prescriptive definitions and operational requirements;
- industry’s ability and willingness to discipline Competent Persons;
- the origins of the Code;
- the nature and composition of the Joint Ore Reserves committee; and
- JORC’s commitment to communication and to ongoing revision of the Code.

Similar codes, guidelines and standards have subsequently been adopted by the relevant professional bodies in Canada, South Africa, the US, the UK, Ireland and in a number of European countries.

**Transparency for companies not listed on the Australian Securities Exchange that have deposits and/or mines in Australia**

The ability of governments, analysts and investors in Australia to access mineral resource data and trends, and accurately forecast production and export volumes and values, has in recent years become inhibited by the rapid increase in the number and resource holdings of foreign-listed, private, and private equity companies operating in the Australian minerals sector. This is because only companies listed on the Australian Securities Exchange are required to report under the JORC Code.

Recognising the need to ensure the availability of resource information received from all companies that own mines and/or significant mineral deposits in Australia, regardless of whether or not the companies are Australian Securities Exchange-listed, the Australian Government has established an intergovernmental committee to review the issue. It is anticipated that this committee will develop a set of recommendations to address the issue for the consideration of the Australian, State, and Territory Governments in 2009.

**Other support**

The Australian Government prioritises good mining practice and is committed to ensuring that Australian companies abide by this in their overseas operations. There is a range of support work that reinforces the aims of the extractives revenue transparency that Australia contributes to. These include activities that support extractive industries’ social responsibility and environmental sustainable development. For example, the Australian Government is committed to a range of existing partnerships and international instruments that help to address weaknesses within the extractives management value chain, including:
- supporting good corporate behaviour including in the extractives sector through support for the Extractive Industries Transparency Initiative;
- promoting and implementing the OECD Guidelines for Multinational Enterprises (voluntary principles and standards for responsible business conduct); and

**Lessons learnt from the Australian regulatory experience**

The Australian Ministerial Council of Mineral and Petroleum Resources has endorsed the following principles for resource tax regimes in Australia. These are, to the greatest extent practical, that resource tax regimes should compensate the community for allowing the private extraction of Australia’s non-renewable resources while seeking to ensure:
- **economic efficiency** (not distorting commercial decisions regarding the levels of capital and other inputs devoted to economic activities which should be made in response to market signals);
- **equity** (relating to the resource developer’s capacity to pay; fairly sharing the burden and benefits of revenue collection between the resource developer and the community; being uniform across all taxpayers in equal situations and being competitively neutral across competing resources);
- **administrative simplicity** (minimising compliance and administration costs for business and government);
- **consistency** with broader environmental, social and fiscal objectives (taking account of the need for reliability and predictability of revenues, being mindful of externalities such as environmental, social or infrastructure objectives); and
- **international competitiveness** (the tax regimes do not harm the competitiveness of Australian resource producers relative to overseas suppliers, and do not act as an incentive to invest in overseas resource projects in preference to competing Australian resource projects).

Principles similar to these may be usefully adapted to suit the particular circumstances of developing countries.

**The EITI**

Australia is strongly committed to the Extractive Industries Transparency Initiative and the role it plays in increasing
demand for transparency and better governance in the oil, gas and mining industries. The Australian Government became an EITI supporting country in 2006, and, as a part of its commitment to the Initiative, is working together with other international donors and multilateral organisations to provide support for greater transparency and accountability in extractive industries. Australia has committed to the World Bank administered Multi-Donor Trust Fund, and helps shape the direction of the Initiative through the EITI Board, supporting country constituency and the Multi-Donor Trust Fund Management Committee. While Australia has not made a formal commitment to implement the EITI, Australia’s current domestic management of extractive resource industries already delivers many of the outcomes sought by the EITI principles and criteria.

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Notes
1 Further information and statistics on Australia’s mining industry are available at www.abare.gov.au, including in quarterly “Australian Commodities” reports.

2 Australian Dollars. All figures in this chapters are in Australian Dollars.
Background

Canada is one of the largest mining nations in the world, producing more than 60 minerals and metals (NRCan). The mining and mineral processing industries represented 3.4% of the national GDP in 2007, contributing $41.7 billion² to the Canadian economy (Statistics Canada). In 2007, preliminary estimates indicated the value of Canadian mineral production to be over $84 billion (NRCan); this figure includes the traditional value of production from Canadian mined ores, concentrates and aggregates, as well as the value realised from the smelting and refining of domestic and imported materials. It also includes the value of primary steel and aluminium production and oil sands mining. The 2007 exploration and deposit appraisal expenditures totalled $2.8 billion, and revised company spending intentions for 2008 indicated a further increase to $3.1 billion (NRCan). In 2007, total direct employment reached more than 363,000, or 2.2% of Canada’s total employment (Statistics Canada). About 51,000 were employed in mining, 79,000 in primary metal manufacturing, and 233,000 in the mineral processing and fabricated metal industries (Statistics Canada).

Canada continues to be the world’s leader in the production (by volume) of potash and uranium. It ranks in the top six countries for the production of cadmium, chrysotile, cobalt, gypsum, magnesium, molybdenum, nickel, platinum group metals, salt, titanium concentrate, and zinc (NRCan; U.SGS). Canada ranks third in the world in the value of diamond production and continues to be the third largest producer of primary aluminium in the world, producing 3.1 million tonnes from imported ores (NRCan).

Constitutionally, Canada is a confederation, with ten provinces and three territories. Canada has two levels of government with authority to make laws, namely, at the federal level and at the provincial/territorial level, and these are enshrined in the Canadian Constitution.

The federal government has responsibility for such matters as fiscal and monetary policy, banking, criminal law, fisheries, interprovincial and international trade and commerce, federal lands, and international treaty-making. In the area of mining, the federal government has authority over uranium mining, mining activities in the territories and offshore, mining on federal lands, and fiscal policies to stimulate investment, encourage production and enhance competitiveness and trade. Some of the federal responsibilities related to fisheries, protected areas and the environment also apply to mining projects.

The provinces have authority with respect to provincial taxation, the use and management of provincial lands, the use and management of natural resources, property and civil rights within the province, civil law, and intra-provincial trade and commerce. In the case of mining, provinces own and manage the resources, make land-use decisions, issue licences and permits, conduct monitoring of activities, collect mining royalties and provincial taxes, and are responsible for health and safety issues. Some “provincial” responsibilities have been devolved to the territories, but many of those relating to mining in the territories remain federal responsibilities, due to the fact that the lands in the territories are federal lands.

Municipal or local governments deal with matters such as zoning and the issuing of some permits within their boundaries.
Finally, there are Aboriginal governments that exercise authority over lands: the responsibilities of Aboriginal governments are defined in specific agreements negotiated between them and the federal and provincial governments.

The distribution of mining activity within the Canadian jurisdictions is not equal. In 2007, there were approximately 180 producing establishments (metal and non-metal, including peat bogs and coal mines), more than 3,000 stone quarries and sand and gravel pits, and about 50 nonferrous smelters, refineries and steel mills operating in Canada. Although there are mining activities in all Canadian provinces and territories, over 80% of the total mineral production was accounted for by Ontario (26%), Saskatchewan (14%), British Columbia (14%), Quebec (14%), and Newfoundland and Labrador (12%).

Historically, the challenge within Canada was to identify an effective and transparent way to collect taxes, royalties and other revenues, while ensuring that the revenues were distributed in an equitable manner. Once established, this fiscal regime had to be fashioned over time to apply to the particularities of the mining industry.

### Revenue collection regime

A revenue collection regime based on the responsibilities of the different levels of government has been devised. This regime, which recognises the payments made to the various governments, ensures an effective collection of revenues. Once the revenues are collected, a system of equalisation payments ensures that a significant part of federal government revenue is distributed equitably to provinces, thereby allowing a similar level of government services across the country. The rules and regulations of this regime and its application are known to mining companies and all Canadians, in general terms.

The Canadian tax rules applicable to the mining industry reflect the specific Canadian federal structure, with three significant levels of taxation (federal, provincial/territorial, and municipal) recognising the specific characteristics of mining and the historical manner in which they developed. Some of these rules, such as flow-through shares to support exploration, and the tax treatment of reclamation bonds, exist only in Canada.

Mining is a highly cyclical and capital-intensive industry, with a long lead time between initial investment and commercial production. The Canadian tax regimes, both federal and provincial, provide a generous treatment of exploration and other intangible expenses, and allow mining companies to recover most of their initial capital investment before paying a significant amount of taxes. The income tax regime also contains generous provisions to help mitigate the negative financial effects of fluctuating prices and to facilitate the reclamation of mine sites. Finally, the provincial mining tax and royalty regimes are principally based on net production profits rather than on net smelter return royalties.

While Canada’s mineral taxation regime has been stable for many years, it is not static. It keeps up with important trends in the industry, such as globalisation, increased Aboriginal participation, responses to environmental and social impacts, federal and provincial/territorial imperatives, and recycling. However, significant changes are always implemented through a transparent consultative process which ensures that tax rules are well known.

### Federal government, taxes and levies

With respect to the mining industry, the government of Canada imposes corporate income taxes, a capital tax, the Goods and Services Tax, payroll levies such as employment insurance and Canadian Pension Plan or Quebec Pension Plan, excise taxes and custom duties.

Canadian corporate income tax is based on income from business, property, employment and capital gains. Generally, a corporation will be considered resident in Canada if it has been incorporated in Canada, or, having been incorporated in another country, if its central management is located in Canada.

Canadian resident corporations are taxed federally on their worldwide income regardless of their geographic source. If a Canadian resident corporation earns income from a source outside Canada, it will generally be entitled to a tax credit for some or all of the foreign tax paid. Canadian income tax imposed on non-resident corporations is restricted to Canadian-source income.

The federal government collects federal income tax and provincial personal income taxes on behalf of all provinces and territories except Quebec. The federal government also collects the corporate income taxes levied by seven of the provinces and by the three territories. The provinces of Alberta, Ontario and Quebec administer their own corporate income tax regimes.

The federal government also collects the Goods and Services Tax, a sales tax that applies to virtually all goods and services bought and sold, payroll levies, excise taxes and custom duties.

### Provincial taxes and royalties

Provincial and territorial governments impose taxes such as income taxes and sales taxes. Some provinces also levy capital taxes on a corporation’s capital (assets). Taxable capital generally consists of the aggregate of a corporation’s equity and capital indebtedness, less an allowance for its loans receivable and certain investments. Provincial capital taxes are in the process of being reduced or phased out, and are normally deductible for income tax purposes.

Provinces and territories that have significant mining activities impose mining taxes and/or mining royalties and/or mineral land taxes on mining operations, in order to compensate the province or territory for the extraction of the non-renewable resources it owns. With the exception of one province, British Columbia, the mining taxes are levied on profits derived from the operation at the mining stage only.
Provinces and territories also impose payroll levies, value-added taxes and excise taxes.

**Municipal governments**

Municipalities' taxation powers are limited to taxation on property and licences and fees. In rural and remote communities, mines are usually significant contributors to municipal revenues.

**Equalisation payments**

Entrenched in the Canadian Constitution, equalisation is the federal government’s transfer programme for addressing fiscal disparities between the provinces. Equalisation payments enable less prosperous provincial governments to provide, at comparable levels of taxation, their residents with services comparable to those in other provinces.

Equalisation payments are unconditional, in that the receiving provinces are free to spend the funds according to their own priorities. Equalisation entitlements are determined by measuring the province’s fiscal capacity, namely, their ability to raise revenues. A province’s equalisation entitlement is thus equal to the difference between its fiscal capacity and the average fiscal capacity of all provinces. Provinces whose fiscal capacity is above the average do not receive equalisation payments.

**Availability of information**

The revenue collection regime of taxes, royalties, and levies is well known and transparent. Furthermore, information on the amount of revenues and on the budgets is also transparent. The budgets, the reports to parliament and departmental estimates, at all levels of government are public documents available to all.

Information on taxes, levies and equalisation payments is available publicly through a variety of instruments. Some of the information is found on governmental websites, in the budgets of the various jurisdictions, and in reports on public accounts. In the case of British Columbia, for example, the Ministry of Revenue and Small Business publishes information on the mineral tax collected on their website, and information on taxes is available in the Financial and Taxation Statistics for Enterprises, from Statistics Canada. Public information is available on the collection of the taxes, levies, royalties and duties, amounts collected, the calculation of equalisation payments, the amount of such payments, and the budgets of the various jurisdictions. These budgets indicate government priorities, revenue projections, and expenditures on programmes and transfers.

All the federal and provincial governments also have legislated offices of auditor generals that are independent and reliable sources of objective and fact-based information on revenues and disbursements. The role of auditor generals is to hold the government accountable for the stewardship of public funds. The auditor generals, which report to parliaments, are effective because they highlight both the positive and negative aspects of the stewardship of public funds, and because they suggest more effective methods of collecting and disbursing funds. Furthermore, all the reports of auditor generals are public, and invariably stimulate media and public discussion.

**Lessons from the Canadian case**

The Canadian situation is complex, reflecting constitutional obligations, the functioning of a federal state, and the variety of revenues collected in a developed country. It functions well because the rules and regulations are known, published and applied equally, and because the system is trusted, in large part due to its transparency, the checks and balances offered by auditor generals, and access to the courts. Furthermore, the governments have the capacity to apply the rules and ensure that the institutions function effectively.

Laws and regulations are implemented in an open, transparent and consistent manner by a professional, non-partisan public service, providing continuity during changes of government. There are limited opportunities for use of discretion by officials, since the laws and regulations are specific as to their applications. An independent judiciary allows governments, companies and individuals an effective mechanism to seek redress in the courts.

Aspects of the Canadian tax regime recognise the particular characteristics of mining and apply directly to that industry. Canada has chosen to use rules of general or sector-specific application, rather than rules that are project-specific. The redistribution of revenues through equalisation makes it possible for all Canadians to have access to comparable levels of services while paying comparable levels of taxes. Equalisation is a distinctive aspect of the Canadian federation and the distribution of responsibilities between the various levels of government. Furthermore, equalisation payments are enshrined in the Canadian Constitution, making them a powerful tool to ensure an equitable distribution of revenues collected by the various jurisdictions.

Information on the tax regime, amounts of revenues collected, equalisation payments and budgets is publicly available. The tax regime is transparent, with all pertinent information available in the public domain. Within Canada, parliamentary oversight, supported by an active media, is an effective mechanism to ensure that governments are accountable for their revenues and expenditures.

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**Notes**

1. This chapter was produced by Natural Resources Canada. It was written by Lise-Aurore Lapalme, Senior Policy Advisor working on environmental, social and corporate social responsibility issues with the Minerals and Metals Sector of Natural Resources Canada.

2. Canadian dollars. $ refers to Canadian dollars throughout this chapter.
17 PRACTICAL IMPLEMENTATION CHALLENGES FOR MINING COMPANIES

INTERNATIONAL COUNCIL ON MINING AND METALS (ICMM)1

Introduction
This chapter complements the EITI's current general Business Guide by providing specific guidance for mining companies. It has two goals:
1. to explore the case for companies to endorse and adopt the EITI, aimed at companies’ head-offices where policy decisions are taken; and
2. to address key questions and implementation issues for companies’ in-country managers.

Readers should also refer to the current EITI Business Guide for additional information.

Three important factors will influence how this guidance can be applied in practice. The first is that companies have varying levels of experience, capacity and motivation to support the EITI. Mining companies may legitimately want to take different approaches to their engagement in EITI implementation. Some companies may wish to play a catalytic and/or an advocacy role, for example by ensuring that there is strong representation from across the sector and from civil society. Others may wish to be engaged as active participants in the EITI process. Others, still, may wish to have a minimal role in the EITI process or none at all. For, while all ICMM member companies are supporters of the EITI, different companies may legitimately choose to adopt alternative approaches to EITI implementation in a given country, or individual companies’ approaches may vary between countries for the reasons given below.

The second factor is the diversity of the sector internationally. In some countries mining might be a well-established and well-understood industry, while in others it might be new, and viewed with some suspicion. The companies making up a country’s industry might span the full range from international majors to small-scale operators, or a country could be characterised by only a few, similar companies. Similarly, government involvement may vary from being primarily regulated centrally, to involving all levels – national, provincial and local.

Thirdly, the EITI is context-specific. While the EITI framework and criteria are globally applicable, the implementation process unfolds very differently around the world. Each country has its own distinct political and historical context, with diverse perspectives on the mining sector.

For all these reasons it is not possible to offer prescriptive guidance that can anticipate how the EITI process will evolve in all countries. Thus, the following sections address the key and more generic questions, and the reporting templates provided in Appendix 1 are intended for illustrative purposes only.

Head Office considerations
Is there a business case for the EITI?
There is substantive literature about the linkages between the quality of governance and the prospects for resource-endowed countries’ economic development.2 It is generally accepted that development outcomes are enhanced by stronger economic and legal institutions, and the EITI is often seen as a component of governance-strengthening, offering particular value as a means of initiating broader reform.

The above statement is a generalisation, but mining investment is likely to have positive effects when public
revenues are spent in a coordinated and transparent way and on clearly defined national development priorities. This would contrast with situations where government authorities are poorly coordinated, development goals are diffuse, money is lost through corruption, and spending is focused on consumption.

In situations where mining investment does not contribute to reasonable development outcomes, community and political support for the industry will generally be weak. This can result in a range of adverse business outcomes: greater risks of onerous taxation, reduced security of mining titles, and increased prospects of disrupted operations. As was explained in Chapter 4, there is a strong case for industry–government–civil society collaboration in the mining sector, and the EITI is a valuable vehicle for achieving this.

The case for mining companies to support the EITI is clear: better governance standards support development efforts and improve the business environment for mining investment. Simply put, business support for the EITI could be viewed as enlightened self-interest.

**The EITI and Publish What You Pay**

The EITI developed from a broad international civil society campaign known as Publish What You Pay (PWYP). PWYP has a wider scope than the EITI, seeking both disclosures of companies’ payments to governments and government receipts from companies, as well as promoting greater transparency in export credit agencies, stock market listing requirements, and accounting standards. It is a civil society campaign that does not have the formal engagement of governments and multi-lateral agencies but is endorsed by some companies, including both AngloGold Ashanti and Newmont (see Box 1).

In some cases this corporate support for PWYP has diminished initial resistance and encouraged host governments to improve transparency in fiscal reporting.

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### Box 1. Newmont’s publication of tax payments and royalties

Prior to 2003, in Indonesia, Newmont had been publishing its payments to government through press releases in the local media. This was largely driven by a perception in the local community that the company was not paying its royalties and taxes. The company continues to put out regular media releases stating what it has paid to the government. Public notification of tax and royalty payments to the government using media releases, community newsletters or website are also regular practice by Newmont in Peru and Bolivia.

The practice of issuing media releases stating taxes and royalty payments to the government was adopted in Ghana when Newmont’s Ahafo mine started operating in 2006. In Ghana, media releases are put out by the company on a quarterly basis.

Why does Newmont choose to publish payments to governments? Aside from giving the company an opportunity to explain that it is doing the right thing, it also provides an opportunity to support and encourage citizens to exercise their democratic rights and question their government’s use of these taxes and royalties.


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The EITI is an official international process endorsed by both “host” country (where mining occurs) and “home” country (where the head office of companies are located) governments. A number of multilateral organisations, including the UN General Assembly, the World Bank and the IMF, have all endorsed the EITI, and some are active participants in its implementation.

While the two processes are distinct, they are complementary. In a practical sense, the EITI can be seen as the best means for companies and governments to implement the goals of PWYP. Thus, companies that take part in the EITI process can reasonably expect greater support from civil society and other key stakeholders.

### Requirements for companies based in supporting countries

Some home country governments, like the UK, Norway, Australia and Canada, have formally endorsed the EITI. These governments provide financial and other resources to help advance the Initiative. However, home government endorsement does not place obligations on those countries’ mining companies, though some companies have chosen to add their support to the EITI.

Some companies have made a public commitment to the EITI, even where their home country has not formally endorsed the EITI. An example is AngloGold Ashanti, whose public policy is as follows:

“AngloGold Ashanti has been an active supporter of the Initiative since its inception, both via the company’s membership of the ICMM and individual corporate action. During 2006, AngloGold Ashanti formally became an organisational supporter of the EITI. As a matter of principle AngloGold Ashanti has established practice of disclosing all payments made to governments via our annual Report to Society, regardless of whether the country is a formal supporter of the EITI.

Furthermore, in countries where governments have indicated a desire to be a part of the process, AngloGold Ashanti is actively involved in contributing to the success of the Initiative. These countries include Ghana, Guinea, Mali and the Democratic Republic of the Congo.”

### Is there a case for early participation by companies?

Implementation of the EITI by governments is a substantial exercise that requires significant time and resources. There are two key stages: becoming a Candidate Country, where a formal decision to adopt and begin implementing the Initiative is made; and a Compliant Country stage, where a country has completed the EITI Validation process to verify that all EITI principles and practises are in place. To date there are a 24 Candidate Countries, but no country has completed Validation to attain Compliant Country status.

One implication of this is that, presently, the EITI imposes very
modest administrative demands on companies – mainly only participation in multi-stakeholder groups to help develop procedures. For this and other reasons, there are potential benefits from early corporate participation. It facilitates the establishment of collaborative relations with key stakeholders in-country, resulting in greater understanding and trust. For example, in relation to Azerbaijan, Prof. Aronsen noted that “even in authoritarian regimes (like Azerbaijan), the EITI seems to facilitate creation of a feedback loop between business, citizens, and their government, which can gradually spill over into the polity as a whole”. A second benefit is that providing input to the design of procedures means they are more likely to be practical and user-friendly. In addition, reputational benefits may accrue to companies that have a demonstrable commitment to the EITI, given the explicit support that organisations such as the UN, institutional investors and development banks have voiced for Initiative.

Thus, even where the EITI is in its early implementation stages, companies can advance their business interests through early participation.

In-country implementation of the EITI

After companies have made a policy decision to support the EITI, implementation responsibility shifts to in-country managers who face a range of practical implementation challenges within their operations. The following sections provide guidance on typical challenges faced by in-country managers.

Encouraging governments to adopt the EITI

The mining industry has been a strong advocate for governments to adopt the EITI in some countries. In Ghana – which has a substantial and growing gold mining industry – Newmont, AngloGold Ashanti, Gold Fields and the national mining chamber combined to encourage the government to implement the EITI. Ghana has a long history of mining, but the sector’s fortunes have varied substantially, with investment periodically plummeting. However, in recent decades progressive reform has led to more favourable conditions, and investment has grown markedly. Greater transparency, formalised by the adoption of the EITI, has been a key signal of the Ghanaian government’s commitment to reform.

Indonesia is another country where mining companies have advocated adoption of the EITI. Newmont has provided leadership by disclosing payments to government and supporting Indonesia’s Publish What You Pay campaign.

The lessons are clear: where a company is an investor in a substantial new project or the operator of a large mine, it can be an effective advocate in its own right, through cooperation with other stakeholders and industry bodies.

Assisting EITI establishment

A company’s motivation, capacity and ability to engage in the EITI implementation process will vary according to the specific circumstances. Typically, companies can help EITI implementation in four ways, namely:

1. participating in groups to establish the EITI, particularly the formally required multi-stakeholder group;
2. advising on the country’s work plan – for example, the practicality of reporting procedures and payments that should be included. Companies can also ensure that, if any changes are made to the EITI reporting templates, the advice is issued well in advance so that the companies can modify their data-collection and reporting structures to respond;
3. communication across the mining industry. Leading companies can act as representatives for the EITI and provide feedback to the wider mining industry, which helps to ensure that disparate perspectives are reflected in EITI discussions; and
4. completing reporting requirements in a timely and cooperative way. Companies making payments to governments above an agreed threshold must fill out a reporting template in order for the EITI process to be validated in that country.

It may be easier for larger companies to participate in these sorts of activities, but it is more valuable to have broad representation where possible. Box 2 gives examples of Rio Tinto’s support for EITI implementation in two countries.

After learning that the EITI would only be applied to companies in active production, Rio Tinto sent a letter to the EITI working group stating its willingness to adhere voluntarily to the Initiative, even though the company was still in exploration. Anglo American made the same request. The MEM has agreed to meet with the two companies to explore this proposal.

The role of business where local industry is diverse and lacking capacity

Countries with a diverse mining industry face particular challenges. The industry may be composed of a range of company types, each with different cultures and objectives:

Box 2. Support for EITI implementation in Madagascar and Peru

Madagascar

In Madagascar, Rio Tinto has appointed a representative to the multi-stakeholder working group. The company has also supported the country’s application to Candidate status and the initial government EITI working group. In addition, the company has facilitated extensive EITI engagement sessions with regional administrators, national government representatives and civil society groups.

Peru

Rio Tinto has taken a number of steps to support EITI implementation in Peru, expressing support for the Initiative via the national industry body for mining and petroleum, SNMPE, and in a public meeting convened by the Ministry for Energy and Mines (MEM).

Source: Information provided by Rio Tinto
local companies, both big and small, and international companies from a variety of home bases, including emerging economies such as China, India, Brazil and Russia. The sector may be further complicated by a host governmental structure in which central, provincial and local governments all have different views on revenue transparency. Potentially, these are the types of situations where the EITI can offer the greatest benefits, but they are also the ones where the challenges and resources required for implementation are greatest.

In these circumstances, enlightened companies that are familiar with the debates around the EITI – concerning the potential to reduce misappropriation of resource revenues, for example, or improving development outcomes through enhanced governance – have the opportunity to provide leadership. Such leadership can have reputational and relationship-building benefits for the companies concerned, and improve the practicality and legitimacy of the EITI procedures adopted. While experience has shown that companies from countries with less of a tradition of transparency are unlikely to obstruct or delay EITI implementation, they may not be best placed to play a leadership role initially.

Support by leading companies can include voluntary assistance for smaller companies, perhaps through the national chamber of mines or through existing business relationships. Typically, this can include information-sharing, representing the broader industry in the multi-stakeholder group, making resources available for multi-stakeholder activities, and providing guidance from the company’s experience in other jurisdictions. Such support is dependent on leading companies having relevant experience of EITI implementation to share.

The role of mining associations
Industry representative bodies can be the most effective vehicle for participation in the EITI, assuming that the association has a unified view on the EITI. And even if it does not, an association can be useful as a forum for industry to debate its views and attempt to form an effective position. Specific potential roles for mining associations are:
• encouraging governments to sign-up. In some countries (Ghana and Zambia are two examples), the country’s mining industry has actively encouraged the national government to join the EITI;
• supporting smaller companies. Here the role could be two-fold: representing the broader industry, including smaller companies, and being an information-sharing forum for all companies;
• supporting communication and outreach. Mining associations can provide representatives for multi-stakeholder groups and publicise information to general audiences about the EITI, as was done by the Mongolian National Mining Association.

Senior personnel from some mining associations are involved in other international initiatives. They can play a very valuable role by informing the local industry about links between the EITI and broader efforts to improve governance in the sector, by, for example, civil society or multi-lateral institutions.

Supporting civil society
Civil society participation is essential for any country’s EITI process to be validated. The Validation Guide requires “civil society [to be] actively engaged in the design, monitoring and evaluation of the process and contribute to public debate”.

Companies need to understand the local context before they decide how or whether to assist civil society, and specifically, whether it will be possible for civil society to participate properly. Where the answer is yes, companies may wish to provide support to enable diverse but representative participation. Of course, such support must be unconditional and might include sharing skills and information with civil society groups in order to encourage self-organisation: one of the reasons preventing civil society from active engagement may simply be that the groups lack access to information about the implementation process.

Where a country has taken the decision to implement the EITI, and where companies are concerned that effective civil society participation is unlikely because of “undue restraint or coercion”, greater care is warranted. Companies will be reluctant to become involved in politicised debates that could jeopardise their own relationships with the government or prompt accusations of straying beyond their legitimate role.

In these circumstances, the most appropriate role for companies might be to explain to governments the potential business benefits that the EITI offers, and to voice their in-principle support for the Initiative. This might extend to drawing a government’s attention to the risks, further down the line, of the process being found to be non-compliant during the course of Validation. In extreme cases a company might choose to convey to a government its reluctance to participate and invest in a process that does not follow the official, internationally endorsed EITI criteria.

What taxes and payments should be reported?
In Chapter 4, the concept of an Effective Tax Rate (ETR) was introduced and it includes all payments required of companies by governments. The ETR is what determines the competitiveness of a country’s tax regime internationally, and its importance suggests that it should be the measure used in the EITI, hence all payments to governments (corporate taxes, royalties, duties, licence fees and employees’ PAYE taxes) would be reported. Further, where they exist, ‘voluntary’ taxes (such as payments to the Voluntary Support Fund in Peru) should also be disclosed, particularly when they fall outside the formal tax system, because of the risk, or perceived risk, of corruption.
Equally, disclosure must cover payments to all levels of government.

The specific issues of voluntary payments (social investment payments, for example, or charitable donations) and spending on socio-economic development activities are less clear-cut. Social investment and voluntary spending are treated very differently for tax purposes in different countries. While considerable sums of money may be involved, current thinking inclines against publicising these payments within an EITI reporting template. The main reason for this is that there is no equivalent entry on the government side and it is difficult to verify them in the same way as (for example) formal tax or royalty payments. Many companies currently publicly report on such expenditures.

A more difficult area is where companies’ investment in public goods may in some cases be in lieu of taxation. Here it is necessary to distinguish between those investments that have a direct business purpose and those for public purposes. This is particularly challenging in cases where infrastructure is shared, such as a new road. In these circumstances, companies should report the means by which they have classified investments as either private or public.

It is only through comprehensive reporting that the EITI’s goals of promoting transparency, improving governance and strengthening trust can be achieved. It is in the interests of all stakeholders that a full picture of the industry’s financial contribution is provided.

Appendix 1 provides sample reporting templates for mining companies. The templates are intended to be illustrative, and will need to be adapted to suit the circumstances of each jurisdiction. Also, it would be desirable to include provision in EITI country work plans for reporting templates to be periodically reviewed and improved, particularly in situations where the capacity of governments and industry is initially low.

Should government expenditure be tracked and reported?

EITI procedures do not currently require monitoring and disclosure of how and where government funds from extractive industries are spent. Arguably, this is a significant omission because expenditure is such an important determinant of development outcomes, and the benefits of greater transparency apply equally to government transfers and to payments by industry to governments.

It is therefore important to note that EITI procedures provide flexibility in implementation and that some countries have broadened the scope of the EITI. In Nigeria, for example, the EITI process was extended to cover the amount of money the government invests in joint ventures.

Communication with stakeholders about mining taxation

Mining taxation is an emotive and topical public issue, and, as explained in Chapter 4, the quantum and timing of payments varies with cycles in the industry, both project development cycles and price cycles for particular minerals. It is also the case that mining investment occurs in a competitive international marketplace and relative taxation is a primary consideration in investment decisions.

It is in the interests of all stakeholders for a country’s tax system to be well understood and to be seen as being fair and reasonable. Ideally, this point is best understood in the context of the mining industry’s overall contribution to a country’s development because payments to government are only a component of complex processes leading to that development. Benefits from foreign investment, employment-creation and training, purchases from suppliers and the stimulus to institutional reform can all be more important than the tax take.

It is very much in the interests of companies to obtain a factual understanding of their contribution to development, even if it is modest and can be strengthened. This enables industry to be an informed participant in national development debates and to influence public policy. Industry must therefore clearly and credibly communicate its case, and multi-stakeholder EITI forums provide an excellent vehicle for this to happen. Specific practical steps that companies can take include:

• providing the information on websites and/or in sustainability reports that the company supports the EITI process in that country and has completed the reporting template. (A link can be provided to the country’s official EITI website); and

• becoming actively engaged in multi-stakeholder communications groups or supporting such groups with other resources.

The EITI Secretariat has developed guidance on communicating the results of the EITI process in its Talking Transparency: How to communicate the EITI.

Conclusions

The mining sector is very diverse both internationally and within particular countries, which means that EITI implementation processes will vary from country to country. The key need is to protect the EITI principles of transparency and inclusiveness.

The business case for the EITI can be viewed as facilitating an operating environment that is more supportive and secure for business. Implementation of the EITI in any country is a lengthy process and different country-specific procedures are still emerging in all Candidate Countries. It would be possible in these circumstances for mining companies to take a passive position and allow others to fashion the procedures. But this would be a lost opportunity, as early participation enables
stakeholder collaboration and the building of trust, and
development of procedures that are practical and user-friendly.

After a policy decision is taken by a company’s head office to
support EITI implementation, responsibility shifts to in-country
managers. They face a range of challenges and are well advised
to work through the country’s national mining association or a
special purpose industry group. Where this is not feasible,
individual companies can still be effective participants. Key
activities are to join and contribute effectively to the local EITI
multi-stakeholder forum, which may also involve supporting
civil society engagement. Communication about the local
industry’s contribution to public revenues and to overall
national or regional development is in the interests of all parties,
provided it is credible and clear.

The ICMM is a CEO-led industry group that addresses key priorities and
emerging issues within the mining sector. David Prescott was lead
writer of the EITI Business Guide published in 2008. Paul Mitchell was
President of ICMM until May 2008.

Notes

1 This chapter was prepared by the ICMM Secretariat with the support of
Dave Prescott, a freelance writer, and with editorial input from Paul
Mitchell, Mitchell McLennan Pty Ltd.

2 See for example the reports from the resource endowment initiative
on ICMM’s website and “Escaping the Resource Curse” by Macartan
Humphreys et al, published in 2007

3 Every country will decide a threshold for payments above which
companies will be required to report. This threshold is sometimes
referred to as the “materiality threshold”.
Appendix 1  Sample EITI reporting template for mining companies
Input template for company reporting entities

Company reporting:

Reporting period:

<table>
<thead>
<tr>
<th>SCOPE 1 BENEFIT STREAMS</th>
<th>Volume</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Line Ref</td>
<td>Guidelines section 6 Ref</td>
<td></td>
</tr>
<tr>
<td>1 Benefit streams from international and national state-owned company</td>
<td>i</td>
<td></td>
</tr>
<tr>
<td>a) Corporate taxes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b) Royalties</td>
<td>ii</td>
<td></td>
</tr>
<tr>
<td>- in cash</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- in kind/sponsorships, i.e. sports, etc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c) License fees, rental fees, permitting fees and other considerations for licenses/concessions, ground rent, property rate</td>
<td>iii</td>
<td></td>
</tr>
<tr>
<td>d) Signing bonuses and production bonuses</td>
<td>vi</td>
<td></td>
</tr>
<tr>
<td>e) Dividends</td>
<td>vii</td>
<td></td>
</tr>
<tr>
<td>f) Other payments to host governments, specified as (including payment made through production entitlement):</td>
<td>iv, v, vii</td>
<td></td>
</tr>
</tbody>
</table>

Exclude:
- Tax levied on consumption (e.g. VAT/GST/sales taxes)
- Pay as you earn (PAYE) income taxes
- Social payments (unless statutory requirement)

<table>
<thead>
<tr>
<th>SCOPE 2 BENEFIT STREAMS</th>
<th>Volume</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Line Ref</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 Scope 2 Benefit streams (voluntary disclosure):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>...................................................................................................................................................</td>
<td></td>
<td></td>
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</tbody>
</table>

MANAGEMENT SIGN-OFF
We acknowledge (or on behalf of the Board of Directors (or similar body)) our responsibility for the fair presentation of the Reporting Template in accordance with the Reporting Guidelines, with the exception of:

Name

Signature

Position  Date
Appendix 2  Sample EITI reporting templates for sub-national governments

Input templates for metropolitan, municipal, district assemblies

Name of District Assembly:

Reporting period:

A. PREVIOUSLY UNREPORTED PROJECTS/ROYALTIES PAYMENT
   1. Mining royalty payment received and not reported for the previous period.
   a) Total amount
   b) Total expenditure (from the amount above)
   c) Total amount remaining after disbursement
   d) Indicate in the table below the disbursement for the amount expended (as in b above).

B. PROPERTY RATES
   a) Total amount

<table>
<thead>
<tr>
<th>Name/location of project</th>
<th>Name and address of contractor</th>
<th>Duration</th>
<th>Estimated cost (¢)</th>
<th>Actual cost (¢)</th>
<th>Remarks/ Progress of work</th>
</tr>
</thead>
</table>

   e) Indicate in this section (table below) any in-kind payment received by your District Assembly

<table>
<thead>
<tr>
<th>Nature of in-kind payment</th>
<th>Cash/in-kind payment</th>
<th>Name of providing institution</th>
<th>Duration</th>
<th>Remarks</th>
</tr>
</thead>
</table>

C. CURRENT REPORTING PERIOD
   2. State in this section the disbursement received as mineral royalties.
   f) Total mineral royalties received
   g) Total expended from the amount above
   h) Total remaining after expenditure (f-g)
   i) Indicate in the format below the disbursement of the expended amount stated in (g) above.

<table>
<thead>
<tr>
<th>Name/location of project/investment</th>
<th>Name and address of contractor</th>
<th>Duration</th>
<th>Estimate cost</th>
<th>Actual cost</th>
<th>Remarks/ Progress of work</th>
</tr>
</thead>
</table>

   j) Indicate in this section any form of in-kind payment received by your District Assembly

<table>
<thead>
<tr>
<th>Nature of in-kind payment</th>
<th>Cash/in-kind payment</th>
<th>Name of providing institution</th>
<th>Duration</th>
<th>Remarks</th>
</tr>
</thead>
</table>

MMDA SIGN OFF

We acknowledge our responsibility for the fair presentation of the reporting Template in accordance with the reporting Guidelines, with the exception of:

Name  
Signature

Position  Date
Introduction
Since the EITI has tended to focus on countries with substantial oil and gas resources, descriptive information on the extractive industries and the EITI process is often written with these countries in mind. This chapter provides a mining supplement to “Drilling Down – The Civil Society Guide to Extractive Industry Revenues and the EITI”, published by the Revenue Watch Institute in June 2008. The supplement points to some important differences between the petroleum and mining sectors that civil society organisations engaged in the EITI process should be aware of. It seeks to help civil society organisations better understand the nature of these differences and what consequences they hold for civil society engagement with the EITI. This chapter should be read in conjunction with “Drilling Down”, to which it makes frequent reference.

The Four Phases of the EITI process related to mining
The EITI validation methodology sets out country obligations in relation to the four phases that mark the EITI process: the Sign-up Phase, the Preparation Phase, the Disclosure Phase and the resulting Dissemination Phase. This section cross-references mining-specific questions that should affect civil society engagement throughout each of these four phases.

The Sign-up Phase
The Sign-up Phase is the period when a government must demonstrate that it is serious about the EITI. This is the time to get organised, to establish objectives and deepen knowledge about the extractive industries present in the country.

Who are the government stakeholders of the mining sector at the national level?
It is important to note that governments use all kinds of administrative structures for their mining sector which may include any number of combinations of entities. Although organisational structures vary from country to country, in the 1990s many countries adopted a structure that formally allocates extractive sector responsibilities to six entities:

- a ministry of mines, acting as the political head;
- an office that administers mining rights at the administrative level (a cadastre office);
- a geological survey department;
- a minerals promotion agency;
- an environmental office;
- a tax authority and/or other revenue collection authorities.

These entities may be located within the same ministry, or they may include semi-autonomous government agencies. Civil society organisations should deepen their understanding of the remits of the different government entities and the allocation of responsibilities for the various aspects of the mining sector. The mining law (perhaps referred to also as the mining code, mining act, or mining statute) usually includes a chapter establishing the organisational structure of government authority over the sector.

Other governmental organisations with a strong role to play in the EITI process include the relevant supreme audit institutions. These institutions (in some jurisdictions referred to as the external audit office) carry out the external audit of public sector bodies. They are the national bodies responsible for
scrutinising public accounts and thus, in most countries, constitute the formal system of financial accountability. In mineral-producing countries, special attention must also be paid to indigenous peoples who have their own traditional leadership structures that represent important constituencies of mining-affected communities (and can sometimes be undermined by governments and companies in an effort to gain access to mineral deposits and wealth).

Are there sub-national government entities that levy or receive mining revenues?
In countries with federal political-administrative systems, sub-national government entities may be able to directly collect mining revenue. There may also be a system that shares earmarked amounts of mining revenue between the national and sub-national tiers of government. Non-national countries may have a resource revenue-sharing mechanism in place that channels some mining revenue back to the regions and localities where mining activities are undertaken.

In some countries mining companies contribute directly to the finances of local government authorities, including traditional authorities. Such arrangements may be a legal requirement, they may have been negotiated and/or be customary, or payments may be made on a voluntary basis. In the case of Peru, for example, companies enjoying stability agreements have negotiated “voluntary contributions” to local communities (not necessarily through local government entities) as a substitute for windfall profits taxes.

What types of companies are involved?
The mining sector shows great variety in the types of mining companies and the sizes of their operations. Mining operations can be very large and capital-intensive or very small and labour-intensive. The following mining company types may typically be found:

- **Large multinational companies operate in many countries.** They select their exploration and project targets on a global basis and they also sell their products on the world market.
- **Medium-size companies** typically operate one or several small to medium-size deposits in one country or region and often trade in locally and regionally traded minerals, including industrial minerals. Such companies could be owned by domestic or international entrepreneurs.
- **Junior companies** are smaller and typically very dynamic, often focusing on higher-risk activities such as mineral exploration. They operate globally and often seek to negotiate deals with larger companies once they have made a discovery. Others aim to gain a controlling interest in an established operation. These companies are driven by short-term interest.
- **State-owned companies** can also be very large and sell globally. They typically focus on one or a few products (more information on these is given below).
- **Small and artisanal miners** mostly concentrate on the production of “high unit value products” – gold, for example – where specific geology makes less capital-intensive mining possible. These miners run very small operations and contribute minor shares to global production. But they provide employment and livelihoods to many people. They often operate “on the fringes of the law”, in part because of the failure of many countries to formalise artisanal mining activities, and often face very severe health and safety risks.

Does the state own parts of the mining industry?
Though they do not play as dominant a role as national oil companies play in the petroleum sector, state-owned mining companies do have a significant impact in some countries. Prominent fully government-owned examples include Gecamines of the Democratic Republic of Congo (DRC), CODELCO of Chile, and LKAB of Sweden (iron ore). In most cases, state-owned mining companies focus on the extraction of a specific type of product.

With high mineral prices, state-owned companies have emerged in new settings in recent years. For example, South Africa has set up the African Exploration Mining and Finance Corporation, and Gambia has also announced the creation of a new state-owned company. These developments have implications for contractual practices, and revenue and other benefits streams, that demand full analysis and assessment. However, such analysis has too often been insufficient.

Mining countries have sometimes formed joint ventures between state-owned companies and multinational companies, or have contracted to take an equity stake (which can take various forms) in an enterprise. For civil society organisations, it is important to understand the nature of state equity participation and partial ownership arrangements. Equity participation may form the basis for the bulk of government revenues if the fiscal system is so structured, and in addition to the country’s law, joint venture agreements may determine the government’s level of managerial control. These arrangements may also require that governments contribute public resources towards meeting a project’s capital requirements.

Various countries require some form of state equity participation, either as a general rule or with respect to the development of specific projects, such as those related to deposits that are already well known. This has been common particularly in Francophone West Africa. From the 1990s through the first few years of this century, the trend has been to reduce state equity participation as a result of the lower commodity price environment and the inability of countries to provide or raise their share of capital. More recently however, the sizeable commodity price boom has led many countries to seek greater direct ownership in strategic projects, and a number of countries have moved towards increasing state equity participation.
**What types of mining processes are used?**

It is important to understand the main types of mining processes that are used in a country. They can bear important legal, fiscal, environmental and social consequences.

- **Surface mining** extracts minerals from the surface, removing overlying earth and rocks to expose the mineral(s). This is the predominate process for metallic mines and includes open-put and alluvial mining.
- **Underground mining** involves extraction below the surface, generally disturbing the topsoil to a lesser degree but involving higher costs.
- **Solution mining** dissolves ores lying in deep deposits with chemicals and then pumps them up to the surface (e.g. salt, potash and uranium deposits).
- **Water-based mining** gathers minerals in river beds and coastal waters amenable to dredging. This is used to extract relatively dense minerals (gold, diamonds, tin, titanium minerals, or zircon).
- Previously discarded minerals may also be extracted through *waste dump or tailings re-treatments*. These processes become more attractive with rising minerals prices.

**What mining products does the country produce and export?**

Some mining products are of very high value compared to their volume (diamonds and gold) and may generate a lot of waste, while others have a low value compared to volume (construction materials). These characteristics can call for different legal and fiscal regimes. For example, regulations specific to diamond trading are applied in countries such as South Africa and Canada. In Canada the Kimberley Process is said to have contributed to strengthening procedures for the outbound shipment of rough diamonds. Another example of where differences can be called for is in cases where local value added to a resource is low. Legal regimes can try to counter this with specific provisions in support of local beneficiation, i.e. value is added domestically through smelting, refining, and other downstream activities. For example, South African legislation mandates local beneficiation with the objective of generating additional employment and other economic benefits.

During the Sign-up Phase civil society organisations should not only familiarise themselves with the types of mining products that are exploited and what they are used for; they should also aim to develop some understanding of the markets that these products serve and the national and international trade rules to which they are subjected. All these factors affect company risks and financial calculations and therefore the types of legal regimes and contracts that are used. For example, some mining products can be rather easily substituted (such as lead or copper), while others have very specific uses (such as gold). Some products have only a few highly specialised producers, while others have many. Likewise, some have many users (rutile); others have only a few (uranium). These factors affect supply and demand, bargaining powers, and also the risk of substitution.

Of course the types of mining products a country produces also affect the transportation and utilities infrastructure that a project requires (e.g. energy demand, road construction, access to ports, etc.) and thus its cost structure.

Where possible, civil society organisations should consider establishing relations with others located in countries that produce similar mining products, in order to compare legal, financial, pricing and marketing arrangements. Care must be taken in making comparisons, however, as differences in geology, infrastructure, geography, and any number of other factors can be determinative of the profitability of a particular mine. Some mining products can only be commercially mined in a few locations and the demand for some products may be very concentrated and very specific. Moreover, comparisons of individual legal or fiscal terms can be misleading, as legal and fiscal regimes can only really be compared if they are considered as a whole.

**The Preparatory Phase**

The Preparatory Phase is the most important phase in the EITI process. Fundamental decisions need to be made about how the multi-stakeholder group is to be set up and who is to be engaged. Civil society organisations require a good overview of the governmental, mining company, investor, and other stakeholders affected by mining activities. This phase also involves getting to understand the revenue streams and whether there are legal and other obstacles to stakeholders’ participating in the EITI process.

**Who are other key stakeholders to engage in the mining sector?**

This chapter has already discussed government stakeholders and the different types of mining companies that a country may host.

In addition, national mining associations can be an important stakeholder which civil society organisations should aim to engage early on. These organisations are not necessarily dominated by the views and standards of the large multinational companies. National industry associations can predominantly represent small and medium-size domestic companies and may have significant political influence. Other stakeholders from within the industry can include professional associations, targeting, for example, mining engineers as well as trade unions.

Parliaments have great potential to play an effective oversight role. Civil society should consider raising awareness of elected representatives and working with them to ensure good practice in EITI implementation, as has been done in Ghana and Nigeria,
Supreme audit institutions are also of importance in this respect. Their role is to provide parliaments with an independent opinion on how the executive has used public resources.

**What are the typical revenue streams?**

Production-sharing agreements, which play a major role in the oil and gas sector, are very rarely applied in the mining industry. Resource revenues in the mining industry are mainly received in the form of different types of taxes and royalties (see “Drilling Down” for the main form of revenue streams). With very few exceptions (e.g. coal in Egypt), there is no sharing of physical mining outputs.

An alternative to the traditional fiscal arrangements is exemplified by the recent contracts with Chinese companies that include the provision of infrastructure in return for the mineral rights. For example, a recent large DRC China contract is structured as a loan, and the costs of large-scale infrastructure projects managed by Chinese-led consortia are to be repaid out of the proceeds of the exploitation of the DRC’s deposits. Large-scale signature bonuses represent the only significant up-front cash payment that the DRC government is to receive, but the deals provide for the government to benefit from billions of dollars of direct infrastructure construction, at relatively favourable interest rates. Beyond the opportunity that these deals create for rapid physical development, they also impose certain risks. The government faces significant price risk, because it must repay the full value of the infrastructure loans even if prices drop. Civil society should also pay close attention to the appropriateness of the priority given to such infrastructure projects and to monitoring procurement and other construction costs, which could exceed the value of the infrastructure delivered but would still need to be repaid in mineral revenues over a period of many years.

In cases where there is government equity participation, civil society organisations should identify the terms, as equity participation can take very different forms. So-called “free equity”, where the government receives rights to a share of profits without having to fund the enterprise, is a common approach. It is important to note one common risk of free equity, which is that if companies are giving government equity without compensation, they may be carving out ways to make up for it elsewhere in the fiscal arrangements. A government may also take a “carried interest”, whereby the government has an obligation to pay for its equity shares but does so by foregoing some portion of future revenues, often with the interest accreting over time up to some pre-established threshold. A country may also acquire equity through raising capital and buying shares. Each of these approaches may also involve some sort of direct role in the management of the enterprise (as distinguished from the government’s regulatory role) – though the receipt of board seats, for example.

The following revenue streams, which are explained further in “Drilling Down”, may typically be expected:

- corporate income tax;
- windfall profits tax;
- royalties;
- sales tax, excise tax and VAT;
- payroll tax;
- import and export duties;
- land rents, property tax, and application/issuing/registration fees and stamp duty;
- withholding taxes on loan interests and services and/or on remitted dividends;
- dividends, if there is state participation and/or state ownership.

Civil society organisations should be aware that in some countries (e.g. Chile) mining projects are taxed similar to other economic sectors. They are subjected to the general tax regime with some special provisions that cater to the particular characteristics of the sector. But in many countries the mining sector, or particular mining projects, enjoy special tax regimes, which may or may not have been negotiated bilaterally. This means that in practice, different fiscal regimes can exist for different mineral deposits and different minerals in a particular country.

**What is the tax base?**

It is important to recognise that tax bases are just as important as tax rates for understanding government revenues. If we know that the corporate tax applied to a mining enterprise is 30%, the next question has to be: “30% of what?” The fact that tax bases differ across countries (and indeed within countries where individual contracts give each mine a unique fiscal regime) makes the comparison of tax rates very misleading.

For direct taxes, the tax base can generally be thought of as gross revenue minus costs. Countries allow different kinds of costs to be deducted from revenue. Often more important that the kind of costs allowed, however, is the timing of the deductions. For example, heavy up-front exploration and development costs may be deducted immediately in one country but deducted over a period of years in another country. These differences can have significant impacts on the revenues due to the government. Another aspect of the tax base that is very important is the determination of the scope of the taxable entity. For example, each mine may be “ring-fenced” as a separate taxable enterprise, or several mines owned by the same company may be taxed in the aggregate, with costs from one mine reducing taxable revenues from another. And in some countries CSR spending may be income tax deductible and in others it may not.

Countries with weak administrative systems and revenue collection competencies may rely heavily on companies self-reporting their tax liability. Some governments suffer
capacity constraints in monitoring and auditing whether the tax base has been properly calculated by the company. There have been concerns that intra-corporate financial flows and transfer pricing have allowed companies to artificially reduce profits, effectively moving them abroad to another related entity and thereby avoiding proper taxation in the country where the mining took place.

Most types of royalties are payable on the basis of production volumes or sales values. In rare cases they are also based on some measure of income or profits. Combinations of different types of royalties may also be applied (in Ghana, for example). One challenge in respect of royalties payable on production volumes or sales values is whether they have been calculated at the correct stage and with the correct prices.

Setting the scope for the EITI and development of the reporting templates

The structure of the revenue streams and the tax base are key in determining the scope of the EITI and the content of the reporting templates. The latter are crucial in ensuring that all the key revenue flows are reported and reconciled.

A key issue will be materiality: determining which payments and which entities should be included in the scope of the national EITI. For example, the existence of many small and artisanal mining companies can pose a challenge. It may not be feasible (at least up front) to include all of them in the EITI process. Compromises have so far included reporting revenue streams by individual companies only above a certain value. Small and artisanal miners may also work in the informal economy, in which case they are not formally taxed.

There is merit in capturing as much information as possible about this segment of the mining sector, not least because of its high employment and environmental impact. However, the information submitted has to be audited and reconciled, and both can be extremely costly. The cost-benefit of different options should be forecast and discussed by the multi-stakeholder group before a final consensus approach is incorporated into the reporting templates.

Are there potential obstacles to participating in transparency initiatives?

In some countries the fiscal and other terms of mining projects are not made public. Companies and governments may claim to be bound by secrecy clauses to keep terms unknown. However, disclosure is typically permitted by the contracts if both parties agree to it. The key may lie in getting both parties to agree to the principle of disclosure, either separately or together.

In countries of Eastern Europe and Central Asia, laws on state secrets and broad regimes of classified information have undermined the efficacy of participation laws. In many countries in Latin America and Africa, Access To Information (ATI) legislation is not comprehensive and/or enforcement is weak. However, NGOs are increasingly bringing cases forward using ATI laws to seek disclosure of contracts and/or disclosure of payments and receipts information.

Governments can legislate or require transparency. For example, in Nigeria, the President issued a requirement that all companies report on an individual (disaggregated) basis and that this information would be made public. In Peru, there is a debate about whether the tax laws allow such individual disclosure. It is a key objective of the EITI to review existing laws and regulations to identify potential barriers and look for solutions that allow appropriate disclosure. Civil society may need to undertake or contribute to this analysis, and advocate for such edicts or laws where needed.

The Disclosure Phase

During the Disclosure Phase the EITI auditor or aggregator delivers the EITI report to the multi-stakeholder group, and discrepancies between company-declared payments and government-declared receipts are laid open.

What kinds of discrepancies and lessons have EITI reports in mining countries identified?

At the national level, EITI reports have been used to identify specific discrepancies in revenues paid and received that may suggest mismanagement, corruption, or poor administrative capacity. For example, the first Mongolia EITI reconciliation report in 2006 identified discrepancies that could not be explained of more than 25 billion tugrugs (US$20 million). This raised numerous questions regarding the integrity of government revenue collection, management and reporting systems at the national and sub-national level, and the possibility that companies may have been including illegal payments, donations and bribes they pay to government officials. In Ghana, early EITI reports identified a lack of independent checks on the amount and grade of gold produced by companies, and the lack of formalised collaboration between the IRS, the Mineral Commission and other government agencies on matters relating to the payment of mining benefits. Ghana’s reports have also identified under- or non-payment of mining royalties by certain companies as a problem.

EITI reports have also raised awareness about revenue management systems and the amount of resource revenue that countries are receiving. To the extent that the EITI generates a more accurate and comprehensive picture of mining revenue streams, this information often raises important questions about implementing countries’ ability to effectively set, manage, monitor and audit their fiscal regimes (more on this below). EITI mining reports can also raise awareness and identify concerns about countries’ mineral sector tax base – “Drilling Down” points to the Ghanaian EITI report, which highlights low tax receipts and various areas of administrative weakness, and makes recommendations on how they could be addressed.

ADVANCING THE EITI IN THE MINING SECTOR
At the sub-national level, several mining countries’ EITI reports have noted discrepancies with respect to payments made to state, local and traditional leadership entities. In the case of Ghana, the recipient sub-national Office of the Administrator of Stool Lands could not account for funds disbursed by the Inland Revenue Service. In the case of Guinea there were discrepancies with respect to moneys paid by companies to local administrative entities.

Administrative capacity and public transparency mechanisms appear to be weakest at the sub-national level, which poses problems for the accountability of revenues transferred to sub-national entities. One root cause of this problem may be that informal/traditional power-holders who receive funding have not been fully integrated into the political-administrative system that oversees the use of public resources. As in Ghana and Guinea, the EITI may be able to raise awareness of these problems at the sub-national level and contribute to domestic constituencies potentially addressing it.

The Dissemination Phase
Effective disclosure depends upon the readiness of the multi-stakeholder group to publish and distribute the EITI report and to generate effective follow-up of recommended actions.

**The Dissemination Phase provides a learning opportunity**
EITI reports provide a powerful opportunity to reveal and explain what types of problems have been encountered by mining countries. For example, the Ghanaian EITI report has revealed the lack of formalised systems (and perhaps also the qualified manpower) to ensure effective enforcement of and compliance with fiscal regimes, especially in establishing the correct tax base. The EITI report should be seen as a tool to help government entities improve inter-governmental coordination and adopt a coherent and country-specific approach to designing, monitoring and auditing mining fiscal regimes. Governments need to be given incentives to become more active and to focus on multi-stakeholder consensus-building.

**Should dissemination reach the sub-national level?**
In mining countries the sub-national outreach of the EITI process and results can be very important, particularly if there is a revenue-sharing formula in place. Civil society organisations should be mindful that the risk of a local “resource curse” can be considerable even if, at the national level, mining revenues comprise a relatively small share of total government revenue. It is also important to keep in perspective the amounts of mining revenue that are received in relation to overall sub-national budgets.

**Business and industry concepts for mining**
Part II of “Drilling Down” explains for the extractive industries more generally the legal and economic framework, primary types of contracts, primary forms of government revenue, entities managing revenues and key areas of vulnerability in extractive industry accounting. The section presented here focuses on issues where the mining sector differs from the general picture conveyed in “Drilling Down”.

**Mining legal and economic framework**
The global mining industry has been shaped by the developments that have evolved over the past couple of decades. They have set the political and economic background for current mining regimes. Recent years have seen several fundamental changes to earlier arrangements, some of which are still evolving. This makes it difficult to provide a broad and general picture.

**How has the mining sector evolved over the past couple of decades?**
Legal and regulatory reforms undertaken in the late 1980s and early 1990s emphasised the (re-)privatisation of state-owned enterprises, the provision of stable and internationally competitive fiscal regimes, liberal foreign exchange regimes and greater reliance on standardised mining laws, as opposed to project-specific negotiated arrangements. Some have argued that this context of reform has led to a “race to the bottom” in which countries have offered foreign direct investors overly generous conditions, to the detriment of those countries’ economic, social and environmental well-being.

The argument behind the late-20th century investment-friendly mining law and agreement reforms focused on balancing risks and rewards for the industry at a time of low commodity prices. The argument was that high political risks in low-income and emerging market countries raise the costs of capital, and that investor protection regimes were necessary in order to sustain investment. The benefits to the host countries were expected to be supplemented by the spill-over and/or multiplier effects of investment. More recently it has been acknowledged that such effects are neither automatic nor certain, and that the risks to host government and societies may have been undervalued (or ignored). Moreover, countries are beginning to think more rigorously about whether proceeding with extraction at a particular site is actually the most economically and developmentally beneficial course of action.

Over the past five to ten years, mining countries have increasingly begun to revisit and revise their mining policies and laws – until recently in a context of historically high commodity prices – in an effort to capture a greater and, in their view, more equitable share of the revenue windfall. Many recent reforms, especially in Africa, Asia and Latin America, have been undertaken with an eye on maximising government take through creating fiscal frameworks that are responsive to commodity price volatility and share up-side and down-side risk
more evenly. There is also a new focus on identifying a broader vision for national development that connects mining sector policies to larger development goals. Countries that have recently initiated mining reviews and policy reforms include South Africa, DRC, Sierra Leone, Indonesia, Mongolia, Ecuador, Guinea and Bolivia.

**What does mining legislation entail and how is it usually set up?**

In general, mining legislation defines mineral ownership in the subsoil and sets out the rules and procedures that govern company access to mineral rights and the conditions for operation (the “licensing”; “concessionary” regime). In addition, mineral ownership is often also defined under constitutional provisions.

In contrast to the variety of contract types in the petroleum industry set out in Chapter 6 of “Drilling Down”, the legal arrangement of granting concessions in the mining industry is most often combined with a fiscal regime based on a tax/royalty concession system and is set out in the mining law, i.e. it is similar to the concession agreements described in 6.2 of “Drilling Down”. Tax/royalty systems generate the main benefit streams for the purposes of the EITI. Across the mining industry and even within the same mining country there can be considerable differences in how royalty/tax systems are set out. They can be specified in general law (i.e. the mining law) but they can also be negotiated in a contract. It is important for civil society to analyse mineral legislation at the start of the EITI process and identify all information relevant to the generation and collection of mineral revenues, including fiscal frameworks and administrative relationships and responsibilities.

A mining law sets the classification of minerals or mineral regimes in each country. Different minerals and metals often have different specific regimes. Small-scale and artisanal mining is also often governed by a specific set of norms; large-scale projects, too, are often provided with specific sets of regulatory provisions and guarantees, and in some cases government equity participation is mandated.

A distinctive feature of mining regimes in contrast to oil and gas regimes is that the former often rely on a general (and to some extent historic) principle of “first come, first served” as a method to gain access to mineral rights. The original rationale for introducing this principle was to reduce government discretion and to cut red tape. The principle is used as an incentive for exploration and is a common feature across countries that underwent recent reform. A common complaint about the “first come, first served” principle is that it has led to decreased government capacity to define mining policy because they are forced by this rule to issue a license. In some cases, though, the principle is “first come, first consider”, where a right is not automatically granted.

The “first come, first served” approach has sometimes given rise to conflicts when national governments issuing licenses have disregarded local/communal land rights or consultation processes. In some countries, for example in Chile, in Peru, and in Bolivia under the 1997 Mining Code, the process for granting mineral rights is separate from setting the regulatory conditions that affect these rights. Thus, companies can be granted a mineral right before getting the regulatory permits required to use that right.

Special regimes might apply to areas of known prospectivity or projects or mines studied or developed by the state. The mining law defines the political authority that will grant mineral rights. This is important for identifying the relevant government stakeholders during the Preparation Phase.

Furthermore, the mining law sets out the rules and procedures for access to land and the use of other resources, and infrastructure requirements. It very often establishes tax, customs, investment and environmental provisions that can be specifically applicable to mining. These aspects often need to be interpreted in tandem with the broader legal framework of a country, which can in certain cases override or alter arrangements spelt out in the mining law. For example, the evolving land regime in Peru has modified the original provisions on land use in the mining law. Miners can no longer demand the expropriation of surface land, and now require prior agreement by each specific landowner. Finally, the mining law establishes the general terms and conditions for the use of some forms of mining agreements (see next sub-section below).

**How do risks affect the structure and pacing of benefit streams?**

The perceived and actual risks of the mining industry, in developing countries and more generally, have affected negotiations on and provisions catering to the types of costs that can be offset against revenue to determine taxable income, i.e. various types of tax allowances and special tax incentives. Tax allowances and special incentives have included favourable provisions for tax deductions (costs than can be used to reduce the tax base directly, including carrying forward indefinitely losses from previous years), tax credits (allowances that are deductible against taxes payable but do not reduce the tax base), tax holidays (periods during which defined taxes are not payable), and exemptions from other generally applicable taxes (e.g. import duties). All of these affect a country's mining revenue streams.

More recently a number of countries have begun to question the advisability of generous tax allowances such as long tax holidays. In Tanzania, for example, mining companies have agreed to voluntarily do away with legally granted tax holidays.

**What are currently debated legal and economic issues?**

As a result of strong global demand, prices for mining products have been rising in recent years, although a new cycle of
contraction appears to have set in from mid-2008. In this context a number of countries are discussing reforms to mining legislation and have initiated or are considering the renegotiations of mining contracts. Among the most important issues put up for change are fiscal terms and requirements to allow for state equity participation. A related discussion covers the need to balance the bargaining powers of private companies and governments to achieve greater stability through consensus and avoid more radical shifts in contractual relations. This discussion has supported calls for building the capacity of governments to negotiate.

The recent re-emergence of a few state-owned mining companies has been mentioned above. So, too, has the issue of reconsidering the rules that govern the determination of tax bases. Other currently debated issues are how firm stabilisation clauses should be in contracts, or whether they should be in there at all, and which fiscal mechanisms best transfer a share of excess profits to governments in a variety of circumstances. All these issues have been setting the background for the re-emergence of some types of mining contracts (see the next sub-section) which can be quite different from those applied in the oil and gas industry.

Primary types of mining contracts

**General differences**

“Drilling Down” describes three main types of contracts distinguishing between production-sharing contracts, concessions, and technical service agreements.

In the period up to the late 1980s, when state control in the mining industry was widespread, the main contractual forms in the mining sector were joint ventures, concession agreements and service contracts. The extensive sector reforms of the 1990s, however, moved countries largely towards an emphasis on using general mining laws to govern the sector, supplemented by agreements intended to generate greater foreign direct investment.

The decline of state-owned mining companies in the 1990s has meant that there are very few technical service agreements in place in mining countries today of the kind sometimes used by national oil and gas producers. However, this could change over time with the re-emergence of state equity participation and the re-establishment of state-owned companies (for example, Venezuela, Bolivia and Ecuador are assessing the reintroduction of different types of arrangements for the mining sector). Production-sharing agreements are very rare in the mining industry, partly due to the limited and often specific marketability of a diverse range of mining products.

**What are the different types of mining agreements?**

For the EITI process in mining countries, it is very important that civil society organisations understand the underlying rationale and functions that the various types of mining agreements have sought to serve. In any country, the law should form the basis upon which the tax, custom, investment and equity participation obligations of private sector investors are based and the benefit streams to governments are established.

Flexible provisions can be included to allow for the unique situations of individual mines. In some instances, especially in weak institutional contexts, countries have allowed mining agreements to substitute for law on these matters, although many are now revisiting their legal extractive frameworks to remedy this.

It is best to make the laws as robust as possible and leave relatively little discretion in mining contracts to ensure consistent policy and uniformly protect countries’ pre-determined national interests. This applies in particular to less developed countries emerging from periods of conflict, where mining agreements substitute for the absence of mining legislation.

In countries where mining agreements have supplemented the mining law, especially to set out specific terms for large investment projects, they often pose limits on the manner in which governments can exercise discretion in the absence of more specific mining legislation. Mining agreements often also provide for recourse to international arbitration and are subject to legislative ratification to gain the status of laws by themselves. Mining legislation in Ghana and Tanzania provides for the use of these types of agreements — they may be referred to as development agreements, investment agreements, or investment promotion agreements, among a variety of other terms.

Understanding the rationale, function and the main clauses of mining agreements is of great importance for the EITI process. Along with the laws, agreements set the institutional framework against the background of which revenue streams are generated. Some types of investment promotion agreements offer extensive benefits and tax allowances to the investor for the purpose of making an overall royalty/tax system regime more attractive to private investment. In some agreements, royalties have been removed altogether, or are now being re-introduced. Some countries have used mining agreements for the purpose of setting up the specific terms of government participation in a project. In countries where fiscal terms are not set out in relevant legislation, mining agreements are used to set out the agreed revenue streams from the project. This can also be the case (even in developed countries) for very large projects for which general tax legislation is deemed unsuitable.

The names of mining contracts and agreements vary considerably. This requires civil society organisations to focus on and identify different contract types by the functions they serve. To give some examples, we have summarised the following general observations:

*Industrialised countries* usually rely on unilaterally specified mineral tenure regimes and fiscal terms to govern access of
private parties to mineral rights. But there are exceptions. For example, in Western Australia, mining agreements have been used for large, export-orientated mining projects that involve extensive infrastructure requirements.

In developing countries there is, generally, greater variety with respect to the use of laws and/or contracts and agreements. Francophone African countries have commonly used mining agreements (convention minière) to set up the general legal framework applicable to projects in addition to mining titles required under the general mining law. Thus the general mining law often includes a model mining convention. The details of these conventions are negotiated bilaterally between the government and the investor, and the agreements also typically require legislative ratification. The mining convention typically defines the rights and obligations of the parties in relation to the legal, financial and fiscal conditions applicable to the project. It usually provides extensive investment guarantees and, in some cases, government equity participation. Guinea, Mauritania, Niger, the Central African Republic and Senegal use such mining conventions.

Many countries in Latin America use the general so-called “concession” regime set out under the national mining law (Argentina, Chile, Peru, Brazil, Mexico). Under these laws, the concession is a non-negotiated, non-discretionary procedure for granting mineral rights. Nevertheless, in Argentina, for example, where some known and studied deposits have been held by provincial state companies, these entities have negotiated agreements with private investors in spite of the general regime established by the national mining law.

In contrast to other Latin American countries, however, concessions in Colombia are contracts (categorised as an “adhesion contract”). Columbia has recently modified its mining code to allow the state to reserve areas for large-scale mining and to grant them to private parties under a contract more similar to the type of concession agreement used in the oil and gas sector, i.e. a company is given rights to exploit all the deposits contained within a large geographic area.

Other types of agreements set out the parameters for investors’ and government participation in some Asian countries. They included the Contract of Work Agreements used, for example, in Indonesia. The Philippines uses so-called Financial or Technical Assistance Agreements that have been considered as a kind of service contract, with special characteristics that include the de facto possibility of foreign investors taking up to 100% equity in mineral ventures

In general, practice in mining agreements is much less standardised than in the oil and gas sector. Within countries, practice may also differ from the general mining law with regard to deposits that had previously been held by state-owned companies. For example, in the DRC, numerous opaque contracts have been entered into, disregarding the provisions of the mining law. These have established joint ventures and arrangements between semi-autonomous state-owned companies and private investors.

Which government entities manage mining revenues?

What are the general differences from the oil and gas sector?
The mapping of revenue flows that “Drilling Down” describes applies generally to mining countries as it does to oil and gas countries. However, one difference lies in the previously mentioned fact that there are few national mining companies that take an equivalent role to that of the many national oil companies. The role of joint venture companies in receiving and managing mining revenue streams will differ on a case-by-case basis, and civil society therefore needs to analyse each mining project individually to gain a full picture of the country’s mining benefit streams and the terms on which they are collected. Another fundamental difference lies in the general absence of mining production sharing contracts.

What is transfer pricing?
Transfer pricing refers to instances in which the accounting prices assigned to project inputs and outputs are partially or entirely based on transactions between related parties. Producers sometimes manipulate transfer pricing arrangements for the purpose of minimising tax liabilities, by:

- inflating the reported costs of tax-deductible inputs bought from affiliates overseas; and/or
- reporting sales values to affiliates overseas at a lower level than would be expected, given global market conditions. Cross-country differences in income tax rates or the way income tax liability is assessed can also entice companies to transfer profits from high-tax to low-tax jurisdictions.

An example of transfer pricing is if the value of a product such as bauxite is reported in the producer country at a low value in order to lower taxable profits in that country, but is sold to an affiliated purchaser in another country where the concentrate is processed, and taken into account at a higher value there. The higher value applied in the recipient country reduces taxable profits there, because it is considered a cost.

Global Witness’s investigations regarding the Liberian Mittal agreement (prior to renegotiation) focused on transfer pricing. The agreement fixed royalties on the sales price, but because this company is vertically integrated it could set the underlying sales price unilaterally.

Civil society organisations should note that vertically integrated companies (such as in the example given above) are not necessarily the norm in the mining industry, with one notable exception being the large Chinese-based companies that are playing an increasingly important role in mining markets. Other vertically integrated companies are most frequently seen in iron ore and bauxite-to-aluminium production. The OECD has led recent discussions on transfer pricing issues and has published Transfer Pricing Guidelines. On
the issue of business restructuring of multinational companies, it has recently released a discussion draft for the period September 2008 to February 2009.

**Sub-national mining issues and challenges for civil society organisations**

**Are mining revenues shared vertically, and/or can sub-national entities levy mining revenues?**

Depending on the political-administrative set up of a country and other factors, there may be revenue flows from the central government to regional and local governments (revenue sharing), or direct payments may be made by companies to regional and local governments (fiscal decentralisation) or even communities (direct contributions). Compensation payments and royalties are sometimes directly negotiated and received by communities in producing areas.

In federal systems, for example in Canada, it is sometimes the case that charges paid at a lower level of government can be deducted as costs against a tax that is incurred at a higher level of government. For example, a royalty paid to a region may be offset against an income tax liability at the national level.

**What are the challenges with sub-national revenue flows?**

Where revenue-sharing systems are in place, the transparency of these revenue flows can become a highly politicised issue. Such is the case in Peru, where on one hand there is a relatively high standard of accountability and transparency around the mining revenue-sharing system, but at the same time, spending outcomes vary and much less attention is paid to the management of mining revenue collected by the central government that is not subject to Peru’s mining revenue redistribution system.

Additional challenges can arise within such systems. The volatility of resource revenue experienced at the national level may be exported to the lower tiers of government less well-equipped to deal with it. Central governments may also decide from year to year to cut back on other transfers to those regions that benefit from mining revenue, thus instilling further the uncertainty and unpredictability that undermines sound spending decisions. There can also be an impetus at the local level, sometimes in response to demands from the central government to “use or lose” resource revenues, meaning that local governments must spend their resources or revert them to the central government at the end of the year. This mentality (and sometimes legal requirement) often results in poorly planned and executed spending projects that are not necessarily in the economic interests of local communities.

Revenue-sharing systems can also apply to the channelling of mining revenue to traditional authorities in mining regions, as is the case in Ghana. In Guinea, companies make direct payments to local authorities, which, according to Guinea’s 2005 EITI reports, keep very poor records on revenue received and spent. Similar problems arise for direct payments and CSR contributions that companies may make to local communities and local public authorities. In most countries there are no systems in place to coordinate such spending with well-designed local development plans. This runs the risk that well-meant contributions may be wasted due to weak local government capacity. In some instances payments by companies (including state-owned enterprises) to local community leaders may be used deliberately to influence political decision-making. The EITI, reporting at the sub-national level, can help bring these instances to light and encourage greater accountability among both local government and company actors.

**Key areas of vulnerability in accounting for mining**

Throughout this chapter concerns have been raised about the ability of governments to effectively negotiate, implement, monitor and audit tax payments, relying instead on companies to self-govern. Transfer-pricing problems are not uncommon, although facts and examples are difficult to retrieve. The heterogeneity of mining products and how they are traded, marketed and priced further complicates the picture. The more civil society organisations can learn about the products that the country exploits and exports, the uses to which they are put and the market structures that govern their exchange, the more they will be able to explore whether national arrangements compare favourably with the conditions applicable elsewhere.

Some areas of vulnerability are of a physical nature, where public administrators are ill-equipped to monitor production levels, processing, and export volumes. These all have implications for establishing the correct tax base.

**Lessons from the field**

**Specific to mining**

While the EITI has only been present in mining countries for a few years, there are a number of important insights from civil society engagement to date that can be used to help activists, as well as companies, governments, international agencies and other EITI stakeholders, to better understand the mining-specific challenges of implementation.

**Social and environmental concerns are just as important as fiscal transparency to many stakeholders**

Mining has generated a large number of social conflicts, environmental disasters and human rights violations that understandably dominate the agenda of many citizens and interest groups. Many civil society groups believe that the environmental, social and human rights costs of mining are too high. In numerous EITI mining countries, social and environmental concerns have given rise to civil society movements that oppose mining altogether, and these activists
tend to have little interest in the EITI and other initiatives that take extractive activity as a given. Likewise, some groups feel that in certain instances governments may attempt to use the EITI as a political tool to legitimise extractive activity in controversial contexts. Very often civil society activists want to see concrete evidence that companies and governments are addressing social and environmental problems first, before engaging in any dialogue around transparency issues, including the EITI.

Concerns over the environmental and social impacts of mining have also led citizens to make broader demands for transparency that extend beyond revenues to include contracts, reclamation funds and corporate social payments which have largely remained outside EITI processes to date. Ghana is one place where civil society has been able to push successfully for corporate social responsibility payments to be included in their EITI reports.

Many activists believe that focusing on revenue transparency alone will not alleviate the “resource curse”, and unless conscious efforts are made to accommodate other legitimate accountability concerns of communities affected by mining, the EITI’s ultimate objective of improving development outcomes in resource-rich countries will be lost. While some civil society groups in EITI mining countries have approached the EITI as an opportunity to try to address social and environmental issues through expanded reporting templates, others feel strongly that the EITI is the wrong vehicle to address these concerns and that separate, more targeted, sustainable mining initiatives are preferable.

Overall, it is important to recognise that the EITI is only one of many mechanisms focused on mining and development. In any country, the EITI will not be able to address the whole diversity of mining-related concerns that present themselves, and civil society has to weigh the costs and benefits of engaging in the Initiative on that basis. That said, for those groups that do choose to participate in the EITI process, it can often provide new opportunities to build relationships with government and company actors, and ultimately raise concerns about the extractive industries beyond EITI’s narrower revenue transparency remit.

**Mining can be harder to address in countries dominated by oil and gas**

In certain parts of the world, the mining sector has been less exposed to public scrutiny, especially in countries where oil and gas are also present and represent much larger, higher-profile sources of national income. Issues of corruption and suspicious deals, social and environmental impacts, and other mining concerns seem to have more trouble bubbling to the surface and gaining exposure in oil and gas-producing countries. This puts a special onus on civil society (and other EITI stakeholders) not to neglect mining in countries like Kazakhstan or Nigeria, where mining is an important extractive industry that is easily overshadowed by oil and gas.

**There are a large number of small and medium-size companies in mining**

Unlike the oil and gas sector, which is dominated by large transnational corporations that typically adhere to a set of corporate social responsibility norms and practices, the mining sector is more diverse, with many small and sometimes local companies that can be less sensitive to civic concerns and good governance/transparency standards. In certain instances there are smaller, family-owned mining companies as well as international companies and joint ventures, that do not list on stock exchanges. This divorces them from the international reporting standards, CSR principles and public scrutiny that larger companies are subject to. The EITI needs to reach out to small and medium-size mining companies, to engage them in global best practice rather than their continuing to “fly under the governance radar”. The ICMM is one major umbrella organisation for large mining companies that is engaged in the EITI and promoting more responsible mining standards. However, its membership does not encompass the small to medium-size actors that are playing an increasingly important role in mining (and oil and gas) countries. Likewise, for all mining companies, large and small, actual practices do not always live up to stated standards, and civil society has an important role to play in holding these companies accountable for their performance at the country level.

**Mining involves a larger number of producing communities with a diversity of interests at stake**

Mining activity is often widely dispersed throughout a country’s territory, creating a large number of producing communities to engage. Mining also typically has more dramatic local impacts, as discussed elsewhere in this guide.

Mining often serves as the primary economic engine of the whole town that has been built around the company. It provides local employment, often builds intensive community infrastructure, and leaves a large environmental footprint that must be managed. Given this confluence of impacts, some portions of mining communities often have tight links with the company and are generally supportive of them, while others have been adversely affected and feel passionately opposed. This can often lead to internal conflicts within mining-affected communities, which need to be taken into account. Trade unions may clash with environmental organisations, and civil society cannot be treated as a monolithic entity.

**Applicable to all extractive industries**

Below are several key lessons learned from the EITI and mining that are important to keep in mind for all extractive industries.
Civil society requires skill-building to take advantage of EITI opportunities

The EITI’s multi-stakeholder format provides civil society with a unique opportunity to engage on a number of broader extractive sector policy issues, including contracts and fiscal regimes as well as the utilisation of resources for development. Civil society often needs additional capacity-building to make the most of these opportunities. Without a minimum level of technical capacity, a lack of understanding of technical issues can create unfounded frustrations within civil society and sometimes lead to unconstructive approaches with companies and state agencies. It is crucial that all EITI stakeholders, including companies and governments, consider how they can contribute to building the technical knowledge of civil society counterparts where relevant, so that they are able to effectively engage.

Civil society vigilance is crucial to ensure meaningful EITI implementation

The EITI Validation process can help push governments to take action on the EITI from the outside, but civil society needs to be organised and vigilant about pushing its government and companies to implement from the inside.

It is important to recognise that signing up to the EITI will not automatically mean involvement. Many mining companies have signed up to the EITI when told to do so by the government, but have done little in the way of EITI implementation.

Information sources

A number of organisations provide further information on the mining sector, its different products, their market characteristics and many other aspects of the industry.

- The Publish What You Pay Campaign (PWYP) is the leading global civil society coalition working to help citizens of resource-rich developing countries hold their governments accountable for the management oil, gas and mining revenues. Members include major international non-governmental organisations doing work on responsible mining, along with several hundred local NGOs in producing countries. More about the campaign and links to relevant organisations can be found at www.publishwhatyoupay.org.

- ARM is a global NGO initiative working to develop a responsible production framework for artisanal and small-scale mining (http://communitymining.org/english/).


- The UNCTAD World Investment Report 2007 (http://wwwunctad.org) covers recent trends in both the mining sector and the oil and gas sector.

- UNCTAD also provides a Minerals Resources Form within its “Natural Resources and Sustainable Development Forum” (http://www.natural-resources.org/).

- CommDev, the resource centre of the oil, gas and mining sustainable community development fund (http://www.commddev.org/) is a multi-donor initiative.

- The Mining, Minerals and Sustainable Development (MMSD) project by the International Institute for Environment and Development (IIED) (http://www.iied.org/).

- The International Council on Mining and Metals (ICMM) (http://www.icmm.com/) is the international industry association of the largest international mining companies and national-level mining associations.

- The Swedish based Raw Materials Group (http://www.rmg.se/) provides data on production and on companies.

- Some consultancy companies provide reports on industry trends, for example the Metals Economics Group (http://www.metalseconomics.com/).

- The Framework for Responsible Mining project is a joint effort by NGOs, retailers, investors, insurers, and technical experts to outline environmental, human rights, and social issues associated with mining and mined products. (http://www.frameworkforresponsiblemining.org).

The Mining Journal has published two sector-specific books by Phillip Crowson: Inside Mining (1998) and Mining Astride (2003). An updated version of both these publications is to be published in December 2008 under the titled Unearthing Mining.

Notes

1 This chapter has been produced by the Revenue Watch Institute (RWI) as a supplement to “Drilling Down: The Civil Society Guide to Extractive Industry Revenues and the EITI”, edited by David L. Goldwyn and published by the RWI with lead authors commissioned being Evelyn Dietsche and Elizabeth Bastida and additional contributions from the RWI staff.
Executive summary

The Extractive Industries Transparency Initiative has now become a standard for improving transparency and accountability in the majority of mineral and metals (mining)-rich countries. There are a number of features of the mining sector (as opposed to the oil and gas sector) which significantly influence how the EITI is implemented in such countries. This chapter focuses on four of those issues: deciding which companies to include in the process; whether to include payments to sub-national governments; addressing the issue of artisanal mining; and considering the impact of non-cash payments by companies. The chapter concludes with a number of recommendations on how EITI policy and guidance might be improved so as to better reflect the challenges of implementing the Initiative in the mining sector.

Introduction

This chapter will briefly outline some of the factors which lead to the differences of EITI programmes in mining countries, compared to those being implemented in oil and gas-producing countries. The chapter pays particular attention to two issues: the need for assessing material payments when deciding which mining companies should be responsible for reporting as part of the EITI process, and the importance of revenues received by sub-national governments from mining companies. The chapter concludes with some thoughts on two issues which are presently not addressed as part of the EITI process but are increasingly becoming an implementation issue: the inclusion or exclusion of artisanal and small-scale mining (ASM) from the EITI, and how to deal with “non-cash” payments made by companies. The issue of non-cash payments, as well as payments made to sub-national governments, is particularly important because these are often the most visible and tangible ways in which companies seek to address the social and environmental impacts of mining and to distribute benefits to local communities.

Finally, it should be noted that there are many important implementation issues (how to ensure that all companies required to report in an EITI process actually do report) which are not addressed in this chapter because they are not specific to the mining sector and are equally applicable to hydrocarbon-rich countries implementing the Initiative. Some of these issues are explored in various guides recently produced by the EITI Secretariat.²

Differences between the oil and gas sector and the mining sector and their impact on EITI implementation

It is important to first outline some points of difference between the oil and gas sector and the mining sector which have a significant impact on the way the EITI is implemented in mining
countries and oil and gas-producing countries. First, the mining sector is characterised by a large number of companies of varying sizes exploiting diverse minerals and metals, while the oil and gas sector tends to be dominated by a smaller number of large companies extracting only two commodities (albeit of various grades). At the early exploration phase the mining sector is considerably less capital-intensive than the oil sector. There is also greater diversity in the functions of mining companies, as smaller exploration companies often operate alongside major companies. This very large number of companies often makes tax administration and collection more difficult relative to the oil and gas sector. In the context of the EITI it also raises the question of which and how many companies should be included in the EITI process – this is discussed further below.

Because oil and, to a lesser degree, gas (owing to the need for expensive transportation and storage facilities, or close proximity to markets) have clear international market values, it is easier to price the value of production. In mining, however, some products (e.g. sand and granite) may only be commercialised at a local level; others may be exported but be priced relative to their proximity to other facilities (e.g. bauxite exports and their proximity to a cheap source of electricity for a smelter); while other products (e.g. gold) can be sold internationally. Moreover, production-sharing arrangements (whereby a government receives a certain percentage of physical production) are relatively common in oil and gas-producing countries, whereas fiscal regimes in mining countries are more focused on a mixture of income/profit taxes, license payments and production royalties, rather than the transfer of an actual portion of production to the government. Fiscal regimes for the mining sector are often set on a national basis and can be relatively easy to follow, whereas in the oil and gas sector the fiscal regime often varies from field to field.

Secondly, mining companies almost always have a bigger impact in the communities where they operate in terms of local employment and the physical environment. Because of their visibility, the expectations and demands placed on mining companies by governments and civil society groups are often high. This means that revenue transparency is sometimes seen as a “second order” concern in the mining sector compared to the more pressing issues of employment, occupational health and safety, local development and the rehabilitation of any environmental damage. Revenue transparency is, however, very relevant to these primary concerns: mining companies often voluntarily, or by law, contribute very significant amounts of money to community development, mine safety and environmental rehabilitation. However, because revenue transparency is a secondary rather than a primary concern, local communities and civil society groups operating on their behalf often have less interest in, or do not the possess the skills to engage in, programmes such as the EITI.

Third, while direct state participation (through a state-owned company) is very common in oil and gas-producing countries, it is less common in mining countries. In some ways this has the potential to simplify EITI implementation as it removes the complexity of including a company which both receives revenues from other companies on behalf of the government and makes payments to the government. In some EITI countries financial information provided by state-owned companies has required additional scrutiny due to the inconsistent use of international auditing standards. It does mean, however, that attention needs to be paid to the other ways in which governments hold interests in the mining sector. In Ghana, for example, the government has a 10% shareholding in all mining companies, and thus receives income from company dividend payments (which it reports as part of its EITI process).

Finally, while in oil and gas-producing countries revenues are captured primarily at the national/federal level, there is an increasing trend in the mining sector for significant revenues to be paid to sub-national levels of government (such as state and regional governments, and local and district authorities). Sometimes these payments are made directly by the company to the relevant authority, while in other cases funds are redistributed via national revenue collection agencies. This issue is discussed in greater detail below.

Which companies should be included in the EITI process?

As mentioned above, a common feature of the mining sector is that it contains companies which vary immensely in size. While production in a country maybe dominated by a few large companies, it is extremely common for there to be a large number of small companies present as well, and this presents the question of whether all companies should be required to report as part of the EITI process. While one of the main EITI criteria states that implementation should include all companies operating in a country, the EITI Sourcebook further states that “an entity should be exempted from reporting only if it can show with a high degree of certainty that the amounts it would report would in any event be immaterial”. This has led to considerable debate on precisely what would constitute a material or immaterial level of payments, and no existing EITI policy provides further clarity on this point.

As a result of this ambiguity in EITI policy, in practice the level of company materiality has been determined by the multi-stakeholder group managing the EITI process in each country. Not having a defined materiality standard has been seen as an inconsistency in the EITI by some, but in reality it increases the degree of country ownership of an EITI programme – what is immaterial in one country maybe considered very material in another. Table 1, below, summarises the approach taken to materiality in various EITI countries.
While it is admirable to aim to include all companies in a reporting process, such an ambition needs to be tempered by two factors: (i) which companies have a significant macroeconomic impact and/or major development impact for a significant number of people; and (ii) what resources are available to carry out an EITI reconciliation or audit process. Where resources are limited, a requirement that the audit company appointed to produce the EITI report gather information from all companies may in fact detract from the more important task of properly scrutinising the data it receives from major companies and government agencies.

While a fixed materiality point based on the value of a company’s production or the amount of payments which they make to government may seem the easiest approach, it incurs the risk that the payments made by all the companies operating below the materiality point may cumulatively be quite significant. Because of this it is perhaps better to develop a materiality system in which all the companies which cumulatively contribute a certain proportion of mining revenues are required to report. For example the largest companies which in total contribute x% (x being a figure that would be defined by the EITI multi-stakeholder steering group) of total revenues would be required to report. The government could then complement this figure with the total amount of revenues received from companies not included in the EITI process.

By taking this hybrid approach an EITI report would account for the majority of mining company payments and the entirety of government revenues from the sector without placing excessive reporting burdens on small companies.

The lessons learned on this issue are clear:

- in order to be able to defend a materiality point, it is important for the administrator hired to reconcile payment and revenue data, and also to publish details of what percentage of mining production value and payments to government from the mining sector is covered by the companies included in the process;

- where a significant number of small companies are excluded from the EITI process for materiality reasons, it is still useful for the government to provide details of the aggregate revenues received from all such companies for inclusion in the EITI report; and

- because companies regularly enter and leave the sector, it is important to keep the list of companies required to report their payments under constant review.

Sub-national reporting

After the issue of company materiality, the next important issue to address for mining countries implementing the EITI is how to treat payments which are made or redistributed to sub-national levels of government. In an increasing number of mining countries a portion of revenues is either paid directly by companies to sub-national governments (e.g. state, regional, municipal or community-level governments), or there is a legal or constitutional formula for redistributing revenues from national government back down to sub-national governments.

Some types of revenues (e.g. land rents and license payments) are often paid directly to sub-national governments. All these payments are often vital for maintaining local peace and stability, redressing environmental damage or loss of livelihoods caused by mining operations, and contributing to economic development in the communities in which mines operate. This focus on ensuring that funds filter down to promote local economic development is important because, while mines are highly visible and capital-intensive enterprises, they often produce revenues that are disproportionate to the comparatively small number of people they employ. Table 2 provides examples of different formulas used in various countries for this kind of distribution of benefits.

EITI policy is silent on this issue. None of the EITI policy...
documents provide a definition of “government”, and thus the EITI neither excludes nor includes sub-national government. In practice both the reports produced in Ghana and Mongolia include payments made to sub-national governments. In Ghana the efficacy of the redistribution of revenues to District Assemblies and other local authorities has been examined, as has how those local governments have used the revenues. In Mongolia the EITI reports also include voluntary donations made by companies directly to sub-national government agencies.

It is clearly important to report on payments made to sub-national levels of government if they are material. Because of the direct proximity of mines to communities, and the bigger local footprint of mining operations, there is often considerable local demand for more information on the financial contribution of mines to those communities. These revenues may appear to be small relative to those received at the national level, but are sometimes the major source of income for communities and sub-national governments in mining areas. While it might be important to include such payments in an EITI process, some particular issues need to be addressed:

- **the administrative capacity**, both in terms of personnel and record keeping, of local revenue collection agencies and finance departments is often weak relative to national agencies;
- **revenues can be paid in a variety of ways** – either directly from the company to the sub-national government, or indirectly by being redistributed through national revenue agencies back to sub-national governments. This requires the audit company hired to produce the EITI report to gather data not only from national government, but also from a number of often geographically remote sub-national government bodies;  
- **resistance from sub-national governments to scrutiny or control over such revenues by national agencies.** In some countries national government agencies have introduced control mechanisms to ensure a minimum of accountability and coherence between sub-national and national infrastructure development plans, while in others the national government agencies have no right to scrutinise such payments; and
- **in some countries there are differing levels of authority, jurisdiction and mandate of the central versus provincial governments to levy and impose taxes.** This might lead to discrepancies between the revenues provided for by national regulation and taxes imposed on companies by local authorities.

### Table 2. Division of revenues between national and sub-national levels of government

<table>
<thead>
<tr>
<th>Country</th>
<th>Division of mining revenues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democratic Republic of Congo</td>
<td>Under the terms of the Mining Code, 40% of collected mining royalties, as well as 10% of surface rents, should be returned to the provinces in which mining takes place. Of that 40%, 25% is retained for the provincial administration while 15% is given to the administration of the area where mining activities are conducted. In addition to this redistribution of royalties provided for in the Mine Law, the Constitution stipulates that 40% of all tax revenues coming from national enterprises, including mining-related tax revenues, be redistributed to provincial governments.</td>
</tr>
<tr>
<td>Ghana</td>
<td>All income tax, dividends and royalties are paid to the national government. Of the royalties received, 90% is retained by the national government (80% in the consolidated fund, 10% in the minerals development fund), while the remaining 10% is distributed to the Administrator of Stool Lands (1%), District Assemblies (4.95%), Stools/traditional authorities (2.25%), and traditional councils (1.8%).</td>
</tr>
<tr>
<td>Papua New Guinea</td>
<td>At least 20% (though often more) of mining royalties is paid to local landowners while the remaining 80% is paid to sub-national governments. Proceeds from state equity in mines are also redistributed to sub-national governments at varying rates.</td>
</tr>
<tr>
<td>Peru</td>
<td>All company income tax and mining royalties are collected by the national government that then redistributes up to 50% of them to regional and municipal regional governments. In addition, companies with large profits have created social funds of different sizes for the benefit of local communities.</td>
</tr>
</tbody>
</table>

There are many obvious reasons why artisanal mining might be difficult to include within an EITI reporting framework, and indeed thus far no country has done so. The impact of revenue streams derived from artisanal activities on the macroeconomic environment is low, due to almost negligible contributions to the national treasury. Profit margins for the individual miners themselves are far too low, and the miners themselves are too geographically spread out to allow for any meaningful taxation. More often than not, the sector is extremely informal and subject to limited effective regulation. Against this background, is it worth thinking about the EITI in the context of artisanal mining?

An estimated 13-20 million men, women, and children from over 50 developing countries are directly engaged in the artisanal mining sector. Additionally, an estimated 100 million
more are indirectly dependent on the sector for their livelihood. Moreover, in many countries, particularly in Africa, the artisanal mining sector accounts for the vast majority of production – in the Democratic Republic of Congo it accounts for over 80% of mining production; in the Central African Republic, almost 100%. All together this implies that there are many more people engaged in artisanal mining than are employed by multinational mining companies, which perhaps accounts for its high profile relative to its often small contribution to government revenues. Because of its widespread and very visible impact, and because of the large number of people it employs, artisanal mining is often disproportionately visible as an issue in mining countries relative to its economic contribution.

To assess how the EITI could be extended to artisanal mining, a closer look at the value chain of the sector is revealing. The EITI would need to intervene at the stage where (substantial) taxes are paid. In a simplified pattern, the miner sells his product to a dealer close to the mine who himself sells the product to a trading house with a license to export the product. The trading house will sell the product, sometimes already processed or purified, to an international buyer. The grade of formalisation and the fiscal potential increase considerably along this value chain. In Sierra Leone in 2005, US$120 million of mainly artisanally mined diamonds were exported by only 20 exporters, who paid 3% export tax on those diamonds.

For the EITI to have any relevance in the artisanal mining sector, it would need to intervene at the point at which significant and concentrated financial flows occur and taxes are (sometimes) paid – i.e. it would need to focus on exporters and traders. In some countries, exporters effectively act as the headquarters of a feudally structured corporation in which investments for artisanal mining activities flow out from exporters through a multiplicity of intermediaries to the miners themselves, who in turn sell their product back up the chain to those exporters. In Ghana, for example, 10% of total gold production is accounted for by a single exporter buying solely from artisanal miners.

Thus far, expanding the EITI to cover artisanal production has been considered as an issue too difficult to address in the EITI by those countries implementing the Initiative. This is either because the sector lacks the required level of formalisation to generate significant and concentrated revenue streams, and/or because other issues related to artisanal mining (e.g. environmental impacts, health and safety, smuggling, the capture of revenues by armed groups) are perceived as greater priorities. Still, artisanal mining is clearly an issue in EITI countries such as the Central African Republic (where exporters are represented on the EITI multi-stakeholder steering group), D.R. Congo, Guinea, Liberia, and Sierra Leone. Moreover, operations by exporters tend to be significant, resulting in material revenue streams to governments. For these two reasons alone, the issue of how to address artisanal mining in the EITI is worthy of further consideration in EITI programmes.

**Reporting on non-cash payments**

Another issue that is of considerable debate in many EITI countries (both oil and gas, but particularly in mining) is that of how to handle non-cash payments. While in oil and gas-producing countries this is an issue of how to accurately report the value of government production share, in mining countries this is often focused on the provision of sometimes significant social services and goods by mining companies to local communities. The provision of such goods and services is sometimes voluntary and sometimes required by the terms of the contract. Most often their provision is counted among operational expenses, and thus ultimately reduces a company’s tax liability.

The challenges of including such payments (sometimes referred to as para-fiscal payments) within an EITI programme are obvious. There is no government agency which is receiving the payment, and thus one is entirely reliant on figures provided by companies to assess the value of such work. This removes a key component of the EITI: the independent comparison and reconciliation of company and government data. The value of such activities is often significant, and to omit it challenges EITI’s core tenet of the need to report on all “material payments”. Moreover, reporting a company’s tax and royalty payments in isolation from their provision of social goods and services can risk understating the true development impact and contribution of mining company operations.

At present, only one country (Mongolia) has attempted to address the issue of reporting the value of non-cash payments by companies as part of its EITI programme. While recipient organisations may struggle to place an accurate value on the goods and services they receive, a value can be placed on them by the company providing them. Not being able to provide comparative data might be an obstacle, but given the local significance of such payments, as well as their susceptibility to corruption, where the expenditures made by companies on such payments are significant they should be included within the EITI process.

In countries engaging in infrastructure-for-minerals contracts, there has been considerable debate over the value of such deals. Most often the total value of the goods and services provided under such terms is considerably less than would be realised from a more regular arrangement involving taxation and royalty payments because those goods and services are most commonly provided up front before significant value has been extracted from the mine. And because it is more difficult to place an exact value on the goods and services provided, there is possibly greater scope for either a poor deal or corruption. In countries where tax and royalty revenues are captured predominantly by elites who provide little or no public goods
and services in return, it could be argued that non-cash payments ensure that citizens receive at least some benefit from mining operations. While it would clearly be very difficult to include the value of such deals as part of an EITI process, greater transparency around them is needed so that the risks and rewards of such arrangements for governments and the wider public can be more accurately assessed.

**Conclusion and recommendations**

The EITI had a slow start in mining countries but now has a higher take-up rate in these countries than in those dominated by the oil and gas sector. This expansion of the EITI in such countries is largely due to the realisation of revenue transparency being a key part of addressing other concerns in the sector, and because of the very visible impact of mining sector revenues at the community level.

The benefit of EITI implementation in all countries – regardless of industry – is becoming clearer. While the EITI does not have an explicitly forensic anti-corruption focus, there is emerging evidence that it serves as a useful component in corruption prevention by increasing scrutiny – and formalising civil society’s role in that scrutiny – of payments and revenues. The EITI is also increasingly being used to identify poor administration by providing a diagnostic of the efficacy of revenue assessment, collection, and (in some cases) redistribution systems. Most intangibly, but possibly of greatest value of all, is the EITI’s ability to reduce political tensions and risks to extractive industry investments by creating a forum in which all parties (government, companies, and civil society) regularly meet and come to better understand each other’s positions and concerns. This confidence-building aspect of the EITI is the most difficult to establish, but also has the potential to deliver long-term benefits by reducing the risk of conflict.

It is clear that in a number of areas, EITI policy and guidance does not provide sufficient clarity on a number of issues important in mining countries. This chapter therefore recommends that:

1. the EITI Board should consider whether it would be useful to provide further guidance or policy on what constitutes an acceptable overall materiality level – i.e. that successful EITI implementation needs to include companies responsible for a minimum percentage of the value of mineral and metal production;
2. the EITI Board should consider producing guidance on how the issue of materiality will be dealt with in the Validation process. Multi-stakeholder groups that set a materiality point to exclude minor companies from the process need to be reassured that in doing so they are not making themselves vulnerable to being assessed as not being “EITI compliant” by the Validation process;
3. the EITI Board should provide more explicit guidance on the need to include any material payments to sub-national governments in EITI programmes. This would need to include guidance on scrutinising not only company-to-government transfers, but also intra-governmental transfers. Failure to include such payments seriously risks the perceived relevance of the EITI in countries where these payments are significant;
4. donors involved in supporting EITI implementation should consider making resources available to sub-national governments involved in the EITI process;
5. exporters of artisanally mined metals and minerals should be brought into the EITI process in countries where the value of their exports is material; and
6. where non-cash payments are material, EITI reports should attempt to obtain a value of those payments from companies, even if they cannot be reconciled with government accounts.

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Notes

1 This article has been produced by the World Bank's Oil, Gas and Mining Policy and Operations Unit (COCPO) with support from the EITI Multi-Donor Trust Fund. The lead authors are Sefton Darby (consultant, S.E.B. Strategy Ltd) and Kristian Lempa, Conseiller en ITIE in the GTZ office in Kinshasa, D.R. Congo. The authors are grateful for contributions made by Craig Andrews, Boubacar Bocoum, Graeme Hancock, Charles Husband, Eleodoro Mayorga Alba, Anwar Ravat, Paulo de Sa, and John Strongman in the COCPO division. Any comments on this chapter can be sent to the authors at sebd@sebstrategy.com and kristian.lempa@gtz.de


3 Page 29 of the EITI Sourcebook, which can be accessed at http://www.eitransparency.org/document/sourcebook.


5 Many oil and gas countries also have legal or constitutional arrangements for redistributing sector revenues to sub-national governments, but they are not always explicitly linked to the communities or regions where production is actually taking place. Also, because of the considerable environmental impact of mining operations, payments to sub-national governments in mining countries are often seen as compensation for the loss of natural resources, whereas revenues from the oil sector are more often seen (and treated) as a region’s share in the nation’s natural resource endowments and are therefore less compensatory in nature.

6 A very extensive list of sub-national revenue distribution models can be found in Annex B of Warner and Alexander (2006) – see footnote 8 for full reference.

7 The “tier” of sub-national government receiving revenues also has an impact on the ease with which data can be gathered. In some mining countries, revenues are paid or redistributed beyond regional governments to local communities and landowners.


10 For the purposes of this discussion, artisanal mining is defined as mining activity in which a person exploits minerals with a minimal amount of capital and fixed installations, mostly by rudimentary means. Small-scale mining activities in contrast involve a higher deployment of capital and fixed installations. Artisanal mining as well as small-scale mining is often informal in that it commonly operates illegally, and at the point of extraction does not make tax or royalty payments to a government.

11 Though it could be argued that the lack of revenues derived from artisanal mining is caused by a lack of scrutiny (such as the EITI would provide) on the tax payments – or lack thereof – of traders and exporters of minerals and metals.

12 The EITI criteria and Validation Indicators specifically ask for companies to report, something which assumes a certain grade of formalisation.


15 Figures from http://www.artisinalmining.org

16 Many countries also require artisanal miners to buy licenses, which, in aggregate, may constitute a material revenue stream for the recipient national or sub-national government authority. Individual license payments, however, are very small, and thus if they were included in an EITI reporting process it would only make sense for total license revenues (rather than payments) to be reported.

17 In some countries this may require research specific to the mineral concerned. For example, in Sierra Leone the World Bank is sponsoring research into the issue of transfer payments to diamond exporters – i.e. is what these exporters receive from the sale of diamonds on overseas markets – similar to the valuation of the diamonds which takes place in Sierra Leone for the purposes of calculating export tax.

18 Similarly, EITI policy states that the Initiative should focus only on production-related taxes and payments and should not include details of payments related to ongoing operations such as customs duties, income taxes, and excise duties. Country experience on this point has been mixed. Some countries (such as Kazakhstan and Mongolia) have included customs duties payments and excise taxes in their EITI reports while other countries have not. Including such payments in an EITI report provides a far more comprehensive view of a company’s contribution to a country, particularly during construction of production facilities when a company’s level of tax and royalty payments will be minimal, even though the company will be having a very visible impact in the community in which it operates.
EITI publications

EITI Rule Book including Validation Guide
This publication brings together the EITI's requirements for implementing the EITI. It includes the EITI Principles, Criteria, The EITI validation guide and policy Notes issued by the EITI Secretariat, conveying decisions taken by the EITI Board. It does not change earlier agreed policies.
www.eitransparency.org/document/rulebook

EITI Business Guide
How companies can support implementation of the EITI
www.eitransparency.org/document/businessguide

Talking Transparency
A guide for communicating the EITI
www.eitransparency.org/communication

FACT SHEETS are short documents explaining elements of the EITI policy:
EITI Fact Sheet
www.eitransparency.org/document/factsheet
How to support the EITI – Extractive Companies
www.eitransparency.org/companyimplementation
How to support the EITI – Non-Extractive Companies
www.eitransparency.org/companyimplementation
How to support the EITI – Countries
www.eitransparency.org/supporters/countries
EITI Endorsements
www.eitransparency.org/document/endorsements
Validation Fact Sheet
www.eitransparency.org/eiti/implementation/validation

EITI Guide for Legislators
How to support and strengthen resource transparency
www.eitransparency.org/parliament

EITI Source Book
A guide to assist countries that are implementing the EITI
www.eitransparency.org/document/sourcebook

Further guidance

Implementing the EITI
Applying early lessons from the field (by the World Bank)
www.eitransparency.org/document/implementingeiti

Drilling Down
A civil society guide to the EITI (by RWI)
www.eitransparency.org/civilsocietyimplementation
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