

27 February 2018

The Honorable Jay Clayton, Chair
 The Honorable Kara Stein, Commissioner
 The Honorable Michael Piwowar, Commissioner
 The Honorable Robert Jackson, Commissioner
 The Honorable Hester Peirce, Commissioner

UK coalition members

ABColumbia
 Action Aid
 Amnesty International UK
 Burma Campaign
 CAFOD
 Campaign Against Arms Trade
 CARE International UK
 Christian Aid
 Ecumenical Council for
 Corporate Responsibility
 Engineers Against Poverty
 Global Poverty Project
 Global Witness
 Natural Resource Governance
 Institute
 The ONE Campaign
 OpenCorporates
 Open Knowledge International
 Open Society Foundations
 Oxfam Great Britain
 Peru Support Group
 Save the Children UK
 Scottish Catholic International
 Aid Fund
 Tearfund
 Transparency International UK
 United Nations Association of
 the UK
 World Vision International

United States Securities and Exchange Commission
 100 F Street NE, Washington, DC 20549-1090, USA

**Re: Dodd-Frank Act, Cardin-Lugar anti-corruption provision
 (Section 1504), SEC rule**

Dear Chair Clayton and Commissioners

European anti-corruption and transparency advocates urge you to ensure that the new Securities and Exchange Commission rule for the bipartisan Cardin-Lugar anti-corruption provision, Section 1504 of the Dodd-Frank Act, aligns strongly with existing reporting requirements for oil, gas and mining companies incorporated and publicly listed on stock exchanges in Europe and Canada.

Here in the UK, in all other European Union (EU) member states, in Canada, and in Norway, transparency legislation applying to extractive companies has been in force for two or more years. Mandatory payments to governments disclosure is now in its third full year of implementation in the UK and France, its second year elsewhere in the EU and in Canada, and its fourth year in Norway.

Each of these jurisdictions has embraced the same disclosure standard, reflecting clear international consensus on the appropriate transparency requirements for extractive industries:

- Each company reports its payments to governments publicly.
- Payments are disaggregated by recipient country, by recipient government entity, by project (unless made at company level), and by payment type (consistent with the Extractive Industries Transparency Initiative).¹
- There are no reporting exemptions for payments made in specific countries.
- The reporting threshold is Euro 100,000 / GBP 86,000 / CAD 100,000 for any single payment or series of payments of the same type made in the same financial year.
- The UK and EU legislation and the Canadian government's reporting guidance define a project as "the operational activities which [that] are governed by a single contract, licence, lease, concession or similar legal agreement[s]" and "form the basis for payment liabilities with a government". Two or more project

¹ EITI: <https://eiti.org/document/standard>

agreements that are “substantially interconnected” are treated for reporting purposes as a single project if they are “operationally and geographically integrated ... with substantially similar terms [and] signed with a government”.²

Companies required to report and now disclosing in the UK include subsidiaries of Chevron, ConocoPhillips and Exxon.³ Exxon’s Luxembourg holding company has disclosed payments totalling more than US \$2.2 billion made in Angola and other countries.⁴

Also disclosing in the UK are Russian state-owned companies Gazprom and Rosneft;⁵ Chinese state-owned subsidiary Nexen (CNOOC);⁶ and large private UK-incorporated companies such as Perenco (operating in Colombia, Turkey, Vietnam and the UK).⁷ In the UK, oil, gas and mining companies are required to provide their disclosures in open and machine-readable data format.⁸

Experience of companies now reporting in the UK and other jurisdictions shows that concerns previously raised by certain oil companies relating to competitiveness risks and compliance costs were unfounded. No undue costs or competitive harms have been publicly evidenced by companies resulting from these legal requirements.

One company reporting in the UK, Tullow Oil – which discloses payments made in Côte d'Ivoire, Equatorial Guinea, Ethiopia, Gabon, Ghana, Guinea, Ireland, Jamaica, Kenya, Madagascar, Mauritania, Mozambique, Namibia, the Netherlands, Norway, Pakistan, Republic of Congo, South Africa, Uganda, and the UK – has informed us: “[I]mplementation costs were low given that we began reporting just as our internal processes were changing. We estimate the cost to have been less than US \$150,000 for the initial report, and ongoing costs (including assurance work) would be about the same. This is calculated using internal Tullow rates, so the actual opportunity cost will be lower as we have not employed any extra people or services to facilitate this reporting.”⁹

In fact, many companies, industry bodies and government leaders are on public record as supporting the benefits (see below) – including more stable operating environments for business and less volatility for investors. Civil society around the world has begun to document these benefits.

In March 2017, the office of UK Prime Minister Theresa May wrote to Publish What You Pay UK reaffirming the UK’s commitment to extractive transparency:

“Improving transparency makes a critical contribution to fighting corruption, including through the support it provides to law enforcement. ...

² UK Reports on Payments to Governments Regulations 2014, http://www.legislation.gov.uk/ukxi/2014/3209/pdfs/ukxi_20143209_en.pdf, section 2; EU Accounting Directive 2013, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0034>, article 41(4) and recital 45; Natural Resources Canada, Extractive Sector Transparency Measures Act (ESTMA) FAQs, <http://www.nrcan.gc.ca/node/18802/#R3>, “What is “project-level” reporting?”

³ Chevron, ConocoPhillips and Exxon’s UK disclosures at <https://goo.gl/Awidzh>

⁴ Exxon’s Luxembourg disclosure at <https://goo.gl/L1DD7s>

⁵ Gazprom: <https://goo.gl/AEXLZz>; Rosneft: <https://goo.gl/8CA28n>

⁶ Nexen (CNOOC): <https://goo.gl/97dUkL>

⁷ Perenco companies make four separate disclosures at <https://goo.gl/Awidzh>

⁸ UK open data requirements at <https://goo.gl/wBMBjR> and <https://goo.gl/cWLWCd>

⁹ Tullow Oil, email communication to PWYP UK, February 2018, quoted with the company’s permission.

“The [UK] Government will continue to make the case for transparency, including with our partners in the United States. In doing so, we will build on our strong record of accomplishment in championing international action on transparency.

“We promoted mandatory reporting by extractives companies as part of our 2013 G8 Presidency and were joined in the establishment of such rules by Canada, Norway and other members of the EU. ...

“The Government remains committed to this, and will continue to work with other jurisdictions around the world to raise global standards of transparency in the oil, gas and mineral sectors.”¹⁰

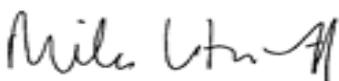
Passage of the Cardin-Lugar provision significantly advanced international efforts to curb corruption and has been widely applauded, as well as being the inspiration for laws subsequently passed by European and Canadian legislators and now fully in effect. It is essential that the United States continue to play a constructive role in these efforts by implementing a final rule that is consistent with the reporting requirements in place in other jurisdictions. Failure to align with the existing international standard would risk undermining the important transparency progress that has been made to date, impairing the utility of information disclosed for investors and citizens, and harming companies listed in multiple jurisdictions.

Please use your rule-making to ensure that the US aligns with the international standard as now implemented in Europe and Canada.

In the Annex to this letter, below, we set out evidence of the scope and benefits of extractive company payments to governments reporting under UK legislation. This evidence is excerpted from a recent Publish What You Pay UK submission to the UK Government.

If you require further information, please don't hesitate to contact me by telephone on + [REDACTED] or by email at [REDACTED].

Sincerely



Miles Litvinoff

National Coordinator, Publish What You Pay United Kingdom
Member, Publish What You Pay Global Council

Annex:

Evidence of the scope and benefits of extractive company payments to governments reporting under UK legislation¹¹

1. Companies known to have reported on FYs 2015 and 2016

¹⁰ The full letter is available at <http://www.publishwhatyoupay.org/wp-content/uploads/2017/03/010317-From-Office-of-PM-Rt-Hon-Theresa-May-MP.pdf>

¹¹ Excerpts from PWYP UK, “Submission to UK Government Review of the Reports on Payments to Governments Regulations 2014”, November 2017.

Civil society monitoring has identified publication of payments to governments under the Reports on Payments to Governments Regulations 2014 by 92 UK-registered and/or London Stock Exchange Main Market-traded oil, gas and mining companies for financial years starting in 2015 (“FY 2015”), and to date [November 2017] by 71 such companies on FY 2016.

2. Payments in which countries?

Illustrating the geographical scope of reporting, disclosures on FY 2015 by 20 selected prominent companies provide data on payments made to governments of 84 host countries. These include resource-rich developing countries, economies in transition and OECD countries such as the following:

<i>Country</i>	<i>Selected prominent companies disclosing payments under the Regulations</i>
Angola	BP, China Petroleum & Chemical Corporation, Gazprom, Total
Australia	Anglo American, BG Group, BHP Billiton, BP, Glencore, Rio Tinto, Shell
Azerbaijan	BP, Total
Brazil	Anglo American, BG Group, BHP Billiton, BP, Premier Oil, Rio Tinto, Rosneft, Shell, Total
Canada	Anglo American, BHP Billiton, BP, Centrica, Glencore, Rio Tinto, Shell, Total
China	BHP Billiton, China Petroleum & Chemical Corporation, Shell, Total
Democratic Republic of Congo	Glencore, Soco, Total
Equatorial Guinea	Glencore, Tullow
Gabon	Shell, Total, Tullow
India	BG Group, BHP Billiton, BP, Vedanta
Indonesia	BHP Billiton, BP, Premier Oil, Rio Tinto, Shell, Total
Iraq	BP, Shell, Total
Kazakhstan	BG Group, Gazprom, Glencore, Lukoil, Total
Kenya	BG Group, Total, Tullow
Malaysia	BHP Billiton, Shell
Nigeria	Shell, Total
Peru	Anglo American, BHP Billiton, Glencore, Rio Tinto
Philippines	Shell, Total
Qatar	BP, Shell
Republic of Congo	Soco, Total, Tullow
Russia	BP, Gazprom, Lukoil, Rosneft, Total
South Africa	Anglo American, Glencore, Lonmin, Rio Tinto, Total, Tullow, Vedanta
Tanzania	BG Group, BHP Billiton, Glencore
UK	BG Group, BHP Billiton, BP, Cairn, Centrica, Gazprom, Premier Oil, Shell, Total, Tullow
USA	Anglo American, BHP Billiton, BP, Rio Tinto, Shell, Vedanta
Zambia	Anglo American, Glencore, Vedanta
Zimbabwe	Anglo American, Rio Tinto

Companies have disclosed payments made to governments in Angola, Cameroon, China and Qatar. In the past, certain oil companies claimed it would contravene host country laws to disclose payments made to these governments, an assertion that civil society consistently challenged. A survey of disclosures by extractive companies by the Natural Resource Governance Institute (NRGI) found that companies reporting under UK law on FY 2015 had reported more than US\$136 billion paid to governments in 112 countries around the world.¹²

3. Benefits of company reporting under the Regulations

The UK Regulations, and similar legislation in and beyond the European Union, are the outcome of two decades of

¹² NRGI, “Oil company data on payments to governments is now coming thick and fast”, June 2017, <http://bit.ly/2t24wSp>

dialogue involving governments, industry, investors and civil society regarding the need for transparency and accountability in the extractive industries to counter the “resource curse”.¹³ Payment and revenue transparency and accountability are crucial to address the widely documented corruption, mismanagement and negative developmental effects associated with oil, gas and minerals extraction in natural-resource-rich developing economies. They should be complemented by full contract and licence transparency in the extractive industries and by public beneficial ownership disclosure, on both of which the UK has shown international leadership.

For the first time, there is now a growing body of data from mandatory reporting, as well as from the voluntary Extractive Industries Transparency Initiative (EITI). This data is essential, if not on its own sufficient, to prevent corruption and mismanagement and to inform governments, investors, citizens, civil society, journalists, parliamentarians and other stakeholders about the revenues generated by the extraction of their countries’ natural resources. The data also helps show how well the money compensates for the depletion of host countries’ finite resources and for negative social and environmental impacts of extraction, and indicates the revenues that flow directly to identified government entities. Citizens and civil society can link the extractives revenue data to their monitoring of how their governments budget and spend public finances.

As PWYP has argued for many years:

“[I]ncreasing transparency in the extractive sector will enable citizens to hold governments and companies to account for the ways in which natural resources are managed. ... [A] more transparent and accountable extractive sector ... enables citizens to have a say over whether their resources are extracted, how they are extracted and how their extractive revenues are spent. ... [R]evenue payments and receipts should be published and tracked, communities should be given all the information they need to make an informed choice about whether to move ahead with the extraction. Transparency and accountability are needed along every step of the value chain from finding out the natural wealth of a country to winding down an extractive project.”¹⁴

Despite challenges in quantifying these benefits with precision, their capacity and potential to address the “resource curse” are considerable. Here we discuss, with brief case study examples, the following benefits of mandatory extractives transparency:

- 3.1 Deterring corruption and mismanagement
- 3.2 Conflict prevention
- 3.3 Enhanced public understanding and citizen empowerment
- 3.4 Complementing the Extractive Industries Transparency Initiative (EITI)
- 3.5 Business benefits for companies
- 3.6 Investor benefits
- 3.7 User benefits of a centralised reporting portal and open data

3.1 Deterring corruption and mismanagement

The first – and sometimes overlooked – major benefit of the Regulations is as a deterrent against corruption and mismanagement. The OECD has cited the estimated cost of world corruption as more than 5% of global GDP and identified the extractive industries as the world’s most corrupt economic sector.¹⁵ Equally, the High Level Panel on Illicit Financial Flows from Africa noted that the natural resources sector “is very prone to the generation of illicit financial outflows by such means as transfer mispricing, secret and poorly negotiated contracts, overly generous tax incentives and underinvoicing” and found “a clear relationship between countries that are highly dependent on extractive industries and the incidence of [illicit financial flows]”.¹⁶

¹³ NRGI, “The resource curse”, March 2015, http://www.resourcegovernance.org/sites/default/files/nrgi_Resource-Curse.pdf

¹⁴ PWYP, “Objectives”, <http://www.publishwhatyoupay.org/about/objectives/>

¹⁵ OECD, *Foreign Bribery Report*, 2014, <http://www.oecd.org/daf/anti-bribery/scale-of-international-bribery-laid-bare-by-new-oecd-report.htm>

¹⁶ *Track it! Stop it! Get it! Report of the High Level Panel on Illicit Financial Flows from Africa*, commissioned by the AU/ECA Conference of Ministers of Finance, Planning and Economic Development, 2015, https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf, page 67.

The fact that oil, gas and mining companies and governments know that their payments and revenues will be disclosed and open to public scrutiny is certain to help prevent future corrupt or questionable deals. A 2017 *Financial Times* article states that while “Transparency alone does not curb corruption or ensure that the wealth generated by natural resources is put to equitable use ... the pressure on oil and mining companies to publish what they pay has helped activists in the developing world keep a closer eye on money earned by their governments ... [amid] the kind of opaque dealing that has given oil a bad name.”¹⁷

Inclusion of examples here should not be taken to imply that companies named have engaged in corrupt activity. Most examples simply show how civil society is using mandatory reports to demonstrate to companies and to government officials that their payments and revenues are under scrutiny.

*Case study example: Nigeria: OPL 245*¹⁸

Royal Dutch Shell and Italian oil company Eni are at present reported as due to face a preliminary court hearing in Italy where prosecutors are seeking their trial for alleged international corruption offences over the purchase of the Nigerian offshore oil block OPL 245. Separate proceedings are being brought against four senior Shell employees, and related charges have reportedly been filed against both companies by Nigerian authorities. This arises from an arrangement concluded between Shell, Eni and the Nigerian government in 2011 whereby US\$801 million in company payments for OPL 245 passed into bank accounts controlled by former Minister of Petroleum Dan Etete, who had been convicted of money laundering in France in 2007 and has since been charged in Nigeria with money laundering. The oil block had been allocated in 1998 for just US\$20 million to a company named Malabu secretly owned by Etete and was subsequently sold to Shell and Eni for US\$1.1 billion, most of which flowed to Etete’s company, rather than to the Nigerian state, depriving the country of an estimated 80% of its 2015 health budget. Revelations indicate that Shell senior executives may have known the money would go to Etete’s company. Prosecutors in the UK have previously alleged that US\$523 million of Shell and Eni’s payment went to alleged “fronts” for former Nigerian President Goodluck Jonathan. Dutch financial police have raided Shell’s headquarters in The Hague.¹⁹

This example of allegedly corrupt deal making, conducted behind closed doors and without knowledge of the public or investors, came to light as a result of the filing of papers in a UK commercial court by a middleman who had acted for Malabu in negotiations with Eni and was suing for fees he claimed to be owed. Had Shell and Eni been required to publish what they paid in 2011 to Nigerian government bodies on a project-by-project basis, as under the UK Regulations and EU Accounting and Transparency Directives, in civil society’s view it is unlikely that they would have made such a deal.²⁰ Nigerian government officials are also far less likely to have agreed to the deal knowing that the companies’ payments for OPL 245 would be published under UK and EU law.

By monitoring company payment disclosures, and putting questions to reporting companies and to government officials, civil society and other actors can reinforce the Regulations’ deterrent effect, irrespective of whether in specific cases serious discrepancies come to light.

Case study example: Shell’s Nigerian payments

¹⁷ Financial Times, “Trump takes aim at the blood minerals cause”, February 2017, <https://www.ft.com/content/e06a3354-ef8c-11e6-ba01-119a44939bb6>

¹⁸ Global Witness, “Nigerian authorities bring money laundering charges ...”, December 2016, <http://bit.ly/2na0xQX> and “Landmark prosecution ...”, March 2017, <http://bit.ly/2nH8Ma9>

¹⁹ For Shell’s view on the case, see its presentation to socially responsible investors, London, April 2017, <http://www.shell.com/investors/news-and-media-releases/investor-presentations/2017-investor-presentations/socially-responsible-investors-briefing-london-24-april-2017.html>, especially PDF slides 7-13. Shell states that based on information and evidence available to it, it does not believe there is a basis to prosecute Shell or any current or former employees.

²⁰ Eni gives its view on the case at https://www.eni.com/en_IT/media/focus-on/nigeria.page. Eni says it is “ungrounded” to assert that, had it been required to publish what it paid in 2001 to the Nigerian government, it is unlikely that it would have made the deal. Eni states that “independent analysis carried out by an US law firms [*sic*] did not reveal evidence of unlawful conduct in relation to the transaction for the acquisition of license OPL 245”.

In analysing Royal Dutch Shell's report on its FY 2015 Nigerian payments,²¹ PWYP UK noted an anomaly in the data with regard to the valuation of some production entitlements paid in kind to the Nigerian government. When calculated from Shell's volume and value data, the average price per barrel of oil equivalent (boe) for in-kind production entitlements payments for one reported project (SPDC East) was at US\$20.89/boe far lower than the average price for other reported projects (US\$51.59/boe). PWYP UK wrote to Shell about this. The company replied that its valuation of in-kind payments for the project combined oil with gas, and it provided a figure for the oil valuation. But Shell declined to disaggregate the oil from the gas, or to provide respective volumes, or to price its in-kind gas payments for this or any other project. This made it impossible to check whether Shell's in-kind gas payments were appropriately and fairly valued per barrel of oil equivalent.²² PWYP UK's finding about the in-kind payment was cited in a published online legal article.²³ The same unexplained outlier in price per boe appears in Shell's FY 2016 payment report for the same project.

*Case study example: Reports by Total, Glencore and one other company*²⁴

Global Witness's engagement with Total, Glencore and one other company has helped demonstrate to the companies that their payments are under scrutiny and in the case of Glencore has encouraged better reporting.

Total: In 2015 French oil company Total struck a deal with the Congo Brazzaville government to renew its rights to three lucrative oil licences in the country. Civil society monitors would have expected Total to report a substantial signature bonus for the licence renewal; however, no signature bonus was disclosed in Total's 2015 payment report (published under France's implementation of the Accounting Directive and announced on the UK National Storage Mechanism/NSM).²⁵ Global Witness wrote to Total to ask about the apparently missing payment. The company explained that while the deal had been signed in 2015, by the end of that year it had still not been ratified by the Congo Brazzaville parliament, so no bonus payment had been made in FY 2015. The company subsequently informed Global Witness that there was no further approval of the relevant licences and that it relinquished the licences at the end of 2016.

Glencore: Reporting under the UK Regulations, Glencore disclosed paying zero royalties from a large oil project in Chad in 2015.²⁶ This appeared questionable because the project is producing substantial volumes of oil, and the contract stipulates a royalty rate of 14.75% to be paid on the value of production. Global Witness wrote to Glencore in November 2016 to ask for an explanation. The company replied in 2017 explaining that the royalties were paid and disclosed but reported as production entitlements, also noting that in response to requests for further information it has opted to disclose royalties separately from its FY 2016 report onwards.

A mining company: A UK-registered and London Stock Exchange (LSE) Main Market-traded mining company reported that it had paid in 2015 US\$2.094 million in royalties from a mine in an African country.²⁷ Global Witness calculated that the company should have paid closer to US\$3.401 million in royalties and wrote to the company about this. The company explained that it had recorded the balance of US\$1.307 million as a liability to be paid in 2016, and therefore to be reported in 2017. The company subsequently confirmed in 2017, consistent with its payments report for FY 2016, that this payment had now been made.

²¹ Shell: <https://extractives.companieshouse.gov.uk/company/04366849>;

<http://www.shell.com/sustainability/transparency/revenues-for-governments.html>

²² Shell says it complies with the UK's Reports on Payments to Governments Regulations 2014, cites confidentiality obligations, competitive harm and costs as reasons for not providing more detailed breakdowns, and provides more information at www.shell.com/payments

²³ HK Law, "SEC rules for resource extraction issuers could lead to increased FCPA scrutiny, disclosures", September 2016, https://www.hklaw.com/publications/sec-rules-for-resource-extraction-issuers-could-lead-to-increased-fcpa-scrutiny-disclosures-09-08-2016/#_edn13

²⁴ The third company in this example has been anonymised at its own request.

²⁵ Total (primary public listing in France):

<http://tools.morningstar.co.uk/tsweu6nqxu/globaldocuments/document/rnsNewsItem.aspx?DocumentId=370395832254923>;

http://www.total.com/sites/default/files/atoms/files/registration_document_2015.pdf

²⁶ Glencore: <https://extractives.companieshouse.gov.uk/company/ZE8BF193>;

http://www.glencore.com/assets/sustainability/doc/sd_reports/GLEN-Payments-to-Government-2015.pdf

²⁷ The company has been anonymised at its own request.

Case study example: Weatherly's Namibian payments

In analysing UK-registered Weatherly's original report under the Regulations on its FY 2015 payments to the Namibian government, NREGI noted that the company had disclosed royalty payments for one project but not for two others that had been in production for part of the reporting period. When NREGI asked the company to confirm that no in-scope payments had been made for the latter two projects, Weatherly stated that because these projects had ceased operations during the year it had overlooked reporting more than US\$400,000 in royalty payments it had made, and it had therefore filed an amended report including this information.²⁸ There is no suggestion that the company had intended other than to file a complete and accurate report.

Case study example: Petrofac's Tunisian payments

In analysing Petrofac's original report on its 2015 Tunisian payments, PWYP UK noted insufficient clarity in the company's disclosures regarding the valuation of in-kind royalty payments and the identity of recipient government bodies. The original report gave a composite figure for in-kind and cash royalty payments without stating how much of the total was in kind and how much in cash (although noting that the in-kind payments were valued "with reference to market rates"). This did not allow readers to ascertain the value calculated for 5,000 barrels paid in kind or to compare this with market rates. The company also inadvertently, as it later informed us, omitted to identify the various government entities that received each payment, preventing Tunisian citizens from fully holding the different government entities to account for the receipts. PWYP UK notified Petrofac about these deficiencies, and the company subsequently published a corrected report containing the previously missing information (although not correcting anomalous in-kind payment data for Malaysia).²⁹ There is no suggestion, again, that the company had intended other than to file a complete and accurate report, and these errors were not repeated in its report on FY 2016.

Dialogue along the above lines between civil society and companies helps in a critical way to normalise diligent and comprehensive company reporting for transparency and accountability purposes and reminds companies that their payments are under scrutiny.

3.2 Conflict prevention

Violent conflict can disrupt oil, gas and minerals production, often reducing the revenues of extractive companies and governments, destabilize countries, harm human rights, and threaten national, regional and global security. Such conflict is often linked to corruption or suspicion of corruption in the sector, or erupts when communities experience negative social and environmental impacts of extraction while seeing very little of the revenues generated or anticipate.³⁰

Transparency of extractive company payments and government revenues is a much needed remedy (although, again, insufficient on its own) to risks of associated conflict. The ONE Campaign has gathered more than 50 case studies of citizens successfully using public information to challenge corruption and press for changes that improve government accountability and help prevent conflict and political instability.³¹

Case study example: Questions on the Nigerian government's receipts

ONE has estimated that oil and gas companies operating in Nigeria lost unrealised revenues of at least US\$14.8 billion between 2003 and 2016 as a result of conflict and unrest leading to shut-in production. Some estimates place the annual value of oil stolen from Nigeria at between US\$3 billion and US\$8 billion. In 2012 a former Nigerian government minister estimated that Nigeria had lost more than US\$400 billion to oil

²⁸ Weatherly: <https://extractives.companieshouse.gov.uk/company/ZEEDF9F9>

²⁹ Petrofac:

<http://tools.morningstar.co.uk/tsweu6nqxu/globaldocuments/document/rnsNewsItem.aspx?DocumentId=373204741491616;>

<http://otp.investis.com/clients/uk/petrofac1/rns/regulatory-story.aspx?cid=227&newsid=801657>

³⁰ OECD, *Terrorism, Corruption and the Criminal Exploitation of Natural Resources*, February 2016,

<https://www.oecd.org/corruption/Terrorism-corruption-criminal-exploitation-natural-resources-2016.pdf>; Economist, "Mining in Latin America: from conflict to co-operation", February 2016, <https://www.economist.com/news/americas/21690100-big-miners-have-better-record-their-critics-claim-it-up-governments-balance>

³¹ ONE, Letter to US Securities and Exchange Commission Chair Mary Jo White, March 2016, <https://www.sec.gov/comments/s7-25-15/s72515-64.pdf>

thieves since the country gained independence.³² Poor governance has hindered Nigeria's economic development, kept a majority of the population poor while an unaccountable ruling elite became very wealthy, and contributed to lawlessness and criminality. Unrest and militant movements regularly disrupt Nigerian oil and gas production and sabotage pipelines, forcing companies to suspend production and spend large sums on heightened security.³³ As Shell stated in its 2015 Annual Report: "Security issues and crude oil theft in the Niger Delta continued to be significant challenges."³⁴

To help bring greater public scrutiny to Shell's payments to the Nigerian government, PWYP UK and PWYP Nigeria summarised in an infographic the company's 2015 payments to Nigerian government entities as disclosed under the Regulations, totalling US\$4.95 billion.³⁵ PWYP Nigeria sent this infographic with covering letters to Nigeria's Department of Petroleum Resources, Federal Inland Revenue Service, Central Bank, Niger Delta Development Commission and National Petroleum Corporation, asking officials to confirm receipt of the disclosed payments. PWYP Nigeria also included a question to government entities about the anomaly in Shell's 2015 valuation of its in-kind production entitlement payments. None of the Nigerian government entities would provide the requested confirmation, despite PWYP Nigeria's follow-up Freedom of Information requests.³⁶

Although the Nigerian government refused to disclose the information that civil society requested arising from Shell's 2015 payments report, the government is now more aware that its oil and gas receipts are under civil society scrutiny. By strengthening its watchdog role, civil society can bring about greater government accountability and, longer term, reduce the causes of oil-related conflict in Nigeria.

3.3 Enhanced public understanding and citizen empowerment

Civil society is using the growing body of extractive industry payment data to build public understanding of the sector. This will increase pressure for more accountable revenue management on the part of host country governments and more responsible payment practices among companies. Citizens empowered with company payment information can assist in the fight against corruption and mismanagement and press more effectively for better governance.

Case study example: Mapping payments in Indonesia³⁷

PWYP Indonesia, which for some time has used EITI report data to track revenues, map concession areas and monitor subnational payments, analysed 2015 payments to Indonesian government entities reported under the Regulations and EU Directives by UK-registered and/or LSE Main Market-traded Shell, BP, BHP Billiton,³⁸ Premier Oil, Total Oil and Jardine Matheson, plus disclosures under Norwegian law by Statoil. These seven companies' payments in Indonesia in 2015 totalled more than US\$2.38 billion. PWYP Indonesia created an interactive online map of the companies as a public resource for citizens, including operational sites and data disaggregated by payment type, and included the data in their Android "Open mining" mobile application for wider accessibility. They plan to update these information resources annually.

Case study example: Payment discrepancies in Uganda

With corruption and mismanagement undermining investment in Uganda's mining sector and threatening

³² ONE, Letter to US Securities and Exchange Commission Chair Mary Jo White, March 2016, <https://www.sec.gov/comments/s7-25-15/s72515-64.pdf>, pages 4, 12-17.

³³ Financial Times, "Militants 'seriously affecting' Nigerian oil production", May 2016, <https://www.ft.com/content/4f788405-5efa-3e1c-bb67-dc2bf0e592cc>

³⁴ Royal Dutch Shell, Annual Report 2015, http://reports.shell.com/annual-report/2015/servicepages/downloads/files/download2.php?file=entire_shell_ar15.pdf, page 29.

³⁵ PWYP infographic, <http://bit.ly/2qe9AED>

³⁶ PWYP Nigeria newsletter, March 2017, <http://publishwhatyoupay.com.ng/2017/03/31/none-compliance-to-freedom-of-information-impedes-transparency-in-extractive-sector/>

³⁷ PWYP Indonesia, "Open mining" app, <https://play.google.com/store/apps/details?id=com.zan.android.pwyp&hl=en>, and "Why mandatory disclosures matter for Indonesia", April 2017, <http://www.publishwhatyoupay.org/pwyp-resources/why-mandatory-disclosures-matter-for-indonesia>

³⁸ BHP Billiton data is from the company's voluntary report for FY 2014/15. BHP's first report under the UK Regulations, for FY 2015/16, was published in September 2016, after PWP Indonesia had completed its initial project.

people and the environment,³⁹ concerns have extended to the country's newly developing oil sector, potentially one of the largest in sub-Saharan Africa. Ugandan civil society, including members of PWYP Uganda, have examined 2015 payments disclosed under the Regulations by UK-registered Tullow and (under France's implementation of the Accounting Directive) LSE Main Market-traded Total and compared these with information in Bank of Uganda annual reports for fiscal years 2015 and 2016.⁴⁰ Civil society has used this information in dialogue with government officials to query discrepancies and demand financial accountability. A review of Tullow and Total's 2015 disclosures revealed US\$14 million not included in the government reports. Unless these payments were part of a prior transfer into the country's general budget before operationalization of the petroleum fund, the US\$14 million could be deemed to be missing. Civil society has asked officials to explain the discrepancy. The need to do this was reinforced in January 2017 when it was revealed that Ugandan President Museveni had approved payment of US\$1.65 million to government officials to "reward" them for a successful lawsuit against Heritage Oil.⁴¹

Case study example: Publishing and tweeting oil and gas payments in Nigeria

BudgIT is a Nigerian civil society organisation that uses technology to promote citizen engagement and to raise standard of transparency and accountability in government. BudgIT's "Fix our oil" campaign publishes infographics based on UK and other EU countries' mandatory extractive company disclosures that help citizens gain a clearer view of their government's oil and gas revenues. BudgIT uses social media to make its infographics available to wider audiences, including tagging government ministers with its Twitter posts.⁴²

Case study example: Exposing a poor deal in Niger⁴³

Oxfam France in partnership with PWYP Niger has published an assessment of the disclosures of French uranium company Areva under the French regulations. The investigation concludes that recent contract renegotiations between the company and the Nigerien government have failed to increase government revenues, despite previous announcements that they would. Analysis of the data published by Areva reveals that the new contracts include a renegotiated uranium price that is below the former price, explaining the decrease in royalty revenues. Civil society's analysis indicates that uranium exported by Areva's operated joint venture subsidiary Somair from Niger to France's nuclear power industry may be undervalued by up to €11,500 per tonne compared with other Nigerien uranium exports. Oxfam France and PWYP Niger believe this is largely why Areva did not pay any profit tax in Niger in 2015. Areva has refuted this conclusion, stating that the agreed price "reflects uranium market conditions", but has not provided a consistent explanation for the undervaluation of the uranium exports. Local civil society including PWYP Niger has used this information to raise media and government awareness about the outcome of the contract renegotiations.

Case study example: Dialogue in Tunisia

Extractive company reporting under the Regulations has helped inform and empower Tunisian civil society in addressing corruption through its dialogue with the government. PWYP UK and the PWYP-affiliated Tunisian Coalition for Transparency in Energy and Mines analysed FY 2015 payments to Tunisian government entities

³⁹ Global Witness, "Uganda: undermined", June 2017, <http://bit.ly/2qTtZ36>

⁴⁰ PWYP Uganda, "Digging deep into oil, gas, and mining data", PWYP US Extract-A-Fact blog, February 2017, <http://www.extractafact.org/blog/project-level-disclosures-open-up-ugandas-opaque-oil-sector>; Tullow: <https://extractives.companieshouse.gov.uk/company/03919249>; Total: http://www.total.com/sites/default/files/atoms/files/registration_document_2015.pdf

⁴¹ Oil News Kenya, "Uganda awarded officials, lawyers \$1.65m after winning Heritage Oil tax dispute", January 2015, <http://www.oilnewskenya.com/uganda-awarded-officials-lawyers-1-65m-after-winning-heritage-oil-tax-dispute/>

⁴² BudgIT, "Fix our oil", http://fixouroil.com/wp-content/uploads/2017/10/shell-payment-latest-8_16pm.pdf, and <http://fixouroil.com/wp-content/uploads/2017/04/Oil-Gas-Payments.pdf>

⁴³ PWYP France, Oxfam France, ONE and Sherpa, *Beyond transparency: investigating the new extractive industry disclosures*, September 2017, https://www.oxfamfrance.org/sites/default/files/file_attachments/beyondtransparency.pdf; see also Q. Parrinello (Oxfam France/PWYP France), "Three years after 'win-win' negotiations, Niger still losing out to Areva", June 2017, <http://www.publishwhatyoupay.org/three-years-after-win-win-negotiations-niger-still-losing-out-to-areva/>, and "Why is Niger still losing out to Areva?", September 2017, <http://bit.ly/neareva>

reported by BG Group, the country's largest gas producer (acquired by Shell in 2016)⁴⁴ and Petrofac.⁴⁵ Infographic summaries of payments reported by each company, totalling together more than US\$114 million, were produced, and questions were formulated for the Tunisian government relating to revenue receipts, subnational revenue allocations and company social responsibility payments to local authorities. The Tunisian coalition intended to use the infographics to inform its dialogue with the government.

*Case study example: Empowering communities in Zimbabwe*⁴⁶

PWYP Zimbabwe used payment data disclosed by Anglo American⁴⁷ for its Unki platinum mine to empower citizens. Workshops were held with 20 representatives of the Marange and Shurugwi communities to develop their skills in assessing local mining tax revenue alongside local government budget and financial statements and to support their calls for better funding for local economic and social development from the proceeds of mineral extraction. PWYP Zimbabwe has also begun sharing company payment and government revenue data with community organisations in diamond-producing but impoverished eastern Zimbabwe. This has helped make data a tool that communities can use in organising their grassroots advocacy and has enhanced PWYP Zimbabwe's participation in national budget consultations and dialogue with government officials. PWYP Zimbabwe reports that community leaders are keen to further improve their data literacy and aims to support district administrators, local councillors and traditional chiefs in promoting development through sharing knowledge about mineral revenues.

Case study example: Seeking accountability in Iraq

PWYP UK, the PWYP International Secretariat and the PWYP-affiliated Iraqi Transparency Alliance for Extractive Industries developed an Arabic-language summary of 2015 payments to Iraqi government entities disclosed by Shell and BP under the Regulations, along with contextual information. The Iraqi Alliance planned to use the data to seek greater accountability from their government and the companies, including by cross-checking the data with the country's forthcoming EITI report on 2015, and in looking into how the oil companies account for operating costs.

*Case study example: Informing citizens in the United States*⁴⁸

Like citizens in resource-rich developing countries, citizens of the USA also need to know if they are getting a good deal on their plentiful natural resources. PWYP US analysed 2015 state and federal tax payments made by nine major extractive companies operating in the USA, using companies' mandatory and voluntary financial disclosures, including reports under the UK Regulations from BP, Rio Tinto and Shell. While this research produced more questions than answers regarding the relatively low level of taxes contributed by these companies' US extractive operations, publication of the findings has provided US civil society with the basis for a more informed public debate.

*Case study example: Summarising reports by UK companies*⁴⁹

PWYP UK has published an online summary of FY 2015 reporting by Shell under the Regulations, and an interim overview of FY 2015 reporting by all UK-registered and LSE Main Market-traded companies. These online summaries provide the general public with accessible information about the global footprints of Shell

⁴⁴ BG Group: <https://extractives.companieshouse.gov.uk/company/03690065>

⁴⁵ Petrofac: <http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/PFC/12867390.html>

⁴⁶ PWYP Zimbabwe, "Community data literacy for demand driven change", June 2017, http://www.publishwhatyoupay.org/wp-content/uploads/2017/06/PWYP-Data-Extractor-Case-Study_Mukasiri.pdf, and "How Zimbabweans persuaded diamond companies and government to listen", August 2017, <http://www.publishwhatyoupay.org/pwyp-news/how-zimbabweans-persuaded-diamond-companies-and-government-to-listen/>

⁴⁷ Anglo American: <https://extractives.companieshouse.gov.uk/company/03564138> and <http://www.angloamerican.com/~media/Files/A/Anglo-American-PLC-V2/documents/tax-report-2015/aa-2015-tec-report-21-04-16-final.pdf>

⁴⁸ PWYP US, "Is the United States getting a good deal on its natural resources?", April 2017, <http://www.extractaffect.org/blog/is-the-united-states-getting-a-good-deal-on-its-natural-resources-a-taxing-question>

⁴⁹ PWYP UK, "Shell reports 2015 payments to governments using open data", June 2016, <http://www.publishwhatyoupay.org/shell-reports-2015-payments-to-governments-using-open-data>, and "Extractive companies publish worldwide payments under UK law", January 2017, <http://www.publishwhatyoupay.org/extractive-companies-publish-worldwide-payments-under-uk-law/>

and UK-reporting companies respectively, including in Shell’s case an infographic ranking the size of its FY 2015 payments in 24 countries.

*Case study example: Disclosures by Russian state-owned companies*⁵⁰

During public debates in the USA ahead of the US Congress’s decision to void the bipartisan Cardin-Lugar anti-corruption rule for oil, gas and mining companies (Dodd-Frank Act, Section 1504), PWYP US used reports under the UK Regulations by Russian state-owned Gazprom⁵¹ and Rosneft⁵² to disprove inaccurate claims that only US companies were required to disclose payments under global extractives anti-corruption laws. The fact that several Russian companies have now become more transparent about their payments to governments than US oil giants such as Exxon and Chevron has become part of wider public debate.⁵³

*Case study example: Investigating company payments for local development in India*⁵⁴

Indian journalist Shreya Shah and online media portal IndiaSpend investigated the way local government in Bhilwara, Rajasthan, used levy payments by mining companies to the District Mineral Foundation intended to assist mining-affected communities with local development projects. Finding a poor record of revenue use to date, Shah and IndiaSpend made recommendations for better use of the funds, including public participation, monitoring and spending transparency. Among the mining companies involved and making payments was UK-registered and LSE Main Market-traded Vedanta. The investigative approach and reporting methodology are being shared widely with PWYP coalitions around the world for potential replication.

*Case study example: Understanding oil price data*⁵⁵

Independent industry analysts OpenOil have used disclosures under the Regulations by BP and Shell, and under Norwegian law by Statoil, to develop a public analysis of oil pricing. This shows that prices spread across a wide range, including significant differences in the concurrent price of oil for projects in the same country. This kind of data and analysis will increasingly enable citizens and civil society to identify patterns and outliers in company payment reports and government oil sale prices, enabling improved public oversight, more informed debate and ultimately better public policymaking.

*Case study example: Insight into Ghana’s oil and gas sector*⁵⁶

Tullow Oil, which has voluntarily disclosed its payments to governments since 2011, operates Ghana’s two main producing oil and gas fields, Jubilee and TEN. NRGI analysed six years of Tullow’s reporting payments in Ghana, including disclosures under the Regulations for FYs 2015 and 2016, to publish an account of how developments during a period of domestic sector growth and oil price volatility can affect company tax payments. The analysis shows how production entitlements representing over half the payments have fluctuated depending on oil price and production volumes, while income tax has fluctuated more, generating over US\$100 million in some years and zero in others. NRGI’s article concludes that the difference came

⁵⁰ PWYP US, “Myth busting: the truth about the Cardin-Lugar anti-corruption provision”, February 2017, <http://www.pwypusa.org/wp-content/uploads/2017/02/3CRA-Mythbusters-Cardin-Lugar-Provision-2017.pdf>

⁵¹ Gazprom: <http://tools.morningstar.co.uk/tsweu6nqxu/globaldocuments/document/rnsNewsItem.aspx?DocumentId=373204741508084>

⁵² Rosneft: <http://tools.morningstar.co.uk/tsweu6nqxu/globaldocuments/document/rnsNewsItem.aspx?DocumentId=373204741509820>; https://www.rosneft.com/Investors/Reports_and_presentations/Reports_on_payments_to_governments/

⁵³ Economist, “Donald Trump signs a law repealing a disclosure rule for oil companies”, February 2017, <http://www.economist.com/blogs/democracyinamerica/2017/02/big-signing>

⁵⁴ IndiaSpend, “For a dying silicosis patient, a mining fund offers hope”, October 2017, <http://www.indiaspend.com/cover-story/for-a-dying-silicosis-patient-a-mining-fund-offers-hope-57967>, and “How not to use a development fund for mineral-rich areas”, October 2017, <http://www.indiaspend.com/cover-story/how-not-to-use-a-development-fund-for-mineral-rich-areas-40871>; also <https://www.youtube.com/watch?v=TnwWEunkGrM>

⁵⁵ OpenOil, “With mandatory disclosures, more open, granular oil price data”, August 2016, <http://openoil.net/2016/08/15/with-mandatory-disclosures-more-open-granular-oil-price-data/>

⁵⁶ NRGI, “Tullow disclosure yields insight into Ghana oil, gas sector”, May 2017, <https://resourcegovernance.org/blog/tullow-disclosure-yields-insight-ghana-oil-gas-sector>; Tullow: <https://extractives.companieshouse.gov.uk/company/03919249> and <http://www.tulloil.com/Media/docs/default-source/2016-Annual-Report-Accounts/2016-Annual-Report-Accounts.pdf?sfvrsn=18>

mainly from deductions against taxable income from the Jubilee field.⁵⁷ It concludes that Ghana's oil fields can remain profitable and provide a larger share of revenue for the government, and it highlights the common trade-off between increasing short-term tax revenues and attracting further investment.

Case study example: Informing public debate in Australia

Australia's ABC News published an online article in April 2017 focused on Glencore's payments report under the UK Regulations.⁵⁸ The article highlighted that Glencore paid zero royalties in Australia's Northern Territory, where – unusually – royalties apply to profits rather than to the value of production. ABC News used the company's absence of royalty payments as the basis for a discussion about the relative benefits and shortcomings of different royalty regimes. This shows the Regulations' and the Accounting Directive's usefulness in informing public debate about different approaches to extractives revenue management and potential to result in reform.

Case study example: Creating a "how-to" handbook for extractives data users

Global Witness is working with Resources for Development Consulting, a leading authority on resource project economics, to develop an accessible, high quality handbook (both web-based and PDF format) to promote citizens' use of extractive companies' payment disclosures. Members of PWYP's Data Extractors group from the Philippines, Canada, Zimbabwe, France, the US, Indonesia and the UK have tested the methodologies for analysing project payments developed in the draft handbook, using company disclosures under the EU Accounting and Transparency Directives. The results of the testing will inform the final version of the handbook, which is due for publication in 2018. The handbook will help equip civil society groups, journalists, independent activists, parliamentarians, academics and others who want to use extractives data for accountability purposes. It will increase the effectiveness of payment transparency regulations in resource-dependent host countries and in home countries and promote responsible data use by explaining the logic behind company payments. Global Witness promoted the handbook's methodology at PWYP's 2017 Africa Conference and will launch and present it at other suitable events in resource-dependent countries and encourage civil society to incorporate the methodology into advocacy and capacity-building.

*Case study example: Public interest financial modelling in Indonesia*⁵⁹

PWYP Indonesia and analysts/trainers OpenOil are modelling extractive project finances using publicly available data to inform public monitoring and discussion about contract implementation, especially in relation to fiscal regimes, and to evaluate project costs and benefits and estimate future state revenues from the extractive industries. PWYP Indonesia plans to extend modelling to include payment reports under the EU Directives, covering payments in Indonesia by companies such as BHP Billiton, BP, Premier Oil, Rio Tinto, Shell and Total, and to develop a mentoring programme for Southeast Asian civil society, academics, journalists and government officials.

*Case study example: An online open-source international data repository on oil, gas and mining project payments*⁶⁰

NRGI is developing www.ResourceProjects.org as an online platform that collects and searches extractive project information using open data. It aims to harvest data on project-by-project payments to governments based on mandatory disclosure legislation in the EU, Norway, Canada and (once implemented) the US, as well as in EITI reports. ResourceProjects.org then links the data to associated information such as project location and status, relevant contracts, companies and licences from a variety of government and industry sources. The platform aims to make it easier for journalists, civil society organisations, researchers and government officials to search, access and download relevant data originating from these sources.

3.4 Complementing the Extractive Industries Transparency Initiative (EITI)

⁵⁷ Tullow's view, however, is that the primary factor was the decline in the oil price.

⁵⁸ ABC News, "Mining giant Glencore paid '\$0' in royalties to Northern Territory government", April 2017, <http://www.abc.net.au/news/2017-04-26/mining-giant-glencore-paid-no-royalties-to-nt-government/8472350>

⁵⁹ PWYP Indonesia, "Financial modelling: a new instrument for promoting accountability in extractive industry", September 2017, <https://pwyp-indonesia.org/en/325216/financial-modelling-a-new-instrument-for-promoting-accountability-in-extractive-industry/>

⁶⁰ NRGI, <http://www.resourceprojects.org/>

Mandatory reporting is widely agreed to complement reporting under the EITI.⁶¹ While the EITI has proved valuable as a country-based reconciliation process and in giving civil society a seat at the table with industry and government, it is currently limited to 51 participating countries. By contrast, the UK Regulations and EU Directives ensure that companies registered and/or traded on a regulated market in the UK and the EU disclose their payments to governments worldwide, including payments in high-corruption-risk countries that are unlikely to join the EITI any time soon, such as Angola and Russia. NRG estimates that 80% of payments reporting under the UK Regulations went to non-EITI country governments in 2015.

BHP Billiton's report on FY 2016, for example, discloses a total of \$4.51 billion in in-scope payments to governments in 19 countries.⁶² Of these countries, only 6 are currently implementing the EITI. BHP's payments to the 12 non-EITI countries totalling \$4.2 billion – i.e. 93% of its total in-scope payments made in FY 2016 – will never be reported under the EITI. This starkly illustrates the importance of mandatory reporting in relation to non-EITI countries.

In addition, EITI data is often incomplete and out of date, whereas payment data is disclosed under mandatory reporting laws during the financial year following the one when payments were made. And with the EITI there is always a risk – borne out in 2017 in the case of two countries – that for political reasons a country will stop implementing the initiative.

Case study example: Making a case in the Philippines

Bantay Kita (PWYP Philippines) analysed payments data published under the French implementation of the Accounting Directive by LafargeHolcim and under the Regulations by LafargeHolcim's UK subsidiary Aggregate Industries,⁶³ identifying that the Philippines was the group's third largest recipient of government payments in 2015, totalling approx. US\$66 million. Bantay Kita, which is represented on the Philippines EITI Multi-Stakeholder Group and publishes a public web portal for extractive industry data and project information, is using LafargeHolcim and Aggregate Industries' disclosures to strengthen its case for the inclusion of payments by non-metallic mining companies in future Philippines EITI reports.

Case study example: Total's payments in Angola⁶⁴

ONE, Oxfam France and Sherpa (all members of PWYP France) in partnership with independent analysts Le Basic published an analysis of the first disclosures by French oil and gas company Total of its payments to governments in Angola under France's implementation of the Accounting Directive. Because Angola – a highly corruption-prone country – is not an EITI member, Total's payments in the country were published for the first time in 2016 alongside mandatory disclosures by other companies such as BP and Statoil. Analysis of production entitlement (“profit oil”) payments made by a consortium of companies including Total (40% stakeholder and operator) on block 17 revealed a major discrepancy between the value of in-kind payments made by the companies (as calculated from Total's proportionate disclosure at 40%) and the production entitlement revenue for the block voluntarily declared by the Angolan authorities, which was US\$108 million less. The fact that the company had not disclosed the volume as well as the value of its in-kind payment made it more difficult to identify the reason for the discrepancy; the government did disclose the volume (number of barrels).

⁶¹ EITI Chair, Statement on repeal of SEC's “resource extraction” rule, January 2017, <https://eiti.org/news/statement-from-eiti-chair-on-repeal-o-secs-resource-extraction-rule>

⁶² BHP Billiton:

<http://tools.morningstar.co.uk/tsweu6nqxu/globaldocuments/document/rnsNewsItem.aspx?DocumentId=384822628095094>;
<https://extractives.companieshouse.gov.uk/company/03196209>

⁶³ LafargeHolcim: http://www.lafargeholcim.com/sites/lafargeholcim.com/files/atoms/files/07152016-finance-lafargeholcim_report_on_payments_to_governments.pdf; Aggregate Industries: <https://extractives.companieshouse.gov.uk/company/00245717>

⁶⁴ PWYP France, Oxfam France, ONE and Sherpa, *Beyond transparency: investigating the new extractive industry disclosures*, September 2017, https://www.oxfamfrance.org/sites/default/files/file_attachments/beyondtransparency.pdf; Q. Parrinello (Oxfam France/PWYP France), “Three years after ‘win-win’ negotiations, Niger still losing out to Areva”, June 2017, <http://www.publishwhatyoupay.org/three-years-after-win-win-negotiations-niger-still-losing-out-to-areva/>, and “Why is Niger still losing out to Areva?”, September 2017, <http://bit.ly/neareva>

This civil society report offers three possible explanations for the gap: (1) differences between Total and the Angolan government in defining and estimating the volume of “profit oil” paid and received; (2) differences between Total’s and the government’s valuation of the oil per barrel (Total does not provide a value per barrel of oil, unlike the government, which does: US\$51.9; from evidence elsewhere it appears that Total and the Angolan government have priced the same oil differently); (3) embezzlement of part of the in-kind “profit oil” payments by Angolan officials.

In response to the civil society report, Total stated that it accounts for production entitlement volumes in accordance with the production sharing contract, and values these volumes on the basis of regulated prices controlled and provided by the Angolan government, and that this “completely excludes any possible manipulation of transfer prices”. Total’s detailed response to the PWYP France report is published online.⁶⁵

By comparing the company data with Angolan government data, French civil society organisations used Total’s mandatory disclosures to perform a similar task of verification to that undertaken in other countries through the EITI, raising important questions similar to those addressed by the EITI reconciliation process. Civil society would still expect Total to disclose in-kind payments by volume as well as by value, in line with the EU Directive.⁶⁶

Case study example: Gazprom’s payments in the UK

Analysing company payment reports on FY 2015 under the Regulations, NRG established by end-March 2017 that a total of 36 different companies’ disclosures included payments to UK Government entities. Among these were mandatory disclosures by Russian state-owned oil company Gazprom, which had declined to disclose payments made to UK Government bodies in 2015 under the 2016 UK EITI process. This data gap in the UK EITI report on 2015 was partly addressed by NRG providing text and a web link in the UK EITI report to NRG-compiled data on Gazprom and other companies’ reported payments to the UK under the Regulations.⁶⁷

3.5 Business benefits for companies

Payment transparency helps secure companies’ social licence to operate, enhances their reputational standing, reduces business risk and lowers costs of capital. International auditors EY have listed social licence as the fourth greatest risk that mining companies face.⁶⁸ Loss of social licence can lead to delayed production – and in extreme cases, abandoned operations, as with Royal Dutch Shell in Ogoniland – and additional risks and costs, such as the need to deploy armed security guards when conflicts arise with local communities. All this impacts negatively on companies’ reputation and bottom line.

Estimates of the potential business costs of community conflict and of production halts and delays are large. The former Special Representative of the UN Secretary-General for Business and Human Rights, Professor John Ruggie, cites an international oil major’s estimate that it may have experienced a “US\$6.5 billion value erosion over a two-year period” from “non-technical ... stakeholder-related risks”, referring specifically to “costs arising from conflict with local communities”.⁶⁹

⁶⁵ https://www.oxfamfrance.org/sites/default/files/file_attachments/right_of_reply_-_total.pdf

⁶⁶ EU Accounting Directive, Art. 43.3. France’s transposition of the Directive inadvertently omitted the requirement to report, where applicable, in-kind payments by volume.

⁶⁷ UK EITI Report for 2015, March 2015, <https://www.gov.uk/government/publications/extractive-industries-transparency-initiative-payments-report-2015>, page 76; NRG data: <http://resourcegovernance.org/analysis-tools/tools/company-reports-payments-governments-including-uk-2015>

⁶⁸ EY, *Top 10 business risks facing mining and metals, 2016–2017*, <http://www.ey.com/Publication/vwLUAssets/EY-business-risks-in-mining-and-metals-2016-2017/%24FILE/EY-business-risks-in-mining-and-metals-2016-2017.pdf>; see also Tom Butler (International Council on Mining and Metals), quoted in Reuters, “Mine bosses say transparency will not be clouded by US rule changes”, February 2017,

<http://www.reuters.com/article/us-africa-mining-transparency-idUSKBN15O1KG>

⁶⁹ J. Ruggie, Foreword to R. Davis and D. Franks, *Costs of company-community conflict in the extractive sector*, CSR Initiative at the Harvard Kennedy School, 2014, https://sites.hks.harvard.edu/mrcbg/CSRI/research/Costs%20of%20Conflict_Davis%20%20Franks.pdf

Researchers Davis and Franks find that “temporary shutdowns or delay” may cost “a major, world-class mining project with capital expenditure of between US\$3-5 billion ... roughly US\$20 million per week of delayed production ... largely due to lost sales”. They also cite cases of delays costing companies hundreds of millions of dollars in total, and tens or hundreds of thousands of dollars per day; and in one extreme case quoted from an interviewee: “When we were building [the mine] the number was frequently thrown around that every day of delay in the construction schedule cost \$2 million, partly because of additional costs, but mainly because of delay in the start of the revenue stream.”⁷⁰

Leading oil, gas and mining companies recognise these risks, including the fact that payment transparency helps protect companies and their investors from bribe-seeking government officials. They have acknowledged publicly that they favour country- and project-level reporting under the Regulations and similar legislation for such reasons, even where benefits may not be immediately quantifiable:

Anglo-American: “[W]e ... support and comply with the EU Transparency Directive.”⁷¹

BHP Billiton: “[W]e ... would be supportive of a globally consistent mandatory disclosure regime based on ... [the EU Accounting] Directive.” “We believe transparency by governments and companies about revenue flows from the extraction of natural resources is an important element in the fight against corruption.” “Consistency of financial disclosure ... is ... critical for civil society and other users of financial disclosure data.”⁷²

BP: “BP supports the concept of transparency in revenue flows from oil and gas activities in resource-rich countries. It helps citizens of affected countries access the information they need to hold governments to account for the way they use funds received through taxes and other agreements.”⁷³

Glencore: “[W]e are strong supporters of transparency around payments made to governments in resource producing countries.”⁷⁴

Rio Tinto: “Rio Tinto believes our investors, stakeholders and communities deserve to understand in clear terms the amount of tax we pay in each country. We are committed to providing transparency about tax payments made to governments.”⁷⁵

Shell: “Shell is committed to transparency as it builds trust. Trust is essential for a company that operates in our line of business, reflecting our core values of honesty, integrity and respect for people. By fulfilling the mandatory disclosures in line with the new UK legislative requirements we demonstrate that extraction of natural resources can lead to the opportunity of government revenue, economic growth and social development.”⁷⁶

⁷⁰ Ibid., pages 9, 19.

⁷¹ Anglo American, Letter to Business & Human Rights Resource Centre, February 2017, <https://business-humanrights.org/sites/default/files/documents/Anglo-American-response-re-revenue-transparency-2016.pdf>

⁷² BHP Billiton, *Economic contribution and payments to governments report 2015*, <http://www.bhpbilliton.com/~media/12d7d9572f1042a4b6cdb0bd7abe5c09.ashx>, page 12; *Integrity, Resilience, Growth: Sustainability Report 2016*, http://www.bhpbilliton.com/~media/bhp/documents/investors/annual-reports/2016/bhpbillitonsustainabilityreport2016.pdf?utm_source=Website&utm_medium=Organic&utm_term=SusDownloadNews&utm_campaign=AR2016, page 18; Business & Human Rights Resource Centre, “Publish What You Pay urges oil, gas & mining firms to support US law on disclosure of payments to govts. - statements of support by 13 firms”, 2017, <https://business-humanrights.org/en/publish-what-you-pay-urges-oil-gas-mining-firms-to-support-us-law-on-disclosure-of-payments-to-govts-statements-of-support-by-8-firms/?dateorder=datedesc&page=1&componenttype=all>

⁷³ BP, <https://www.bp.com/content/dam/bp/en/corporate/pdf/sustainability-report/group-reports/bp-report-on-payments-to-governments-2015.pdf>, page 3.

⁷⁴ Business & Human Rights Resource Centre, “Publish What You Pay urges oil, gas & mining firms to support US law on disclosure of payments to govts. - statements of support by 13 firms”, 2017, <https://business-humanrights.org/en/publish-what-you-pay-urges-oil-gas-mining-firms-to-support-us-law-on-disclosure-of-payments-to-govts-statements-of-support-by-8-firms?dateorder=datedesc&page=1&componenttype=all>

⁷⁵ Rio Tinto, *Taxes paid in 2015*, http://www.riotinto.com/documents/RT_taxes_paid_in_2015.pdf, page 3.

⁷⁶ Shell, “Revenues for governments”, <http://www.shell.com/sustainability/transparency/revenues-for-governments.html>

Statoil: “Statoil is committed to and engaged in revenue transparency for activities in the extractives sector, and has found this practise conducive to establish trust between stakeholder groups”; “[O]ur company supports transparency ... Statoil has not seen negative effects from the disclosures we have made.”⁷⁷

Tullow: “We are committed to transparency, both in the way we run our business and in our disclosure of payments to major stakeholders ... we believe transparent disclosure of tax payments helps governments, citizens and international opinion formers to debate how wealth from oil resources should be managed sustainably and equitably.” “Part of our commitment to creating shared prosperity is to ensure that there is transparent disclosure of payments to governments in the countries in which we operate.”⁷⁸

Similarly, the International Council on Mining and metals (ICMM), a leading mining industry body, has said:

“[T]he global trend is in the [pro-transparency] direction. The train has left the station. It is driven by investors and other stakeholders and the desire of the industry to maintain its social license to operate. One way to maintain that is for everyone to see that the taxes and other payments the mining industry makes are applied sensibly to the development of the country.”⁷⁹

The UK Government’s Impact Assessment indicated that the Regulations were “expected to bring real benefits to UK companies operating in resource rich developing countries by reducing risk and improving the business environment”.⁸⁰ Guidance for companies published by the UK Government for the UK EITI has similarly acknowledged that revenue transparency enhances risk mitigation for, and the reputations of, companies:

“Political instability caused by opaque governance is a clear threat to investments. In extractive industries, where investments are capital intensive and dependent on long-term stability to generate returns, reducing such instability is beneficial for business.

“Transparency of payments made to a government can also help to demonstrate the contribution that their investment makes to a country. ...

“Openness around the extractive industry and its value creation, importance for the economy will lead to more predictable social and political development. ...

“Shareholders, investors, employees, competitors, civil society groups, the media and other external stakeholders view companies’ disclosure of payments ... as an example of principled leadership. ...

“Regular ... [r]eports on payments and revenues can improve the creditworthiness of both companies and countries.”⁸¹

UK Business Minister and EITI Champion Margot James MP has publicly acknowledged the reputational benefits of transparency for companies that do business in the UK: “Improving corporate transparency across all sectors makes us even more attractive to foreign investors on our path to building a truly global Britain.”⁸²

While one or two years’ reporting under the Regulations cannot prove or disprove the above anticipated business benefits, there is every reason to think such benefit will consolidate over time.

⁷⁷ Statoil, *2016 Annual Report and Form 20-F*, <https://www.statoil.com/content/dam/statoil/documents/annual-reports/2016/statoil-2016-annual-report.pdf>, and company email to PWYP UK, February 2017.

⁷⁸ Tullow Oil, “Transparency”, <https://www.tulloil.com/sustainability/shared-prosperity/transparency>, and *2013 Annual Report & Accounts*, http://www.tulloil.com/Media/docs/default-source/3_investors/2013-annual-report/2013-tullow-annual-report-pdf.pdf?sfvrsn=6; <http://www.tulloil.com/sustainability/shared-prosperity/transparency>, page 175.

⁷⁹ Tom Butler (ICMM), quoted in Reuters, “Mine bosses say transparency will not be clouded by US rule changes”, February 2017, <http://www.reuters.com/article/us-africa-mining-transparency-idUSKBN1501KG>

⁸⁰ UK Government, <http://www.legislation.gov.uk/ukxi/2014/3209/impacts>, page 1.

⁸¹ UK Government, *Guide to the UK Extractive Industries Transparency Initiative (UK EITI)*, June 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/424168/Guidance_document_for_mining_companies_on_EITI.pdf

⁸² UK Government, “Business Minister Margot James renews UK’s commitment to corporate responsibility in extractive industry”, March 2017, <https://www.gov.uk/government/news/business-minister-margot-james-renews-uks-commitment-to-corporate-responsibility-in-extractive-industry>

3.6 Investor benefits

The UK Government's Impact Assessment refers to "benefits ... to UK investors who will be better able to assess the risk profiles of extractives projects".⁸³ Numerous UK and EU investors, including Allianz Global Investors, CCLA Investment Management, Co-operative Asset Management, F&C Asset Management, Henderson Global, Hermes, ING, Legal & General, the Local Authority Pension Fund Forum, RPMI Railpen, Scottish Widows, SNS, the Swedish National Pension Fund, UBS and USS, are on record as supporting country- and project-level reporting by extractive companies under US and/or EU laws. See for example this statement from their 2013 letter to the US Securities and Exchange Commission (SEC):

"Payment disclosure regulations, such as [Dodd-Frank Act] Section 1504 and the European Union Transparency Directive, play a critical role in encouraging greater stability in resource-rich countries, which benefits both the citizens of those countries and investors. ... [D]isclosure requirements ... protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation."⁸⁴

Similarly PWYP has been told in conversation with certain UK investment fund managers that payment transparency is valued because it demonstrates and enhances the good governance of oil, gas and mining companies and addresses investor risk.

A study by UK accounting academics notes that payments to governments disclosures "should assist investors in judging the merits of potential investments in terms of compliance with applicable tax laws and transparency displayed by companies. It is useful in relation to risk assessment. [Payments to governments reports] provide a level of detail not available in the accounts or elsewhere in company disclosure and to this extent they provide users with information which they would not otherwise have any access to."⁸⁵

When in early 2017 the newly elected US Congress voted to rescind the SEC's rule for the Cardin-Lugar provision (Dodd-Frank Section 1504), and President Trump signed the resolution into law, the *Responsible Investor* online news service published an article subtitled: "Why the repeal of '1504' section of act will harm investors".⁸⁶

3.7 User benefits of a centralised reporting portal and open data

From a data user's perspective, all UK-registered companies' payment reports are usefully accessible online in open data CSV files via the UK Government's Companies House Extractives Service portal.⁸⁷ The requirement for UK-registered companies to report via a central online repository, using the prescribed XML schema that outputs as open data CSV files, significantly enhances access and usability for report users. Civil society appreciates that, in prescribing open data reporting by UK-registered companies, the UK Government exceeded the minimum requirements of the Accounting Directive and acted resolutely in the spirit of the 2013 G8 Open Data Charter and 2013 Lough Erne G8 Leaders' Communiqué, and in keeping with its 2013-15 Open Government Partnership commitment that by 2016 "UK listed and UK registered extractive companies will start to publish data under the EU Directives in an open and accessible format."⁸⁸

⁸³ UK Government, <http://www.legislation.gov.uk/ukxi/2014/3209/impacts>, page 1.

⁸⁴ Investor letter to SEC Chairman Mary Jo White, August 2013, <https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-3.pdf>

⁸⁵ E. Chatzivgeri, L. Chew, L. Crawford, M. Gordon and J. Haslam, *Reports on payments to governments: a report on early developments and experiences*, report for Publish What You Pay International Secretariat and Publish What You Pay UK, 2017, <http://bit.ly/2rLmBnv>

⁸⁶ Responsible Investor, "Analysis: investors concerned over repeal of Dodd-Frank extractives disclosure rule", February 2017, https://www.responsible-investor.com/home/article/analysis_investors_concerned_df/

⁸⁷ UK Government, Companies House Extractives Service, <https://extractives.companieshouse.gov.uk/>

⁸⁸ G8 Open Data Charter, 2013, <https://www.gov.uk/government/publications/open-data-charter/g8-open-data-charter-and-technical-annex>; Prime Minister's Office, 2013 Lough Erne G8 Leaders' Communiqué, <https://www.gov.uk/government/publications/2013-lough-erne-g8-leaders-communication>, para. 47; UK Cabinet Office, *Open Government Partnership National Action Plan 2013-15*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255901/ogp_uknationalactionplan.pdf, commitment 21, page 49.

Open data enables users to access and use data freely, machine-read it, analyse it mechanically and easily represent it in different formats. The 2013 G8 Open Data Charter recognised the value of open data to citizens and society:

“Open data can increase transparency about what government and business are doing. Open data also increase awareness about how countries’ natural resources are used, how extractives revenues are spent All of which promotes accountability and good governance, enhances public debate, and helps to combat corruption.”⁸⁹

Much of the payment analysis and advocacy undertaken by PWYP and other civil society actors, as evidenced in the case study examples above, makes use of the open data provided under the Regulations.

4. Conclusions

Achieving greater transparency and accountability in the extractive industries is a medium- to long-term task that will require sustained effort on the part of forward-thinking governments, progressive companies, responsible investors and civil society. We should remain confident that these laws are already helping deter corruption and mismanagement in the sector and enabling more extractives revenues to be used for public benefit. PWYP UK’s submission is that the Regulations have gone a significant way towards achieving their objectives.

The Regulations’ objectives remain entirely appropriate. No changes have occurred in the extractive industries or the wider global context to suggest that citizens of resource-rich countries no longer need information to hold their governments to account, including the greater insight available from project-level reporting, or that global standards of transparency in the extractives sector no longer need to be raised.

Is there a viable alternative or equivalent system? No. For comments on the limitations of the EITI, see above.

Are the Regulations and EU Directives, and similar laws in other jurisdictions, sufficient in themselves to stamp out corruption and mismanagement in the oil, gas and mining industries? Clearly not. But they are essential to maintain the current direction of travel towards a world where the extractive sector is well governed and trusted and delivers its potential to effectively improve the lives of millions of citizens in resource-rich countries for as long as these finite natural resources last and are exploited.

⁸⁹ G8 Open Data Charter, 2013, <https://www.gov.uk/government/publications/open-data-charter/g8-open-data-charter-and-technical-annex>, page 1.