Natural Resource Governance Institute

Vanessa A. Countryman
Secretary, Securities and Exchange Commission
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CC:
Mr. William Hinman, Director, Division of Corporate Finance
Mr. Barry Summer, Associate Director, Division of Corporation Finance
Ms. Elizabeth Murphy, Associate Director, Division of Corporate Finance
Mr. Elliot Staffin, Special Counsel, Division of Corporate Finance

Via Email (to: rule-comments@sec.gov)

16th March, 2020

Re: File Number S7-24-19 – Proposed Rule 13q-1 to implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Secretary Countryman,

We welcome the opportunity to provide a submission to the Securities and Exchange Commission (the "Commission") on proposed Rule 13q-1 and amendment to Form SD implementing Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Section 1504) requiring payment disclosure by resource extraction issuers.

The Natural Resource Governance Institute (NRGI), an independent, non-profit organization, helps people to realize the benefits of their countries' oil, gas and mineral wealth through applied research, and innovative approaches to capacity development, technical advice and advocacy. NRGI is recognized for its technical expertise, and has been involved in the development of mandatory reporting requirements for the extractive industries in the United States, Europe and Canada. We have also contributed extensively to the development of the Extractive Industries Transparency Initiative (EITI), including serving on the initiative's board since its inception and contributing to the revised version of the EITI Standard adopted in 2019.

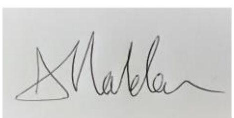
In the years since the 2016 Rule, and 2017 Congressional Review Act Vote, companies have begun reporting their payments-to-governments under mandatory disclosure laws in the EU, UK, Canada and Norway. NRGI has explored how civil society organizations, journalists and oversight bodies in Nigeria, Ghana and Indonesia can use the resulting contract-level project data for accountability in their communities. The attached reports: *Nigeria's Oil and Gas Revenues: Insights From New Company Disclosures*; *Ghana's Gold Mining Revenues: An Analysis of Company Disclosures;* and *Indonesia's Oil and Gas Revenues: Using Payments to Governments Data for Accountability,* provide 10 examples of ways contract-level project payment data can be used to respond to resource governance challenges in each of these countries.

While each of these reports demonstrate the value of the disclosures resulting from the mandatory disclosures laws in EU, Canada and Norway to citizens in Nigeria, Ghana and Indonesia, the lack of reporting under Dodd-Frank Section 1504 since the law was passed nearly a decade ago results in continued significant transparency gaps.

We urge the Commission to ensure the final rule aligns with the contract-level project reporting requirements as laid out in the EU Accounting Directive, Canada's Extractive Sector Transparency Measures Act (ESTMA) and the 2019 EITI Standard.

We appreciate the opportunity to make this submission and would welcome the opportunity to discuss our reports with you in further detail. Please do not hesitate to contact us with any questions.

Sincerely,



Alexander Malden
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Briefing
December 2017

Natural Resource Governance Institute

Nigeria's Oil and Gas Revenues: Insights From New Company Disclosures

Alexander Malden

Nigeria is one of the largest and oldest oil producers in Africa, with over 50 years of commercial extractive activity. Until recently, however, citizens within the country have not had sufficient information to hold companies or government entities accountable for billions of dollars of oil and gas revenues, nor to begin to assess the costs, benefits and management of the country's extractive activities.

Box 1. Summary of European and Canadian mandatory disclosure laws	
Which companies must disclose?	Oil, gas or mining companies[1] registered in or listed on a regulated stock exchange in Canada, the European Union or European Economic Area.[2]
What must they disclose?	Payments made to governments (including state owned enterprises) in relation to extractive activities. Payments should be attributed to projects where applicable.[3] 1. Production entitlements 2. Taxes (on income, production or profits) 3. Royalties 4. Dividends 5. Signature, discovery and production bonuses 6. License fees 7. Payments for infrastructure improvements
What is the threshold for payment reporting?	Single, or series of, payments that amount to EUR 100,000 in the EU/EEA or CAD 100,000 in Canada.
When must they disclose?	**EU.** The date of the first required report from a company depends on when the EU Member State enacted the relevant provisions of the European Accounting and Transparency Directives.[4] **Canada.** The Extractive Sector Transparency Measures Act came into force on 1 June 2015 and applies to any financial year starting after this date. Companies have 150 days after the end of their financial year to file their Payments to Governments Report. **Norway** (as an EEA country). Its law ("*Forskrift om land-for-land rapportering*") came into force on 1 January 2014 and applies to financial years beginning on or after this date.
What data exists so far?	The number of identified reporting companies by jurisdiction: EU: 130; Norway: 8; Canada: 700

1 Private companies are only required to disclose if they meet thresholds in two of the following criteria: Size of balance sheet (in UK must exceed GBP 18 million), net turnover on its balance sheet (in UK must exceed GBP 36 million) and number of employees (in UK must exceed 250).
2 In EU and Norway forestry companies are also captured.
3 A project is defined as "the operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities with a government. None the less, if multiple such agreements are substantially interconnected, this shall be considered a project."
4 All listed companies must report within 6 months of their financial year end. For private companies, this is at the discretion of the member states but it will be a maximum of one year after financial year end. The UK and France adopted national legislation in 2014, making the 2015 financial year the first year for which reports were required.

Nigeria's implementation of the Extractive Industries Transparency Initiative (EITI) has been an important first step in promoting informed public debate around the country's natural resources. Despite this, the considerable delay in reporting has weakened the usefulness of the EITI information as a tool to hold companies and government entities accountable for their management of specific projects and payments.

However, with the introduction of recently passed mandatory payment disclosure laws in Europe and Canada, companies incorporated or listed in these jurisdictions are required (for the first time) to disclose their payments to government entities.[5] These newly released payments-to-governments (PtG) reports provide timely and informative data on the payments mining and oil and gas companies make to government entities. Companies must categorize payments as one of seven payment types, such as taxes and royalties. They also must report which government entity receives the payment, and must break down the payment data by project, where applicable. (See Box 1.)

Mandatory disclosures have brought unprecedented levels of relevant and timely project-level payment data into the public domain. This data—especially when combined with data from other sources (including companies' annual reports, EITI reports and government statistics)—can lead to better-informed public debate on the management of the country's natural resources. This briefing aims to highlight potential avenues of inquiry for media and civil society stakeholders—they can use this information to push for greater accountability from companies and government entities around extractive industries' revenues. Focusing on Nigeria, this briefing examines the data available in PtG reports and demonstrates how, in a country context, citizens can use such data.

Given that the publication of these reports is still in its infancy, with many companies reporting for the first time, this briefing will also assess where companies could go further with their PtG reports to maximize their utility as a tool for a country's citizens to promote greater accountability.

The data for this briefing has been compiled from PtG reports of companies that disclose payments to Nigerian government entities. The dataset used for the analysis in this briefing has been made available on Resourcedata.org and the PtG data covered in this briefing are available on ResourceProjects.org.

NIGERIA OVERVIEW: ANALYZING THE OIL AND GAS SECTOR

Nigeria is one of Africa's largest oil and gas producers, with over two million barrels per day in 2016[6]. The country also has the largest oil and gas reserves in sub-Saharan Africa, with an estimated 37 billion barrels of oil and 188 trillion cubic feet of gas.[7] The most recent report from Nigeria's chapter of the EITI found that oil and gas revenues account for 77 percent of total government revenues.[8] Revenues from the industry amounted to USD 55.45 billion in 2014.[9]

5 The original mandatory payment disclosure law, Section 1504 of the 2010 US Dodd-Frank Act, has yet to be implemented.

6 BP, *BP Statistical Review of World Energy June 2017*, 2017. http://www.bp.com/content/dam/bp/en/corporate/pdf/energy-economics/statistical-review-2017/bp-statistical-review-of-world-energy-2017-full-report.pdf

7 Natural Resource Governance Institute, *Resource Governance Index*, 2017. http://resourcegovernanceindex.org/country-profiles/NGA/oil-gas

8 NEITI, *2014 Oil and Gas Industry Audit Report*, 2016. https://eiti.org/sites/default/files/documents/neiti-oil-gas-report-2014-full-report-301216.pdf

9 *Ibid.*

Analyzing Nigeria's oil and gas sector

PtG reports provide citizens with unprecedented levels of relevant and timely project-level payment data that can be used to inform public debate on the management of Nigeria's natural resources.

To maximize this data's use as an accountability tool, it can be compared, contextualized and reconciled with other country-level data. Table 1 provides a non-exhaustive list of Nigeria-specific data sources that can be used in conjunction with PtG data to hold government entities and companies accountable for resource revenues. Many of these data sources were used in this briefing's analysis.

Table 1. Additional data sources for analyzing Nigeria's oil and gas sector

Data type	Nigerian source/example	How this data can be used
Company annual reports	Seplat's annual report[10]	Company reports can be used to provide contextual information on the activities of the company in the country. For example, production figures reported in Seplat's annual report can be compared to those reported by the Nigerian Petroleum Development Company (NPDC) to assess whether they reflect each partner's equity share in the NPDC/Seplat joint venture.
Government data	Nigerian National Petroleum Corporation (NNPC) Monthly Financial and Operations Reports[11]	Government data can be reconciled with company disclosures.
Crude oil price	Central Bank of Nigeria (CBN) Data & Statistics[12]	The monthly average Brent crude oil price reported by the CBN can be used to check whether the USD/barrels of oil equivalent (boe) unit price of company production entitlements payments to the government align with market crude oil prices.
Domestic production/ crude oil export	Central Bank of Nigeria Data & Statistics[13]	Can be used to assess the economic importance of a specific project.
Company engagement	Contacting the company directly	Engaging with companies directly can help identify additional contextual information. This process can also demonstrate to companies the importance of their PtG reports and show that they will be scrutinized.
EITI reports	Nigeria EITI (NEITI) 2014 Oil and Gas Annual Report[14]	At the time of publication, the latest NEITI report is for 2014. This report contains a wealth of information on the Nigerian oil and gas industry. In particular, the EITI report can help estimate the revenue not covered by PtG reports (i.e., by some indigenous companies; by foreign companies in jurisdictions that are not currently implementing a mandatory disclosure law; or revenue streams outside the scope of PtG reports).
Ministry reports	Department of Petroleum (DPR) Resources Oil and Gas Annual Report[15]	These reports can offer insight into the government's interaction with companies. For example, the DPR annual report outlines the number of different agreements the government has with companies (i.e., joint ventures and production service contracts).
National acts and laws	Niger Delta Development Commission Establishment Act[16]	National acts within Nigeria can outline the obligations of companies operating in the country (i.e., obligatory payments to the Niger Delta Development Corporation). Similarly, the federal constitution lays out many of the government's obligations (i.e., statutory transfer of 13 percent of resource revenues to the producing state). These obligations can then be quantified and scrutinized using PtG data.
Oil and gas contracts	ResourceContracts.org[17]	Where available, the contract between the government and the company contains a wealth of information that can be used to hold both parties accountable for their respective obligations.

10 Seplat Petroleum Development Company, Annual Report and Accounts 2016, 2017. http://ar2016.seplatpetroleum.com/assets/pdf/seplat-annual-report-2016.pdf

11 NNPC, Monthly Financial and Operations Report, January 2017. http://nnpcgroup.com/Portals/0/Monthly%20Financial%20and%20Operations%20Data/Full%20Reports/NNPC%20Monthly%20Financial%20&%20Operations%20Report%20for%20the%20month%20of%20January%202017.pdf

12 Central Bank of Nigeria, Data & Statistics, 2017. https://www.cbn.gov.ng/rates/crudeoil.asp

13 *Ibid.*

14 NEITI, 2014 Oil and Gas Industry Audit Report, 2016. https://eiti.org/sites/default/files/documents/neiti-oil-gas-report-2014-full-report-301216.pdf

15 Department of Petroleum Resources, 2015 Oil and Gas Annual Report, 2016. https://dpr.gov.ng/index/wp-content/uploads/2015/01/2015-Oil-Gas-Industry-Annual-Report.pdf

16 Nigeria Law, Niger-Delta Development Commission Establishment Act, 2010. http://www.nigeria-law.org/Niger-DeltaDevelopmentCommission(Establishment%20etc)Act2000.htm

17 Natural Resource Governance Institute, Resource Contracts, 2017. www.ResourceContracts.org.

Tax and legal framework

There are five major types of contractual arrangements in the Nigerian oil and gas sector.

- **Joint venture**. An agreement between the Nigerian National Petroleum Corporation (NNPC) and one or more oil companies to share the funding of an operation based on equity share. Based on the 2014 NEITI report, joint venture (JV) agreements account for around 50 percent of production in Nigeria. Out of the 109 oil mining licenses (OMLs), 59 are JVs.[18] Foreign companies hold equity (<50 percent stake) in 40 out of the 59 JVs. Companies engaged in JVs are assessed at a petroleum profits tax (PPT) rate of 65.75 percent for the first 5 years, and 85 percent thereafter.

- **Production sharing contract**. The concession is held by NNPC, and it contracts a company to conduct operations. The contractor takes on the financial risk but is entitled to recover costs if commercial production occurs. Production sharing contracts (PSCs) account for around 40 percent of production in Nigeria. Out of the 109 OMLs, 23 are PSCs. Out of the 23 PSCs, 14 (about 60 percent) are held by foreign companies. Companies engaged in PSCs are assessed at a 50 percent PPT rate.

- **Service contract**. The concession is held by the NNPC, and a contractor is paid a fixed fee for its services of extracting oil. Service contracts account for around 0.4 percent of production in Nigeria. Out of the 109 OMLs, only one is a service contract. Nigeria's only OML service contract is held by Eni.

- **Marginal field concession**. As part of Nigeria's push for more indigenous producers, this arrangement involves a multinational company surrendering one of its marginal fields for development by a smaller indigenous company. Marginal field concessions account for around 2.5 percent of production in Nigeria. Out of the 109 OMLs, 59 are marginal field concessions.

- **Sole risk contracts** (SRCs)**.** An arrangement whereby an oil company or group of companies wholly take on the costs and risks of an oil operation. SRCs are largely held by local Nigerian companies. Out of the 109 OMLs, 23 are SRCs. Foreign companies have equity in 7 out of the 23 SRCs.

Box 2. Accessing payments to governments reports

Payment reports and the data they contain can be found in the following locations:

- **Natural Resources Canada (NRCAN) Extractive Sector Transparency Measures Act (ESTMA) Repository.**[19] NRCAN makes company disclosures available in PDF format on its online repository.
- **UK Companies House Extractives Service.**[20] UK-incorporated companies disclosures are available in XML format.
- **National Storage Mechanism (NSM).**[21] UK main market-listed company disclosures must announce report release on the NSM service.
- **Company reports.** Many companies (including ENI, Seplat Petroleum and Statoil) incorporate their PtG report into their annual reports or as part of their transparency or sustainability reports.
- **Company websites.** Some companies publish their PtG reports on their websites.
- **ResourceProjects.org.**[22] Currently in development, this site collects PtG reports from multiple sources.

18 Department of Petroleum Resources, *2015 Oil and Gas Annual Report*, 2016. https://dpr.gov.ng/index/wp-content/uploads/2015/01/2015-Oil-Gas-Industry-Annual-Report.pdf
19 Natural Resources Canada, Links to ESTMA Reports, 2017. www.nrcan.gc.ca/mining-materials/estma/18198
20 Companies House, Companies House Extractives Service, 2017. https://extractives.companieshouse.gov.uk
21 Morningstar, National Storage Mechanism, 2017. http://www.morningstar.co.uk/uk/NSM
22 Natural Resources Governance Institute, Resources Projects, 2017. http://resourceprojects.org/

PAYMENTS TO GOVERNMENTS OVERVIEW

Eight companies have disclosed payments to Nigerian government entities in their PtG reports: Chevron Canada Limited, CNOOC Limited (Nexen), Eni, LafargeHolcim, Royal Dutch Shell, Statoil, Seplat and Total. Seven of these are oil and gas companies, and one is a mining company (LafargeHolcim). One of these companies, Statoil, disclosed data for payments made in 2014, with four more companies disclosing payments for 2015 and all companies releasing a PtG report for 2016. (See Table 2.) Six of these companies are multinational oil companies (MOCs), with one indigenous oil and gas company, Seplat Petroleum, disclosing as a result of its listing on the London Stock Exchange. From these 7 consolidated oil and gas companies, 13 subsidiaries operating in Nigeria were identified that manage the projects covered in these disclosures.

These seven consolidated companies have disclosed a total of USD 14.6 billion in payments to Nigerian government entities between 2014 and 2017. This figure may include some double counting of payments, as a result of companies adopting different approaches in their reporting on payments made in JV-controlled projects.[23] While some companies, such as Shell, disclose the payments they make to government entities as the operator for the whole JV, others, such as Statoil, report certain payments made proportionally, based on equity share in the project. The largest contributor was Shell, with USD 3.6 billion in 2016, the majority of which came from its Shell Petroleum Development Company of Nigeria Limited (SPDC) JV.

NNPC is the largest recipient by some distance, receiving USD 3.6 billion in 2016.

Using production volumes disclosed in Nigeria's most recent EITI report,[24] these seven oil and gas companies accounted for around 68 percent of the country's oil production in 2014.

Payment disclosures made by companies have been identified for 25 unique oil and gas projects. Several projects were featured in the payment disclosures for multiple companies as a result of them being controlled by a JV. Four projects—including the Bonga field (OML 118)—are subject to equity interest holdings from three disclosing companies. This payment data sheds light on the revenue generated from these projects and highlights gaps by non-disclosing companies (such as ExxonMobil) with significant expected payments to government entities within the country.

The company payments identified in these reports have been paid to 10 government entities in Nigeria. NNPC is the largest recipient by some distance, receiving USD 3.6 billion in 2016, followed by the Federal Inland Revenue Service with USD 2.1 billion.

Production entitlements are the dominant payment type, accounting for USD 3.4 billion, or 49 percent, of total payments in 2016. Taxes and royalties make up the majority of the remainder, at USD 2.7 billion and USD 518 million, respectively.

23 Joint ventures between private companies are often referred to as "consortia" in Nigeria to differentiate these from Joint Venture contractual agreements between one or more companies and the NNPC or NPDC.

24 NEITI, *2014 Oil and Gas Industry Audit Report*, 2016. https://eiti.org/sites/default/files/documents/neiti-oil-gas-report-2014-full-report-301216.pdf

Table 2. Overview of reporting oil and gas companies

Disclosing company	Year of first activity in Nigeria	Reporting jurisdiction	Years of reporting	Subsidiaries operating in the country	Projects with payment data	Total payments disclosed for 2016 (in USD millions)
Chevron Canada Limited	1961	Canada	2016	Star Deep Water Petroleum	Agbami Field (OML 128)	363.36
				Chevron Petroleum Nigeria Limited (CNL)	Niger Delta Concessions	408.59
					Payments not attributed	0.01
					Total	**771.96**
CNOOC Limited (Nexen)	2006	Canada	2016	China National Offshore Oil Corporation (CNOOC)	Akpo and Egina (OML 130)	50.12
				Nexen Petroleum Nigeria Limited	Usan (OML 138)	31.35
					Payments not attributed	0.06
					Total	81.52
Eni	1962	Italy	2016	Nigerian Agip Oil Company	NOAC JV (land/swamp areas)	858.96
					SPDC JV	21.52
				Agip Energy and Natural Resources	OML 116	46.53
				Nigerian Agip Exploration	OML 125/oil prospecting license (OPL) 245	34.80
					Payments not attributed	131.94
					Total	**1,093.74**
Royal Dutch Shell Plc	1937	UK	2015, 2016	Shell Petroleum Development Company of Nigeria Limited (SPDC)	SPDC East	1,055.19
					SPDC Shallow Water	270.66
					SPDC West	111.16
					SPDC JV	1,066.63
				Shell Nigeria Exploration and Production Company (SNEPCO)	PSC 1993 (OPL 212/OML 118, OPL 219/OML 135)	1,114.92
					PSC 1993 (OPL 209)	19.68
					Payments not attributed	-
					Total	**3,638.24**
Seplat Petroleum	2009	UK	2015, 2016	Seplat Petroleum Development Company	OMLs 4, 38 and 41	279.11
					OML 53	18.91
					Payments not attributed	-
					Total	298.02
Statoil	1992	Norway	2014, 2015, 2016	Statoil Nigeria AS	Agbami Field (OML 128)	152.67
					Payments not attributed	194.04
					Total	**346.70**
Total S.A.	1962	France	2015, 2016	Total E&P Nigeria (formerly Elf Petroleum Nigeria Ltd)	Usan Field (OML 138)	25.75
					Obagi field (OML 58)	14.38
					Amenam-Kpono field (OML 99)	25.61
					OML 100	16.99
					Ofon field (OML 102)	61.62
					Bonga field (OML 118)	132.38
					JV with NNPC, operated	19.54
					JV with NNPC, non-operated	103.95
				Total Upstream Nigeria Limited	Akpo and Egina fields (OML 130)	51.13
					Payments not attributed	234.71
					Total	**686.04**

COMPANY-LEVEL ANALYSIS

PtG reports provide invaluable project and government entity-level data with which a company's economic contribution to the country can be assessed. Project-level reporting will soon be required in EITI reports following the EITI board's decision to reaffirm its requirement in early 2017[25]. However, the tight reporting window in which a company must release its PtG report (all reports for 2016 were released within six months of the end of 2016) enables citizens to use these disclosures to conduct a more timely assessment of the benefit they receive for the extraction of their country's natural resources. Furthermore, given that PtG reports are mandatory for companies incorporated or listed in the relevant jurisdictions, these reports will also enable citizens of countries that do not implement EITI to hold their governments accountable for certain natural resource revenues they receive.

As multiple years of reporting from the same company become available, these disclosures will provide further insights into how the company's activities within the country and shifts in the macroeconomic context affect the revenues the government receives from the exploitation of its oil and gas endowments.

There has been a considerable reduction in Statoil's payments to the Nigerian government, from USD 655 million in 2014 to USD 348 million and USD 346 million in 2015 and 2016, respectively.

Statoil in Nigeria

Statoil was one of the first major oil and gas companies to disclose its payments to governments, under the Norwegian Reports on Payments to Governments regulations. As a result, data on the company's payments to the Nigerian government are available for 2014, 2015 and 2016. This multi-year data allows us to assess how Statoil's economic contribution within Nigeria has changed over time.

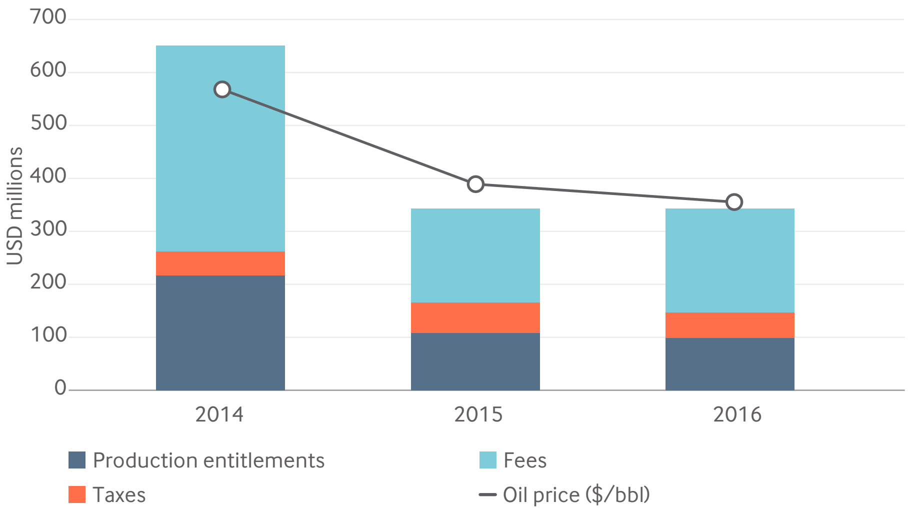


Figure 1. Statoil's payments to the government of Nigeria (2014-2016)

Statoil's presence in Nigeria is focused on its 20.21 percent equity interest in the Agbami Field (OML 128).[26] As Figure 1. Statoil's payments to the government of Nigeria (2014-2017) shows, there has been a considerable reduction in Statoil's payments to the Nigerian government, from USD 655 million in 2014 to USD 348 million and USD 346 million in 2015 and 2016, respectively. This drop in Statoil's economic contribution in Nigeria appears to be predominately the result of a reduction in production entitlements and taxes, caused by a sharp decline in the oil price in the second half of 2014. Going forward, Statoil's PtG reports can be used to assess whether the company's payments to the Nigerian government increase if and when the oil price rises.

25 Extractive Industries Transparency Initiative, The Board reaffirmed that project-level reporting is required, 2017. https://eiti.org/BD/2017-14

26 Statoil, *Statoil 2016 Annual Report*, 2017. https://www.statoil.com/content/dam/statoil/documents/annual-reports/2016/statoil-2016-annual-report.pdf

Potential avenues of inquiry

Going forward, PtG reports can be used to assess whether a company's payments to the Nigerian government increase if and when the oil price increases.

Conclusion

PtG reports can be used to measure a company's economic contribution within the country.

PROJECT-LEVEL ANALYSIS

Project-level disclosures within Nigeria provide citizens with information on which company or state-owned entity is responsible for projects within their territory and which government entities receive revenue from these projects—this information can be used to improve assessments of the costs and benefits of these projects. Many of the projects covered in these disclosures are controlled by JVs. Companies reporting on JVs can be especially useful, as their payments data can be used to infer the payments made to Nigerian government entities by other companies that are not currently required to release a PtG report.

One of the central motivations behind implementing mandatory disclosure laws was to support the EITI process.

However, companies' current reporting practices for payments made as part of JVs can make it difficult for citizens to identify who is responsible for a project and to precisely quantify the revenues generated from it. A JV ownership structure should not remove a company's obligation to report. Instead, companies should report payments made to government entities proportional to their equity share in the project. This means that if a company has a 40 percent equity share in a project, it should disclose 40 percent of the total payments made to the government for this project, regardless of whether it made the payments themselves or if the payments were made on its behalf by the operator. This position is supported by a legal opinion of a senior barrister, provided in 2015, which states that it is "incorrect" and "highly unsatisfactory"[27] for companies to assume that they need not report payments if they are made on their behalf by a JV operator, and that this view is without legal basis and not supported in the regulations.

Box 3. EITI and mandatory payment disclosure laws

One of the central motivations behind implementing mandatory disclosure laws was to support the EITI process. In EITI-implementing countries, mandatory disclosure regulations can help multi-stakeholder groups (MSGs) enact project-level reporting and the EITI's new open data policy as companies listed in relevant jurisdictions become accustomed to disclosing data of this nature in an open data format.[28]

EITI reports can also provide important information to assist in contextualizing the data contained within PtG reports, such as data on the total natural resource revenues received by the government.

Furthermore, EITI reports can help identify revenues from companies not yet covered by mandatory disclosure regulations. These include payments made by companies from countries such as the U.S. and China, which have not yet implemented or adopted PtG laws. Similarly, the EITI can shed light on revenue streams not currently covered in mandatory disclosure laws, including revenues from the sale of the government's share of oil and gas (often referred to as commodities trading).

27 K.P.E. Lasok QC, In the matter of Global Witness and in the matter of draft industry guidance concerning the Reports on Payments to Governments Regulations 2014, legal opinion, Monckton Chambers, February 2015. http://www.publishwhatyoupay.org/wp-content/uploads/2015/04/Legal-opinion-2-on-JV-reporting.pdf

28 The U.K. is currently the only jurisdiction requiring companies to disclose in an open data format. Statoil in Norway also voluntarily discloses in an open data format.

ExxonMobil

As a company based in the U.S. (which is not currently implementing its PtG legislation) ExxonMobil is not required to release a PtG report. However, it is clear from analyzing disclosures from other oil and gas companies engaged in consortia with ExxonMobil that the company makes significant payments to Nigerian government entities. Assuming payments are made proportionally to the company's equity share, we can estimate that in 2016 the company paid USD 39 million in taxes and royalties for the Usan project (OML 138) and between USD 212 and 223 million in taxes and production entitlements for the Bonga project (OML 118). (See Table 3.) These sizable revenues cover only two projects in which ExxonMobil has an interest, but point to the company's significant role as a source of government revenue.

ExxonMobil, through its Nigerian subsidiary Mobil Producing Nigeria Unlimited (MPN), also has several operations for which this type of estimation is not possible. MPN has a 40 percent share (with NNPC owning the other 60 percent) in OMLs 67, 68 and 70. These assets produce around 550,000 barrels per day, equating to over 25 percent of the country's total production.

While the company is under no obligation to release a PtG report, it is clear that if it did so voluntarily, Nigerian citizens would be better equipped to hold the government accountable for the natural resource revenues it receives. Kosmos Energy set the example for such a voluntary disclosure when it revealed its 2016 project-level payments to the governments of Ghana, Mauritania, Morocco, Senegal and Suriname despite no legal obligation to do so.

We can estimate that in 2016 ExxonMobil paid USD 39 million in taxes and royalties for the Usan project (OML 138) and between USD 212 and 223 million in taxes and production entitlements for the Bonga project (OML 118).

ExxonMobil declined when, as part of the research process for this briefing, we contacted it to ask it to voluntarily report 2016 payment data for Nigeria in line with data disclosed by other companies covered in this briefing.

Usan Field (OML 138) 2016 payments analysis

The Usan Field is an offshore oilfield controlled by a consortium of ExxonMobil, Chevron Canada, Total S.A. and CNOOC Limited. CNOOC and Total S.A. have disclosed payments for OML 138 proportionately based on their equity share in the project. Chevron has not disclosed payments for this project. Chevron stated, when contacted as part of the research process for this briefing, that this was because it considers it to be ExxonMobil's responsibility as the operator of the consortium to report all payments for the project. ExxonMobil declined to voluntarily disclose payments made to the Nigerian government.

However, based on CNOOC's and Total's disclosures, and the equity share of both Chevron and ExxonMobil in the project (30 percent each), we can estimate that both companies would have paid USD 36.5 million in royalties and USD 3.3 million in taxes for this project in 2016.

Both CNNOC and Total S.A. have a 20 percent equity share in this project. As a result, we would expect their payments for the project to be similar. Total S.A. previously informed the civil society group Publish What You Pay (PWYP) France that it uses U.S. and Canadian accounting standards' definition of royalty when deciding how to classify payments, resulting in it disclosing as taxes what other companies (and indeed the host country government) may consider as royalties.[29] Figure 2 indicates that the payment Total S.A. disclosed as taxes for OML 138 matched the royalties and taxes disclosed by CNOOC for the same project. This graph demonstrates that CNOOC considers most of this payment (USD 23.7 million) as royalties, and only

29 Oxfam France, *Beyond Transparency – Investigating the new extractives industries discoures*, 2017 https://www.oxfamfrance.org/sites/default/files/file_attachments/beyondtransparency.pdf , pg.15

classifies USD 2 million as taxes. Aggregating taxes and royalties can misrepresent the government's natural resource revenue streams and prevents citizens from assessing whether the company has met its payment obligations.

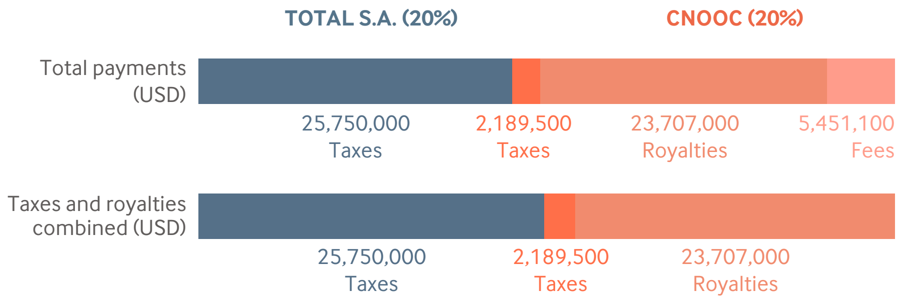


Figure 2. Analysis of CNOOC and Total S.A.'s 2016 payments for OML 138

Another noteworthy element of this comparison between CNOOC and Total S.A.'s disclosures is that CNOOC appears to have made an additional fees payment of USD 5.4 million that Total S.A. has not disclosed. While there are plausible explanations for this discrepancy, citizens may wish to follow up with CNOOC, Total S.A. and the government to question what this payment was for, and ask why Total S.A. has not, or was not required, to make a similar payment.

Bonga Field (OML 118) 2016 payments analysis

Bonga Field is an offshore oil field controlled by a consortium of SNEPCO, ExxonMobil, Eni and Total S.A. Both Shell and Total S.A. have disclosed payments for Bonga Field OML 118. Shell's disclosure represents the payments it makes on behalf of all consortium partners as the operator of the project. Shell also aggregates the payments made for Bonga Field (OML118) with those made for OML 135, identifying them as part of "PSC 1993 (OPL212/OML118, OPL219/OML135)". We contacted Shell to ask for a disaggregated figure for OML 118 and the company responded by confirming that all the payments made for this project were in fact for OML 118.

CNOOC appears to have made an additional fees payment of USD 5.4 million that Total S.A. has not disclosed.

Eni does not disclose payments for its equity share in this project. In the "Basis of Preparation" section of its report, Eni states that it only reports payments for consortia for which it is the operator (and thus makes direct payments to the government).[30] We contacted Eni to confirm our estimation of the payments made on its behalf by the operator and Eni stated it was unable to confirm our estimation. Eni did however provide useful additional information in response to other questions we posed regarding its payments to Nigerian government entities, addressed in the "payment-level analysis" section below.

Total S.A. has reported payments for the project paid on its behalf by the operator proportionally based on its 12.5 percent equity share in the project. As a result, we would expect the USD 49 million in production entitlements and USD 82 million in taxes that it disclosed to equal 12.5 percent of the total amount reported by Shell.

However, Table 3 indicates that there are large discrepancies in the estimated economic contribution of the project based on Shell and Total S.A.'s disclosures. Examining the taxes and royalties disclosed, Shell states that it paid USD 380 million as the operator of the JV. As Shell confirmed this entire payment was for OML 118, this payment represents the 100 percent equity share of the project.

30 ENI, *Report on payments to governments*, 2016. https://www.eni.com/docs/en_IT/enicom/publications-archive/publications/reports/reports-2016/Report-Payments-governments-2016.pdf

Total S.A., which discloses payments for its 12.5 percent share in this project, states that it paid USD 84 million, or that this figure was paid on its behalf by the JV operator (who in this instance is Shell). Based on this disclosure, the payment for the 100 percent equity share of the project should equal USD 664 million, which is USD 284 million more than Shell discloses it paid as operator for the whole JV.

Conversely, after reviewing both companies' disclosures for production entitlements for OML 118, it appears that Shell's payment as the JV operator was far greater (USD 735 million) than what we would estimate based on Total's disclosure for the payment made on its behalf. Total disclosed production entitlements of USD 49 million for its 12.5 percent interest in the project, which would result in a USD 395 million payment for the project as a whole. This USD 395 million figure is USD 340 million less than that disclosed by Shell.

Table 3. Estimation of company payments for Bonga Field in 2016 based on Shell and Total S.A.'s disclosures (reported figures in bold/estimated figures in italics).

		Taxes and royalties (USD)			Production entitlements (USD)		
	Equity share (%)	Based on Shell's disclosure	Based on Total S.A.'s disclosure	Difference in estimated taxes and royalties of the project	Based on Shell's disclosure	Based on Total S.A.'s disclosure	Difference in estimated production entitlements of the project
		Taxes and royalties combined	Taxes		Production entitlements	Production entitlements	
Shell	55	*208,894,747*	*365,182,400*	*156,287,654*	*404,308,586*	*217,298,400*	*87,010,186*
ExxonMobil	20	*75,961,726*	*132,793,600*	*56,831,874*	*147,021,304*	*79,017,600*	*68,003,704*
Eni	12.5	*47,476,079*	*82,996,000*	*35,519,921*	*91,888,315*	*49,386,000*	*42,502,315*
Total	12.5	*47,476,079*	**82,996,000**	*35,519,921*	*91,888,315*	**49,386,000**	*42,502,315*
Sum total	100	**379,808,630**	*663,968,000*	*284,159,370*	**735,106,520**	*395,088,000*	*340,018,520*

There are plausible explanations for the discrepancies in both companies' disclosures, including that companies are permitted to recover operating and capital costs over five years of the project, which may result in differing payment obligations among the JV partners. However, this analysis demonstrates that this PtG data should be used to engage with companies and governments to form a clearer picture of the specific economic contributions of different projects to Nigeria and to question why some payments may be less than would be expected for a project at this stage of its lifecycle.

Box 4. OPL 245

In 2011, Shell and Eni paid USD 1.3 billion for the license for OPL 245, one of West Africa's largest oilfields. However, rather than benefiting Nigerian citizens, 85 percent of this payment was transferred to Malabu Oil and Gas, a company owned by former petroleum minister Dan Etete.

This deal was done behind closed doors, and the details of it did not emerge at the time—they were only made public as a result of a separate legal dispute and investigations by civil society and the media, including Global Witness and *Premium Times*.

The case of OPL 245 provides a clear example of why data on what companies have paid the government are crucial for citizens of resource-rich countries seeking to hold companies to account. Had mandatory disclosure laws been in place at the time of the Malabu transfer, actors may have been deterred from attempting misappropriation.

Payments related to OPL 245 appear in Eni's 2016 "Payments to Governments Report," as part of the "Nigeria Deep Offshore (OML125/OPL245)" project, which includes USD 5 million in production entitlements, USD 24 million in royalties and USD 5 million in fees. These payments demonstrate that Eni is still actively developing this oilfield, despite ongoing legal disputes regarding its acquisition.

Potential avenues of inquiry

Why in 2016 did CNOOC disclose a USD 5.4 million fee payment as an equity partner in the Usan Field when Total S.A., as a partner with the same equity share, did not also disclose a similar payment?

Why do the payments Total S.A. has disclosed as a 12.5 percent equity partner in Bonga Field for 2016 not reconcile with those disclosed by Shell, which is reporting for the whole JV?

Conclusion

JV reporting can be used by citizens to cross-check the payments disclosed by multiple equity partners for the same project.

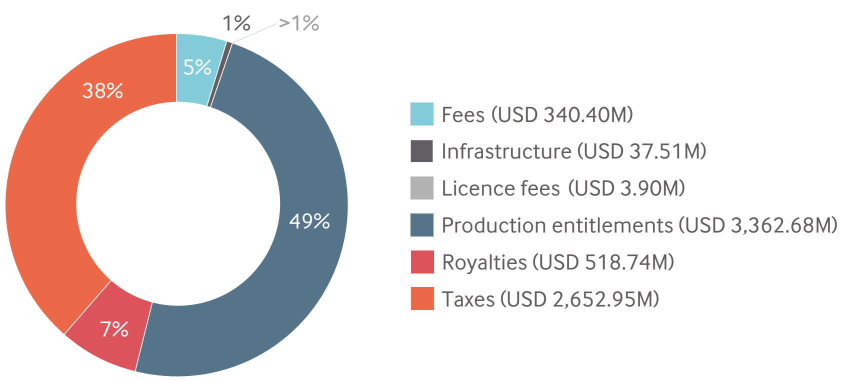
PAYMENT-LEVEL ANALYSIS

Under both European and Canadian mandatory disclosure regulations, payments must be categorized as one of seven payment types. (See Box 1.) The distribution of payments across these payment types can tell us a great deal about how the government manages its natural resources sector.

The distribution of payments across these payment types can tell us a great deal about how the government manages its natural resources sector.

A review of the payments disclosed for 2016 indicates that nearly half of the government revenue received from these companies came from production entitlements. Production entitlements, which in 2016 equaled USD 3.4 billion, are a share of the oil or gas production of a project paid in-kind to the government. A further USD 544 million of taxes and royalties were also paid in-kind. These in-kind royalty and tax payments are revenues which are intended for government entities such as the Federal Inland Revenue Service (FIRS) and Department of Petroleum Resources (DPR); but as physical oil and gas, they are paid to NNPC. NNPC then markets this tax and royalty oil on behalf of these government entities, with the resulting revenue being paid directly into accounts held by FIRS and DPR. A lack of transparency regarding how the producing company and the national oil company (NOC) come to agree on the unit value of production entitlements leaves this form of payment susceptible to mismanagement.

Figure 3. 2016 payments by payment type



The dominance of this USD 3.9 billion in-kind revenue stream—which represents 56 percent of revenue disclosed by these companies—indicates a reliance in the government's natural resources management strategy on revenues generated from commodity trading payments, and highlights the importance of the procedures NNPC has in place for determining the price and buyers of this physical oil and gas.

In its monthly financial and operations reports, NNPC currently discloses the revenues it generates from the sale of its share of physical oil and gas.[31] However, in order for citizens to be able to assess whether the country has received a fair deal for its oil and gas, information on who the buyers are, how much they paid and how much volume they received is also required. EITI recently released guidance (which NNPC helped develop) that provides a framework for how such disclosures could be reported.[32]

Shell in-kind payments

In reviewing Shell's 2015 PtG report (which discloses the volume and value of in-kind payments) Publish What You Pay identified an anomaly in the pricing of the in-kind payment of 76,215,000 barrels of oil equivalent (BOE) for the SPDC East project.[33] While the average BOE price for Shell's other projects was USD 51.59, the SPDC East project has a price of just USD 20.89. When questioned on this pricing, the company responded that the pricing reflected a combined oil and gas price, but declined to disaggregate these prices. As a result, it is impossible to check whether this production volume was valued appropriately, and whether it reflected what the government will actually be able to sell it for.

Reviewing Shell's 2016 PtG disclosure, it appears that this issue persists, with the BOE unit value ranging from USD 15.68 for SPDC East to USD 54.68 for PSC 1993 (OPL 209).

NNPC should disclose the buyer, value and volume of oil and gas they sell as well as how the unit price and buyers were determined.

Box 5. Commodities trading transparency in Nigeria

In the 2017 Resource Governance Index, NNPC scored "poor" or "failing" in indicators relevant to the governance of the sale of the state's oil and gas, with NNPC able to sign contracts free of external scrutiny.

NNPC does share information on which companies it has selected to purchase its oil and gas, releasing an annual list with the amount these companies are entitled to purchase. However, NNPC does not disclose how much production these companies actually purchased, nor the prices at which they purchased, making it impossible for citizens to fully assess whether they got a fair deal for the sale of the state's assets.

NNPC should disclose the buyer, value and volume of oil and gas they sell as well as how the unit price and buyers were determined.

Furthermore, current mandatory disclosure laws should be expanded to include payments to governments for the purchase of oil and gas production in order to add transparency to this important government revenue stream. Currently, Trafigura is the only commodity trader that discloses these payments on a voluntary basis. These voluntary disclosures include four years of payments to the NNPC, including USD 133 million in 2016.[34]

Eni in-kind payments

A similar pricing anomaly was identified in Eni's production entitlements. Eni's 2016 PtG report states that production entitlements for NOAC JV (land/swamp areas) "includes 41,779 KBOE paid in kind." This results in a BOE unit price of EUR 17.08/barrel (USD 18.90/barrel), compared to an average unit price of EUR 40/barrel (USD 44.3/barrel) for Eni's other in-kind payments in Nigeria.

31 NNPC, *Monthly Financial and Operations Report*, January 2017. http://nnpcgroup.com/Portals/0/Monthly%20Financial%20and%20Operations%20Data/Full%20Reports/NNPC%20Monthly%20Financial%20&%20Operations%20Report%20for%20the%20month%20of%20January%202017.pdf
32 EITI, Guidance note 26 - Reporting on first trades in oil, 2017. https://eiti.org/GN26
33 Publish What You Pay, *Shell reports 2015 payments to governments using open data*, 2016. http://www.publishwhatyoupay.org/shell-reports-2015-payments-to-governments-using-open-data/
34 Trafigura, 2017 Responsibility Report, 2017. https://www.trafigura.com/media/364861/2017-trafigura-responsibility-report.pdf

We contacted Eni to seek clarification on this anomaly, and they stated that this, like Shell's explanation, was a result of the in-kind unit value including both oil and gas, valued at different prices. However, unlike Shell, Eni went further and provided the breakdown of oil and gas payments.

In-kind payments relating to the NOAC JV (land/swamp areas) production entitlements (equaled 13,073 kilo barrels of oil equivalent [KBOE] of crude oil) valued at USD 43.52/BOE, resulting in a payment of USD 570 million and 28,706 KBOE of gas valued at USD 7.69/BOE, resulting in a payment of USD 221 million. The response from Eni clarifies this pricing anomaly; demonstrates the value in engaging directly with companies on such issues; and places greater pressure on Shell to follow suit and provide disaggregated figures for their oil and gas in-kind payments. We hope Eni will also proactively disclose such disaggregated figures in its 2017 report.

Conclusion

To enable citizens to assess whether the country has received a fair deal for its share of physical oil and gas, NNPC should regularly release information on who has bought this production, how much they paid and how much volume they received.

GOVERNMENT ENTITY-LEVEL ANALYSIS

Information on which government entity has received revenues resulting from extractive activities is crucial to Nigerian citizens' ability to hold their government entities (including state-owned enterprises) accountable. These revenues are often tied to specific revenue management regulations, which dictate what revenues an entity receives and what they are required to do with them. Having detailed and timely data on how much government entities have received allows citizens to assess whether these entities have, given the resources at their disposal, effectively met their obligations. At the same time, these data allow citizens to check whether companies have met the obligations in making payments to government entities that are imposed by the country's regulations.

In Nigeria, 10 government entities were identified as having received revenue from the disclosing companies.

In Nigeria, 10 government entities were identified as having received revenue from the disclosing companies. (See Figure 5.) The majority of these payments—including those to the Central Bank of Nigeria, Department of Petroleum Resources, Federal Inland Revenue Service and Federal Ministry of Industry of Trade—are all paid into the Treasury Single Account (TSA). The TSA, established in 2012, was designed to consolidate all revenue inflows from government agencies into one account at the Central Bank of Nigeria. The adoption of this single account was designed to increase the stability and effectiveness of Nigeria's revenue collection system. As the TSA does not apply to accounts jointly operated with JV partners, payments to the NNPC are held in a separate account.

Unsurprisingly, given the dominance of production entitlements as a payment type within Nigeria, NNPC (the national oil company, which receives all in-kind payments) is the largest overall recipient with USD 8.9 billion. This information on the in-kind revenue received by NNPC is important, given previous controversies that have arisen around whether NNPC transferred a sufficient amount of oil revenues to the Federation Account, or whether it retained more than it should have.[35]

35 Bassey Udo, Premium Times, *NNPC withheld N824.7 billion oil revenue in 6 months of Buhari's govt, 2016.* https://www.premiumtimesng.com/news/headlines/201087-nnpc-withheld-n824-7-billion-oil-revenue-6-months-buharis-govt-report.html

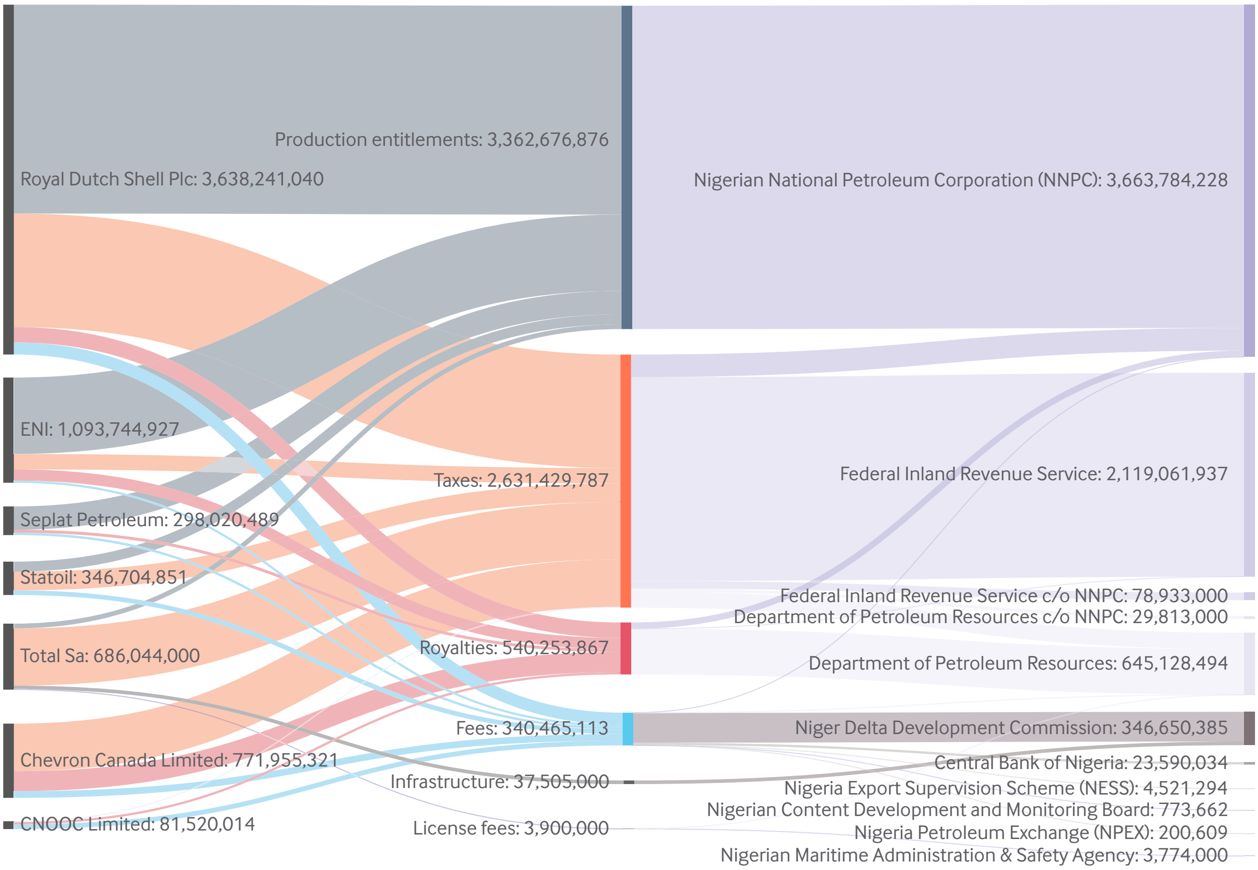


Figure 4. Revenues (USD) received by government entities in 2016

NPDC/Seplat joint venture: reconciling PtG data with NNPC data

Comparing and reconciling PtG data with official government figures can increase the utility of both information sources as tools to hold companies and government entities accountable. Since August 2015, NNPC has published a monthly financial and operations report in an effort to "ensure probity, transparency and accountability in the conduct of its business."[36] The release of these reports is a significant step, and provides an important data source against which to compare and contrast the PtG data disclosed by companies.

One way this NNPC data can be used in conjunction with PtG data is to analyze the activities of the NNPC's upstream operating arm, the Nigerian Petroleum Development Corporation (NPDC). These reports disclose the NPDC's share of production of its operations (including its share of production for OML 4, 38 and 41 fields) controlled by a JV between Seplat as operator (45 percent equity share) and NPDC (55 percent equity share). Examining the share of oil production figures for 2016 disclosed by the NPDC (3,421,145 barrels) and by Seplat in its annual report (2,719,980) shows that these figures reflect the equity share split between these partners. (See Figure 5.)

In the company's PtG report, Seplat states that it discloses the government's share of production for the NPDC/Seplat JV as a production entitlement.[37] Thus for 2016, NPDC's share of production for this project was valued at USD 223 million.[38]

36 NNPC, *Monthly Financial and Operations Report*, December 2015. http://www.nnpcgroup.com/Portals/0/Monthly%20Financial%20and%20Operations%20Data/Full%20Reports/NNPC%20Monthly%20Financial%20and%20Operations%20Report%20for%20the%20month%20of%20December%202015.pdf

37 Seplat Petroleum Development Company, *Annual Report and Accounts 2016, 2017.* http://ar2016.seplatpetroleum.com/assets/pdf/seplat-annual-report-2016.pdf

38 This production entitlement for NPDC/Seplat JV includes gas production not disclosed at the project level by the NPDC in the monthly financial and operations reports.

The value of the production received by NPDC, as well as the royalties (USD 31 million) and fees (USD 25 million) paid for this project, are particularly important given that Seplat currently pays no tax on the project. In 2014 Seplat was granted a pioneer status tax incentive by the Nigerian Federal Inland Revenue Service as part of a strategy to promote growth in the indigenous oil and gas industry. As a result, Seplat is not required to pay tax on its projects in Nigeria for five years.[39]

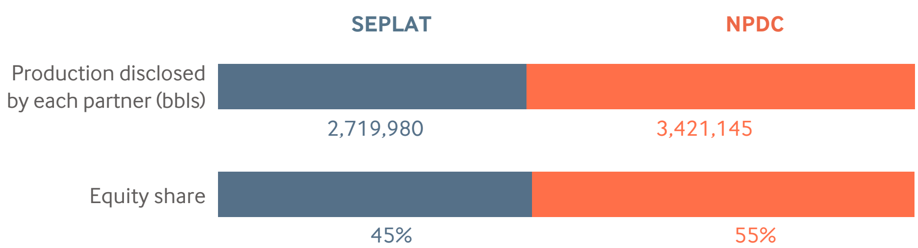


Figure 5. NPDC/Seplat JV analysis

While this case demonstrates one of the potential uses of this government data, NNPC should go further in improving the detail, quality and format of data. In particular, the "lifting by company" data[40] are presented in an image of an Excel table, saved in PDF format, which cuts off many of the largest figures contained within it. This error occurs when the Excel cell is not large enough to present the entire number contained within it. This reporting issue limits the utility of this disclosure as a tool for transparency and accountability. To improve the detail, quality and format of this data, NNPC should present it in an open data format.

To improve the detail, quality and format of this data, NNPC should present it in an open data format.

Niger Delta Development Commission (NDDC)

PtG reports provide data that allow citizens to check that both a government entity, for example the Niger Delta Development Commission (NDDC), and companies have fulfilled their obligations.

The Nigerian government established NDDC in 2000, as part of the Niger Delta Development Commission Establishment Act, to facilitate the sustainable development of the Niger Delta and address ecological and environmental problems that arise due to extractive activities in the region. The act requires that oil and gas companies operating in the country pay an annual levy of 3 percent of their total annual budget to the commission.

The commission has questioned companies' levy payments in recent years. Oil and gas companies—including Nigeria LNG Limited (NLNG)—have contested the meaning of the term "annual budget," while the NDDC itself claims it cannot check that companies are meeting their payment obligations, as it does not have access to the annual budgets of the oil and gas companies operating in the Niger Delta.[41]

The PtG reports show that for 2016, each disclosing oil and gas company did make a payment to the NDDC. (See Table 6.) Citizens can then use this data to hold the NDDC accountable as to what it did with this revenue from 2016 (totaling USD 346 million).

On a company level, this information can be used to engage with companies and ask them to confirm their implied annual budget (and thus ensure they are meeting their obligations to the NDDC).

39 Seplat Petroluem, *Response to Media Comment,* 2015. http://tools.morningstar.co.uk/tsweu6nqxu/globaldocuments/document/rnsNewsItem.aspx?DocumentId=368456654441021

40 NNPC, *Lifting by Company 2015,* 2016. http://nnpcgroup.com/Portals/0/Monthly%20Financial%20and%20Operations%20Data/Links/Lifting%20By%20Company_2015.pdf

41 Sunday Aborisade, Punch Nigeria, *Oil firms not paying accurate dues to NDDC – Sementari,* 2016. http://punchng.com/oil-firms-not-paying-accurate-dues-to-nddc-semenitari/

Disclosing company	Amount (USD)	Implied company annual budget (USD)
Chevron Canada Limited	63,051,435	*2,101,714,483*
CNOOC Limited	49,830,000	*1,661,000,000*
Eni	22,296,077	*743,202,581*
Royal Dutch Shell Plc	125,147,780	*4,171,592,667*
Seplat Petroleum	24,044,724	*801,490,800*
Statoil	24,775,369	*825,845,647*
Total S.A.	37,505,000	*1,250,166,667*
Sum Total	**346,650,385**	

Table 4. Company payments to the NDDC in 2016 (estimated figures in italics)

Potential avenues of inquiry

Does the payment made to the NDDC by each disclosing company reflect 3 percent of its annual budget?

CONCLUSION

While it is still early days for companies releasing reports under European and Canadian mandatory disclosure laws, it is clear that these PtG reports can enable citizens to more meaningfully assess the costs and benefits of extractives activities in their countries. In the case of Nigeria, where the government heavily relies on the large oil and gas sector for revenue, this means citizens are better equipped to hold government entities accountable and ensure companies meet all their payment obligations.

However, it is clear that improvements are still needed—both within Nigeria and globally—to empower the country's citizens to conduct a more informed public debate on the country's natural resource management. These improvements include:

- **NEITI should increase the speed of its report releases.** While NEITI reports contain a wealth of information on the country's natural resources sector, the most recent full oil and gas report was for 2014, limiting the resource's usefulness for accountability purposes. One of the stated aims of the mandatory disclosures legislation passed in Europe and Canada was to support the EITI process, and NEITI should use this additional data and the increased reporting by companies in the country to shorten the length of time between a financial year and its corresponding EITI report.

- **All companies operating in Nigeria should report voluntarily.** Current mandatory disclosure laws capture a majority of the foreign extractive companies operating in Nigeria. However, companies based in countries that do not yet have these laws or that have not implemented these laws (such as the U.S.) restrict citizens' abilities to fully assess the extractive activities in their countries and hold their government entities accountable for the resulting revenues. These companies (most notably ExxonMobil) should voluntarily release PtG data, offering Nigerian citizens the same level of transparency as is required by other foreign extractives companies.

- **NNPC should commit to commodities trading transparency.** The payment type analysis in this briefing demonstrates the importance of production entitlements as a revenue source for the Nigerian government. For Nigerian citizens to be able to fully assess the benefits of the natural resource sector, NNPC needs to disclose more detailed information on commodities trading payments. NNPC currently discloses the revenues they generate from the sale of its share of physical oil and gas.[42] However, in order for citizens to be able to assess whether the country has received a fair deal for this oil and gas, information on the identity of the buyers, how much they paid and how much volume they received is also required.

- **Governments of countries home to commodity trading hubs should include commodities trading transparency in mandatory disclosure legislation.** Current mandatory disclosure laws should be expanded to include PtGs for the purchase of oil and gas production in order to add transparency to this important government revenue stream. Currently, Trafigura is the only commodity trader that discloses these payments on a voluntary basis.

- **NNPC should improve the level of detail and format of the data disclosed in its monthly financial and operations report.** While the release of the monthly financial and operations report is an important first step in NNPC's aim of becoming more transparent, it must improve the detail, quality and format of the data disclosed if these reports are to be used by citizens to assess whether the country is receiving a fair deal for their natural resources. To improve the detail, quality and format of this data, NNPC should present it in an open data format.

This briefing introduces PtG reports and demonstrates some of the ways citizens can use the data contained within to inform debates around the natural resource sector within their country and hold the relevant actors accountable. The dataset used for the analysis in this briefing has been made available on Resourcedata.org and the payments to governments data covered in this briefing are available on ResourceProjects.org.

42 NNPC, *Monthly Financial and Operations Report*, January 2017. http://nnpcgroup.com/Portals/0/Monthly%20Financial%20and%20Operations%20Data/Full%20Reports/NNPC%20Monthly%20Financial%20&%20Operations%20Report%20for%20the%20month%20of%20January%202017.pdf

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Natural Resource Governance Institute

Ghana's Gold Mining Revenues: An Analysis of Company Disclosures

Alexander Malden and Edna Osei

INTRODUCTION

Ghana is blessed with mining, oil and gas endowments. The country is Africa's second largest gold producer and started producing oil in 2010. Due in large part to the more recent development of the oil and gas sector, the industry has stronger disclosure practices and citizen oversight than the older mining industry. In anticipation of first oil, the government of Ghana passed the Petroleum Revenue Management Act, putting in place strong disclosure practices and establishing the Public Interest and Accountability Committee, enabling citizens to monitor the revenues generated in the oil and gas sector and how these are managed. A similar government accountability institution is not currently present in the mining sector.

Ghana's implementation of the Extractive Industries Transparency Initiative (EITI) has been an important first step in promoting informed public debate around the country's mining industry. Despite this, the considerable delay in reporting has weakened the usefulness of the EITI information as a tool to hold companies and government entities accountable for their management of specific projects and payments.

However, with the introduction of the Extractive Sector Transparency Measures Act (ESTMA)[1] in Canada, extractive companies incorporated or listed in Canada are now required to disclose their payments-to-government entities. These newly released payments-to-governments reports provide timely information on the payments mining and oil and gas companies make to government entities.[2] Companies must categorize payments into one of seven payment types, such as taxes and royalties. They must also report which government entity receives the payment, and must break down the payment data by project, where applicable. (See Table 1.)

In Ghana the majority of international mining companies, including Asanko Gold, Golden Star Resources, Kinross Gold, Perseus Mining and Xtra-Gold Resources, have disclosed payments-to-governments reports under ESTMA. In addition Gold Fields, AngloGold Ashanti and Newmont Mining have made voluntary disclosures regarding the payments they make to the Ghanaian government. While these disclosures do not follow the exact reporting specification of the mandatory disclosure regulations, partially limiting their comparability to disclosures made

1 Natural Resources Canada, *Extractive Sector Transparency Measures Act (ESTMA)*, www.nrcan.gc.ca/mining-materials/estma/18180
2 In the oil sector the Government of Ghana provides quarterly disclosure of payments with a very short delay. Disclosures can be accessed here: www.mofep.gov.gh/publications/petroleum-reports.

CONTENTS

under ESTMA, this positive step by the companies to voluntarily disclose payments does provide Ghanaian citizens with a more complete view of the revenues generated in the country's mining sector.[3]

These company disclosures, especially when combined with data from other sources (including companies' annual reports, EITI reports and government statistics), can lead to better-informed public debate on the management of the country's mining resources.

Focusing on the gold sector, the aim of this briefing is to explore ways company disclosures can be used by government, civil society, media and other oversight actors to better understand the revenues generated within Ghana's gold sector and use this new data source as an accountability tool within the country.

Table 1. Summary of Extractive Sector Transparency Measures Act (ESTMA)

Summary of Extractive Sector Transparency Measures Act (ESTMA)	
Which companies must disclose?	Oil, gas or mining companies incorporated or listed on a regulated stock exchange in Canada.
What are they required to disclose?	Payments made to governments, including state owned enterprises, in relation to extractive activities. Payments should be attributed to projects where applicable. Payments include cash payments and in-kind payments.
What types of payments must they disclose?	1. Production entitlements 2. Taxes 3. Royalties 4. Dividends 5. Signature, discovery and production bonuses 6. License fees 7. Payments for infrastructure improvements
What is the payment threshold?	Single, or series of, payments that amount to CAD 100,000
When do they have to disclose?	Companies have 150 days after the end of their financial year to file their payments-to-governments report.

Drawing on some of the current debates within Ghana on the generation, allocation and management of mining revenues, this briefing will demonstrate some of the ways payments-to-governments data can be used to better understand the revenues generated within the gold mining sector.

The first section of this briefing will provide an overview of Ghana's gold mining sector, including how the government generates revenue from gold mining activities in the country. The second section will demonstrate how government, media and civil society stakeholders can use payments-to-governments data to analyze government revenues in the mining sector. The remaining three sections of the briefing will outline three ways that this data can be used to monitor gold mining revenues in the country. These sections will focus on how this data can be used to monitor whether company payments match what would be expected under the fiscal regime; to monitor the allocation and disbursement of mining royalties to subnational entities; and to monitor payments for infrastructure improvements in mining-affected areas.[4]

3 In this report, data resulting from ESTMA disclosures are referred to as "payments-to-governments data." "Company disclosures" are used when referring to data from both ESTMA disclosures and company voluntary disclosures.

4 The dataset used for the analysis in this briefing has been made available on Resourcedata.org and the payments-to-governments data covered in this briefing are available on ResourceProjects.org.

1. GHANA'S GOLD MINING SECTOR

In 2012, oil overtook gold as the commodity that generates the most revenue in Ghana. However, the mining sector remains an important source of revenue within the country.[5] The government revenue generated from the 10 international gold mining companies referenced in this report accounted for around four percent of government revenue 2017.[6] Gold is the dominant commodity within the mining sector. According to the Ghana Extractives Industries Transparency Initiative (GHEITI) 2015 Mining report, the gold sector contributed about 96 percent of the total value of mineral exports in 2015, with manganese (1.95 percent), bauxite (1.24 percent) and diamonds (0.31 percent) as the other commodities mined at significant levels in the country.[7]

Challenges within the sector

Ghana's gold mining sector scored "weak" in the 2017 Resource Governance Index (RGI), behind the oil and gas sector, which achieved a "satisfactory" rating. The main governance challenge identified within the RGI was in the management of the country's mining revenues, with the revenue management component of the mining assessment being the only element within Ghana to be rated as "poor." The oil and gas sector has clear revenue management laws and practices, detailing how revenues generated from the oil and gas sector are to be allocated and used, overseen by the Public Interest and Accountability Committee. The disparity between the revenue management structures in the oil and gas and mining sectors has led to calls within Ghana for the government to implement a Mineral Revenue Management Act.[8]

Ghana's gold mining sector scored "weak" in the 2017 Resource Governance Index (RGI), behind the oil and gas sector, which achieved a "satisfactory" rating.

A second area where the mining RGI score falls short of that achieved in the petroleum sector is in contract disclosure. In the petroleum industry, the Petroleum Commission is required to publish all petroleum agreements, licenses and permits. The government has not currently adopted the same contract disclosure policies in the mining sector, limiting oversight actors' ability to identify project-specific fiscal terms and contractual obligations.

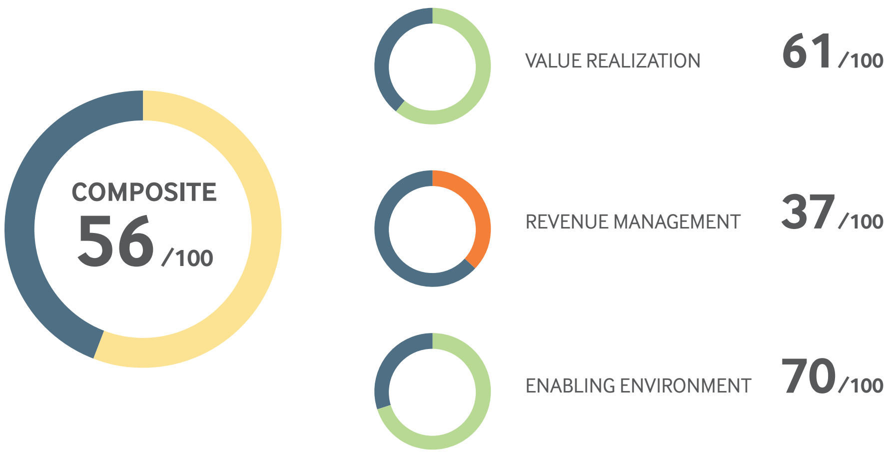


Figure 1. Ghana mining 2017 Resource Governance Index score

5 Ghana Extractive Industries Transparency Initiative (GHEITI), *Data Analysis of Ghana's Extractive Sector,* (2015), data.gheiti.gov.gh/#.
6 General government revenue taken from International Monetary Fund (IMF). *World Economic Outlook Database* (2018), www.imf.org/external/pubs/ft/weo/2018/01/weodata/weoselser.aspx?c=652&t=1#sNGDP.
7 GHEITI, *GHEITI Mining Sector Report for 2015,* (2018), eiti.org/sites/default/files/documents/2015_gheiti_mining_report.pdf.
8 Ghana Business News, *ACEP calls for Mineral Revenue Management Law* (2018), www.ghanabusinessnews.com/2018/04/28/acep-calls-for-mineral-revenue-management-law/.

Government officials and international organizations have highlighted the need to increase scrutiny of the revenues generated under the current fiscal regime. The International Monetary Fund (IMF) has stated that Ghana could significantly increase resource revenues if it more effectively enforced the current fiscal regime by "executing costs audits to detect possible profit shifting by companies."[9] In April 2018, Vice President Mahamudu Bawumia stated that the government was to review the tax exemptions given to resource companies, claiming improper accounting is a major source of revenue loss.[10] The Vice President has also questioned the utility of the government's 10 percent equity interest in mining operations within the country given the evidence that this equity share has not generated the expected revenue in dividends.[11]

The International Monetary Fund (IMF) has stated that Ghana could significantly increase resource revenues if it more effectively enforced the current fiscal regime.

Research by the Natural Resource Governance Institute (NRGI) based on modeling a hypothetical gold mine concluded that the government of Ghana's share of company profits is just over 50 percent.[12] This 50 percent government share of company profits is comfortably within the 40 to 60 percent range IMF has estimated is "reasonably achievable" for mining countries.[13] This modeling suggests that the current fiscal regime can generate significant government take if implemented and monitored effectively.

Box 1. Accessing payments-to-governments reports

Payment reports and the data they contain can be found in the following locations:

- Natural Resources Canada (NRCAN) Extractive Sector Transparency Measures Act (ESTMA) Repository. NRCAN makes company disclosures available on its online repository here: www.nrcan.gc.ca/mining-materials/estma/18198. The links generally point to company websites.
- ResourceProjects.org. Currently in development, this site developed by NRGI collects payments-to-governments reports from multiple sources and standardizes the data to enhance accessibility.

Generating revenues from the gold mining sector

Ten international mining companies currently operate active gold mines within the country, mostly located within the Ashanti and Western regions.

In total, over 3.3 million ounces of gold were produced in Ghana in 2017.[14] International mining companies that have either disclosed payments-to-governments under ESTMA regulations or made voluntary disclosures produced 86 percent of the total national production. (See Figure 2.) Small-scale and artisanal mining generated the remaining country production.

9 IMF, *Ghana: Fifth and Sixth Reviews Under the Extended Credit Facility, Request for Waivers for Nonobservance of Performance Criteria, and Request for Modification of Performance Criteria-Press Release; Staff Report; and Statement by the Executive Director for Ghana* (2018), www.imf.org/en/Publications/CR/Issues/2018/05/02/Ghana-Fifth-and-Sixth-Reviews-Under-the-Extended-Credit-Facility-Request-for-Waivers-for-45841.

10 Reuters, *UPDATE 1-Ghana to review corporate tax exemptions for resources sector* (2018), uk.reuters.com/article/ghana-mining/update-1-ghana-to-review-corporate-tax-exemptions-for-resources-sector-idUKL5N1RH5ML.

11 Abubakar Ibrahim, "10% carried interest in mining companies is 'virtually useless' – Bawumia," *MyJoyOnline*, (2018), www.myjoyonline.com/business/2018/May-8th/10-carried-interest-in-mining-companies-is-virtually-useless-bawumia.php.

12 David Manley. *An* Economic Evaluation of Gold Mining Tax Regimes in the Kyrgyz Republic (Natural Resource Governance institute, 2018), resourcegovernance.org/sites/default/files/documents/economic-evaluation-of-gold-mining-tax-regimes-kyrgyz.pdf. The model was based on a hypothetical gold mine with total development costs of USD 500 million, per unit operating costs of USD 500 per ounce, and annual production of 250,000 ounces of gold selling at USD 1,300 per ounce.

13 IMF, *Fiscal Regimes for Extractive Industries: Design and Implementation* (2012), pp. 29.

14 Production figures taken from S&P Global Market Intelligence.

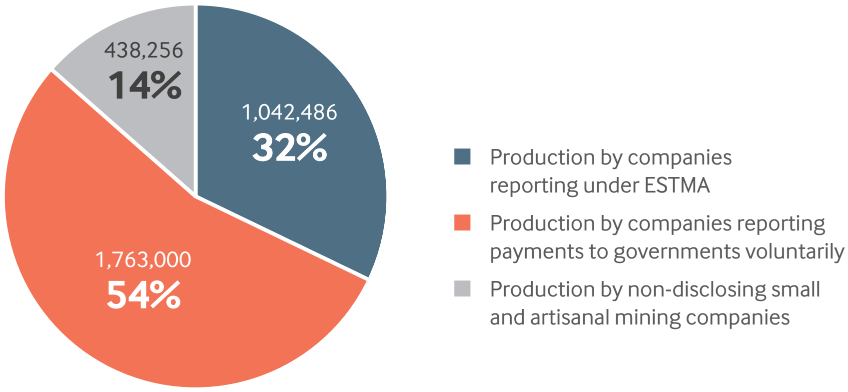


Figure 2. Ghana gold production in 2017 by company payment disclosure practice (ounces)

Fiscal regime

Ghana operates a "tax-royalty" fiscal regime, meaning that the central way that government revenue is generated from mining activities in the country is through corporate income taxes and royalties levied on revenue generated from production. (See Table 2.)

Table 2. Ghana's Mineral Fiscal Regime

Revenue stream	Payment type	Note
Mineral Right (Mining lease)	Annual payment	
Capital allowance	20%	
Carry forward of losses for taxation purposes	5 year	
Corporate income tax rate	35%	
Mineral royalty	5%	Select companies, including Gold Fields, have signed updated mineral development agreements, which institute a royalty rate that varies between 3 and 5 percent depending on the price of gold.
Government equity participation	10% free equity interest	The government has a 10 percent free carried interest in all operations apart from those owned by Newmont Mining and AngloGold Ashanti.[15]

While the standard corporate income tax rate within Ghana is 25 percent, for extractive activities, this rises to 35 percent. The standard royalty rate is set at five percent on gross revenue from operations, however some companies, including Gold Fields, have negotiated with the government a sliding scale royalty rate from three to five percent based on the gold price.

The government of Ghana also owns a 10 percent free equity interest in all but three of the companies' gold operations. This means that the government is provided this equity interest without having to make financial contributions to the development or operations of the project. The equity share is intended to generate additional revenues through the receiving of dividends.

Companies are expected to make several payments at the subnational level, including ground rents and property rents which are paid to the Office of the Administrator of Stool Lands and relevant district assemblies respectively.

15 The government of Ghana has a 1.55 percent interest in the multinational company AngloGold Ashanti Limited.

2. ANALYZING GHANAIAN GOLD MINING REVENUES

Payments-to-governments reports provide citizens with unprecedented levels of relevant and timely project-level payment data that can be used to inform public debate on the management of Ghana's mineral resources.

To maximize this data's use as an accountability tool, it can be compared, contextualized and reconciled with other country-level data. Table 3 provides a non-exhaustive list of Ghana-specific data sources that can be used in conjunction with payments-to-governments data to hold both government entities and companies accountable for resource revenues. Many of these data sources were used in this briefing's analysis.

Table 3. Additional data sources for analyzing Ghana's gold mining sector

Data type	Ghanaian source/ example	How this data can be used
Company annual reports	Gold Fields Integrated Annual Report 2017	Company reports can be used to provide contextual information on the activities of the company in the country. For example, Gold Fields 2017 Integrated Annual Report provides information on the companies updated development agreement signed with the government of Ghana.
Government data	Ghana Minerals Commission Online Repository	Government data can provide production data and information on license holders.
Company engagement	Contacting the company directly	Engaging with companies directly can help provide additional contextual information. This process can also demonstrate to companies the importance of their payments-to-governments reports and show that they will be scrutinized. Six companies were contacted in the course of preparing this briefing.
EITI reports	GHEITI Mining Annual Report 2015 Annual Report	At the time of publication, the latest GHEITI mining report is for 2015. This report contains a wealth of information on the country's mining sector and governance challenges that arise in its management.
National acts and laws	Ghana Minerals and Mining Act	National acts within Ghana can outline the obligations of companies operating in the country, including the fiscal regime.
Ghana Chamber of Mines	Performance Of The Mining Industry In 2017	Performance Of The Mining Industry provides useful information on the country's mining industry compared to that of other countries.
Resource Governance Index 2017	RGI Data Explorer	The Resource Governance Index data explorer provides justifications for each of a country's RGI scores, including linking to relevant government documents.
Mining contracts	ResourceContracts.org	Where available, the contract between the government and the company contains a wealth of information that can be used to hold both parties accountable for their respective obligations. Mining contracts for Xtra-Gold Resources and Asanko Gold are available on resourcecontracts.org.
Project feasibility studies	Asanko mines 43-101 definitive feasibility study	Companies incorporated in Canada are required to release a 43-101 feasibility study, in which the company must disclose a great deal of technical information on a project, including when the company expects an operation to become profitable.
Mass media within Ghana		Mass media in Ghana is a useful resource for identifying political figures' current positions on governance challenges in the mining sector.

Overview of gold mining payments-to-governments in Ghana

Seven gold mining companies have disclosed payments to Ghanaian government entities under ESTMA in Canada: Asanko Gold Incorporated, Endeavour Mining, Golden Star Resources, Kinross Gold Corporation, Perseus Mining, Pinecrest Resources and Xtra-Gold Resources Corporation. Of these, six companies have to date released two reports, covering 2016 and 2017, with Pinecrest Resources having only disclosed payments for 2016.

Seven gold mining companies have disclosed payments to Ghanaian government entities under ESTMA in Canada: Asanko Gold Incorporated, Endeavour Mining, Golden Star Resources, Kinross Gold Corporation, Perseus Mining, Pinecrest Resources and Xtra-Gold Resources Corporation.

Six companies have disclosed for a January-to-December fiscal year, with one, Perseus Mining Limited, operating a July-to-June fiscal year.

A further three companies, AngloGold Ashanti, Newmont Mining and Gold Fields are not required to disclose this information, as they are not listed or incorporated in a country which currently has mandatory payment disclosure regulations which are being implemented. (See Table 1.) As all of these companies are listed in the United States, they would be required to disclose under Section 1504 of the U.S.'s Dodd-Frank Act of 2010. However, this law is yet to be implemented. Given their listings on the Johannesburg Stock Exchange, a mandatory payment disclosure law in South Africa would also result in disclosure requirements for AngloGold Ashanti and Gold Fields.

Despite not being legally required to report at present, these companies have however chosen to voluntarily disclose the payments they make to the Ghanaian government for their operations in the country. These disclosures do not follow the reporting specifications of the mandatory disclosure regulations, partially limiting their comparability to disclosures made under ESTMA. The main difference between ESTMA disclosures and these voluntary disclosures is in the level of detail provided. ESTMA requires disclosure at both the government entity and project level and under seven defined payment categories, creating comparability between ESTMA reports. However, the positive step taken by companies to voluntarily disclose payments does provide Ghanaian citizens a more complete view of the revenues generated in the country's mining sector than they would have under current legislation.

As shown in Figure 3, nearly three quarters of the payments to Ghanaian government entities by ESTMA companies in the gold sector arose from royalties in 2017, with five companies paying a total of USD 57 million.[16] A further 22 percent of the payments from these ESTMA companies were in the form of corporate income tax. While six operating companies paid royalties in 2017, only two, Kinross Gold Corporation and Endeavour Mining paid corporate taxes.

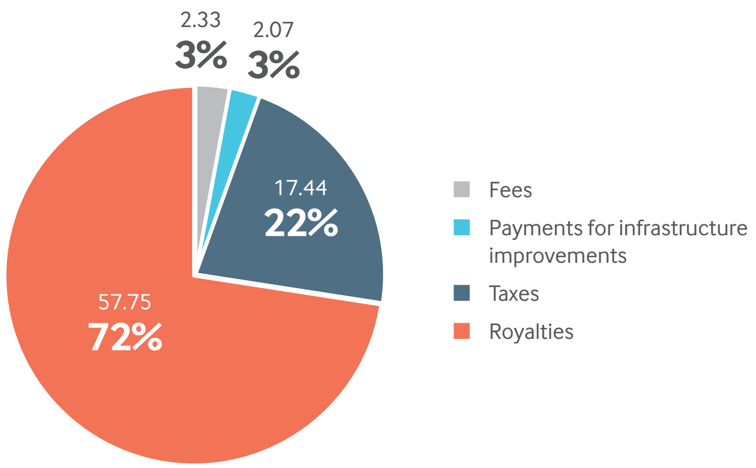


Figure 3. 2017 gold mining payments to governments by payment type from ESTMA companies (USD in millions)

16 This infographic does not include payments made by Perseus Mining as the only company that does not operate a calendar year financial reporting system.

The payments disclosed by ESTMA companies are, where applicable, also attributed to the relevant project. ESTMA companies disclosed payments for eight gold projects in the country, the largest of which by payment was Kinross Gold Corporation's Chirano mine, which generated nearly USD 30 million in 2017. (See Table 4.)

Table 4. Overview of companies disclosing payments to governments

Disclosing company	When it reported	Reporting jurisdiction	Years of reporting	Operating projects in the country	Government equity share (%)	Total payments disclosed for 2017 (in USD)
Companies disclosing under ESTMA regulations						
Asanko Gold Incorporated	29 May 2018	Canada	2016, 2017	Asanko	10	14,860,000
Endeavour Mining Corporation[17]	30 May 2018	Canada	2016, 2017	Nzema	10	13,260,000
Golden Star Resources Limited	29 May 2018	Canada	2016, 2017	Prestea	10	10,530,000
				Wassa	10	8,580,000
Kinross Gold Corporation	30 May 2018	Canada	2016, 2017	Chirano	10	30,080,000
Perseus Mining Limited	15 Dec. 2017	Canada	2015/2016, 2016/2017	Edikan	10	12,808,348
Pinecrest Resources Limited	23 Apr. 2018	Canada	2016	Enchi	10	No payment was disclosed in 2017
Xtra-Gold Resources Corporation	29 May 2017	Canada	2016, 2017	Kibi	10	207,937
Companies making voluntary disclosures						
AngloGold Ashanti	29 Mar. 2018	South Africa	2013 - 2017	Iduapriem	0% - Government has 1.55% share in AngloGold Ashanti Limited	26,300,000
				Obuasi		
Gold Fields	27 Mar. 2018	South Africa	2017	Tarkwa	10	105,000,000
				Damang	10	
Newmont Mining	27 Mar. 2018	U.S.	2017	Akyem	0	97,400,000
				Ahafo	0	

17 In early 2018, Endeavour Mining completed the sale of its Nzema operation to BCM International.

3. FISCAL REGIME MONITORING

Policy decisions regarding the fiscal regime within a country's extractive industries are crucial in determining how much revenue a country generates from its natural resource endowment.

Policy decisions regarding the fiscal regime within a country's extractive industries are crucial in determining how much revenue a country generates from its natural resource endowment. Several commentators in Ghana have recently questioned the government's current tax-royalty model and its implementation.

The IMF has highlighted the potential to see large increases in the revenue generated from the mining sector by adopting measures to ensure greater scrutiny of the implementation of the current fiscal regime, including "executing costs audits to detect possible profit shifting by companies in these sectors."[18] The government has also recently stated that it will, in the second half of 2018, conduct a special audit of the mining and oil and gas sectors to examine whether companies have reduced their tax burden through transfer mispricing and other forms of tax evasion.[19]

Research by NRGI based on modeling a hypothetical gold mine concluded that the government of Ghana's potential share of company profits under the current fiscal regime is just over 50 percent.[20] This 50 percent government share of company profits is comfortably within the 40 to 60 percent range that the IMF has estimated is "reasonably achievable" for mining countries, suggesting that the fiscal regime can generate significant government take if implemented and monitored effectively.[21]

Given the potential to generate greater government revenues under the current fiscal regime, the ability to monitor company payments can have a positive impact on both the revenues received by mining-affected communities and government revenue as a whole. Payments-to-governments data can be used by oversight actors to monitor whether the effective royalty rate being paid by the companies appears correct and to track corporate income tax and dividend payments over time.

It is important to note that any payments that are not at the level expected does not necessarily indicate any wrongdoing on the side of the company or the government. As the examples below illustrate, there are often context-specific explanations for why the payments made do not reflect what might be expected.

In Ghana, as in most other countries, royalties are levied on gross revenues, meaning that as long as the mine is producing it will be generating royalties based on the revenue generated from selling this production. Conversely, corporate income tax is levied on profits. Corporate income tax can generate the largest share of a project's government revenue if the mine is highly profitable, often coming only after the mine has been producing for several years. In the short term, companies are able to offset their costs first and thereby reduce the size of the profit on which corporate income tax is calculated.

Corporate income tax being based on profits made after costs are deducted also puts a greater burden on a government tax agency to monitor revenues and reported costs to ensure the taxable income is appropriate. Mining is a very capital-intensive industry, requiring large upfront costs in constructing the mine prior to production and it is quite common for companies to operate at a loss for many years. As a result, while corporate income tax is a potentially lucrative source of government revenue, it is not as reliable a source of revenue as a royalty.

18 IMF, *Ghana: Fifth and Sixth Reviews Under the Extended Credit Facility.*
19 N. Acquah-Hayford, "Budget review: Special audit for extractive industry to check tax evasion" *Joy Business* (2018), www.myjoyonline.com/business/2018/july-20th/special-audit-for-extractive-industry-to-check-tax-evasion.php.
20 Manley, *An Economic Evaluation of Gold Mining Tax Regimes in the Kyrgyz Republic.*
21 IMF. *Fiscal Regimes for Extractive Industries: Design and Implementation* (2012), 29.

Effective royalty rate

Under the current fiscal regime in Ghana, companies are required to pay a five percent royalty on the value of the gold produced. ESTMA company disclosures can be used to verify whether the effective royalty rate paid by a company matches this five percent rate stated in the fiscal regime. By combining company disclosures on the amount paid per project in royalties with information on gross project revenue, it is possible to determine the effective royalty rate paid by the company. Gross project revenue can be obtained by multiplying the project's total gold production for the year by the realized gold price reported by the company. (See Box 2.)

Box 2. Estimating the Chirano gold mine's effective royalty rate paid for 2017[22]

Annual average realized gold price per ounce (USD 1,260) **X** Gold production (246,027 oz.) **=** gross project revenue (USD 309,994,020)

Royalty payment for 2017: USD 18,540,000

Royalty payment ($18,540,000) **/** Gross project revenue (USD 309,994,020) **=** Effective royalty rate paid (six percent)

Box 2 outlines how this form of royalty monitoring can be conducted, using Kinross' Chirano gold mine as an example. Using the annual average realized gold price per ounce and the gold production figures taken from Kinross' 2017 results, it is possible to calculate the total gross revenue of their Chirano gold mine. By dividing Kinross' royalty payment for the Chirano mine in 2017, as disclosed in its ESTMA report by this gross project revenue figure, it is possible to estimate that Kinross paid an effective royalty rate of six percent on this project in 2017.

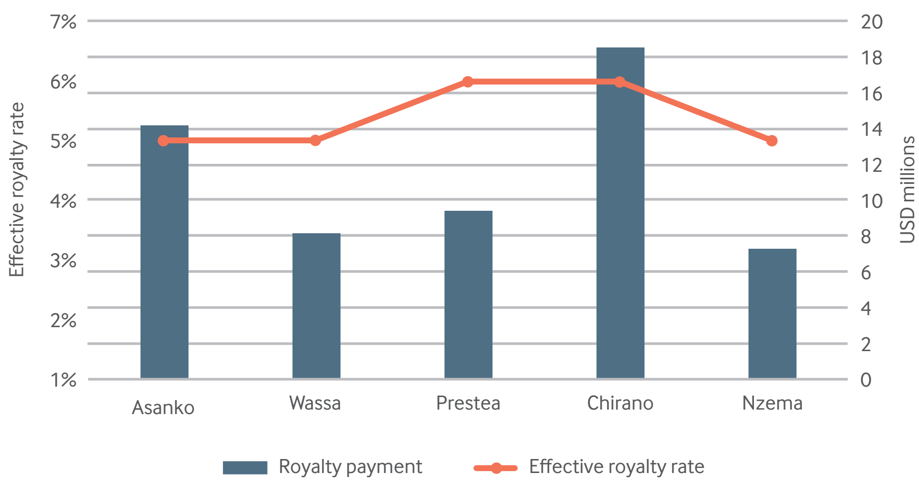


Figure 4. Estimating the effective royalty rate paid for gold mines in 2017

22 Annual average realized gold price per ounce and gold production figures sourced from "Kinross reports 2017 fourth-quarter and full-year results," Kinross Gold Corporation, 14 February 2018: www.kinross.com/news-and-investors/news-releases/press-release-details/2018/Kinross-reports-2017-fourth-quarter-and-full-year-results/default.aspx

Forestry mineral royalty

Figure 4 shows the effective royalty rate paid in relation to five gold projects in the country. The effective royalty rate for three of the projects (Asanko, Wassa and Nzema) closely matches the five percent royalty rate stipulated within the fiscal regime.

The effective royalty rate paid for the Chirano and Prestea gold mines are slightly above five percent. As both of these mines are located in forestry reserve areas the companies that operate them, Kinross and Golden Star Resources respectively, are required to pay an additional 0.6 percent royalty directly to the Forestry Commission. As a result, we would expect the effective royalty rate on the amount paid to the Ghana Revenue Authority to equal 5 percent and the effective royalty rate on the amount paid to the Forestry Commission to equal 0.6 percent. However, for both companies the effective royalty rate paid to the Ghana Revenue Authority is greater than 5 percent, while the effective royalty rate paid to the Forestry Commission is significantly less than 0.6 percent.

Table 5 Effective royalty rate paid by Chirano and Prestea mines in 2017

Gold Mine	Production Value (USD)	Recipient Government entity	Royalty rate	Royalty paid (USD)	Effective Royalty rate
Chirano[23]	309,994,020	Ghana Revenue Authority	5%	18,097,519	5.84%
		Forestry Commission of Ghana	0.6%	444,436	0.14%
Prestea	153,480,000[24]	Ghana Revenue Authority	5%	9,010,000	5.87%
		Forestry Commission of Ghana	0.6%	420,000	0.27%

There are plausible explanations for the discrepancies between the effective royalty rate paid and that stipulated in the fiscal regime. A recent Global Witness handbook, *Finding The Missing Millions,* details on how to perform many of the types of analysis outlined in this briefing, including verifying royalty payments.[25] The handbook notes that plausible explanations for discrepancies between the expected and reported royalty payment include: royalties being recorded as a liability and paid the following year; and the value of a commodity used in the calculation of the royalty differing from the value reported in other sources.

Certain mining companies in Ghana have signed mining development agreements with the government that specify a different royalty rate. Gold Fields states on its website that in March 2016 it signed a development agreement with the government for both its Tarkwa and Damang mines. This updated agreement lowered the corporate tax rate from 35 percent to 32.5 percent and changed the flat five percent royalty rate to a sliding scale from three to five percent based on the gold price.[26] The company does not voluntarily provide the project-level royalty information required to assess the royalty rate paid on each of its projects in 2017.

23 Kinross Gold's 2017 ESTMA report does not disaggregate royalties by recipient government entity. Kinross Gold provided this information to us when we reached out to the company via email for this additional information.
24 Production value sourced from S&P Global Market Intelligence.
25 Global Witness, *Finding The Missing Millions*, (2018), www.globalwitness.org/en/campaigns/oil-gas-and-mining/finding-missing-millions/
26 Gold Fields, *Government Relations* (2018), www.goldfields.com/reports/annual_report_2016/integrated/government-relations.php#sel=7:20:3Wj,7:24:vGj.

The effective royalty rate assessment outlined above is only possible when companies disclose royalties at the project-level, as is required under ESTMA regulations. While Gold Fields voluntarily discloses the royalties the company pays to the government, it does not disaggregate this disclosure between its two projects in country, meaning this type of royalty rate assessment is not currently possible for the company's projects.

Corporate income tax

Analysis of the payments-to-governments data from the five ESTMA companies indicates that royalties have been a consistent revenue stream for the government in 2017. (See Figure 3.) While each producing mine has generated significant royalties, only one, Kinross Gold's Chirano generated significant corporate income taxes. Endeavour Mining disclosed USD 5.9 million in taxes for Nzema in its 2017 ESTMA report. However after we reached out to Endeavour Mining via email, the company clarified that the majority of these taxes paid are for custom and export duties and payroll taxes, and that only USD 80,527 of this USD 5.9 million was corporate income taxes. Of the four operations that generated no corporate income tax in 2017, two (Wassa and Prestea) are operated by Golden Star Resources.[27] The lack of corporate income tax arising from these projects is likely due to the fact that both operations are currently transitioning from open pit to underground operations. Such a transition is capital-intensive, limiting corporate income tax generated for the projects in the short-to-medium term due to the costs involved.

While each producing mine has generated significant royalties, only one, Kinross Gold's Chirano generated significant corporate income taxes.

Two of the operations, the Asanko mine and the Edikan mine have started production in the last six years, which may explain why these projects are also not currently generating corporate income tax. The companies are likely recovering costs prior to the mine becoming profitable.

Once an operation is profitable and corporate income tax begins to be generated, the value of these payments can be much larger than royalties. In essence, a government has to make a decision regarding the risk-to-reward trade-off between royalties and corporate income tax. As Figure 5 shows, corporate income tax is not guaranteed, but once a mine becomes profitable this form of tax can generate considerable revenue.

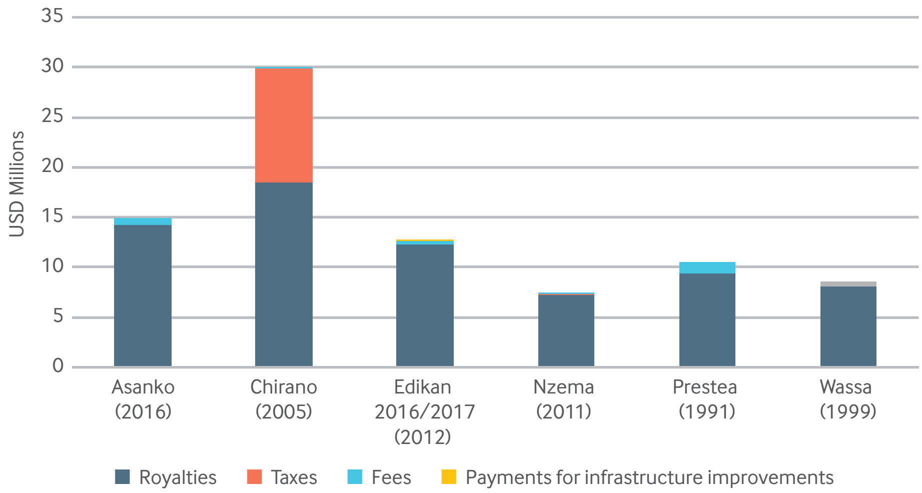


Figure 5. ESTMA company project payments by payment type (USD in millions)[28] – The year in brackets indicates the first year of production

27 Golden Star Resources. *Wassa gold mine "Operations at a glance,"* (2018), www.gsr.com/operations/wassa/wassa-main/default.aspx and Prestea. *Operations at a glance* (2018), http://www.gsr.com/operations/prestea/default.aspx.

28 The year in parentheses indicates the first year of production.

Figure 5 does not include payments made by AngloGold Ashanti, Gold Fields, or Newmont Mining. This type of analysis is only possible when companies disclose payments to governments at the project level, which these three companies have not provided for 2017. Gold Fields did however provide NRGI with its payments to governments information at the country level following a request for additional information. Gold Fields stated that in 2017 it paid USD 60.5 million in corporate income tax, USD 36.9 million in royalties and USD 5.9 million in dividends. The company's additional disclosures underscores the fact that while there are risks, corporate income tax can generate considerable revenue, with Gold Fields paying USD 23.6 million more in corporate income tax than royalties in 2017. This large corporate income tax payment suggests that one or both of Gold Fields' Tarkwa and Damang mines are highly profitable.

Gold Fields stated that in 2017 it paid USD 60.5 million in corporate income tax, USD 36.9 million in royalties and USD 5.9 million in dividends. The company's disclosures underscores the fact that while there are risks, corporate income tax can generate considerable revenue.

Similarly, in August 2017 the Ghana Chamber of Mines published aggregate data on payments which its producing member companies made to the Ghana Revenue Authority in 2017, stating that its companies paid more in corporate tax (GHc 970 million / USD 204 million) than they did in royalties (GHc 702 million / USD 148 million).[29]

As these companies are listed in Canada, they are required to release a 43-101 feasibility study, in which the company must state when it expects an operation to become profitable. In the case of Asanko Gold, the Definitive Feasibility Study cash flow model estimates that the mine will not start generating corporate income tax until 2023, seven years after the project began production.[30]

Dividends

Ghana's Vice President Mahamudu Bawumia has questioned the utility of the government's 10 percent equity interest in mining operations, stating at the IMF's Regional Economic Outlook for sub-Saharan Africa, that the lack of revenue generated from the government's equity share was because "many of the mining companies say they are not making profits to pay dividends but they keep mining, notwithstanding the fact that they are unprofitable."[31]

The government of Ghana holds these shares and the non-tax revenue unit of the Ministry of Finance collects the revenues. The government is provided this equity interest without having to make financial contributions to the development or operations of the project. The government has equity share interests in every gold mining operation in the country bar those owned by Newmont Mining or AngloGold Ashanti following the signing of updated mining development agreements. In the case of AngloGold Ashanti, the government has a stake of 1.55 percent in the global company AngloGold Ashanti Limited.

The government has previously stated that its equity share is intended to generate additional revenues by receiving dividends as the operation becomes profitable. The most recent GHEITI mining report raised concerns regarding the utility of this equity share model due to the limited number of companies actually paying dividends to the government of Ghana in the year covered in the report (2015).[32] The more recent payments-to-governments data highlights that ESTMA mining

29 Ghana Chamber of Mines. 'Publish What You Pay – 2017', Daily Graphic (1 August 2018), pg. 45

30 Asanko Gold. *43-101 Definitive Feasibility Study* (2018), 21.q4cdn.com/214525344/files/doc_technical-reports/DFSFinal-July18-2017-Final.pdf.

31 Ghana Communications Bureau. *'Ghana's 10% Carried Interest In Mining Companies Is Virtually Useless' – Vice President Bawumia* (2018), presidency.gov.gh/index.php/briefing-room/news-style-2/653-ghana-s-10-carried-interest-in-mining-companies-is-virtually-useless-vice-president-bawumia

32 GHEITI, 2015 *Mining Report.*

companies have continued to pay no dividends for these operations, although Gold Fields which is disclosing voluntarily stated that it made dividend payments of USD 5.85 million to the government of Ghana in 2017.[33] Dividends are one of the seven payment types that companies are required to disclose under ESTMA. (See Table 1.) Under ESTMA's reporting guidance document, companies are not required to disclose "dividends paid to a payee as an ordinary shareholder" but are required to disclose dividend payments that "are paid to a payee on shares received in lieu of a bonus, production entitlements, royalties or any other payment category, on the basis of concessional terms." The fact that dividend payments must be disclosed if they are made on the basis of concessional terms applies to Ghana given that the 10 percent free equity interest is a current requirement of the fiscal regime.[34] Companies are able to limit their requirement to pay dividends on their operations by reinvesting the free cash into Ghana by expanding their operations, which may generate future benefit for the country, or by shifting profits in the form of payments to related party creditors as part of the international mining company's global operations.

Payments-to-governments data highlights that ESTMA mining companies have continued to pay no dividends for these operations.

The payments-to-governments disclosures made by international mining companies operating in the country suggest that if revenue generation is the primary purpose of this state equity participation, then the government may want to reconsider this approach.

To maximize the ability of media and civil society stakeholders to monitor the payments made by mining companies, the government should consider following the example set in the petroleum sector and publically disclose mining contracts. Contract disclosure is especially relevant in Ghana given that the obligations of some of the largest mining companies in the country, including Gold Fields, are dictated by the development agreement signed between the company and the government and not the preexisting fiscal regime.

Potential avenues for inquiry

- Why have so few ESTMA companies reached a stage of profitability required to pay corporate income taxes and dividends?
- Why does the effective royalty rate on Kinross and Golden Star Resources' royalty payments to the Forestry Commission, for operating in forestry reserve areas, appear to be less than would be expected given the 0.6 percent royalty requirement?
- Why is the 10 percent free carry interest failing to generate revenue and should the government consider adjusting the fiscal regime and removing the requirement in the future?
- Should the government strengthen its tax administration and monitoring capabilities to maximize revenue generation under the current fiscal regime?

33 Email from Gold Fields to NRGI, August 2018
34 Government of Canada. *Extractive Sector Transparency Measures Act Guidance* (2018), www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/estma/pdf/ESTMA%20Guidance%20-%20Version%202_1%252C%20July%202018.pdf.

4. MONITORING THE DISBURSEMENT OF MINING ROYALTIES

Revenue management and allocation are some of the central governance challenges in the Ghanaian mining sector. Under the current mineral revenue management structure within Ghana, 80 percent of the mining royalties generated are transferred to the consolidated fund to be used as part of budgetary expenditure. The remaining 20 percent is split evenly between the Minerals Development fund, which is designed to fund activities that support the development of domestic capacities in the industry, and the Office of the Administrator of Stool Lands (OASL) which is tasked with disbursing this revenue to subnational and local entities following the formula laid out in Table 6.

Of the funds given to OASL, the office keeps 10 percent for administrative expenses. The OASL disburses the remaining 90 percent to subnational entities. The largest share (49.5 percent) of this is disbursed to district assemblies that are meant to use this revenue to benefit the constituencies of mining-affected areas. Of the remaining 40.5 percent, 22.5 percent is transferred to the traditional authorities with the explicit intended use of maintaining the stool lands. The other 18 percent is also transferred to the traditional authorities, however the intended use of the revenue is contested within Ghana, and is not tied to any specific development projects or accountability mechanism for public consultation on how this revenue is used. As a recent study noted on the revenues transferred to traditional authorities, "There are no mechanisms in place for accountability and transparency of these funds paid to chiefs."[35]

Table 6. Disbursement of mineral royalties revenue

Recipient	Share (%) of total amount
Consolidated Fund	80%
Minerals Development Fund	10%
Office of the Administrator of Stool Lands (OASL)	10%
Office of the Administrator of Stool Lands disbursement (OASL)	
Amount retained by OASL for administrative expenses	10% (1% of total royalties)
District assemblies	49.5% (4.95% of total royalties)
Stools	22.5% (2.25% of total royalties)
Traditional councils	18% (1.80% of total royalties)

The lack of government transparency and accountability regarding the management of revenues within the mining sector contrast strongly with the oil and gas sector, which has clear revenue management laws and practices, detailing how revenues generated from the oil and gas sector are to be allocated and used, overseen by the Public Interest and Accountability Committee.

The lack of opportunities for the public to assess and offer input into how their government entities manage the mineral revenues they receive has led to frustration in mining communities and an anger at the lack of benefits citizens receive for the

35 André Standing and Gavin Hilson. *Distributing Mining Wealth to Communities in Ghana* (Chr. Michlson Institute, 2013), www.cmi.no/publications/file/4791-distributing-mining-wealth-to-communities-in-ghana.pdf.

mining activities in their areas.[36] The lack of government transparency over these specific revenues generated in the mining sector has left local communities without the information tools to hold government entities accountable for what they do with this revenue.

Company disclosures can help mining-affected communities hold government entities accountable for the royalty revenues they receive. Figure 6 outlines the royalty revenues each government entity either directly received in 2017 or should be transferred as part of the mineral revenue disbursement system in Ghana.

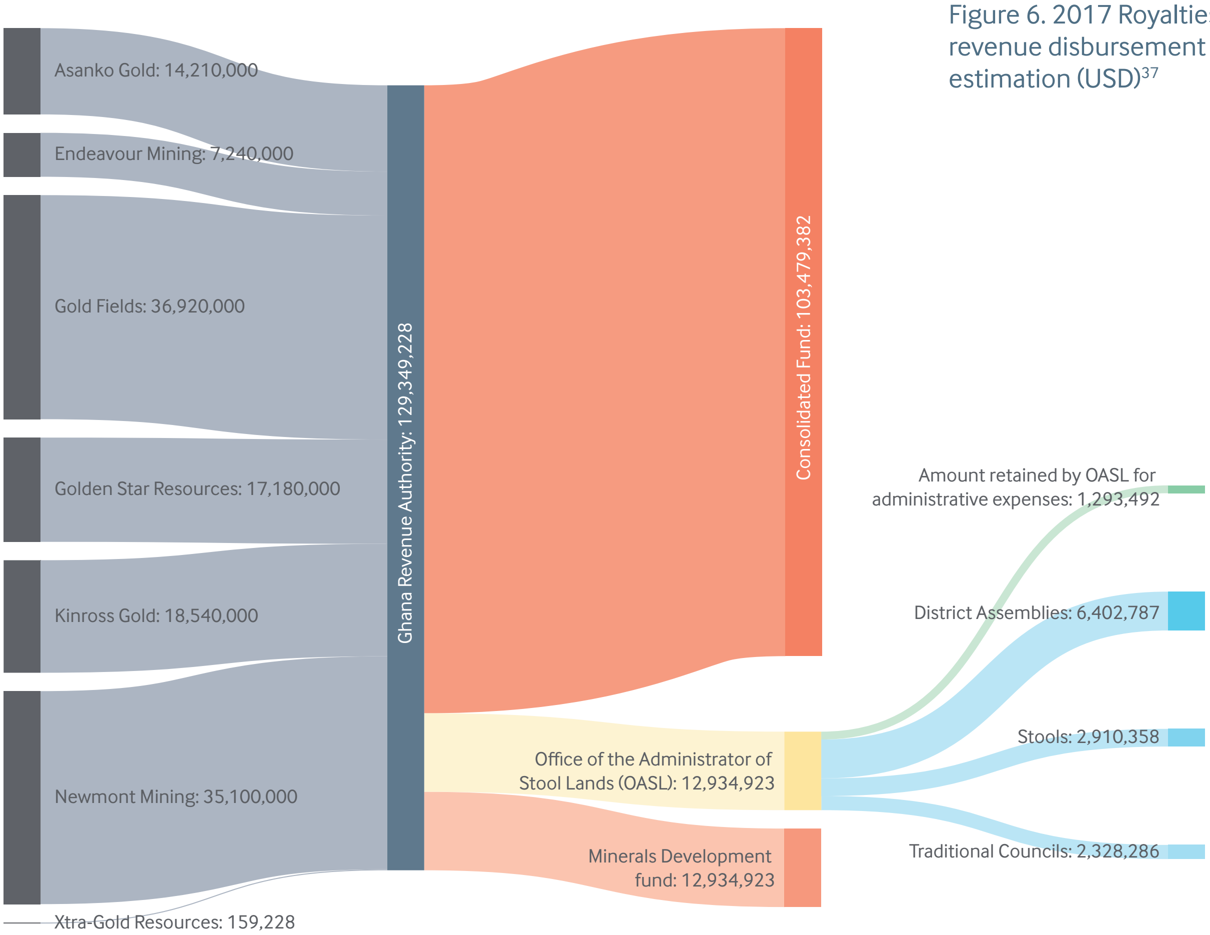


Figure 6. 2017 Royalties revenue disbursement estimation (USD)[37]

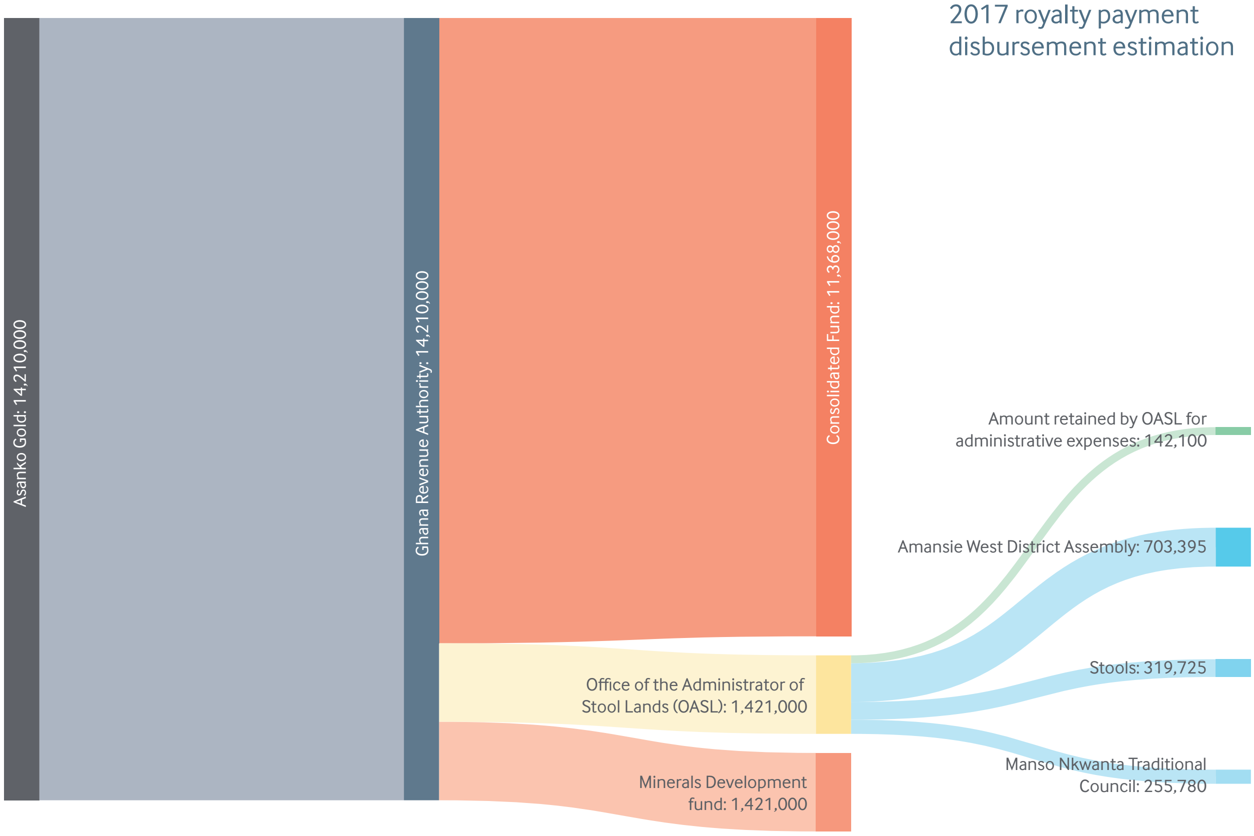
The disbursement to local district assemblies and traditional authorities are based on the royalties generated by the projects in that area. As a result, civil society and media stakeholders in mining-affected areas can use project-level disclosures in the payments-to-governments data to estimate how much specific district assemblies and traditional communities receive. Figure 7 estimates the amount that the Amansie West District Assembly and Manso Nkwanta Traditional Council should receive of the royalties paid by Asanko for the Asanko Gold mine in 2017.[38]

36 Kobina Welsing. "State Of Mining Communities In Ghana Disgraceful – Akufo-Addo," *Starr FM Online* (2018), starrfmonline.com/2018/05/30/state-of-mining-communities-in-ghana-disgraceful-akufo-addo/.

37 This infographic does not include payments made by Perseus Mining as the only company that does not operate a calendar year financial reporting system. Royalties paid by AngloGold Ashanti are also not included as the company does not voluntarily disclose Royalties as a separate payment category.

38 According to Asanko Gold's 2016 corporate social responsibility report, "All the communities in the footprint of the Asanko Gold Mine are under the administration of the Amansie West District Assembly," *Asanko Gold. Asanko Gold Corporate Social Responsibility Report 2016.* 21.q4cdn.com/214525344/files/doc_reports/Asanko-CSR-2016_Spreads_FINAL.pdf.

Figure 7. Asanko mine 2017 royalty payment disbursement estimation



This type of estimation can be replicated for other gold projects in Ghana to enable communities in mining-affected areas to hold their local authorities accountable for the royalty revenues they receive and ensure they are used for the communities' development priorities.

Potential avenues for inquiry

- Have the OASL, district assemblies and traditional authorities received the correct amount based on the royalties paid in 2017?
- How have the district assemblies and traditional authorities used the royalty revenue they received in 2017?

5. MONITORING PAYMENTS FOR INFRASTRUCTURE IMPROVEMENTS IN MINING-AFFECTED AREAS

Mining activities can have a severe adverse impact on local infrastructure surrounding the mine. For example, in July 2018 a civil society group, Prestea Communications for Development, blamed Golden Star Resources for damage to the Ankobra Bridge. The bridge is near Golden Star Resource's Prestea mine and is used by the operation's trucks.[39]

ESTMA companies, including Golden Star Resources are required to disclose any payments they make for the improvement of infrastructure. The ESTMA guidance states that companies must disclose any payments made for infrastructure improvements, regardless of whether contractually obligated or not, other than in instances where the infrastructure is primarily dedicated to use by the mining operation itself.[40]

Three ESTMA companies have disclosed payments for infrastructure improvement over 2016 and 2017: Golden Star Resources, Perseus Mining and Xtra-Gold Resources.

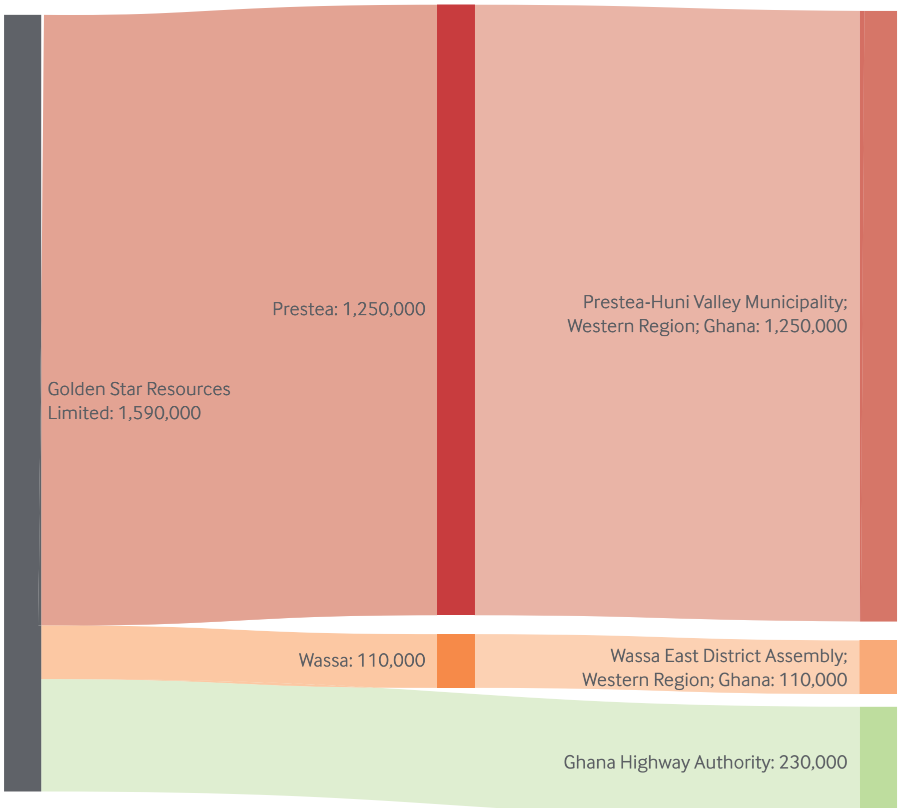
Three ESTMA companies have disclosed payments for infrastructure improvement over 2016 and 2017: Golden Star Resources, Perseus Mining and Xtra-Gold Resources.

Golden Star Resources has disclosed payments for infrastructure to subnational government entities close to both its Wassa and Prestea gold mines and to the Ghana Highway Authority. In its 2016 ESTMA report, the company detailed in the notes section of the report what the infrastructure payments were for specifically. For example, the company noted that a USD 230,000 payment to the Ghana Highway Authority was for "Twifo Praso-Damang public railway crossing road maintenance." (See Figure 8.) The company did not disclose the same information in its 2017 report. (See Figure 9.)

39 Desmond Nana Osei. "Blame Golden Star Resources For the State of Ankobra Bridge," *Modern Ghana* (2018), www.modernghana.com/news/866295/blame-golden-star-resources-for-the-state-of-ankobra-bridge.html.

40 Natural Resources Canada. *Extractive Sector Transparency Measures Act Guidance* (2018), www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/estma/pdf/ESTMA%20Guidance%20-%20Version%202_1%252C%20July%202018.pdf.

Figure 8. Golden Star Resources payments for infrastructure improvements in 2016



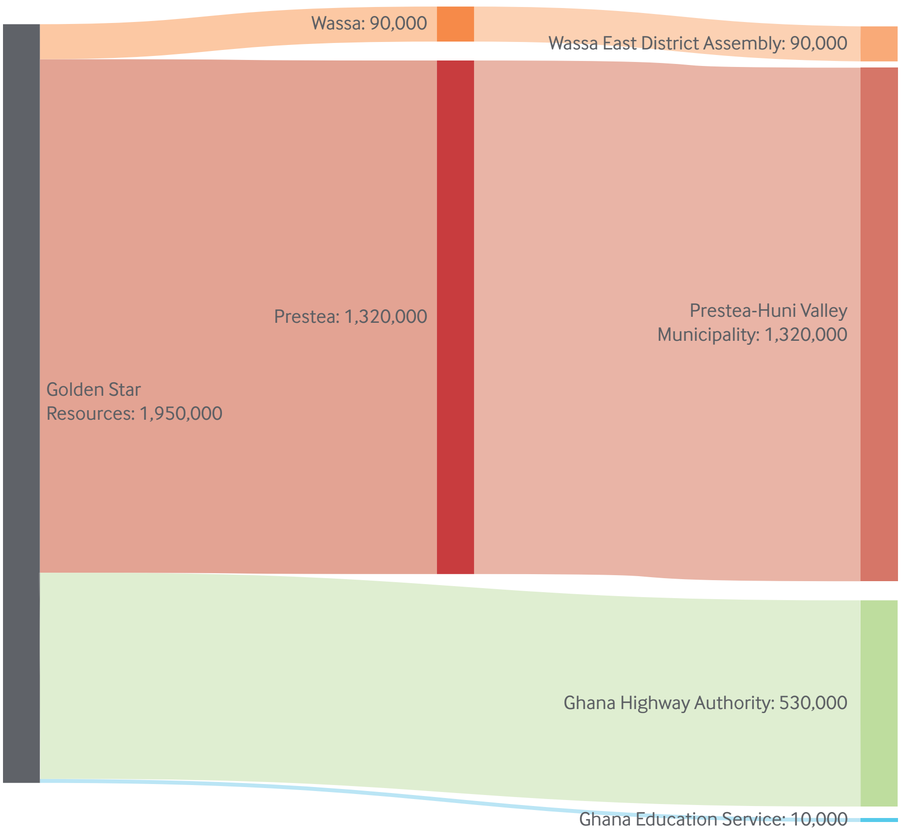
Purpose of Infrastructure payments

- Construction of boreholes for community
- Provision of portable water to community
- Construction of community refuse dump
- Purchase of community sanitation truck
- Community roads maintenance
- Community Hospital renovations
- Purchase of community portable water pump station electrical equipment

- Community Center renovation
- Construction of boreholes for community
- Community Water Maintenance

- Twifo Praso-Damang public railway crossing road maintenance

Figure 9. Golden Star Resources payments for infrastructure improvements in 2017



Local communities in these mining-affected areas can use these disclosures to assess whether mining companies are making payments that are not only sufficiently reimbursing local areas for the damage caused by mining activities but that also benefit the local community.

Similarly, local media and civil society groups can hold recipient government entities accountable for these infrastructure improvement payments to ensure they are used for the intended purpose of restoring or improving infrastructure in mining-affected areas.

Potential avenues for inquiry

- For what did Golden Star Resources and other mining companies intend their payments for infrastructure in 2017 to be used? Were these payments made in-kind or in cash?
- How have the Ghana Highway Authority and district assemblies used the revenue they received for infrastructure improvements in mining-affected communities?

CONCLUSION

This briefing outlined some of the ways that government, civil society, media and other oversight actors can use newly-released mining payments-to-governments data to better understand the revenues generated within the Ghanaian gold mining sector and hold relevant actors accountable.

More specifically, this briefing has examined how payments-to-governments data can be useful in addressing many of the current governance challenges in the mining sector, including: how government and civil society actors can assess whether the mineral fiscal regime is optimal for generating revenues within the sector; how media and civil society can hold government entities accountable for the management of mineral revenues; and how local media and civil society can use payments-to-governments data to help assess whether companies are sufficiently helping to offset the negative impacts of their activities on local infrastructure.

However, improvements are still needed within Ghana and internationally to empower the country's citizens to conduct a more informed public debate on the country's management of its endowment of gold. These improvements include:

Improvements are still needed within Ghana and internationally to empower the country's citizens to conduct a more informed public debate on the country's management of its endowment of gold.

- **Companies currently making voluntary disclosures should report in line with ESTMA.** Given the lack of an implemented mandatory payment disclosure law in South Africa and the U.S., AngloGold Ashanti, Gold Fields and Newmont Mining should consider making their voluntary disclosures in line with ESTMA in order to maximize the utility of these disclosures to oversight actors in Ghana. This would enable government, media and civil society actors to identify which revenues are attributable to specific projects and which government entities receive these payments.
- **GHEITI should utilize payments-to-governments reports.** GHEITI's annual mining report contains a wealth of information on the country's mining sector and governance challenges that arise in its management. As GHEITI's multi-stakeholder group moves to adopt its own project-level reporting framework following the EITI global board's 2017 reaffirmation of reporting requirements in this area, it should consider utilizing the payments-to-governments data to streamline and speed up project-level reporting in Ghana. Given that seven out of 10 international gold companies currently disclose project-level payments under ESTMA, these reports offer GHEITI an opportunity to quickly and easily integrate such reporting into Ghana's EITI framework. ESTMA reports must be published within 150 days of the end of the financial year so these reports can also be used by GHEITI to improve timeliness. At the time of publication, the most recent GHEITI mining report is for 2015, which limits its utility as an accountability tool.
- **The government should disclose mining contracts.** The government should consider following the practice already in place in the petroleum sector and publically disclose mining contracts. Publishing contracts can increase trust in both government and companies and allow oversight actors to judge whether payments are in line with what was agreed; to monitor fiscal terms agreed outside the fiscal regime; and to have an informed debate on the agreements the government has signed with mining companies.

- **The government should consider a mineral revenue management act.** Local communities in mining-affected areas do not currently have a say over how revenues generated from the sector are managed and used. The government may want to consider implementing a mineral revenue management act to ensure mineral revenues are effectively invested in line with both community and national development priorities.

The dataset used for the analysis in this briefing has been made available on ResourceData.org and the payments-to-governments data covered in this briefing are available on ResourceProjects.org.

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Indonesia's Oil and Gas Revenues: Using Payments to Governments Data for Accountability

Alexander Malden and Fikri Zaki Muhammadi

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Publish What You Pay INDONESIA
Natural Resource Governance Institute

Contents

Key messages

- The oil and gas sector is a major source of revenue for the Indonesian government. In 2018, it contributed 7.4 percent of government revenue.
- Mandatory disclosure laws in the European Union, Canada and Norway require companies listed or incorporated in these places to disclose the payments they make to governments for their extractive activities. Since 2014, under these regulations, 17 international oil and gas companies have disclosed over USD 15 billion in payments to Indonesian government entities.
- Civil society organizations, media outlets, government officials, parties to Indonesia's Extractive Industries Transparency Initiative (EITI) and oversight actors can use this timely source of payment data as an accountability tool. In Indonesia, oversight actors can use payment data in combination with other data sources to:
  - Verify the size and recipient of oil and gas project signature bonuses
  - Estimate and verify the revenue that local and regional government entities should receive from an oil and gas project that operates in their region
  - Estimate and verify the government's share of production from a project under the new gross split production-sharing contract (PSC) model

Summary

Under mandatory disclosure laws in the European Union, Canada and Norway, companies listed or incorporated in these countries must disclose the payments they make to government entities for their extractive activities. Under these laws, seventeen international oil and gas companies have reported over $15 billion in payments to Indonesian government entities since 2014.

This report explores some of the ways this timely source of payment data can be used as an accountability tool by civil society, media, government, Indonesia's EITI and oversight actors. This report will show how oversight actors can use payment data in combination with other data sources to:

VERIFY THE SIZE AND RECIPIENT(S) OF OIL AND GAS PROJECT SIGNATURE BONUSES

Why this matters:

- As one-off payments, signature bonuses are particularly susceptible to mismanagement or illegitimate diversion because they are high value and not always incorporated into the normal budgetary process.

How oversight actors can use payments to governments (PtG) data:

- PtG data can be used to raise public awareness on the payment of signature bonuses, which government entity received these payments and ask questions regarding how the resulting revenue was managed.
- Oversight actors can use PtG data to verify that companies have paid a signature bonus, that the recipient government entity matches what is expected under Indonesian law and to verify that the amount paid matches what was written in the contract.

Example questions that PtG data can answer:

- Did Italian oil and gas company Eni make a signature bonus payment following their signing of the contract for the East Ganal PSC in 2018?

ESTIMATE AND VERIFY THE REVENUE THAT LOCAL AND REGIONAL GOVERNMENT ENTITIES SHOULD RECEIVE

Why this matters:

- Revenue distributed to producing local and regional governments is an important revenue source to mitigate the negative impacts of extractive activities and to fund the development priorities of citizens in the area.

How oversight actors can use PtG data:

- PtG data, when used together with the country's revenue sharing fund formula, can be used to estimate how much local government entities should receive as a share of the revenue generated from a project, and how much should be kept by the central government.

Example questions that PtG data can answer:

- How much of the total non-tax revenue generated from the Tangguh project in 2018 should the West Papua regional government, and producing and non-producing regencies receive?

ESTIMATE AND VERIFY THE GOVERNMENT'S SHARE OF PRODUCTION UNDER THE NEW GROSS SPLIT PSC MODEL

Why this matters:

- Under the new gross-split PSC model, most revenue generated for the government by an oil and gas project will come from its share of production. The government's share of production is determined by the gross revenue of the project and the gross split formula agreed upon by the government and the contractor. As a result, it is important for oversight actors to be able to verify that companies are paying what is expected under the gross split PSC terms and to check how the recipient government entity uses the resulting revenues.

How oversight actors can use PtG data:

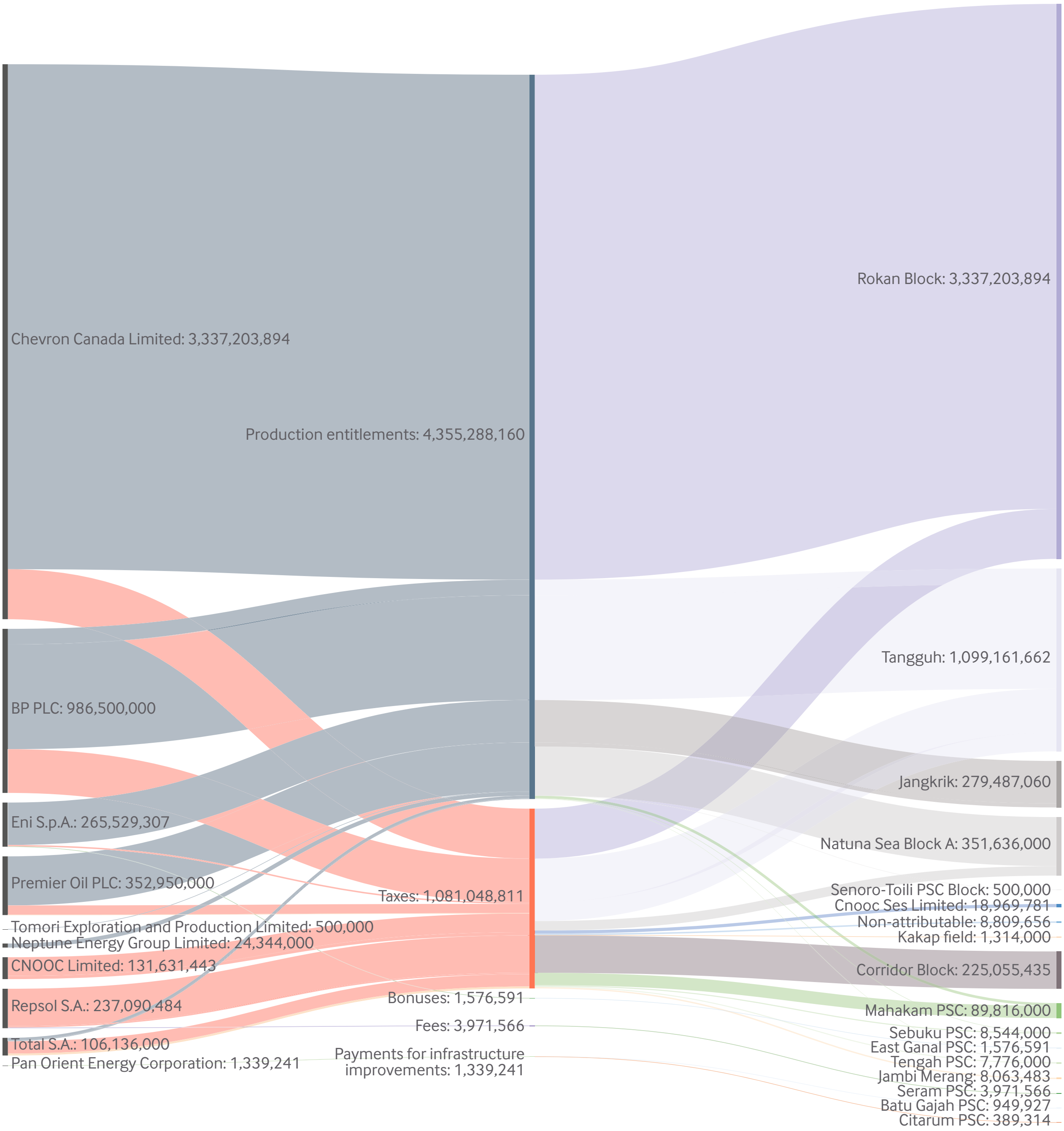
- PtG data, when used in conjunction with the project's gross split formula and gross revenue, can be used to verify that the value of the share of production the government receives from the contractor of a project managed under the new gross split PSC model matches what is expected.

Example questions that PtG data can answer:

- Once a contractor starts producing under the new gross split PSC model, oversight actors can ask: did the government's share of production paid by the contractor match what is expected given the gross revenue and gross split formula of the project?[1]

1 Given the gross split PSC regulation only came into force in 2017, and did not affect existing contracts, most oil and gas projects in Indonesia still currently operate under cost recovery PSCs. In early 2019 Eni, one of the PtG disclosing companies in Indonesia, signed a gross split PSC contract with the government for the Merekas Gas Field, it expects to start producing gas in the second half of 2020.

Figure 1. 2018 oil and gas company payments to Indonesian government entities by project and payment type (USD)



RECOMMENDATIONS

Improvements are needed within Indonesia and internationally to empower the country's citizens to conduct a more informed public debate on the country's management of its oil and gas endowment. These improvements include:

- **The Indonesian government should disclose oil and gas contracts.** As an EITI implementing country, Indonesia will be required to publish all oil, gas and mining contracts and licenses that it grants, enters into or amends after 1 January 2021. The government should consider taking a proactive approach and disclose oil and gas contracts before this deadline.

- **The Indonesian government should clarify how it manages signature bonus revenue.** NRGI understands that the Directorate General of Oil and Gas within the Ministry of Energy and Natural Resources (ESDM) requested Eni make its signature bonus payments for East Ganal PSC to a Directorate General bank account, rather than through the Online Non-Tax State Revenue Information System (SIMPONI) mechanism stated in ESDM regulation No. 30/2017. The state treasury can delegate the right to collect non-tax revenues to Directorate General's, however doing so restricts citizens ability to follow the money and hold government entities accountable for how this money is managed and used. The Directorate General of Oil and Gas should clarify why it has directed Eni to deposit the signature bonus payment of $1.5 million for the East Ganal PSC into a Directorate General of Oil and Gas bank account, rather than into the SIMPONI. The government should also clarify how this revenue is managed and transferred to the state treasury.

- **Reporting companies should disaggregate their oil and gas production entitlements, where applicable.** Disclosing companies that operate projects with significant oil and gas production should consider disaggregating their production entitlement disclosure by commodity. This will enable accountability actors to more effectively monitor whether these revenues meet expectations under the terms of the contract and to check how these revenues are managed by the government.

- **Companies not bound by PtG regulations should report their payments voluntarily.** ExxonMobil, ConocoPhillips and other companies without a global disclosure obligation under PtG regulations in their home countries should consider voluntarily disclosing their PtG data in Indonesia. Doing so would give citizens a more holistic picture of the recent payments their government receives from the oil and gas projects in their country.

- **The U.S. Securities and Exchange Commission should implement a strong Dodd-Frank Section 1504 rule.** Following the repeal of the Dodd-Frank Act Section 1504 regulation under the Congressional Review Act in 2017, the United States Securities and Exchange Commission (SEC) must release a new implementing regulation for this law. In the years since Dodd-Frank 1504 was introduced, the payment transparency international norm that the law helped to instigate has resulted in five years of reporting that is providing data being used as an accountability tool in resource-rich countries across the globe. When the SEC introduces a new implementation regulation for Section 1504, this rule should reflect and build on the strong payment transparency laws in place in the EU, Canada and Norway. The SEC is expected to propose a new rule on 18 December 2019 which will be subject to a public comment period before being adopted likely in 2020.

Introduction

The oil and gas sector is a significant source of revenue for the Indonesian government, contributing 7.4 percent of government revenue in 2018. Yet, a sharp decline in oil and gas revenues in 2015 has seen fundamental changes occur in the country's oil and gas sector in recent years. Specifically, in 2017, the government announced it was moving away from the cost recovery PSC model that had been in place for over 50 years. It shifted governance of Indonesia's oil and gas sector to a gross split PSC model, meaning the government's share of production from a project will, in future agreements, be based on the project's gross revenue, rather than the profit it generates. In 2018, the government removed the upper limit of $250 million on the value of signature bonuses when awarding a new PSC. Recently, there has also been increasing public debate on how to improve the governance of the distribution of revenues generated from the oil and gas sector.[2] This discussion has led to the government's effort to increase the amount that it generates from the oil and gas sector and to improve the management and allocation of the resulting revenue.

Drawing on these national debates within Indonesia, this report demonstrates ways that accountability actors, including civil society, government, media and official oversight actors can use newly released PtG data to hold companies and government entities accountable for the revenues generated from oil and gas projects in the country. In this report, we explore what this data can tell us about the country's oil and gas sector. We also look at what other extractives data sources oversight actors can incorporate into analysis of the sector.

This PtG data is the result of recently implemented laws in the European Union, Canada and Norway which require oil, gas and mining companies incorporated or listed in these countries to disclose their payments to government entities. These newly released PtG reports supply timely information on the payments oil, gas and mining companies make to Indonesian government entities for their extractive activities. Companies must categorize payments into one of seven payment types, such as taxes or royalties. (See table 1.) They must also report which government entity receives the payments and must break down the payments by project, where applicable.

2 Extractive Industries Transparency Initiative Indonesia. "Transparency as Efforts to Improve Governance of Distribution of Revenue Sharing Funds" (2019) eiti.ekon.go.id/en/siaran-pers-transparansi-sebagai-upaya-perbaikan-tata-kelola-penyaluran-dana-bagi-hasil/.

Table 1. Summary of European and Canadian mandatory disclosure laws

Which companies must disclose?	Oil, gas or mining companies[3] registered in or listed on a regulated stock exchange in Canada, the European Union or European Economic Area.[4]
What must they disclose?	Payments made to governments (including state owned enterprises) in relation to extractive activities. Companies should attribute payments to projects where applicable.[5] 1. Production entitlements 2. Taxes (on income, production or profits) 3. Royalties 4. Dividends 5. Signature, discovery and production bonuses 6. License Fees 7. Payments for infrastructure improvements
What is the threshold for payment reporting?	Single, or a series of, payments that amount to EUR 100,000 in the EU/EEA or CAD 100,000 in Canada.
When must they disclose?	EU. The date of the first required report from a company depends on when the EU member state enacted the relevant provisions of the European Accounting and Transparency Directives.[6] Canada. The Extractive Sector Transparency Measures Act came into force on 1 June 2015 and applies to any financial year starting after this date. Companies have 150 days after the end of their financial year to file their PtG report. Norway (as an European Economic Area country). Its law ("Forskrift om land-for-land rapportering") came into force on 1 January 2014 and applies to financial years beginning on or after this date

Seventeen international oil and gas companies have disclosed over $15 billion in payments to Indonesian government entities since 2014 under these laws. In 2018, both the largest oil producer, Chevron, and the largest gas producer BP, disclosed $3.3 billion and $987 million in payments to Indonesian government entities, respectively. (See table 2.) All the PtG data referenced in this report are available on NRGI's PtG data repository, www.resourceprojects.org.

The first section of this report provides an overview of Indonesia's oil and gas sector, the recent developments that have occurred and national debates on the governance of the sector. The second section shows how civil society, media, government, EITI and official oversight actors can access and use PtG data to analyze the country's oil and gas sector. The remaining three sections of the report outline ways in which oversight actors can use this data as an accountability tool in Indonesia. These sections explore how accountability actors can use PtG data to verify the size and recipient(s) of oil and gas project signature bonuses and how to estimate and verify the revenue that local and regional government entities should receive from an oil and gas project operating in their region. It also details how to estimate and verify the government's share of production from a project under the new gross split PSC model.

3 Private companies are only required to disclose if they meet thresholds in two of the following criteria: size of balance sheet (in the U.K. must exceed GBP 18 million), net turnover on its balance sheet (in U.K. must exceed GBP 36 million) and number of employees (in U.K. must exceed 250). For more information see: Directive 2013/34/EU of the European Parliament and of the Council (2013) www.legislation.gov.uk/eudr/2013/34/introduction

4 The EU and Norway also capture data for forestry companies.

5 A project is defined as "the operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities with a government. None the less, if multiple such agreements are substantially interconnected, this shall be considered a project." For more information see: Directive 2013/34/EU of the European Parliament and of the Council (2013) www.legislation.gov.uk/eudr/2013/34/introduction

6 All listed companies must report within six months of their financial year end. For private companies, this is at the discretion of the Member States, but it will be a maximum of one year after financial year end. The U.K. and France adopted national legislation in 2014, requiring reports for the first time in the 2015 fiscal year. For more information see: Directive 2013/34/EU of the European Parliament and of the Council (2013) www.legislation.gov.uk/eudr/2013/34/introduction

Table 2. Overview of oil and gas companies' disclosures of payments to Indonesian government entities in 2018

Disclosing company	When the company last reported	Reporting jurisdiction	Years of reporting	Operating projects in the country	Total payments disclosed for 2018 (USD)
BP	29 May 2019	UK	2015 - 2018	Tangguh	986,500,000
Chevron Canada Limited	29 May 2019	Canada	2016 - 2018	Rokan Block	3,337,203,894
CNOOC Limited	5 June 2019	Canada	2016 - 2018	CNOOC South East Sumatra Limited	112,661,662
				Tangguh	18,969,781
Eni S.p.A.	30 May 2019	Italy	2016 - 2018	Jangkrik	255,143,060
				Non-attributable	8,809,656
				East Ganal PSC	1,576,591
Neptune Energy Group Limited	28 November 2019	UK	2018	Jangkrik	24,344,000
Pan Orient Energy Corporation	29 May 2019	Canada	2016 - 2018	Batu Gajah PSC	949,927
				Citarum PSC	389,314
Premier Oil PLC	6 March 2019	UK	2015 - 2018	Natuna Sea Block A	351,636,000
				Kakap field	1,314,000
Repsol S.A.	27 February 2019	Spain	2016 - 2018	Corridor	225,055,435
				Jambi Merang	8,063,483
				Seram PSC	3,971,566
Tomori Exploration and Production Limited	16 April 2019	UK	2016 - 2018	Senoro-Toili PSC Block	500,000
Total S.A.	20 March 2019	France	2015 - 2018	Mahakam PSC	89,816,000
				Sebuku PSC	8,544,000
				Tengah PSC	7,776,000

I. Overview of Indonesia's oil and gas sector

OIL AND GAS SECTOR'S CONTRIBUTION TO THE INDONESIAN ECONOMY

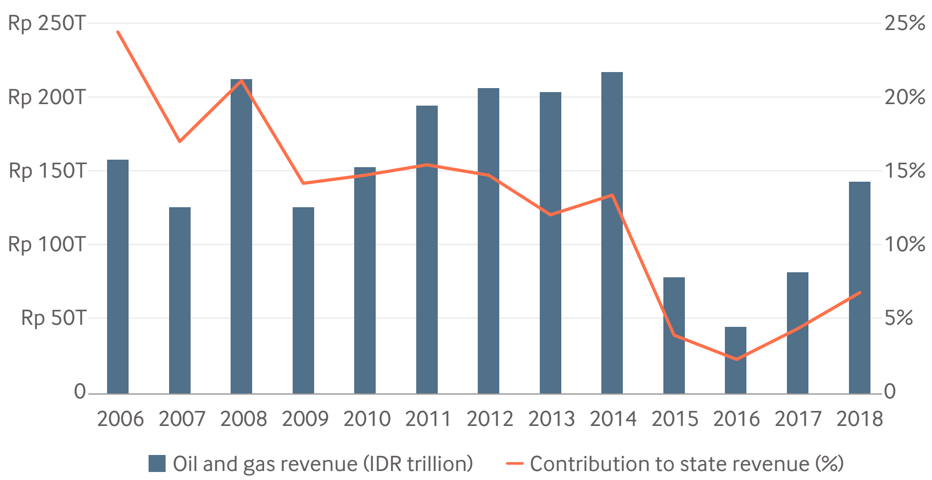
The economic contribution of the oil and gas sector to Indonesian state revenue has fallen dramatically over the past decade from around 25 percent in 2006 to 7.4 percent of government revenue in 2018. (See figure 2.) This is in part a result of a significant decline in production over this period. At the same time, domestic consumption has steadily risen, resulting in Indonesia becoming a net oil importer beginning in 2004.[7] The government has tried to address declining production and rising domestic consumption by requiring oil and gas contractors to allocate around 25 percent of their equity share of production to domestic demand, known as Domestic Market Obligation, reimbursed at Indonesia Crude Price (ICP).[8]

While Indonesia is endowed with considerable mineral resources, including significant deposits of gold, copper, coal and lead, the mineral industry generates significantly less revenue for the government than the oil and gas industry. According to Indonesia's most recent EITI report covering 2016, the mining industry contributed 3 percent of state revenue, compared to 7 percent from the oil and gas industry.[9,10]

INCLUDED IN THIS SECTION

- An overview of the oil and gas sector's contribution to the Indonesian economy
- An overview of key national debates on the country's oil and gas sector

Figure 2. Oil and gas revenues contribution to state revenue[11]



7 Dwi Atty Mardiana, Zulkifli Husin, Muhammad Zilal Hamzah, and RS. Trijana Kartoatmodjo. "Economy Growth and Oil Import Requirement in Indonesia" *Journal of Energy Technologies and Policy.* (Vol.3, No.11 – Special Issue for International Conference on Energy, Environment and Sustainable Economy, 2013) pdfs.semanticscholar.org/d071/1bf2555b3107c4fd58dc1a3043b3b80a6842.pdf.

8 Extractive Industries Transparency Initiative Indonesia. "2016 EITI Indonesia Report" (EITI, December 2018). eiti.org/document/2016-eiti-indonesia-report.

9 Ibid.

10 Seven mining companies have disclosed over $1.4 billion in payments to Indonesian government entities from 2015 to 2018: BHP Billiton Public Limited Company; Heidelberg Cement Group; Jardine Matheson Holdings Limited; LafargeHolcim Limited; Mercuria Energy Group Limited; Rio Tinto PLC; and Vale Canada Limited.

11 Figures are from Ministry of Finance; Indonesia and compiled by PWC in: PricewaterhouseCoopers. "Oil and Gas in Indonesia Investment and Taxation Guide" (PWC, 2019). www.pwc.com/id/en/energy-utilities-mining/assets/oil-and-gas/oil-gas-guide-2019.pdf

NATIONAL DEBATES ON INDONESIA'S OIL AND GAS SECTOR

Over the past two decades, Indonesia's oil and gas sector has suffered from a series of corruption scandals. In 2014, Rudi Rubiandini, then head of Indonesia's oil and gas regulator SKK Migas, was sentenced to seven years in prison for accepting bribes to provide preferential treatment in a tender process.[12]

In 2014, during his first term in office, President Widodo pledged to reform the oil and gas sector by developing a new oil and gas law. This law is intended to serve as the umbrella regulation for the sector, and to clarify many issues which are not covered in the existing 2001 law. For example, important elements including guidelines on permit extension, participating interest, organization of the oil and gas SOE holding and elements of the new gross split scheme are currently unclear. However, the Indonesian Parliament has been unable to reach a consensus and has not progressed with the oil and gas law revision, despite the legal certainty such a law could give to investors.

In the absence of the new legislation, the government and the Ministry of Energy and Mineral Resources (Energi dan Sumber Daya Mineral (ESDM)) have been issuing regulations to fill in the gaps that the existing law does not cover. This raises concern that the sector might experience a shock if, when parliament passes the new legislation, it includes clauses that contradict existing government and ministerial regulations that companies are currently following.

In 2017, the government announced it was shifting to governing the oil and gas sector through a gross split PSC model, moving away from the cost recovery PSC model that had been in place for over 50 years. The new approach stipulates that the share of production will be determined on a gross split basis, with the contractor receiving a greater share of oil, but no longer able to request reimbursement for operating costs on the project (cost recovery).

The Indonesian government introduced the gross split model in response to political pressure about the increasing percentage of oil going to cost recovery and declining investment in the oil and gas sector. The year prior to the introduction of this law, 2016, saw cost recovery expenditures total $11.4 billion, while total government revenue from the sector was only $9.3 billion.[13] The ESDM blamed these growing cost recoveries on the inefficient practices of companies operating in the sector. The government intends this new model to grant operators more spending and operational freedom, with a hope that this will lead to improved cost-efficiencies. It announced the changes in regulation and then implemented them abruptly. This attracted criticism from the oil and gas industry, who claimed there was very little consultation on this change. There is also some concern about how quickly companies will be able to reduce costs, citing the higher cost of procurement in Indonesia as compared to other resource-rich countries.

In 2018, the government passed a new regulation removing the earlier cap of $250 million on the value of signature bonuses, which it expects to lead to an increase in the value and economic significance of these payments. In May 2019, when Pertamina was awarded the PSC for the Rokan block, taking over operatorship from Chevron, the company agreed to pay a $784 million signature bonus, which underscored the importance of these bonuses.[14]

12 *The Jakarta Post*. "Rudi Rubiandini gets seven years for bribery" (The Jakarta Post, April 29 2014) www.thejakartapost.com/news/2014/04/29/rudi-rubiandini-gets-seven-years-bribery.html.

13 Brad Roach and Alistair Dunstan. "The Indonesian PSC: the end of an era" The Journal of World Energy Law & Business, (Volume 11, Issue 2, Pages 116–135, April 2018) academic.oup.com/jwelb/article/11/2/116/4958804.

14 Stefanno Reinard Sulaiman. "Pertamina signs Rokan contract, paves way for transition" (*The Jakarta Post*, May 10, 2019) www.thejakartapost.com/news/2019/05/10/pertamina-signs-rokan-contract-paves-way-for-transition.html.

Indonesia's system for subnational revenue sharing, Dana Bagi Hasil (DBH), also poses governance challenges. The DBH system has so far failed to address imbalanced revenue sharing among subnational governments. This has led to an unpredictable and fluctuating share of revenues that can lead to poor budgeting and the failure to promote economic diversification for when oil and gas production decreases and affects revenue transfers.[15]

15 EITI Initiative Indonesia, "Transparency as Efforts to Improve Governance of Distribution of Revenue Sharing Funds."

II. Accessing and using payments data for accountability

OIL AND GAS PAYMENTS TO INDONESIAN GOVERNMENT ENTITIES

Since 2014, 17 international oil and gas companies have disclosed over $15 billion in payments to Indonesian government entities under PtG laws. In 2018 ten oil and gas companies disclosed payments to Indonesian government entities, totaling $5.4 billion. Those companies included BP PLC, Chevron Canada, CNOOC, ENI, Pan Orient Energy, Neptune Energy Group Limited, Premier Oil, Repsol, Tomori Exploration and Production and Total S.A. In 2018, both the largest oil producer, Chevron, and the largest gas producer BP, disclosed $3.3 billion and $987 million in payments to Indonesian government entities, respectively.

As operator of Rokan Block, Chevron's $3.3 billion in payments represented 62 percent of all revenue paid by disclosing companies in 2018. (See figure 3.) In 2018, the government awarded Pertamina, an Indonesian national oil company, the Rokan Block and Pertamina took over operatorship from Chevron. While Pertamina, unlike Chevron, is not registered on the Canadian stock exchange and thus not bound to the Extractive Sector Transparency Measures Act (ESTMA), it should nevertheless continue the practice of revenue transparency for the economically critical Rokan block.

The Tangguh project, operated by BP and in which CNOOC is also a junior partner represents another major revenue generator with these two companies disclosing over $1.1 billion in payments to Indonesian government entities for this project in 2018.

The largest international oil producer in Indonesia, Chevron Canada, and largest international gas producer, BP, disclose their payments to Indonesian government entities. However, the second largest producers in the country for both commodities, ExxonMobil and ConocoPhillips, do not.[16] ExxonMobil and ConocoPhillips are both US-headquartered companies, and as such are not currently required to release a PtG report. While Chevron is also a US-headquartered company, its subsidiary Chevron Canada Limited manages its Indonesia operations. Because Chevron Canada Limited is headquartered in Canada, the Canadian Extractive Sector Transparency Measures Act (ESTMA) requires that it discloses its payments to the Indonesia government.[17]

The US was the first country to introduce a PtG law, Section 1504 of the Dodd-Frank Act in 2010, with the US Securities and Exchange Commission adopting an implementing rule in 2012. This rule was subsequently vacated following a lawsuit by the American Petroleum Institute.[18] A second version of the implementing rule for this law was repealed in 2017 under the Congressional Review Act. The SEC is expected to propose a new rule on 18 December 2019 which will be followed by a public comment period and the adoption of a final rule likely in 2020.

INCLUDED IN THIS SECTION

- An overview of Indonesia's oil and gas PtG data
- A guide on how to access PtG data
- An overview of more data sources for analyzing Indonesia's oil and gas revenues

16 PricewaterhouseCoopers. "Oil and Gas in Indonesia Investment and Taxation Guide" (PWC, 2019). www.pwc.com/id/en/energy-utilities-mining/assets/oil-and-gas/oil-gas-guide-2019.pdf

17 Both ExxonMobil and ConocoPhillips have subsidiaries that disclose payments in Europe, but these subsidiaries do not control these companies' Indonesian operations.

18 Alice Ross. "Dodd-Frank's bid to clean up extractive industries stymied by oil business" (*The Guardian*, July 2015) www.theguardian.com/global-development/2015/jul/22/dodd-frank-act-section-1504-natural-resources-extractive-industries-oil-api-sec.

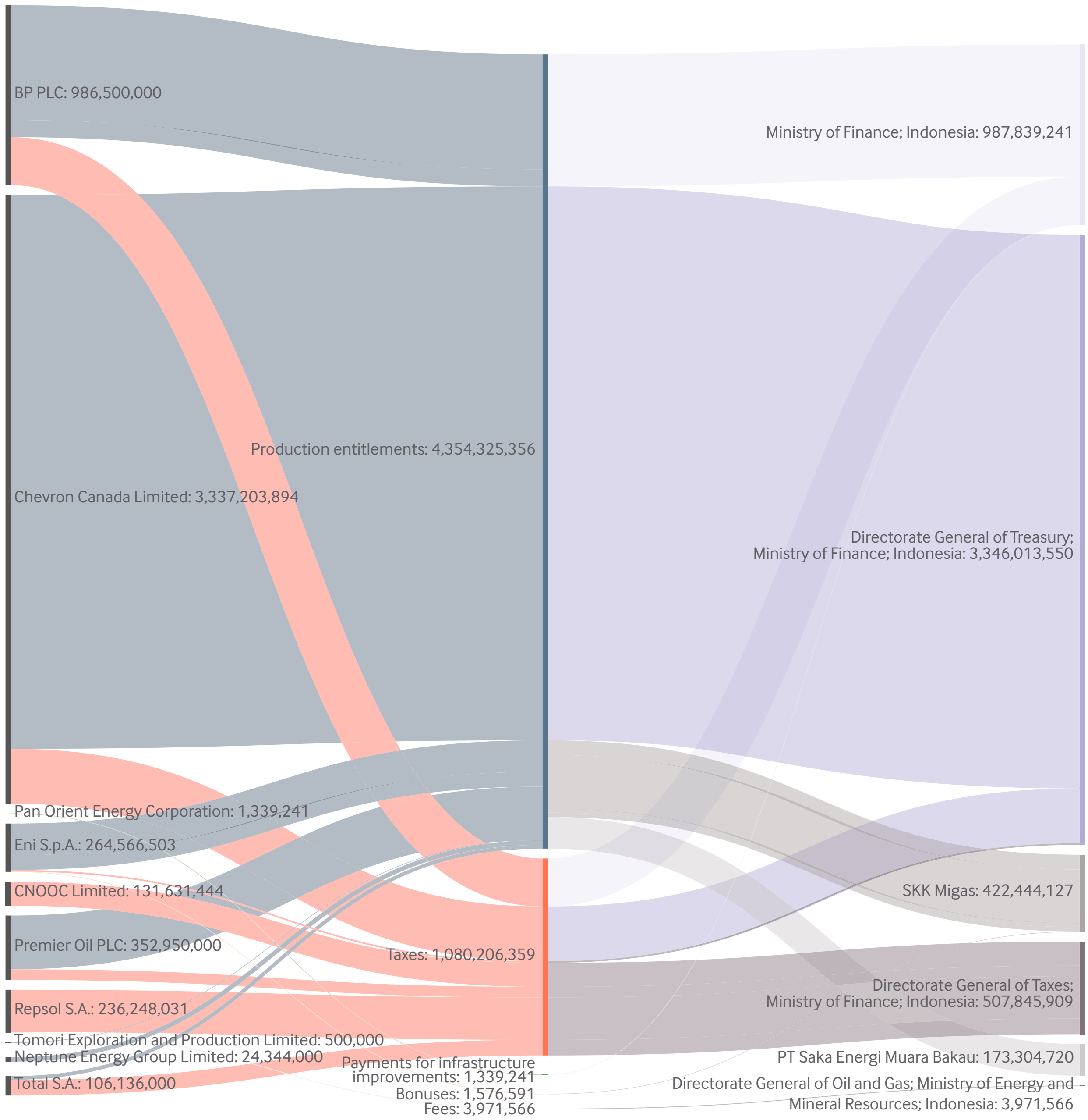
ExxonMobil, ConocoPhillips and other companies not bound by PtG regulations in their home countries should consider voluntarily disclosing their PtG data in Indonesia to provide citizens in the communities where they operate the same transparency as those with projects covered by PtG laws receive. Such a move would be in line with the EITI's Expectations for Supporting Companies which notes that all EITI supporting companies should "ensure comprehensive disclosure of taxes and payments made to all EITI implementing countries"[19], as well as EITI's promotion of "systematic disclosure" where companies and governments are expected to publish payments routinely in their own systems. As part of the research process for this report, NRGI asked ExxonMobil and ConocoPhillips to voluntarily publish their 2017 and 2018 payments to the Indonesian government in line with data disclosed by other companies covered in this report. ExxonMobil declined to publish the information. NRGI is in an ongoing dialogue with ConocoPhillips to address the issue. ExxonMobil and ConocoPhillips are both EITI supporting companies, with ExxonMobil also occupying an alternate seat on the EITI Global Board.

In 2018, 80 percent ($4.4 billion) of the revenue paid by disclosing oil and gas companies was in the form of production entitlements, as dictated by the production sharing model that governs the oil and gas sector. The other payment types made were taxes ($1.1 billion), fees ($4 million), payments for infrastructure improvements ($1.3 million), and bonuses ($1.6 million).

Under Indonesian law, all non-tax revenues (Penerimaan Negara Bukan Pajak (PNBP)), including production entitlements and bonuses, are to be deposited to the state treasury (Ministry of Finance) through the Online Non-Tax State Revenue Information System. SKK Migas receives in-kind payments of oil and gas and then transfers the resulting sales revenue to the state treasury. BP's 2018 PtG report includes a $93,525,739 production entitlement payment to the Ministry of Finance made in-kind in the form of 1,432,021 barrels (bbls). As part of the research process for this report, NRGI contacted BP to confirm that the Ministry of Finance was the recipient of their in-kind production entitlement, given that it would be unusual for a ministry of finance to take receipt of an in-kind payment of this nature. BP said that SKK Migas received this payment.

19 Extractive Industries Transparency Initiative International Secretariat. "Expectations for EITI supporting companies" (EITI, April 2018) eiti.org/document/expectations-for-eiti-supporting-companies.

Figure 3. 2018 oil and gas company payments to Indonesian government entities by payment type



HOW TO ACCESS PTG DATA ON RESOURCEPROJECTS.ORG

Each country that has a PtG law has a different procedure for companies to disclose their PtG to regulators and how they make the resulting PtG data available to the public. (See box 1.)

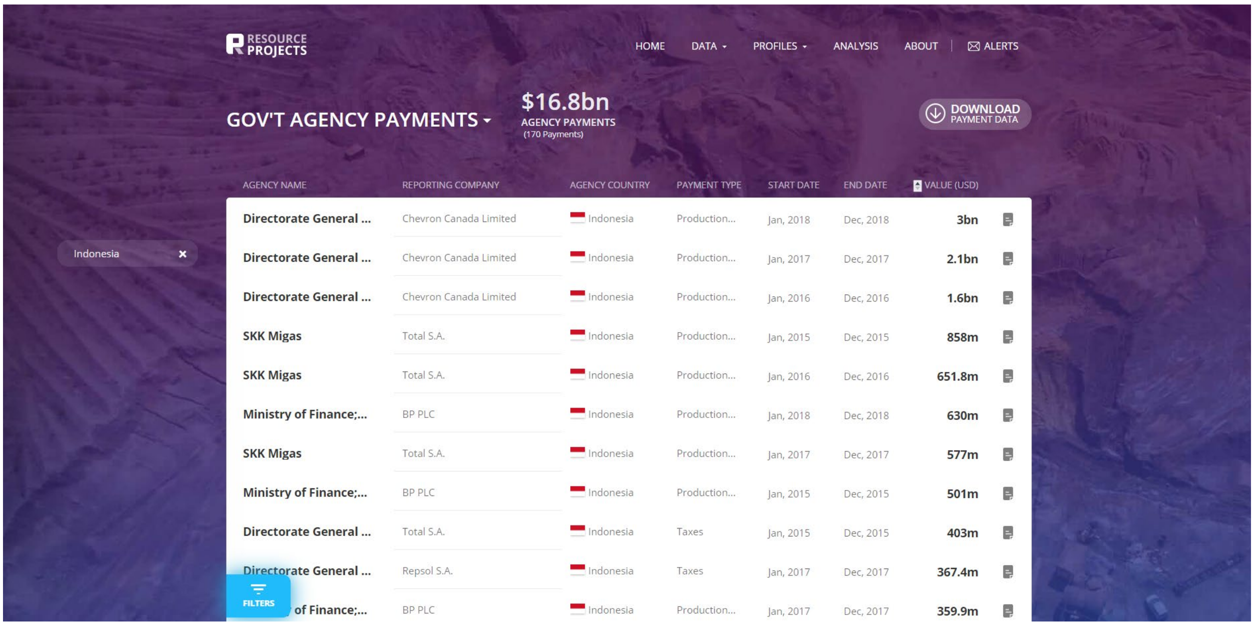
As a result, it is often difficult for oversight actors in resource-rich countries to access and use the PtG data relevant to them. To address these accessibility and usability challenges, NRGI has developed a data repository for PtG data, www.resourceprojects.org. As of December 2019, www.resourceprojects.org contains data on over $800 billion in payments in over 150 countries from 2014 to 2019.

Key features of resourceprojects.org include:

- **Collection and standardization of PtG data.** Resourceprojects.org collects all identified PtG reports. It standardizes the currency, project name and government entity name data within the reports, making them easier to use for comparison and analysis.

- **Enables oversight actors to find data relevant to them.** The repository’s filter feature enables users to search the data by country, project, recipient government agency, company, year and payment type. This feature allows users to quickly find and download the data relevant to them.

- **Subscribe for timely updates.** A key elements of PtG data as an accountability tool is its timeliness. Most companies are required to disclose their payments within six months of the end of their financial year. To maximize the benefits of this timeliness, www.resourceprojects.org has developed a feature where users can subscribe to receive an email when NRGI uploads a relevant PtG report onto the site.



Box 1. How PtG reports are made publicly available

Payment reports and the data they contain can be found in the following locations:

- **Natural Resources Canada (NRCAN) Extractive Sector Transparency Measures Act (ESTMA) Repository.**[20] NRCAN makes company disclosures available in PDF format on its online repository.
- **UK Companies House Extractives Service.**[21] UK-incorporated companies' disclosures are available in XML format.
- **National Storage Mechanism (NSM).**[22] UK main market-listed company disclosures must announce their reports' release on the NSM service.
- **Company reports.** Many companies incorporate their PtG report into their annual reports or as part of their transparency or sustainability reports.
- **Company websites.** Some companies publish their PtG reports on their websites.

MORE DATA SOURCES FOR ANALYZING INDONESIA'S OIL AND GAS REVENUES

Each of the uses of payment data for accountability that we present in this report rely on analyzing PtG data in conjunction with other data sources. To effectively hold companies and government entities accountable for the payments they make for extractive activities in Indonesia, it is often necessary to understand the fiscal terms of a project. The oil and gas fiscal regime dictates the types of payments that should be made by extractive companies operating in the country, how these payments should be calculated and what, if any, allowable deductions exist.

OIL AND GAS FISCAL REGIME

In 1966, Indonesia became the first country to implement a PSC system and uses this model to this day. In January 2017, the ESDM Ministry announced a new regulation that moved Indonesia from a PSC model based on cost recovery to one based on a gross split of production. Because gross split PSC regulation only came into force in 2017 and did not affect existing contracts, most oil and gas projects in Indonesia still operate under cost recovery PSCs. Under both the cost recovery and gross split PSCs, the government generates revenue mainly through their share of production, bonuses (upon signature and when specific production targets are met) and through taxes levied on income, dividends and land and building rental. (See table 2.)

20 Natural Resources Canada. "Links to ESTMA Reports" (2019), www.nrcan.gc.ca/mining-materials/estma/18198.
21 Companies House, "Companies House Extractives Service" (2017), extractives.companieshouse.gov.uk/.
22 Morningstar, "National Storage Mechanism" (2019), www.morningstar.co.uk/uk/NSM.

Table 2. Summary of Indonesia's cost recovery and gross split PSCs models[23]

	Cost recovery PSC	Gross split PSC
Income tax	The income tax rate is dependent on the date that the government and company signed the PSC. Indonesia's 2015 EITI report details information on changes in the tax rate over time.	The tax rate is currently 25 percent.
Land and building tax	The government applies a tax to land and/or buildings that are in areas used for extractive activities. The basis of charging land and building tax varies depending on the location (onshore or offshore) and phase (exploration or exploitation) of a project.	
Dividend tax (branch profit tax)	20 percent	
Non-tax revenue (share of production)	There are six steps involved in determining what share of the total production each party (the government and the contractor(s)) receives: **1) First tranche petroleum (FTP) -** an initial share of production is divided between the government and the contractor, with the specific distribution stated in the contract. **2) Investment credit** - an incentive that the government gives in the form of an additional return on capital directly related to oil and gas production facilities. **3) Cost recovery** - the reimbursement of costs of production, agreed upon between the government and contractor **4) Equity oil** - the distribution of the remaining oil as stipulated in the contract. **5) Domestic market obligation** - the contractor is also required to allocate up to 25 percent of its share to fulfill domestic needs in Indonesia. **6) Domestic market obligation fee** - remuneration from the government to the contractor for the domestic market obligation allocation	Under the gross split PSC, production will be allocated based on the base split formula. The government can adjust it in favor of either party, based on the variable and progressive particularities of the project. **Base split:** • Government: 57 percent for oil; 52 percent for gas • Contractor: 43 percent for oil; 48 percent for gas Base split can then be adjusted, depending on: **Variable components:** 1. Status of the field 2. Location of the field 3. Depth of reservoir 4. Availability of support infrastructure 5. Type of reservoir 6. Carbon dioxide content 7. Hydrogen sulfide content 8. Density of oil 9. Domestic component level 10. Production stages **Progressive components:** 1. Price of oil; price of gas 2. Cumulative amount of oil and gas production
Bonuses	**Signature bonuses** – a bonus, agreed upon between the contractor and SKK Migas, is due within one month of awarding of the contract. Historically these bonuses have generally ranged from $1 million to $15 million with a cap at $250 million. In 2018, the government removed the cap on the size of signature bonuses. **Production bonuses** – a contractor meets a bonus requirement when production exceeds a specified number of barrels per day. The contractor and SKK Migas agree on the specifics of this production limit.	

Cost Recovery PSC

Under the cost recovery model, the government and contractor share the initial share of production under conditions stipulated in the contract. The contractor is then able to bill the government for the operating costs of the project, paid in the form of cost oil. Following this, they divide equity oil based on terms in the contract, with the contractor also required to allocate a specific portion of its equity oil to meeting domestic requirements in Indonesia, known as Domestic Market Obligation.

Gross Split PSC

The new approach stipulates that the share of production will be determined on a gross split basis, with the contractor receiving a greater share of oil. The contractor will no longer be able to request reimbursement for operating costs on the project. Under this model, a base split is established in which the government receives 57 percent

23 EITI, "2016 EITI Indonesia Report." PricewaterhouseCoopers, "Oil and Gas in Indonesia Investment and Taxation Guide." Ernst and Young, "Global oil and gas tax guide 2019". (EY, 2019) www.ey.com/Publication/vwLUAssets/ey-global-oil-and-gas-tax-guide-2019/$FILE/ey-global-oil-and-gas-tax-guide-2019.pdf.

of production for oil, with the contractor receiving the remaining 43 percent. With gas, the government receives 52 percent of production and the contractor receives 48 percent. The government can adjust this base split to create more favorable terms for either party during the contract negotiation process, based on the variable and progressive components outlined in table 2.

OTHER INDONESIA-SPECIFIC EXTRACTIVES DATA SOURCES

Table 3 provides a non-exhaustive list of Indonesia-specific data sources that can be used in conjunction with PtG data to hold both government entities and companies accountable for resource revenues generated in the country. We used many of these data sources in this report's analysis.

Table 3. Additional data sources for analyzing Indonesia's extractives revenues

Data type	Indonesian source/example	How this data can be used
Company annual reports	ENI Factbook 2018	Company reports can provide contextual information on the activities of the company in the country. For example, the ENI Factbook for 2018 supplies information on the company's average realized price and gross production in Indonesia.
Government data	Ministry of Energy and Mineral Resources geoportal	Information on the oil and gas licenses awarded, including block name, operator, signature data and status.
Company engagement	Contacting the company directly	Engaging with companies directly can help supply more contextual information. This process can also show companies the importance of their PtG reports and show that they will be scrutinized.
EITI reports	Indonesia EITI Report for 2016	At the time of publication, the latest Indonesia EITI Report is for 2016. This report has a wealth of information on the country's oil and gas sector and governance challenges that arise in its management.
National acts and laws	Minister of Energy and Mineral Resources Regulation Number 8 of 2017 on gross split PSCs	National acts within Indonesia can outline the obligations of companies working in the country, including the fiscal regime.
Oil and gas association	Indonesian Petroleum Association (IPA)	The IPA is a valuable source of information on company developments within the Indonesian oil and gas sector and their position on changes in regulations and implementation.
Resource Governance Index 2017	RGI Data Explorer	The Resource Governance Index's data explorer supplies justifications for each of a country's RGI scores and links to relevant government documents.
Oil and gas contracts	ResourceContracts.org	Where available, the contract between the government and the company has a wealth of information that oversight actors can use to hold both parties accountable for their respective obligations. Currently four Indonesian contracts are available on Resourcecontracts.org.
Mass media within Indonesia		Mass media in Indonesia is a useful resource for finding political figures' current positions on governance challenges in the mining sector.

CONTRACT TRANSPARENCY

Many uses for the data that we present in this report focus on comparing payments to Indonesian government entities to what would be expected based on terms contained with the PSC. The contract should contain information on the gross split of production between the operator and the government, the value of the signature bonus and any production levels that trigger the requirement to pay a production bonus. While many of these terms can be estimated or gathered from other sources, such as EITI reports, disclosure of petroleum contracts would provide an important tool for accountability and increase public trust in both the government and companies.

III. Verifying the size and recipient of signature bonuses

Why this matters:

- Signature bonuses, as one-off payments, are particularly susceptible to mismanagement or illegitimate diversion as they are often high value and are not always incorporated into the normal budgetary process.

How oversight actors can use PtG data:

- PtG data can be used to raise public awareness on the payment of signature bonuses, which government entity received these payments and ask questions regarding how the resulting revenue was managed.
- PtG data can be used to verify that companies have paid a signature bonus, that the recipient government entity matches what would be expected under the law and to verify that the amount paid matches what was stipulated in the contract.

Example questions PtG data can answer:

- Did Eni make a signature bonus payment following its signing of the contract for the East Ganal PSC in 2018?

Table 4. Data required to analyze size and recipient of oil and gas project signature bonuses

Information required	Where this can be accessed
Information on the oil and gas license awarded, including block name, operator, signature date and status	Ministry of Energy and Mineral Resources geoportal
Bonus payment data from disclosing companies' PtG report from the year of award	Indonesian PtG data is available on resourceprojects.org. Information on signature bonuses is also available in Indonesia's EITI reports.
Where publicly available, information on the expected value of the signature bonus, based on the PSC agreement	For many new PSCs, the Ministry of Energy and Mineral Resources include information on the value of the signature bonus in the press release announcing the signing of the contract. The Indonesia EITI reports also contain this information.

To check payment of a signature bonus following the award of a new PSC, identify:

1. The date a new PSC was signed and the operator of the block[24]
2. The disclosing company's PtG report for the year the PSC was signed
3. Whether a signature bonus was disclosed for that project and the recipient government entity
4. Where the Ministry of Energy and Mineral Resources has disclosed information on the expected value of the signature bonus, verify that the payment disclosed in the PtG report matches this figure

Under both the traditional cost recovery PSCs and new gross split PSCs, the contractor must pay a signature bonus within one month of the awarding of a new contract. The government and the contractor agree upon the value of the signature bonus during the negotiation process. It has historically ranged from $1 million to $15 million.[25]

24 Energi dan Sumber Daya Mineral. "ESDM Geoportal" (ESDM, 2019) geoportal.esdm.go.id/indonesia-overview/.
25 PricewaterhouseCoopers, "Oil and Gas in Indonesia Investment and Taxation Guide."

As Global Witness notes, these types of one-off payments are particularly susceptible to mismanagement or illegitimate diversion because they are high value and are not always part of the normal budgetary process.[26]

Companies that are required to disclose their payments to governments must include any bonuses paid for commercial development, including signature bonuses. As a result, PtG disclosures supply oversight actors the ability to check whether an oil and gas company has paid the signature bonus and to verify to which government entity it made its payment.

The ESDM regularly discloses information on newly awarded PSCs, including the operator and agreed upon signature bonus value. Oversight actors in Indonesia can use this information to verify that the signature bonus disclosed in its PtG report matches what is stipulated in the PSC agreement.

FINDINGS

Table 5 shows the signature bonuses that have been reported by disclosing oil and gas companies, the date the PSC was signed and the value of the signature bonus as stipulated in the PSC agreement.

Each of the disclosing companies that Indonesia has awarded a PSC to since PtG reporting requirements came into force have reported a signature bonus. In each of these cases, information on the expected size of the signature bonus in the PSC agreement was disclosed by ESDM, enabling comparison between the expected and actual amounts disclosed. In all three cases, the amount disclosed closely matches that expected based on the PSC terms.[27] (Discrepancies of $0.76 million for Eni's East Ganal PSC signature bonus and of $4,443 for Equinor's Aru Trough PSC are likely a result of variations in reporting currency.)

BP disclosed a bonus payment of $18 million in its 2017 PtG report for the Tangguh project. As part of the research process for this report, NRGI contacted BP to ask about the purpose of this bonus payment. The company clarified that this payment was primarily for production bonuses for Trains 1 and 2 of this project, rather than a signature bonus. Production bonuses are payments made when production exceeds a specified number of barrels per day.

As governments and contractors do not often make information on the production level required to trigger a production bonus publicly available, it is difficult to check payment of production bonuses without knowledge of the terms of the agreement. The government's implementation of contract transparency would enable oversight actors to identify the contractually agreed upon production level threshold that triggers a production bonus and enable them to monitor the disclosure of this payment in the company's PtG report.

In accordance with ESDM regulation No. 30/2017, companies are required to make their signature bonus payment to the state treasury through the Online Non-Tax State Revenue Information System (SIMPONI).[28] In the company's 2018 payments to governments report, Eni stated that it paid its signature bonus payment for the

26 Global Witness. "Finding the missing millions" (Global Witness, 2018) www.globalwitness.org/en/campaigns/oil-gas-and-mining/handbook-using-extractives-data/.

27 Eni, in its PtG report discloses in euros, while Equinor discloses in Norwegian Krone. We have converted both to USD as part of the data standardization process conducted by NRGI on www.resourceprojects.org.

28 EDSM. "Permen ESDM Nomor 30 Tahun 2017 Tentang Cara Pengenaan, Pemungutan dan Pembayaran/Penyetoran Penerimaan Negara Bukan Pajak Yang Berlaku Pada Ditjen Migas Kementerian ESDM". https://migas.esdm.go.id/post/read/permen-esdm-nomor-30-tahun-2017-tentang-cara-pengenaan,-pemungutan-dan-pembayaran-penyetoran-penerimaan-negara-bukan-pajak-yang-berlaku-pada-ditjen-migas-kementerian-esdm

East Ganal PSC to SKK Migas. As part of the research process for this report, NRGI wrote to Eni to ask why SKK Migas was the recipient of this signature bonus payment. The company noted that this was a clerical error and that the bonus was actually paid to the Directorate General of Oil and Gas within the Ministry of Energy and Mineral Resources, and not - as incorrectly reported – to SKK Migas. The company is considering publishing a corrected version of the report.

ENI shared with NRGI an excerpt of its assignment decree for the East Ganal PSC which outlines that the company should deposit the signature bonus into a Directorate General of Oil and Gas bank account. Royal Dutch Shell and Equinor both also disclosed paying their signature bonus payments to the Directorate General of Oil and Gas, rather than the state treasury.

NRGI understands that the Directorate General of Oil and Gas requested companies to make the signature bonus payment to a Directorate General bank account, rather than through the SIMPONI mechanism stated in ESDM regulation No. 30/2017. The state treasury can delegate the right to collect non-tax revenues to director generals, however doing so restricts citizens' ability to follow the money and hold government entities accountable for how this money is managed and used.

Directorate General of Oil and Gas taking receipt of this non-tax revenue limits oversight actors' ability to track this money into the state treasury. Management of signature bonus revenues will only increase in importance following the government's decision to remove the cap of $250 million on the size of these one-off payments.

Table 5. Signature bonuses disclosed in PtG reports 2015 to 2018

Company	Project	Recipient government entity	Date of contract signing	Signature bonus according to ESDM/ press release (USD)	Signature bonus disclosed in PtG report (USD)
Equinor	Aru Trough	Directorate General of Oil and Gas	2015	1,000,000[29]	1,004,443
Royal Dutch Shell PLC	Pulau Moa Selatan	Directorate General of Oil and Gas;	2015	1,000,000[30]	1,000,000
Eni S.p.A.	East Ganal PSC	SKK Migas[31]	2018	1,500,000[32]	1,576,591

Conclusion: Oversight actors can use PtG data to verify that companies awarded new PSCs have paid the required signature bonus. They can also verify to which government entity they made this payment.

Potential avenues for inquiry: Why has the Directorate General of Oil and Gas directed Eni to deposit the signature bonus payment of $1.5 million for the East Ganal PSC into a Directorate General of Oil and Gas bank account, rather than into the SIMPONI, as specified in ESDM regulation No. 30/2017?

How can oversight actors check whether signature bonus payments that are due to the state treasury but paid to the Directorate General of Oil and Gas are subsequently deposited with the state treasury?

29 Disfiyant Glienmourinsie. "Pemenang Lelang WK Migas Harus Selesaikan Signature Bonus," (*Sindonews*, 2015). ekbis.sindonews.com/read/978228/34/pemenang-lelang-wk-migas-harus-selesaikan-signature-bonus-1426658484.

30 Ibid.

31 The company clarified to NRGI that this was a clerical error and that the bonus was actually paid to the Directorate General of Oil and Gas within the Ministry of Energy and Mineral Resources

32 Energi dan Sumber Daya Mineral. "Hasil Penawaran Wilayah Kerja Migas 2018 Ditandatangani: Wilayah Kerja East Seram, East Ganal dan Southeast Jambi" (ESDM, 2018). migas.esdm.go.id/post/read/hasil-penawaran-wilayah-kerja-migas-2018-ditandatangani-wilayah-kerja-east-seram-east-ganal-dan-southeast-jambi.

IV. Estimating and verifying local and regional government revenue

Why this matters:

- Revenue distributed to producing local and regional governments represents an important revenue source to mitigate the negative impacts of extractive activities. Revenue can fund the development priorities of citizens in the area.

How oversight actors can use PtG data:

- PtG data, when used in conjunction with the country's revenue sharing fund formula, can be used to estimate how much local government entities should receive as a share of the revenue generated from a project, and how much should be kept by the central government.

Example questions that PtG data can answer:

- How much of the total non-tax revenue generated from the Tangguh project in 2018 should the West Papua regional government, and producing and non-producing regencies receive?

Table 6. Data required to analyze local and regional government revenue

Information required	Where this can be accessed
Revenue Sharing Fund (DBH) formula	Information on revenue sharing fund (DBH) formula is available below, in Indonesia's 2016 EITI Report and in the Ministry of Finance – Directorate of Regional Balance Non-Tax Revenue DG.
Non-tax payments data from disclosing companies' PtG report from year of analysis	PtG reports are available on resourceprojects.org.
Information on the location of the oil and gas project of analysis	A company's annual report often contains information on which province and regencies its oil and gas projects are located.

To estimate the revenue that local government entities should receive from an oil and gas project operating in their region:

1. Identify the location of the oil and gas project, including whether it is onshore or offshore, and if onshore, which province and regencies it is located within
2. Identify the revenue sharing fund (DBH) formula
3. Identify the non-tax payment disclosed by the operator in its PtG report
4. Multiply the production entitlement payment by the resource revenue formula to estimate how much local government entities should receive as a share of the revenue generated from a project, and how much central government should retain

Since the Indonesian government's extensive decentralization in 2001, regional governments and the funding they receive has taken on greater importance. The central government shares revenues with local and regional governments where oil and gas projects exist through the revenue sharing fund (DBH).

Oversight actors have scrutinized the design and implementation of this revenue sharing fund. In particular, the opacity of the mechanism for allocation and distribution of revenues has caused difficulties for local governments' budgetary planning processes.[33]

33 EITI Indonesia. "Transparency as Efforts to Improve Governance of Distribution of Revenue Sharing Funds."

Under the DBH revenue sharing fund formula, the central government transfers 15.5 percent of oil and 30.5 percent of gas non-tax revenues to local governments in non-Special Autonomy Regions. It retains 84.5 percent of oil and 69.5 percent of gas non-tax revenues. Non-tax revenues includes both the government's share of production, which in the PtG reports are referred to as "production entitlements," as well as other non-tax revenues such as signature and production bonuses.

At the local level, 3.1 percent of a project's non-tax oil government revenues go to the provincial government where the oil is produced and 6.2 percent go to the producing regency. A further 6.2 percent goes to other cities and regencies in the same province. For gas, 6.1 percent of a project's non-tax gas revenues go to the provincial government where it is produced and 12.2 percent to the producing regency. A further 12.2 percent goes to other cities and regions in the same province. (See table 7.) For operations located 12 miles or further offshore, the central government retains 100 percent of the revenues.

The Special Autonomy Law grants the provinces of Aceh, Papua and West Papua the status of a Special Autonomy Region. As Special Autonomy Regions they are entitled to a higher share of revenues generated from oil and gas activities, with these regions receiving 70 percent of non-tax revenue generated in their area, with the remaining 30 percent kept by the central government.

At the local level, 58 percent of a project's non-tax oil government revenues go to the regional government where the oil is produced and 6 percent go to the producing regency. A further 6 percent goes to other cities and regencies in the same region. For gas, 46 percent of a project's non-tax gas revenues go to the regional government where it is produced and 12 percent to the producing regency. A further 12 percent goes to other cities and regions in the same region. (See. Table 8)

Table 7. Oil and gas revenue sharing formula for non-special autonomy regions (DBH)[34]

Resource	Percentage kept by central government	Province Producing	Regency/city within producing Province	
			Producing	Non-producing
Oil	84.50%	3.10%	6.20%	6.20%
Gas	69.50%	6.10%	12.20%	12.20%

Table 8. Oil and gas revenue sharing formula for special autonomy regions (DBH)[35]

Resource	Percentage kept by central government	Special autonomy region	Regency/city within producing Province	
			Producing	Non-producing
Oil	30%	58%	6%	6%
Gas	30%	46%	12%	12%

34 Andrew Bauer, Uyanga Gankhuyag, Sofi Halling, David Manley and Varsha Venugopal."Natural Resource Revenue Sharing." (NRGI & UNDP, 2016) resourcegovernance.org/sites/default/files/documents/nrgi_undp_resource-sharing_web_0.pdf.

35 EITI, "2016 EITI Indonesia Report."

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Company disclosures can help oversight actors in producing regions hold government entities accountable for the distribution of revenue to local government entities. This data allows oversight actors to check how these revenues are managed and used.

As the amount of oil and gas produced in a region determines the value of revenues the central government distributes, project-level PtG disclosures can be used to estimate how much revenue should be transferred to local governments. To make these estimations, oversight actors must know the production entitlement payment made for each commodity.

In the case of the Tangguh LNG project, which is located in the special autonomy region of West Papua, the operator BP provides a breakdown of production entitlements by commodity in its 2018 payments to governments report. The company states that the production entitlements payment for Tangguh 'includes payments in kind of $93.5 million for 1.4 million bbls of condensates valued per the Production Sharing Agreement and the remaining production entitlement for LNG was paid in cash'.[36] The government treats revenue resulting from condensates as oil revenue,[37] meaning that of BP's total production entitlement payment of $723.1 million in 2018, $93.5 million was considered oil or condensate revenue and the remainder, $ 629.6 million, was considered gas revenue. BP's 2018 payments to governments report also states that the company reports payments made in full by all partners in a project when it is the operator of a joint venture. As a result this production entitlements payment represents all non-tax revenue from this project in 2018.

Figure 4 shows the estimated amount of oil/condensate and gas non-tax revenue that the central government should distribute to local government entities. This analysis suggests that of the $629.6 million gas production entitlement payment made by BP for the Tangguh project in 2018, $188.9 million should be retained by the central government and $440.7 million should be distributed to local government entities. Of this local government entity distribution, $289.6 million should be distributed to the West Papua regional government, with $75.6 million distributed to the producing regency of Teluk Bintuni. The central government should distribute the final $75.6 million of BP's gas production entitlement payment to other non-producing regencies in the West Papua region. (see. Figure 4.)

Similarly, using the formula laid out in Table. 8 we can estimate that of the $93.5 million oil/condensate production entitlement, $28.1 million should be kept by the central government and $65.5 million should be distributed to local government entities. Of this local government entity distribution, $54.2 million should be distributed to the West Papua regional government, with $5.6 million distributed to the producing regency of Teluk Bintuni. The central government should distribute the final $5.6 million of BP's oil/condensate production entitlement payment to other non-producing regencies in the West Papua region.

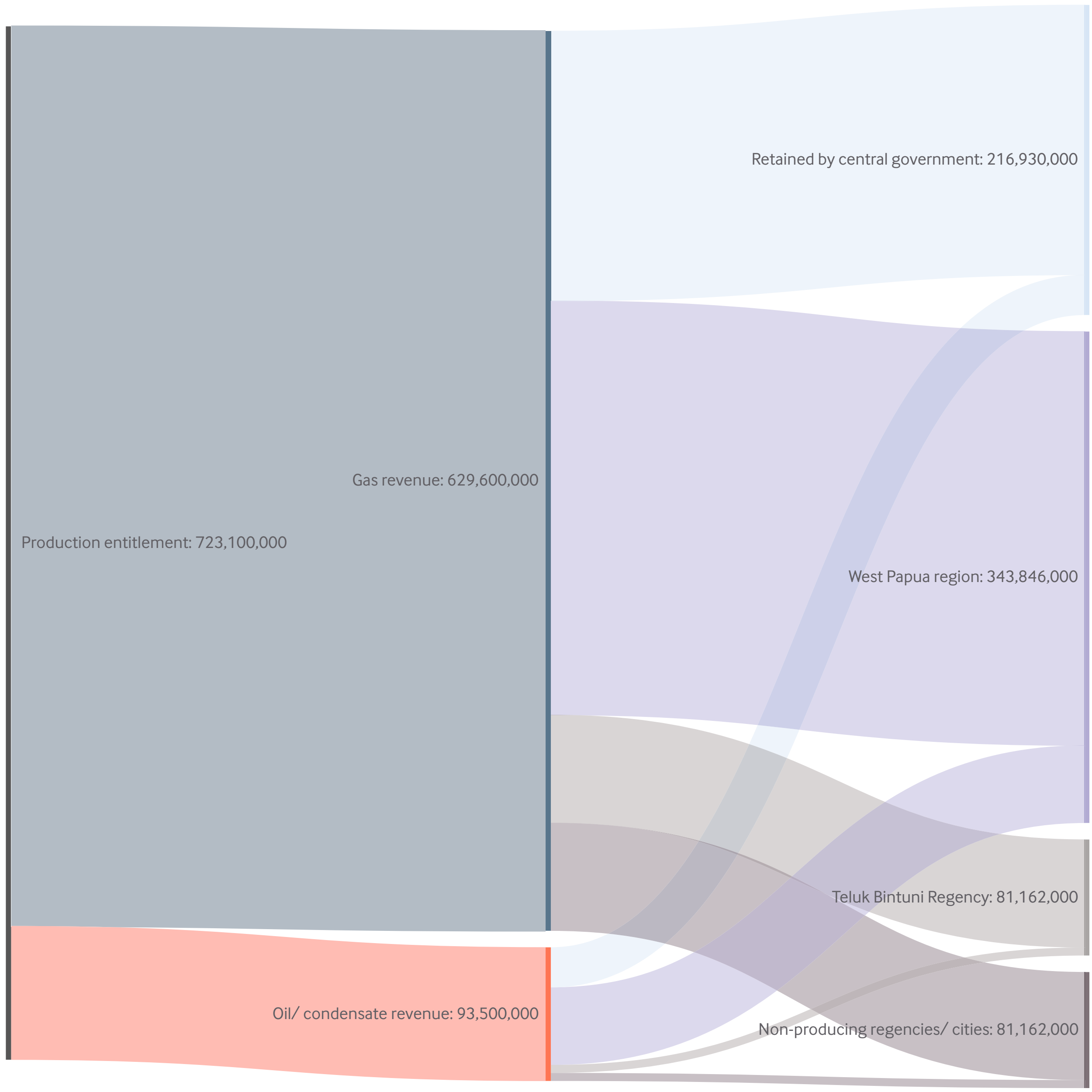
Oversight actors can replicate this type of estimation for any project in which the company has disaggregated its non-tax payments by commodity. When a project produces significant levels of oil and gas, but the company has not disaggregated its production entitlement payment by commodity, oversight actors can ask companies for a breakdown of the production entitlement payment by oil and by gas. The

36 BP "BP report on payments to governments 2018" (2019) pg. 16. www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-report-on-payments-to-governments-2018.pdf

37 EITI Indonesia "Mekanisme Penghitungan DBH Migas" (2018) eiti.ekon.go.id/fgd-transparansi-dbh-di-batam/?aid=2390&sa=1

applicable European legislation requires that "[w]here payments in kind are made to a government, the report must state the value of such payments in kind and, where applicable, the volume of those payments in kind, and the directors must provide supporting notes to explain how the value has been determined." A reasonable interpretation of this provision is that the value and volume for each commodity should be disclosed.

Figure 4. Distribution of BP's 2018 production entitlement payment for the Tangguh project estimation (USD)



Conclusion: Oversight actors can use project-level payment data to estimate how much revenue local government entities should receive from a project and how much the central government should keep.

Potential avenues for inquiry: Have the West Papua regional government and its regencies received their share of BP's 2018 Tangguh production entitlement payment? How have these local government entities managed and used this oil and gas revenue?

V. Emerging use of PtG data: Estimating and verifying the government's share of production from a gross split PSC project

Why this matters:

- Under the new gross-split PSC model, the majority of government revenue from oil and gas projects will come from its share of production. The government's share of production is determined by the gross revenue of the project and the gross split formula agreed to by the government and the contractor. As a result, it is important for oversight actors to be able to verify that companies are paying what is expected under the gross split PSC terms and to check how the recipient government entity uses the resulting revenues.

How oversight actors can use PtG data:

- Oversight actors can use PtG data, in conjunction with the project's gross split formula and gross revenue, to verify that the value of the share of production the government receives for a project managed under the new gross split PSC model matches what is expected.

Example questions that PtG data can answer:

- Once a contractor starts producing under the new gross split PSC model, oversight actors will be able to ask: did the government's share of production paid by the contractor match what is expected given the gross revenue and gross split formula of the project?

Table 9. Data required to verify central government revenue

Information required	Where this can be accessed
Gross split terms stipulated in the PSC agreement	The gross split terms agreed between the government and contractor are available in the PSC agreement. These terms are often also made publicly available upon signing the contract. This happened when ENI and the Indonesian government recently signed the PSC agreement for the Merekas gas project.[38]
Gross revenue/estimation of the gross revenue of the project for the year of analysis	The gross revenue for a project is often available in the operator's annual report. Where information on the gross revenue of a project is not available, oversight actors can estimate using average realized price and total production data which may be available in the operating company's annual report.
Production entitlement payment disclosed for the project	For companies that must disclose a PtG report, this data is available in the project-level payments section of their report.

To check the government's share of production from a project under the new gross split PSC model:

1. Identify the gross split agreed between the contractor and government for the project
2. Identify or estimate the project's gross revenue for the year of analysis
3. Estimate the expected government share of production by dividing the gross split percentages by the gross revenue of the project
4. Compare the expected share of production for this project to the amount the contractor paid as a production entitlement, as disclosed in its PtG report

38 Indonesian Petroleum Association, "Dua Tahun Gross Split."

Under traditional profit-based PSCs, information on the costs a project incurs and for which it requests reimbursement is required to be able to determine the profit of the project, and thus how much of that profit the government should receive. Information on the costs incurred by a project is rarely publicly available. This means that accountability actors cannot accurately estimate how much of the gross revenue of a project the contractor can deduct in costs, before the government and contractors' share of production from the project are determined.

Under a gross split PSC, the amount the government and contractors generate from the project are determined based on the gross revenue, with the contractor likely to receive a larger share then they would under a profit-based PSC. However, under this model, the government no longer has to reimburse their costs.[39]

As a result, cost information is no longer necessary to determine how much revenue a project should be generating for the government. This allows accountability actors to use PtG data to check if the government is receiving what would be expected from a project, provided the gross revenue and gross split formula of the project is known. (See box 2.) Where information on the gross revenue of a project is not available, oversight actors can estimate using average realized price and total production information, which may be available in the operating company's annual report. BP's annual report, for example, includes this data.[40]

The gross split formula agreed upon by the government and contractor will be present in the PSC agreement. While public disclosure of oil and gas contracts is not yet standard practice in Indonesia, the gross split formula of the project may be publicly disclosed. For example, when announcing the signing of a new gross split PSC for the Merakes Gas Field, the operator, ENI, disclosed that the company will receive 67 percent of the gross split for oil and 72 percent for gas, with the government receiving 33 percent for oil and 28 percent for gas from this project.[41]

As this new gross split regulation was implemented in 2017, no oil and gas project operated by a disclosing company is yet producing under this new model. The Merekas gas field is not expected to start producing gas until the second half of 2020. However, when companies do begin disclosing payments under this formula, being able to estimate the government share of production from a project, and compare this to the actual production entitlement payments made will enable oversight actors to estimate if the government share of production is meeting expectations. They will be able to hold the government accountable for how the resulting revenue is managed, allocated and used.

Box 2 presents a hypothetical oil project run under Indonesia's new gross split PSC model and demonstrates how accountability actors will be able to monitor the government share of production received under this model.

39 Under the gross split system, some costs may still be deductible against corporate income tax.

40 BP. "BP Annual Report and Form 20-F 2018" (BP, 2019). www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-and-form-20f-2018.pdf.

41 Indonesian Petroleum Association, "Dua Tahun Gross Split."

Box 2. Estimating government share of production from a hypothetical oil project under the gross split PSC model

Gross revenue = $50,000,000 (Average realized price ($50) X production (1,000,000 bbls) = estimated gross revenue ($50,000,000))

Gross split = 45 percent to the government and 55 percent to the contractor

(Average realized price ($50) X production (1,000,000 bbls) = estimated gross revenue ($50,000,000))

Divide by gross split percentages = 45 percent to the government ($22,500,000), 55 percent to the contractor ($27,500,000)

Identify production entitlement payment in contractor's PtG report = $23,000,000

Compare estimated government share of production with actual PtG disclosed by contractor = In this example, the payment by the contractor meets what we would expect from the estimated government share of production, with small discrepancies possible due to currency conversion or inaccuracy in the gross revenue estimation.

Conclusion: Under the new gross split PSC model, accountability actors will be able to monitor the government share of production from a project and verify if it meets expectations given the gross revenue and gross split of the project.

Potential avenues for inquiry: Going forward, will project operators in Indonesia or the government make the gross split formula of a project publicly available?

Conclusion and recommendations

In this report, we outlined some ways that government, civil society, media and official oversight actors can use newly-released oil and gas PtG data now and in the future to better understand the revenues generated within the Indonesian oil and gas sector to hold relevant actors accountable for its management and use.

PtG data enables accountability actors in Indonesia to verify the size and recipients of oil and gas project signature bonuses. It also allows for estimation and verification of the revenue that local and regional government entities should receive from an oil and gas project working in their region. Finally, it provides oversight actors with the information necessary to estimate and verify the government's share of production from a project under the new gross split PSC model.

Indonesia and the contractors operating there still need to make improvements to empower the country's citizens to conduct a more informed public debate on their country's management of its oil and gas endowment. These improvements include:

- **The Indonesian government should disclose oil and gas contracts**. Much of the prescribed analysis that we describe in this report focuses on using contract terms to compare actual to expected payments. Contracts should contain information on the production share gross split between the operator and the government, the value of the signature bonus and any production levels that trigger the requirement to pay a production bonus. While many of these terms can be estimated or gathered from other sources, such as EITI reports, disclosure of petroleum contracts would supply an important tool for accountability and increase public trust in both the government and companies. As an EITI implementing country, Indonesia will be required to publish all oil, gas and mining contracts and licenses that it grants, enters into or amends after 1 January 2021. The government should consider taking a proactive approach and disclose oil and gas contracts before this deadline.

- **The Indonesian government should clarify how it manages signature bonus revenue.** NRGI understands that the Directorate General of Oil and Gas requested Eni make its signature bonus payments for East Ganal PSC to a Directorate General bank account, rather than through the SIMPONI mechanism stated in ESDM regulation No. 30/2017. The state treasury can delegate the right to collect non-tax revenues to Directorate General's, however doing so restricts citizens ability to follow the money and hold government entities accountable for how this money is managed and used. The Directorate General of Oil and Gas should clarify why it has directed Eni to deposit the signature bonus payment of $1.5 million for the East Ganal PSC into a Directorate General of Oil and Gas bank account, rather than into the SIMPONI. The government should also clarify how this revenue is managed and transferred to the state treasury.

- **Reporting companies should disaggregate their oil and gas production entitlements, where applicable.** The formulas for determining each party's allocation under the new gross split PSC model and for determining local government shares vary for oil and gas. In order to effectively perform these analyses, accountability actors need disaggregated information to know which production entitlements come from oil and which come from gas. Disclosing companies that operate projects with significant oil and gas production should consider disaggregating their production entitlement disclosure by commodity to enable accountability actors to effectively monitor how the government manages these revenues. Companies reporting their payments to governments under EU legislation could reasonably interpret their reporting obligation in this way.

- **Companies not bound by PtG regulations should report their payments voluntarily.** ExxonMobil, ConocoPhillips and other companies not bound by a global PtG disclosure obligation in their home countries should consider voluntarily disclosing their PtG data in Indonesia. Doing so would provide citizens in the communities where they operate the same transparency as those with projects covered by PtG laws receive. Such a move would be in line with the EITI's Expectations for Supporting Companies which notes that all EITI supporting companies should "ensure comprehensive disclosure of taxes and payments made to all EITI implementing countries", as well as EITI's promotion of "systematic disclosure" where companies and governments are expected to publish payments routinely in their own systems.

- **The U.S. Securities and Exchange Commission should implement a strong Dodd-Frank 1504 rule.** Following the repeal of the Dodd-Frank 1504 regulation under the Congressional Review Act in 2017, the United States SEC is required to release a new implementing regulation for this law. In the years since Dodd-Frank 1504 was introduced, the payment transparency international norm that that law helped to instigate has resulted in five years of reporting that is providing data being used as an accountability tool in resource-rich countries across the globe. When the SEC introduces a new implementation regulation for Dodd-Frank 1504, this rule should reflect and build on the strong payment transparency laws in place in the EU, Canada and Norway. The SEC is expected to propose a new rule on 18 December 2019 which will be subject to a public comment period before being adopted likely in 2020.

We have made the dataset used for the analysis in this report available on ResourceData.org and the PtG data covered in this report are available on ResourceProjects.org.

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