

**FROM TRANSPARENCY IN
THE EXTRACTIVE INDUSTRIES
TO FIGHTING FOR
TAX JUSTICE**

**SUGGESTIONS FOR LOCAL USE
OF FINANCIAL DATA
PRODUCED BY COMPANIES AND STATES**

CONTENTS

TRANSPARENCY TO MAKE THE ECONOMY SERVE THE COMMON GOOD	3
1 TRANSPARENCY IN COMPANIES: FROM THE EXTRACTIVE INDUSTRIES TO MULTATIONALS – WAYS AND MEANS OF MAKING THE ECONOMY SERVE THE COMMON GOOD	4
1.1 TRANSPARENCY MECHANISMS IN THE EXTRACTIVE INDUSTRIES	6
1.2 BEYOND PAYMENTS IN THE EXTRACTIVE INDUSTRIES TO THE ONGOING CAMPAIGN FOR GREATER TAX JUSTICE	21
1.3 USING THE INFORMATION AVAILABLE AND CHALLENGES FOR THE FUTURE	26
2 TRANSPARENCY MECHANISMS AND TECHNIQUES FOR OVERSEEING STATE EXPENDITURE – AND HOW TO USE THEM	32
2.1 ACCESS TO BUDGETARY INFORMATION: FROM LEGAL THEORY TO THE REALITY ON THE GROUND FOR CIVIL SOCIETY ORGANISATIONS	32
2.2 OVERSEEING THE REDISTRIBUTION OF INCOME	37
2.3 CIVIC INITIATIVES FOR CHECKING BUDGETS AFTER THE EVENT	38
APPENDICES	39
GLOSSARY	52

TRANSPARENCY TO MAKE THE ECONOMY SERVE THE PUBLIC GOOD

For many years Secours Catholique-Caritas France and its partners have been campaigning to put the economy back at the service of ordinary people. Fighting for a fairer world, one that upholds the dignity of men and women, one in which they can enjoy their rights to the full, involves tackling the structural causes of poverty, injustice and inequality. This is what the fight for transparency in multinationals and for tax justice is all about. A root and branch reform of the current economic systems is absolutely essential if each citizen is to benefit equitably. The main players in the economy, and also governments, need to shoulder their responsibilities as contributors to and stakeholders in the lives of ordinary people.

In parallel with the work the developed countries have done on monitoring public development aid commitments, a major campaign is under way to harness the domestic resources within developing countries, with a particular focus on the use to which these natural resources are put. Making the economy

serve ordinary people requires, in the final analysis, that economic activities should benefit the inhabitants of the regions in which these activities are carried out and all the more so when these are based on exploiting the resources of those countries. The drive for greater transparency in the extractive industries is therefore a first step in ensuring that the revenues of these activities should be paid to states, and that these states should then give priority to allocating them to the basic needs of their populations. Civil society's

"PROFIT AND CAPITAL ARE NOT A GOOD GREATER THAN MANKIND, THEY ARE THERE TO SERVE THE COMMON GOOD."

POPE FRANCIS, CIUDAD JUAREZ, MEXICO,
FEBRUARY 2016

commitment to campaigning for global transparency in multinationals, and against corruption and tax avoidance, all form part of this drive.

"The economy, as the word itself suggests, should be the means of managing a shared household properly, with that household being the entire world. All economic activities of a certain scale, carried out on a small part of the planet, have a knock-on effect on the planet as a whole; this means that no government can act in disregard of a shared responsibility." Apostolic exhortation *Evangelii gaudium* by Pope Francis (206), 2013.

Much progress has been made in the fight for greater financial transparency in multinational corporations over the last few years. New arrangements for taxing transnational groups have been introduced internationally, nationally and regionally. They have made real progress toward financial transparency.

This transparency, far from being an end in itself, is first and foremost a means of ensuring that everyone gains access to their rights and to essential services. The data produced by these international mechanisms certainly helps, on the one hand, to monitor the utilisation of resources by the authorities and, on the other hand, to check the amounts paid by multinational corporations. This data can play a major role in the process of civic oversight of public policies, making it possible to monitor public revenues and check how governments use them. The real aim of transparency is therefore to move towards ensuring that multinational corporations make a fairer contribution to state revenues and towards a fairer redistribution of these revenues by governments.

For transparency to help developing countries, and to put the economy at the service of the common good, it is essential that the data produced by this transparency should be used by a majority of the movements and citizens engaged in political and in social and economic matters. This publication, intended for civil society organisations, aims to demystify and explain the various transparency standards and mechanisms, so that they can use them in furthering the campaigns for promoting justice and combating inequality.

1 TRANSPARENCY IN COMPANIES: FROM THE EXTRACTIVE INDUSTRIES TO MULTINATIONALS – WAYS AND MEANS OF MAKING THE ECONOMY SERVE THE COMMON GOOD

The fight for corporate financial transparency started, historically, with the extractive sector, especially after the British organisation Global Witness¹ published several reports on the role of oil companies in the Angolan civil war. Initiated as part of the Publish What You Pay campaign (see the box on page 5), the actions taken by civil society first tackled the issue of transparency from the point of view of combating corruption in the extractive sector, to put an end to the "resource curse" that affected, and still affects, many developing countries. This phenomenon, first formulated by Richard Auty², states that an abundance of resources such as oil, gas and mineral resources often has a harmful effect on many producer countries. Civil society in these countries in particular found that instead of contributing to combating poverty and improving economic growth, the revenue from these industries has sometimes led to greater corruption in the industry and has often underpinned conflicts, acting as a considerable brake on the countries' development.

The fight for transparency in the extractive industries involves firstly the adoption of transparency mechanisms for payments made by companies to the governments of the countries in which they do business, particularly in the extractive sector. The

main transparency arrangements for companies in the extractive sector are explained in detail in the first section of the first chapter. These are tools that can help local civil society organisations gain a better understanding of how their governments and local authorities handle the taxation of large companies operating in their countries.

In the wake of these victories won on the battlefield of transparency in the extractive industries,

UNDER STRONG PRESSURE FROM CIVIL SOCIETY MOVEMENTS, SEVERAL INTERNATIONAL INSTITUTIONS, SUCH AS THE OECD AND THE EUROPEAN UNION, HAVE DEvised MEASURES TO HELP PUT AN END TO THE TAX AVOIDANCE PRACTICES EMPLOYED BY LARGE COMPANIES.

through setting up international, national and regional mechanisms, the fight now moves on to tax justice and combating tax avoidance. This is because the transparency now in place in the extractive industries makes it possible to measure the amounts paid by companies, but

does not yet make it possible to check whether these payments are commensurate with what should have been paid given the activities carried out and the profits made. Civil society organisations are therefore calling for these payment disclosure mechanisms to be extended to other crucial data, particularly to all companies and to all the countries in which they operate. Access to these various types of information would lead to better oversight of public revenues deriving from the operations of multinationals, and would also make it possible to ensure that the revenues were commensurate with the real activities of these companies in the countries. It would also yield crucial information on tax practices, thereby helping to further the cause of greater tax justice in developing countries.

Under strong pressure from civil society move-

1 In particular: Global Witness (1999). *A Crude Awakening*, [on line], available at <https://www.globalwitness.org/fr/archive/crude-awakening/>
2 RM.Auty (1990). *Resource-based industrialization: sowing the oil in eight developing countries*, Oxford Clarendon press

ments, several international institutions, such as the OECD and the European Union, have devised measures to help put an end to the tax avoidance practices employed by large companies. Unfortunately, with a very few exceptions, these measures still require only a very small amount of information to be made public. These measures are nevertheless described in this document (particularly in the appendices on page 39), because this data may become public in future years, and because these issues are crucial to harnessing the domestic resources of developing countries. To understand these measures better, and to be able to demand answers from the tax authorities on these arrangements, this document also gives an account of the main forms that these corporate tax avoidance practices may take. On the face of it, they would seem to account for 80% of the almost US\$1,100 billion of illicit flows of capital that are leaving developing countries³.

To ensure that funds from company activities can be properly harnessed for national and local purposes, the third section of chapter 1 gives some ideas on what people can do and identifies questions they can ask to enable them to judge the appropriateness and effectiveness of the various tax measures, and on how to use the data published by companies and governments to best effect.

Note

The data released under the extractive industries' transparency mechanisms varies from one country to another, as does the way in which it is disseminated. Some mechanisms are intended to make data public while others are intended only to have it transmitted to the tax authorities.

This document focuses on the public mechanisms. Some non-public mechanisms are nevertheless described in the appendices to bring them to the attention of civil society organisations. (see in particular appendix 5 on page 47)

The terms and mechanisms marked with an* below are defined or explained in the appendices.

3 Global Financial Integrity (2015). See information diagram opposite.



Illicit flows of capital* leaving developing countries in 2013

= 11 X

THE AMOUNT OF PUBLIC AID

ILLICIT FLOWS
1,100 billion US dollars

+ 6,5 %
PER YEAR

WHICH IS TWICE THE RATE OF WORLD GROWTH



PUBLIC AID
100 billion US dollars

In 2013, illicit flows of capital leaving developing countries came to almost 1,100 billion US dollars*, amounting to over 11 times the figure for public aid received by these countries in the same year**. Over the last 10 years, these illicit flows leaving developing countries have increased by 6.5% per year, which is twice the rate of worldwide growth.

* Global Financial Integrity (2015). Illicit Financial Flows from Developing Countries: 2004-2013. [on line], available at http://www.gfintegrity.org/wp-content/uploads/2015/12/IFF-Update_2015-Final-1.pdf

**OECD DAC figures 2015.

<http://stats.oecd.org/viewhtml.aspx?datasetcode=TABLE2A&lang=en>

Publish 
what you pay:

Started up in 2002 in London by six international organisations based in France¹, Publish What You Pay (PWYP) or PCQVP in its French acronym, is a global network of civil society organisations with the "aim of making the extractive industries more transparent and responsible, so as to ensure that the revenues from the oil, gas and mining industries contribute to improving the living conditions of the populations of resource-rich countries, and that extraction is carried out responsibly for the benefit of the country and its people²".

In several countries, members of the worldwide network have joined forces to work together more effectively by creating national coalitions. PCQVP France, which was founded in 2003, of which Secours Catholique-Caritas France is a founder member, was the first national coalition to be formed. It works mainly on campaigns at the European Union level, to encourage greater transparency in the administration of revenues from the extractive industries* and it also works in close cooperation with other national coalitions, particularly African coalitions, on transparency matters. PWYP currently has 800 members worldwide and over 35 national coalitions.

1 The founder organisations of PWYP are: CAFOD, Global Witness, Open Society Foundations, Oxfam, Save the Children and Transparency International.

2 Publishwhatyoupay.org (2016). Publish What You Pay "About PWYP". Available on: <http://www.publishwhatyoupay.org/about/> [Viewed on 25 March 2016].

1.1 TRANSPARENCY MECHANISMS IN THE EXTRACTIVE INDUSTRIES

The campaign for the transparency in the extractive industries' worldwide is based on a global initiative for combating corruption and for allocating countries' wealth to match the needs of their people. Following pressure from civil society, particularly in developing countries rich in natural resources, a series of laws has been introduced.

The national, regional and international transparency mechanisms for the extractive industries' described below form part of a global campaign for mandatory disclosure of financial transparency information in the extractive industries, so that countries' resources can be put to fairer use. This movement, with civil society and particularly the Publish What You Pay coalition as its driving force, has recently enjoyed a series of successes with the introduction of laws in the US, Canada and Norway, as well as European Directives. It has also led to an international standard on transparency in the extractive industries' being put in place, and has kick started a wave of reforms in the mining codes of many countries. These various mechanisms and reforms promoting greater transparency are explained and demystified in the pages that follow, to make them easier to use by members of civil society engaged in campaigning to have the extractive industries' make a fairer contribution to society.

➔ MANDATORY PUBLICATION OF PAYMENTS: LAWS IN THE HOME COUNTRIES OF MAJOR EXTRACTIVE CORPORATIONS

This section contains a description of four laws on disclosure by the extractive industries of payments made to governments of the countries in which they carry out extractive activities: section 1504 of the Dodd-Frank Act in the USA, European

Union Directives 2013/34/EU and 2013/50/EU, the Canadian Extractive Sector Transparency Measures Act (ESTMA), and the Norwegian law on country-by-country reporting.



US legislation

In July 2010, the US voted in a series of measures to improve transparency and accountability in the financial markets. They are gathered together in the "Wall Street Reform and Consumer Protection Act". Section 1504 of this law deals with financial transparency and good governance in the extractive industries*. It provides that oil, gas and mining companies registered with the Securities and Exchange Commission (SEC) (that is to say listed on US stock exchanges) engaging in extractive industry activities, should publicly disclose the amounts paid to the US federal government and to all governments in the countries in which they operate.

There have been a number of hitches in the implementation of the section on financial transparency and good governance in the extractive industries* (section 1504) since the act was first signed in July 2010. For the act to become effective, the SEC needed to lay down a set of regulations setting out the level of disclosure required of companies, that is to say the details of how the disclosure obligation is to work (for instance the exceptions, the definition of a project and the materiality threshold). The oil industry companies, through the American Petroleum Institute⁴ (API), applied to the courts for the first set of regulations put forward by the SEC to be set aside. The SEC therefore had to put forward new draft regulations. To put an end to the delays that had built up since signature and to see to it that the law finally came into effect, Oxfam America⁵, a member of the PWYP coalition, then applied to the courts in September 2014 to require the SEC to lay down the regulations needed for the law to come into force⁶. The final regulations were issued by the SEC on 27 June 2016⁷, and the first disclosures by companies are expected at

4 North, J. (2015). "Big Oil and the SEC Delay Transparency Law for 4 Years", *Huffington Post*. Available at: http://www.huffingtonpost.com/james-north/big-oil-and-the-sec-delay_b_8592876.html [Viewed on 25/03/16].

5 Publishwhatyoupay.org (2016). "Publish What You Pay", News: The USA's oil transparency rules: Worth the wait?, Available at <http://www.publishwhatyoupay.org/pwyp-news/the-usas-oil-transparency-rules-worth-the-wait/> [Viewed on 25/03/16].

6 On 2 September 2015, the Massachusetts district court ordered the SEC to produce a new set of draft regulations promptly.

7 Securities and Exchange Commission (SEC) (2016). *Disclosure Of Payments By Resource Extraction Issuers*. Available at <https://www.sec.gov/news/pressrelease/2016-132.html>



Key information:

Upcoming key dates: First published reports by listed companies in the USA expected at the end of 2018 – start of 2019

Where to track the progress of these mechanisms (helpful websites):

Oxfam America:

<https://policy-practice.oxfamamerica.org/workresource-rights>

PWYP Canada:

<https://www.sec.gov/spotlight/dodd-frank-section.shtml#1504>

PWYP Norway: <http://www.publishwhatyoupay.no/en>

Natural Resources Governance Institute:

<http://www.resourcegovernance.org/>

PWYP US: <http://www.extractaffect.org>

Fossil energies and combating climate change



The fight for transparency in the extractive industries* is a longstanding campaign fought by international civil society, a battle that is crucial for the development of underdeveloped countries by securing a fair reward to these countries and their inhabitants for the use of their resources. Today, the extractive industries* issue should also be considered in conjunction with the fight against climate change and the worldwide transition to cleaner energy that goes hand-in-hand with it.

The commitment made by the international community under the Paris Agreement in December 2015, to keep the rise in temperatures "well below 2°C above pre-industrial levels" and to strive to keep the rise in temperature to 1.5°C¹ entails a massive change in the ways we consume and produce. It particularly involves decarbonising the economy and leaving the era of fossil energies behind us². Many countries, developed and developing, have started the transition towards becoming low carbon societies, setting greenhouse gas emission reduction targets and bringing in climate action plans³. Exiting the era of fossil fuels should be done in a fair way, taking countries' levels of development into account, their historical responsibility for climate change, and their ability to handle it. It must also go hand-in-hand with technological and financial measures so that the richest industrialised countries give support for a low carbon means of development in less advanced countries, which are also less responsible for climate

change. This transition to renewable energies and energy efficiency also has its part to play in attaining the new Sustainable Development Goals⁴.

This worldwide agenda for promoting sustainable development and combating poverty does indeed take on board the urgent need to combat climate change. For the international community, it sets the goal of "ensuring access to affordable, reliable, sustainable and modern energy for all" (goal 7). In this context, countries have undertaken, by 2030, to "ensure universal access to affordable, reliable and modern energy services" (goal 7.1), to "increase substantially the share of renewable energy in the global energy mix" (goal 7.2), and also to "double the global rate of improvement in energy efficiency" (goal 7.3). To achieve these international goals for limiting the rise in temperature and averting the worst impacts of climate change, which first and foremost affect the poorest populations, this worldwide campaign will have to be intensified – with consequences for worldwide demand for fossil energies and for the extractive industries. This therefore involves a gradual rethink of the roles of the various sectors contributing to a country's economy and could lead to plans to promote the renewable resources sectors. These could extend access to energy to a greater number in a sustainable way, as they often have great potential in developing countries. For example, the International Renewable Energy Agency (IRENA) has demonstrated that, by 2030, renewable energies could supply 22% of end-user energy consumption on the continent of Africa (against 5% in 2013)⁵. On the sidelines of COP21, the Prime Minister of India launched the International Solar Alliance, bringing many countries together to promote the expansion of solar energy.

1 United Nations Framework on Climate Change. (2016). "The Paris Agreement". Available on: http://unfccc.int/paris_agreement/items/9485.php

2 IPCC, (2014) Summary for Policymakers. In: Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Edenhofer, O., R. Pichs-Madruga, Y. Sokona, E. Farahani, S. Kadner, K. Seyboth, A. Adler, I. Baum, S. Brunner, P. Eickemeier, B. Kriemann, J. Savolainen, S. Schlömer, C. von Stechow, T. Zwickel and J.C. Minx (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA.

3 United Nations Framework on Climate Change.(2016). "Intended Nationally Determined Contributions (INDCs)". Available on:http://unfccc.int/focus/indc_portal/items/8766.php

4 United Nations (2015) " Sustainable development knowledge platform". Available on: <https://sustainabledevelopment.un.org/?menu=1300>

5 IRENA (2015), Africa 2030: Roadmap for a Renewable Energy Future. IRENA, Abu Dhabi. Available on: http://www.irena.org/DocumentDownloads/Publications/IRENA_Africa_2030_REmap_2015_low-res.pdf

the end of 2018 or the start of 2019. Civil society organisations have welcomed the publication of these robust new regulations, which are in line with other European, Canadian and Norwegian laws on this subject and which require public disclosure of payments by company and by project. Although the draft regulations issued by the SEC in December 2015 had no provisions for any possible exceptions, the final regulations contain some exceptions, particularly for companies involved in exploration activities which can defer filing their reports for one year. The SEC also reserves the

right to allow exceptions on a case-by-case basis⁸.



European Directives

In 26 June 2013, the European Union issued new mandatory disclosure regulations requiring oil, mining, gas and logging companies to report the payments they make – by project and by country – to the governments of the countries in which they carry out these activities. These regulations can be found in chapter 10 of the European Directive on transparency (2013/50/EU) and in article 6 of the accounting directive (2013/34/EU).



Canadian law

In December 2014, Canada introduced the Extractive Sector Transparency Measures Act (ESTMA). This requires oil, gas and mining companies to report the payments that they make to governments in the countries in which they carry out these activities. The law came into force on 1st June 2015.



Norwegian law

In December 2013, Norway introduced a law making country-by-country reporting mandatory for Norwegian extractive companies. This law came into force on 1st January 2014. The Publish What You Pay coalition Norway is currently working on tightening on this law with greater country-by-country reporting obligations, (and by extending it, for example, to all countries in which companies operate and not only in the countries in which they carry out these activities).

Parent company and subsidiaries: to which should transparency be applied?

The European Directives and the draft SEC rules provide that companies must file accounts and disclose data on their own activities as well as on the activities of their subsidiaries¹ in the extractive sector.

For the Dodd-Frank Act², the SEC may decide to extend a company's disclosure obligations not just to its subsidiaries, but also to other companies over which it exercises indirect control. Canadian law draws no distinction between direct and indirect control. This means that a company has to report the payments of all companies that it controls indirectly if they fall within the scope of the law.

A parent company is defined in Directive 2013/34/EU³ as "a company that controls one or more subsidiary companies". A subsidiary company is therefore defined as "a company controlled by a parent company, including any subsidiary company of the parent company that heads up the group".

The parent-subsidiary relationship is determined based on the concept of "control". Each national legal system has its own definition of this criterion. As a general rule, direct control has to be distinguished from indirect control⁴.

- We talk of company A having direct control over company B when company A owns over 50% of company B's share capital. A parent company exercises direct control over its subsidiary.
- We talk of indirect control if the proportion of company B's share capital held by company A is less than or strictly equal to 50%. If it stands at between 10% and 50% of share capital, we call it an associate company (below that it is simply an investment).

1 Directive 2013/34/EU, article 42, *op. cit.*

2 The SEC refers back to generally accepted accounting principles and particularly to the European approach in defining control and subsidiaries: Securities and Exchange Commission (2015). Proposed Rules on Disclosure of Payments by Resource Extraction Issuers, II.D. Available on: <https://www.sec.gov/rules/proposed/2015/34-76620.pdf>

3 Directive 2013/34/EU, article 2.9, *op. cit.*

4 Insee.fr (no date, in French). Insee French national statistics office - Definitions, methods and capacity - Associates. Available on: <https://www.insee.fr/fr/metadonnees/definition/c1314> [Viewed on 06/02/2016].



INDUSTRIES AND COMPANIES AFFECTED

These laws cover the extractive sector (as more or less broadly defined in the various laws and regulations) and affect a large number of companies worldwide, particularly many multinational companies operating in developing countries.

8 PWYP United States campaigned to prevent exceptions being included in the draft. During the proceedings against the SEC, the American Petroleum Institute emphasised that some countries, such as China, Cameroon and Angola, prohibited the publication of certain information (information that the Dodd-Frank Act requires to be published). In the API's view, the fact that the SEC allowed no possible exceptions would harm companies operating in these countries. These considerations were rejected by Oxfam America (see the case filed by this organisation against the SEC: <https://www.earthrights.org/sites/default/files/brief-of-intervenor-oxfam-jan16-2013.pdf>) and by many other civil society organisations, particularly Cameroon organisations, which pointed out that Cameroon implemented the EITI and therefore already made public payments by the extractive industries to the state. Introducing exceptions to this payments disclosure obligation brought with it the risk that companies would seek to avoid this disclosure obligation by trying to negotiate on a case-by-case basis with the SEC on the grounds, for example, of contract confidentiality clauses.

✓ Industries

Section 1504 of the Dodd-Frank Act, as well as the Canadian act cover all the extractive industries* (from exploration through to export, taking in extraction).

The EU Directive and the Norwegian law also cover the primary forests sector but address only exploration and prospection along with the discovery, exploitation and extraction of oil, gas, mineral ores and timber from primary forests.

✓ Companies affected**Section 1504 of the Dodd-Frank Act**

Section 1504 applies to all US and non-US oil and mining companies registered with the Securities and Exchange Commission. The Dodd-Frank Act is of broad application to all companies in the industry, US and non-US. According to PWYP USA, 68 of the world's 100 biggest oil companies⁹ are affected by this act. This number rises to 84 companies if the European Directives and the Canadian and Norwegian laws are added onto the Dodd-Frank Act¹⁰.

A list of foreign companies registered with the SEC is available on its website:
<https://www.sec.gov/divisions/corpfin/internatl/companies.shtml>

For US companies, the SEC's EDGAR database contains the companies' reports: <https://www.sec.gov/edgar/searchedgar/companysearch.html>

**European Directives**

The Directives apply to [European] "large companies" and public interest entities operating in the extractive industries* and in primary forest logging operations¹¹. European small and medium-sized companies are exempt from publication.

In European law, large companies are defined as companies fulfilling at least two out of three of the following criteria¹²:

- they employ more than 250 people,
- their annual turnover exceeds €40 million,
- or their annual balance sheet total is greater than €20 million.



For the scope of the Norwegian and Canadian laws, refer to the summary table of mechanisms in appendix 1 on page 40.

**INFORMATION MADE AVAILABLE BY THE TRANSPARENCY MECHANISMS**

The payments that need to be disclosed under these laws are decided on the basis of materiality thresholds*. These materiality thresholds* lay down the figure above which payments need to be reported. The level at which this threshold is set is crucial. Not all amounts paid have to be reported, of course, because important information might be lost in the profusion of payments. On the other hand, the threshold must not be set too high, so as not to exempt material payments from being reported, if we want this data to be useful to local communities living close to the extraction sites.

Materiality thresholds for each mechanism:

- **US legislation:** "All payments (single payments or a series of connected payments) equal to or greater than US\$100,000" in each financial year.
- **European Directives:** "Any payment, whether an individual payment or a series of linked payments, greater than €100,000 in each financial year.
- **Canadian law:** Any payment (single or series of connected payments) equal to or greater than CAD 100,000 (about US\$77,300) in each financial year.
- **Norwegian law:** All payments (single or a series of connected payments) equal to or greater than 800,000 Norwegian kroner (US\$95,536) in each financial year.

**DATA PUBLISHING AND DISSEMINATION REQUIREMENTS**

Data publication requirements are one of the key issues of these laws, mainly because they decide the format in which the data has to be published.

9 PWYP USA (2015). *Transparency on the Move: Payment Disclosure by the World's Largest Oil, Gas & Mining Companies*. Available on: http://www.publishwhatyoupay.org/wp-content/uploads/2015/12/Company-Coverage-Fact-Sheet_Final_0-1.pdf [Viewed on 6/02/2016].

10 *Ibid.*

11 Directive 2013/34/EU, chapter 10, article 42.1, *op. cit.*

12 Directive 2013/34/EU, article 3.7, *op. cit.*

Data to be included in the disclosure reports (applicable to all mechanisms):

- ✔ Payment type and amount, project by project
- ✔ Payment type and total paid to each government (all projects without distinction)
- ✔ Total payments made for each category, such as exploration or production.
- ✔ *Business segment* that made the payment
- ✔ The government and the country receiving the payment
- ✔ The various projects
- ✔ The specific resources exploited
- ✔ The geographical areas in which the projects are located

✔ Publication of data: when does it need to be published?

- *US legislation:* For each fiscal year, within 150 days of the end of the fiscal year*.
- *European Directives:* Each state lays down its own publication requirements. The United Kingdom, for example, which has already transposed the Directives into its national legal system, requires the data to be published within 11 months of the end of the fiscal year*.
- *Canadian law:* For each fiscal year, within 150 days of the end of the fiscal year*.
- *Norwegian law:* For each fiscal year, within 6 months of the end of the fiscal year*.

The first reports filed under the European Directives were published in the first half of 2016, covering the 2015 accounting year. The first figures under the Dodd-Frank Act will be published at the end of 2018 or the beginning of 2019, covering accounting years ending 30 September 2018. The first Norwegian reports were published in March 2015. The first Canadian reports are expected to be disclosed from June 2017, and will cover the 2016 fiscal year.

The limits of these mechanisms, information not available:

These transparency laws provide good tools for tracing payments. They do not, however, give certain details such as the volume of production, prices, operating revenues or costs. This contextual data is difficult to find because it is usually contained in contracts (the pricing method) or companies annual operating reports (costs, operating income, volume of production, etc.), but it is nevertheless essential to an understanding of the extractive industry in each country. Payments are very important, but they are rather difficult to analyse without this contextual information.

✔ Accessibility of the data

The question of accessibility brings us back, on the one hand, to whether the data is made public or not, and also to the format in which it is published. For the data to be genuinely usable by the greatest number of people, it has to be published in suitable formats. For further information on these *Open Data formats*, see the box on page 16.



US legislation

The SEC will make a set of data available to the public on its website when the law actually comes into force.

The SEC requires reports to be made using an electronic form in standard XBRL format¹³.



European Directives

The data to be published under the Directive is to be included in the companies' annual reports. These reports are public and available on the websites of the companies concerned.

The Directive does not lay down any standard format. The choice of format is therefore left to the discretion of each member state. Several civil society organisations in Europe are currently running a campaign to have an *open data* report publication format stipulated when the Directives are transposed into their countries legal systems. France has not passed any law on this point, but in the UK civil society organisations have succeeded in having a central register set up, with data published in PDF and CSV format (the latter format being reusable).



Canadian law

Canadian law requires publication in PDF and/or XLS format¹⁴. The PWYP coalition is campaigning for XLS to be the mandatory format, which would make all the difference from the point of view of making the information accessible (for further details see the Open Data insert on p.16).



Norwegian law

Norwegian law does not require reports to be in any standard format. It leaves this to the government agency responsible for company reports (the *Regnskapsregisteret*) which may lay down a particular format for these reports.

¹³ For further information on the XBRL format: <https://www.xbrl.org/>

¹⁴ Government of Canada (2016). "ESTMA - Technical requirements for reports". Available on: http://www.publishwhatyoupay.org/wp-content/uploads/2015/12/Company-Coverage-Fact-Sheet_Final_0-1.pdf

➔ THE EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE

EITI The Extractive Industries Transparency Initiative (EITI) was launched in 2002 after a civil society campaign to promote financial transparency in the extractive industries* – in particular through a campaign by members of the Publish What You Pay coalition.

The EITI is a worldwide standard deriving from a voluntary initiative aimed at promoting prudent management of oil, gas and mining resources by producer countries¹⁵. Since the first EITI plenary conference in London in 2003, all stakeholders in this initiative, which are the representatives of governments of 50 states, of members of civil society organisations and of multinational corporations operating in the extractive industries¹⁶ have met every three years in plenary session¹⁷. The most recent conference was held in Lima in February 2016¹⁸.

✓ **Candidate countries, compliant countries: the various EITI member statuses, from sign-up through to validation**

A state obtains the status of "compliant country" at the end of a multi-stage process: sign-up, candidature, validation and compliance.

To achieve the status of EITI candidate country, a government must take the four measures set out in requirement 1 of the EITI rules. The country must:

- make a public declaration of its intention to sign up to the initiative,
- appoint a senior official to be responsible for implementing the EITI,
- undertake to work with civil society and corporations and to set up a multi-stakeholder group,
- this group must draw up a work plan complying with the time limits laid down by the EITI Board for validating the candidature.

These four measures are called "sign-up requirements".

Once this sign-up stage has been validated, the country can submit a candidature application, which must be endorsed by the country's multi-stakeholder group. It is the responsibility of

THE EITI STANDARD contains various principles and requirements with which countries that have agreed to implement it must comply. It was first adopted in 2013 (referred to as the 2013 standard), and was then revised in 2016 (only the 2016 standard will be described in this document). In particular, it contains EITI's seven requirements and the civil society participation memorandum:

- **Requirement 1:** Effective monitoring of the initiative by the multi-stakeholder group made up of representatives of the government, of civil society and of extractive industries companies.
- **Requirement 2:** Disclosure in reports of information on the extractive industries legal and institutional framework.
- **Requirement 3:** Disclosure of production and export data.
- **Requirement 4:** Comprehensive disclosure of revenues received from extractive industries*.
- **Requirement 5:** Disclosure of information on the allocation of revenues from the extractive industries*.
- **Requirement 6:** Disclosure of information on social expenditure* and the impact of extractive industries on the economy.
- **Requirement 7:** Evaluation of the outcomes and impact of the EITI.

the EITI Board to consider the application by the state, which it must do within eight months of the application being filed.

A candidate country will therefore be a country that implements the EITI standard and fulfills the above four sign-up requirements referred to above, but that does not yet fulfill all the requirements set out in the EITI standard (requirements 1 to 7).



Key information:

Upcoming key dates: One of the key aspects of the EITI standard to be watched over the next few years is compliance by stakeholders with the new beneficial ownership* information requirements which become mandatory from 1st January 2020.

Where to follow the progress of this mechanism (helpful websites):

▶ The EITI website: <https://eiti.org/>

▶ Together with the national EITI websites.

The EITI section of the PWYP website: <http://www.publishwhatyoupay.org/category/eiti/>

NRGI: <http://www.resourcegovernment.com/>

¹⁵ EITI (no date). *What is the EITI?* Available on: <https://eiti.org/> [Viewed on 06/01/2016].

¹⁶ EITI (no date). *Stakeholders*. Available on: <https://eiti.org/supporters/companies> [Viewed on 28/03/16].

¹⁷ EITI (no date, in French). *The EITI member world conference and general*. Available on: <https://eiti.org/conference> [Viewed on 04/01/2016].

¹⁸ *Ibid.*

The initiative has now been implemented in 51¹ countries (April 2016):

29 COMPLIANT COUNTRIES	20 CANDIDATE COUNTRIES	2 SUSPENDED COUNTRIES	PARTNER COUNTRIES SUPPORTING THE EITI
Albania, Burkina Faso, Cameroon, Ivory Coast, Ghana, Guatemala, Republic of Guinea, Indonesia, Iraq, Kazakhstan, Liberia, Mali, Mauritania, Mongolia, Mozambique, Nigeria, Niger, Norway, Peru, Democratic Republic of Congo, Republic of the Congo, Kirghizistan, Sierra Leone, Tanzania, Chad, East Timor, Togo, Trinidad and Tobago and Zambia	Afghanistan, Germany, Azerbaijan, Colombia, the United States of America, Ethiopia, Honduras, Solomon Islands, Madagascar, Malawi, Myanmar, Papua-New-Guinea, Philippines, Dominican Republic, United Kingdom, São Tomé and Príncipe, Senegal, Seychelles, Tadjikistan, Ukraine	The Central African Republic and the Yemen (countries suspended because of political instability)	Australia, Belgium, Canada, Denmark, Spain, Finland, France, Italy, Japan, Norway, the Netherlands, Qatar, Sweden, Switzerland

1 Since the approval of Germany and the Dominican Republic in February 2016.

For further information on the sign-up process, see information brief: <https://eiti.org/document/guidance-note-on-becoming-eiti-candidate>

Validation and compliance with the EITI requirements:

Once it has achieved the status of candidate country, the state that is to implement EITI has eighteen months to publish its first EITI report. Furthermore, is required to move on to the "validation" stage, that is to say to comply with all the requirements of the EITI standard within two and a half years of attaining the status of candidate. Once the validation process has been completed, if the country meets all the requirements of the standard, it is declared a compliant country. To keep its status as a compliant country, the country must maintain its commitment to the EITI principles and requirements, and in particular continue to produce EITI reports regularly.

A country is EITI compliant when it fulfills all the requirements of the EITI standard.

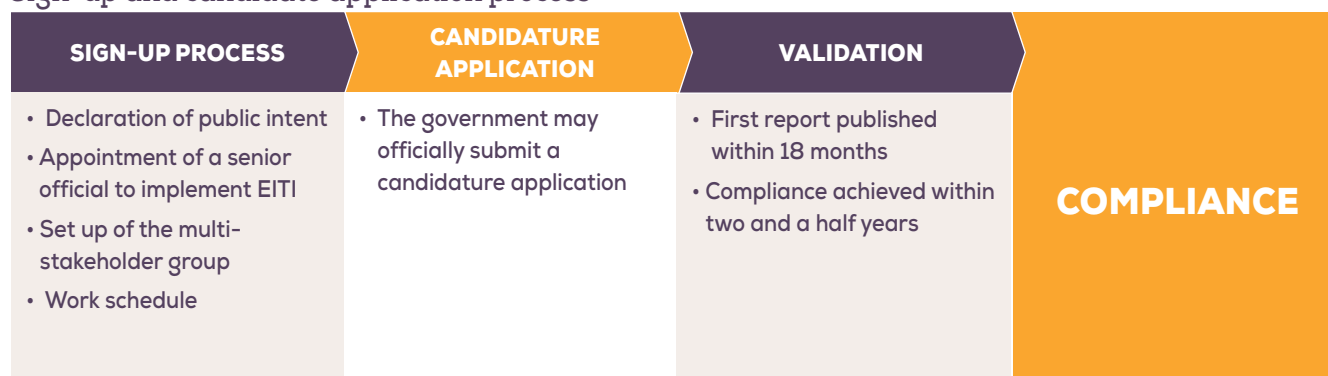
Suspension

A country implementing the EITI standard may be suspended if it fails to comply with one or more principles or requirements, particularly as a result of lengthy delays in producing EITI reports. In such cases, the country is suspended until such time as the Board lifts the suspension after the report has been submitted. If suspension lasts more than one year, the Board should, in theory, delist the country.

Delisting

Countries implementing the initiative may also be delisted for not complying with EITI requirements. A status review process may be initiated on request by the national committee or on the initiative of the Board. If the Board considers that having been suspended, the state has made no progress towards compliance with the EITI standard, it may decide to delist it permanently. Up to now, no country that has achieved compliance has subsequently been delisted from the initiative. However, for example, in 2013 Gabon was censured for the opacity of its extractive industries and barred from the candidature process.

Sign-up and candidate application process



✓ **EITI structure**

EITI is the outcome of collaboration between governments, civil society and companies operating in the countries implementing this initiative.

This multi-stakeholder structure takes its inspiration particularly from the model of the International Labour Organisation (based on equal participation by states, employers' organisations and trade unions) and strives to divide powers fairly between the three groups. This multi-stakeholder structure is reproduced at the various levels of management: these three stakeholders are present both at the international level during plenary conferences – during which new EITI standards are adopted and members of the international Board are elected – and also within each national EITI committee. These national committees are made up of a national secretariat and the multi-stakeholder group. These two bodies are of the cornerstone for implementing the initiative at the country level. These national committees have the job, amongst other things, of producing and endorsing the EITI reports, and also ensuring compliance with the EITI standard at country level.

National committee

The national committee is made up of the national secretariat and the multi-stakeholder group. The national secretariat handles the EITI application process and coordinates work at national level. Within the multi-stakeholder group, all stakeholders must be represented, particularly, but not exclusively, the government, civil society and the private sector. Each stakeholder appoints its own representatives. Governments often choose members of the appropriate ministries, such as the ministries of mines, of energy or of the environment, or members of parliament. Private sector representatives usually come from the governance bodies of the companies involved. Civil society representatives may be members

of non-governmental organisations (NGOs) engaged in the matter, journalists or trade unions members.

International governance

Other than for plenary meetings, which take place every three years, the initiative's international structure is co-ordinated by the Board. It sets up Board committees to be responsible for specific matters, of which there are currently eight.

The Board has 20 "full member" seats, plus the Chair. Each constituency (state, civil society and corporate) appoints its own representatives: there are nine government representatives (six for the implementing countries and three for the outreach countries), five extractive industry representatives, five civil society representatives and one investor representative.

Civil society applicants must, amongst other things, have a knowledge and experience of the key components of the extractive industries* value chain and an active commitment to EITI or a track record demonstrating commitment to civil society and public life.

The full list of criteria and the selection process for civil society representatives to the EITI international Board (2016-2019 are available at: https://eiti.org/sites/default/files/civil_society_procedures_for_selecting_board_members_0.pdf

All EITI members without exception are required to adhere to the EITI association code of conduct, which sets out the behaviour to be followed, particularly in terms of integrity, ethics and conflict of interests. The code of conduct is available at: https://eiti.org/sites/default/files/documents/Code_of_Conduct_FINAL_EN.pdf

The EITI international secretariat, which is based in Oslo, is responsible for managing its day-to-day running and is accountable to the Board.

Although they form two distinct entities, the international Board and the national committees work together in close cooperation. For example the Board can, on request by the national committee, start the process of reviewing the country's compliance status which can lead to suspension or even to the state in question being delisted.

Functions

of National Committee

- ➔ Supervising the EITI reporting process and taking part in validation
- ➔ Ensuring compliance with the EITI standard locally
- ➔ Producing and endorsing EITI reports
- ➔ Undertaking local and national public relations and outreach campaigns on this initiative

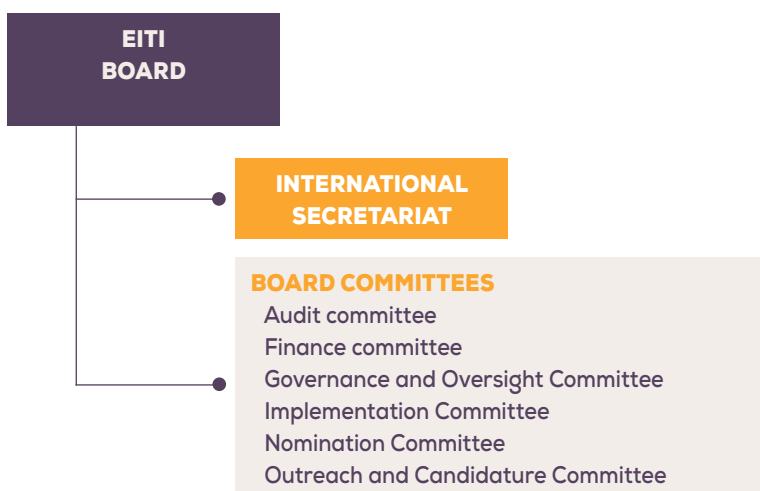
Functions

of the Board

- ➔ Production and revision of the EITI standard
- ➔ Supervision of the validation process
- ➔ Suspension and delisting

International secretariat

- ➔ Implementing the policy decisions of the EITI Board



INDUSTRIES AND COMPANIES AFFECTED

✓ Industries

The EITI is aimed at the oil, mining and gas industries. However, in several countries, the multi-stakeholder groups have decided to include other industries in *their reports*. In Mauritania for example, the EITI now includes the fishing industry.

✓ Companies

The initiative is aimed at all companies operating in the extractive industries, including multinational, national and state undertakings.



INFORMATION AVAILABLE

In practice, governments publish the amounts that they receive from the extractive companies operating in their countries, and these companies publish what they pay. An independent administrator is then appointed to reconcile these sets of data.

EITI reports should contain:

- ▶ A comprehensive list of all government revenues from extractive industries* together with all material payments made to the government by the oil, gas and mining industries (requirement 4), which are:

- income taxes,
- host government production share (particularly profits from oil),
- state-controlled companies' production share,
- royalties*,
- dividends*,
- bonuses, for example signature, discovery and production bonuses,
- license duties and fees, leasing expenses, entry fees and other consideration for licenses and/or concessions, and all other significant payments or benefits received by the state or its parts.

▶ Contextual information on:

- The legal and institutional framework applicable to the extractive industries* (requirement 2):

- Licenses: a description of the processes for awarding or transferring licenses, the technical and financial criteria used, and the requirement to keep a public register of licenses.
- Contracts: countries implementing the EITI are encouraged publicly to disclose all contracts connected with the exploitation of gas, oil or minerals.
- Beneficial ownership*: for many years civil society has been calling for the disclosure of information on the beneficial ownership* of companies, that is to say the name of the natural persons who control the company and or receive income from it. The 2016 standard took this demand on board and requires disclosure, from 1st January 2020, of several details relating to the beneficial ownership* of companies.

- Prospection, production and export (requirement 3):

- production: Total production volumes, value of production by commodity (and possibly by state/region).
- export: Total volume of exports, value of exports by commodity (and/or by state/region).
- prospecting: Disclosure of all major prospecting activity.

- How revenues are allocated in national or regional budgets (requirement 5).

- Social welfare expenditure and the impact of the extractive industries on the economy (requirement 6):

- social welfare expenditure: Material social welfare expenditure required by law or under a contract entered into with the government should appear in the report. If this expenditure is made in kind, the report should include the type and estimated value of the expense.

Example of a reconciliation table of oil company payments and returns of revenues by the state taken from the Democratic Republic of Congo's 2014 EITI report in US dollars

En USD

Companies	Companies' declarations (A)	Public Treasury (1)	EPE (2)	Declaration of the state's financial agencies' revenues (AFE) on their own account				Total AFE (3)	Total revenues (B)=(1)+(2)+(3)	Residual amount (A)-(B)
				DGI	DGRAD	SGH	MEDD			
La Congolaise des Hydrocarbures	1 327 532	1 295 936	-	31 596	-	-	-	31 596	1 327 532	-
Perenco Recherche et Exploitation Pétrolière	86 162 193	75 697 139	-	71 670	10 224 567	166 847	1 970	10 465 054	86 162 193	-
Lirex	71 688 727	55 675 640	7 409 200	38 661	8 560 575	-	-	8 599 236	71 684 076	4 651
Muanda International Oil Company	129 534 416	126 618 343	-	113 767	2 635 459	166 847	-	2 916 073	129 534 416	-
Teikoku Oil DRC	82 824 385	81 073 285	-	73 376	1 677 497	-	-	1 750 873	82 824 158	227
Chevron ODS Limited	39 923 611	38 986 448	-	40 344	896 819	-	-	937 163	39 923 611	-
Total E&P RDC Sprl	906 408	6 408	-	-	-	749 900	150 000	899 900	906 308	100
Soco E&P DRC	1 578 001	262 942	-	5 824	-	996 290	293 000	1 295 114	1 578 056	(55)
Energulf Congo	276 013	1 013	-	-	-	249 890	25 000	274 890	275 903	110
Oil of DRCONGO	784 803	104 803	-	-	-	600 000	80 000	680 000	784 803	-
Surestream RDC SA	274 316	274 152	-	164	-	-	-	164	274 316	-
Eni R.D. Congo Sprl	-	79 236	-	-	-	-	-	-	79 236	(79 236)
Total	415 280 405	380 095 345	7 409 200	375 402	23 994 917	2 929 774	549 970	27 850 063	415 354 608	(74 203)

- quasi-tax expenditure
- the impact on the economy: particularly government revenues from the extractive industries* as a percentage of Gross Domestic Product (GDP), exports (in absolute terms and as a percentage of GDP).

The EITI has resulted in a discussion and reflection forum being set up, which has gone beyond the initial concept of revenue transparency in the extractive industries*. This is an evolving standard which today is just as interested in the transparency of the oversight of these industries and extends to other aspects, such as mining contracts, the procedures and criteria for granting mining rights, and the production and even the redistribution of revenues at the national and local levels. It is up to civil society to use this reflection forum and also the standard to promote transparency in contracts, beneficial ownership, etc. The revision of the EITI standard (the standard was revised in 2013 and then again in 2016) gives civil society greater flexibility in tackling more of the sets of problems that it faces. In Latin America for example, particularly in Colombia, this involves incorporating social and environmental data in the EITI. In other countries, such as Mauritania, it consists of extending the initiative to other industries, such as fishing.

PROCEDURES FOR PUBLISHING AND DISSEMINATING DATA

- 1st EITI report within eighteen months of a country being accepted as a candidate.
- Annual publication following acceptance of the candidate's application, although in practice reporting frequency is not always observed.

Accessibility of the data

The data may be accessed by the public on the EITI national committee website of countries applying the EITI standard and they are also collated on the EITI website.

One persistent criticism of the EITI reports is their lack of accessibility, particularly because of the format in which the data is published. In most cases, EITI reports a compilation available on line are in fact published in PDF format, making it difficult

EITI reports,

α compilation available online

To make the information more accessible, some organisations, particularly the Natural Resource Governance Institute (NRGI), have collected data from a great many EITI reports and incorporated them into a database accessible to everyone.

The NRGI dataset has garnered information from 223 EITI reports from 37 countries, from the time the first figures were published through to February 2015.

This database is available online: <http://www.revenuewatch.org/analysis-tools/tools/dataset-unlocking-eiti-data-meaningful-reform>

This comprehensive dataset contains:

- ➔ A summary of each EITI report
- ➔ Information on production by the extractive industries in each country: the volume of production and the value of production, and also social and economic data by country, to help put the extractive industry revenues into perspective
- ➔ Project by project data (where possible)
- ➔ A list of additional sources available for use

Spotlight on open data: The issues surrounding data being accessible for ordinary people to check

To derive the maximum benefit from the data coming from transparency mechanisms it is essential that they should be understood and used by as many people as possible. The format of this data is crucial to its accessibility and use. Data communicated in "closed" formats is difficult to use, to compare and to transfer.

Open data may be defined as accessible data that can be freely used, reused and redistributed by anyone. Data must also be machine-readable: this means it must be produced in formats such as CSV, Excel, XBRL, or XLS.

Regarding mandatory disclosure, only the Dodd-Frank Act and ESTMA require a format compatible with *open data* (XBRL and XLS). The European Directives leave the choice of publication format to the discretion of the member states. This issue has therefore become a key aspect in the campaigns of civil society organisations working on the transposition of the Directives in their countries. In Canada, the format in which the data is to be published is decided in implementing regulations – members of civil society in Canada are campaigning for publication of data on line in an *open data format*.

to extract the data and analyse the information. Excel or CSV (*Comma Separated Values*) formats would be more suitable. Some countries, such as Zambia and Tanzania, have already taken the initiative and have started to publish their reports in Excel format. Other countries implementing the EITI standard are strongly encouraged to publish reports that can be read and processed electronically. Moreover, these reports are often long and complicated, and the important information is therefore difficult to extract. Contextual information has been included in reports since the 2013 EITI standard, to make them more accessible and easier to use.

The limits of these mechanisms, information not available:

- The main weaknesses of the EITI process relate to the fact that the process has not yet significantly improved living conditions for the populations of the countries in which it has been implemented.
- Transparency alone is not enough, and the EITI has not yet become an instrument for bringing about transformational reform in the way in which public finances are managed. For the meanwhile, this initiative sets a floor, and it is up to civil society to push for something more ambitious and to incorporate new issues into the initiative. It is also up to the governments of the countries concerned to make the necessary reforms.

➔ MINING CODES: FOR A FAIR CONTRIBUTION BY THE EXTRACTIVE SECTOR TO THE NATIONAL ECONOMY

A country's mining code governs all utilisation of what lies beneath the ground within its territory. It particularly covers all the activities of prospecting, exploration, extraction, transport and marketing. It is the mining code that lays down the types and rates of taxes that apply, the procedures for awarding licenses and also the regulations on safeguarding local populations and managing the impact of mining on them. It contains much information that is useful to civil society organisations working on the subject of transparency in the extractive industries*.

Between 1980-1990, to encourage foreign companies to invest in their mining industries, many countries chose to grant them tax incentives and exemptions. Since then, world demand for most minerals has steadily increased and the tax revenues from the extractive industries* have grown sharply. However, the increase in foreign investment and royalties* in the extractive sector has not necessarily resulted in economic development and better social welfare in the producer countries. Starting from this premise, many civil society organisations in mining countries are calling for legislative reforms to bring in new mining codes that meet the challenges of economic development at the various levels of society, as well as the challenge of transparency and also environmental issues.

International organisations have now joined civil society organisations in recommending reforms and a harmonisation of mining systems at regional level. For example, in 2009 the African States adopted an initiative backed by the United Nations Organisation (UNO), Mining Vision Africa, which consists of a plan of action by the African States to revise their mining policies, to "build a sustainable future for the extractive industries". Other regional initiatives, such as that of ECOWAS (Economic Community of West African States) are trying to harmonise the codes of member states. Since 2009, ECOWAS has indeed introduced a Directive on harmonising mining sector guidelines and policies. Reforms of mining industry tax are currently in progress or on the drawing board in many developing countries.

✔ A standard mining code

A state's mining code governs everything connected with mining operations in a state's territory. It therefore covers the various stages of mining op-

erations, from exploration and prospection work through to the export of minerals.

► A mining code governs:

- exploration,
- prospection,
- extraction,
- transport,
- marketing the minerals within the country.

As a model mining code, the document uses the new Burkina Faso mining code revised in 2015 as an example. The reform of the Burkina Faso mining code was well received by local civil society which had, for a number of years, been calling for a root and branch reform of the mining system to make it truly serve the interests of Burkina Faso society.

Example of a typical mining code and key information

In almost all mining codes, the first section covers the general provisions and includes a definition of key terms or the scope of the text. It is usually in this first section that we find the provisions on human rights and safeguarding the environment.

► The observance of human rights in the mining code: the majority of new mining codes (revised in the decade beginning in 2000) refer to the obligation to respect human rights, as applicable both to the company and also to the state as guarantor of the rights of its citizens. The fact that they include this obligation to safeguard human rights is important. In addition to their dissuasive nature, these explicit references make it easier for ordinary people to take action over infringements to their rights, using international law conventions ratified by many states as well as domestic law.

Two clauses dealing with the observance of human rights have been added into the Burkina Faso code. They stipulate that the state, the guarantor of human rights¹⁹, must prevent and if necessary make good any infringement of the human rights of the populations affected by mining activities (article 19). Furthermore, mining companies are obliged to safeguard these human rights (article 20).

► Mining funds: Mining funds consist of holding back a specific percentage of mining revenues to fund specific projects.

Funds for promoting development can be ear-

¹⁹ The Burkina Faso mining code refers to human rights. The terms human rights and the rights of man are used without distinction.

The mining code: main headings

Section I: General provisions

Mining Code definitions and areas of application; General regime: observance of human rights, mining funds, etc.

Section II: Mining rights and permits

Award procedures, validity period, renewal, etc.

Section III: Rights and obligations arising from carrying out mining activities.

Transfer of rights, preference given to employing local people, withdrawal of rights, complaints, penalties for not meeting obligations, etc.

Section IV: Mining levies and royalties*

Section V: The taxation of mining

Tax incentives and exemptions...*

marked in the mining code. This is the case for example with "future generations funds". These sovereign wealth funds* managed by the state are built up, in the case of mining or oil funds, from oil or mining income, with the purpose of setting aside some of the revenues from exporting mining or oil production for the needs of future generations.

Botswana, for example, set up a sovereign wealth fund in 1994, financed by the surpluses from diamond exports, intended for future generations.

Some of these sovereign wealth funds have been criticised for being opaque. To measure their degree of transparency, there now exist several independent indicator figures particularly the Linaburg-Maduell Transparency index which measures their transparency, or the Truman index which measures the transparency, structure, governance and accountability of these funds.

The new Burkina Faso mining code specifically sets up a local development mining fund (articles 26 et seq) to finance community and regional development plans. The income from these funds will be allocated in priority to the social welfare sector. There will be transparent monitoring of the management of these funds in the form of an annual report published in the country's *Official Journal*. The state will be obliged to pay over 20% of royalties* (in proportion to the quantities of minerals) received to this local development fund. For their part, the companies will build up this fund by paying 1% of their monthly turnover (exclusive of taxes)

into it. Civil society organisations had been calling for this corporate contribution to development for many years, particularly the MiningWatch-PWYP coalition²⁰.

Mining codes also have chapters specifically on various types of mining rights, and also on the tax regime applicable to mining activities.

► Mining rights and permits: a mining code contains the various rules and procedures for the various types of mining rights: the grant of a right, the renewal, redesignation, or renunciation (in whole or in part), extension or transfer.

A summary table of the main types of mining rights and permits is available in appendix 2 on page 43.

► The tax regime applicable to mining activities: a country's mining code also lists all special taxes applying to companies in the mining industry along with the exemptions that some companies may be granted.

A summary table of the main mining and hydrocarbons taxes is given in appendix 4 on page 45.

In addition to these special taxes, there are also the normal taxes that apply to all companies, for example corporate income tax, social security contributions and value-added tax *.

A mining code provides for certain exemptions and deductions of taxes that can be claimed by mining companies operating in a country. Other exemptions are decided on a case-by-case basis between the state and the company, as stated in the contracts. For example, during the survey phase, companies very often receive total exemption from corporate income tax and from VAT on the goods and services needed to carry out the work, and perhaps also from customs duties on importing equipment. These exemptions are not limited to the survey phase, and some of them may also be granted to companies during the production phase.

Under the former Burkina Faso mining code adopted in 2003, during the operational phase, mining companies were liable for corporate income tax at a rate 10 points lower than the standard rate. The new mining code applies the generally applicable rate to mining companies once again²¹. Finally, the new Burkina Faso mining code introduces an ac-

counting ring fencing policy for operating permits: a company (legal entity) can obtain only one single operating permit²². Without this measure, companies involved in both a profitable operating activity and also involved in exploration – by definition not profitable – would be able to deduct the exploration losses from the profits of operations, so as to reduce the base figure on which tax is charged.

✓ Reforms and issues

In parallel with the new transparency initiatives for managing natural resources described above, it is important that the governments of resource-rich countries put in place the best legislative framework possible to manage these resources to greatest advantage. The mining code is a key component of the legislative framework for the mining industries.

Within the national reform movements seeking to ensure the mining sector is managed better – one of the expressions of which is the fact that some recently revised mining codes now explicitly require mining companies operating within the territory of the state to participate in transparency mechanisms and particularly in the EITI²³ – the question arises of including social and environmental issues in these codes. The debate on these matters is particularly far advanced in Latin America, where civil society organisations have succeeded in drawing the attention of the decision-makers to possible infringements of fundamental rights, of the right to work and to environmental degradation connected with the mining industry.

Latin American civil society organisations have historically been very active in the matter of environmental crimes, and in particular have rallied round to support victims and demand stricter controls over the environmental impact of extractive projects. Because of the actions of these civil society organisations, most Latin American mining codes now explicitly mention the obligation to care for the environment (other Asian and African countries also mention this). Other human rights are also championed by Latin American civil society organisations, particularly the rights of indigenous populations, who are particularly impacted by mining projects in these regions. Because of civil society action, these rights are gradually being taken into account by governments and mining companies,

20 Publish What You Pay(2015). "MiningWatch". Available in French on: <https://www.minesalerte.blogspot.fr/2015/05/plaidoyer-pour-ladoption-du-code-minier.html>

21 Article 161 of the new Burkina Faso mining code.

22 Article 100 of the new Burkina Faso mining code.

23 This is the case with the new Burkina Faso mining code which, in article 172, reiterates Burkina Faso's commitment to the EITI and sets out the transparency obligations that flow from it.

and a legislative framework has been put in place to protect and ensure respect for the rights of these populations. In several Latin American countries, indigenous populations have been granted a right of prior consultation²⁴, meaning the right to be consulted in advance of national and regional development measures, plans and projects that directly affect their collective rights²⁵. This means that indigenous peoples have to be consulted before any mining project goes ahead in their home territories. These references to fundamental rights in mining codes represent a major step forward in achieving better protection for human rights.

However, in practice, these rights are often denied. The civil society organisation network Red Muqui, for example, deplores the fact that in spite of the progress made on the legal front in Peru²⁶, in reality local populations are only very seldom able to exercise their right of prior consultation. The consultation procedures are often poorly drafted or convoluted²⁷ and since local populations are often ill informed on the issues and consequences of these projects, they are often in no position to look after their own interests²⁸. These infringements are found throughout the extractive industries, particularly in the oil industry, as the report *Le baril ou la vie? (Barrels or life) testifies*²⁹. It illustrates the denial of the right to prior consultation of local populations living close to certain oilfield sites in Peru.

24 A right protected by convention no. 169 of the International Labour Organisation work (ILO) regarding indigenous and tribal people in independent countries and by the 2007 United Nations declaration on the rights of indigenous populations. United Nations Declaration on the Rights of Indigenous Peoples of 2007 http://www.un.org/esa/socdev/unpfi/documents/faq_drps_en.pdf

International Labour Organisation (ILO) convention no. 169 on indigenous and tribal peoples in independent countries http://www.ilo.org/dyn/normlex/fr/f?p=NORMLEXPUB:1:0::NO::P12100_ILO_CODE

25 For further information on Peruvian legislation, see <http://www.consulta-previa.org.pe/consultaprevia.html>

26 In Peru, the mining industry is governed by various laws over and above the general framework laid down in the mining code. "General environmental law no. 28245" governs environmental protection matters and the right to prior consultation is guaranteed in Peruvian law by "Law no. 29785, the Law granting the right to prior consultation to aboriginal indigenous people, recognised in Convention 169 of the International Labour Organisation (ILO)" and specific associated regulations.

27 One of the practices used to get round this prior consultation obligation is to categorise the local populations as "rural communities" and not as indigenous populations. Rural communities still do not have the right to prior consultation.

28 Muqui (2016). "Is there any hope of change for mining conflicts in Peru?". Available in Spanish on: <http://muqui.org/comunicaciones/noticias/item/428-esperanza-de-cambio-para-conflictos-en-peru> [Viewed on 16 June 2016].

29 Secours Catholique-Caritas France and CCFD-Terre Solidaire (2015). *Barrels or life? (In French)* http://www.secours-catholique.org/sites/scinternet/files/publications/le_baril_ou_la_vie-060915-bd.pdf

In some countries, therefore, enhancing capabilities is just as crucial as revising the mining code, to provide genuine protection for the fundamental rights of their people. On this score, the Peruvian organisation Red Muqui considers that, in addition to certain legislative failings, it is the frailty of the institutions responsible for managing the mining sector and taxing it, and also dealing with environmental protection, that constitutes the problem. The association points out that these institutions certainly have the power to apply penalties but, because of lack of funds, they cannot always carry out their role of the "policemen of the mining industry" properly.

“ THE REFORM OF MINING CODES PROVIDES AN OPPORTUNITY FOR INCORPORATING ENVIRONMENTAL AND SOCIAL ASPECTS ”

Finally, labour law issues in the extractive industries should certainly be emphasised. In Latin America, labour law is safeguarded by the mining unions which play a major role in the gradual shaping of labour law in the region.

These industrial relations and environmental issues are not limited to South America, and the environmental impact of mining activities, as well as the protection of mining workers, are issues that are coming to the fore in the public debate in both Africa and Asia. The recommendations of Mining Vision Africa³⁰ bear witness to this (see box). It has called on African governments to "create a mining industry that cares for the environment and is socially responsible..."³¹.

30 African Union (2009). "Vision of an African mining regime". Available in French on: <http://www.africaminingvision.org/reports.html> [Viewed on 26/11/16].

31 Addis Ababa declaration on building a responsible future for the African extractive industries, adopted at the second ministerial conference of African Union Ministers responsible for the proper use of mining resources, Addis Ababa, 16 December 2011. Available on: http://www.africaminingvision.org/amv_resources/AMV/Declaration_Second_Final.pdf

1.2 BEYOND PAYMENTS IN THE EXTRACTIVE INDUSTRIES TO THE ONGOING CAMPAIGN FOR GREATER TAX JUSTICE

The historic campaigns for transparency in extractive industries' payments pave the way for the issues of tax justice and countering tax avoidance*. Once the payments made by companies have been published, the question arises as to whether these amounts actually match the amounts that should have been paid under the legal agreement or tax system in place, and also whether they represent a fair tax contribution. The principle of taxpayer

equality in the obligation to pay taxes is the foundation of the concept of tax justice. In other words, a fair tax system is a system in which each taxpayer bears the tax burden in accordance with their ability and income, and also depending on the type of activity they carry out, since an activity that causes pollution could legitimately be taxed at a higher rate because of the environmental damage it causes. The tax collected should be used to fund state public expenditure. Multinational corporations carrying out activities in developing countries should necessarily contribute to the tax burden. This tax should be redistributed to fund the country's public

Mining Vision Africa:

an initiative to promote convergence amongst states confronting natural resources challenges

Mining Vision Africa was adopted in February 2009 in Addis Ababa at the summit of the African Union heads of state. Mining Vision Africa starts from the assumption that the development of the mining industry on the African continent is not necessarily synonymous with economic and social development for its people. It therefore seeks to rethink the exploitation, management and use of mining resources in a more inclusive and more sustainable way¹.

In December 2011, at the African Union ministerial conference, the ministers responsible for the proper utilisation of mining resources adopted a plan of action to achieve the Mining Vision Africa targets by 2050². Mining Vision Africa sets out a series of short-term, medium-term and long-term actions that need to be carried out to achieve the targets set by 2050. These actions must also be taken at different levels: national, sub-regional and continental.

The targets of the Mining Vision Africa are:

- **The transparent, fair and efficient ex-**

1 Ramdoo I., European Center for Development Policy Management (2015). "Inclusive vision of development in Africa based on the extractive industries: the African mining vision". Available on: <http://ecdpm.org/publications/vision-inclusive-developpement-afrique-partir-industries-extractives/> [Viewed on 8/01/16].

2 Addis Ababa declaration, *op. cit.*

ploitation of the continent's mineral resources to support sustainable economic and social development. For example, Mining Vision Africa recommends incorporating the EITI and Kimberley Process* principles into national and regional policies, laws and regulations. It also recommends greater decentralisation of the distribution of mining revenues and that independent committees should be set up to oversee the fair allocation of these revenues to priority populations and projects.

- **An interconnected extractive sector acting as the engine of broad-based growth in a world-class diversified, vibrant and competitive African economy:** by reinvesting some of the revenues generated by mining (and also by oil in oil producing countries) into other industries, African states could diversify and boost their economies. They would then be less dependent for their growth on mineral and oil prices. Mining Vision Africa also recommends that states should develop ore processing industries. Most of the profit is in fact made once the ore has been processed. Since this industry has not been properly developed in Africa, companies export the raw material directly after extraction to other countries in which they will be resold at a much higher price. This deprives African states of potentially very high revenues.
- **Mutually beneficial partnerships be-**

tween the state, the private sector, civil society, local communities and other interested parties: Mining Vision Africa stresses the need for states to negotiate mining contracts properly, to maximise their profits and to set up fair partnerships between states and companies. To achieve this, it particularly recommends giving officials training in negotiation.

- **An industry that cares for the environment, is socially responsible,** that distributes the revenues from extractive resources fairly, and one that neighbouring communities will look up to.
- **An extractive industry which will have contributed to boosting regional and continental cooperation and integration:** Mining Vision Africa particularly stresses the need for all countries to adopt a harmonised mining regime to make it easier to learn from each other and avoid competing in a race to the bottom (to attract foreign investors, countries tend to go for lower requirements, leading to lower standards throughout the region).

The full list of actions can be seen on the link below (page 38 to 44):

http://www.africaminingvision.org/amv_resources/AMV/ISG_Report_eng.pdf

“WHILE A SMALL NUMBER OF PEOPLE ARE GAINING A LOT, [...], THE MAJORITY OF PEOPLE ARE EVER FURTHER REMOVED FROM THE WELL-BEING OF THAT FORTUNATE MINORITY. THIS IMBALANCE ARISES FROM IDEOLOGIES THAT PROCLAIM THE ABSOLUTE INDEPENDENCE OF THE MARKETS AND OF FINANCIAL SPECULATION. THE RESULT IS THAT THEY DENY THE RIGHT OF OVERSIGHT TO THE STATES RESPONSIBLE FOR SAFEGUARDING THE COMMON GOOD. [...] IN ADDITION TO ALL THIS, **THERE IS WIDE-RANGING CORRUPTION AND SELFISH TAX DODGING THAT HAVE REACHED WORLDWIDE PROPORTIONS.** [...] IN THIS SYSTEM, WHICH DEVOURS EVERYTHING IN THE PURSUIT HIGHER PROFITS, ANYTHING VULNERABLE SUCH AS THE ENVIRONMENT IS LEFT DEFENCELESS BEFORE THE INTERESTS OF THE GODLIKE MARKET, TRANSFORMED INTO AN ABSOLUTE POTENTATE.” APOSTOLIC EXHORTATION EVANGELII GAUDIUM BY POPE FRANCIS (56), 2013.

services, such as the education system, hospitals, transport networks, etc.

To minimise their tax contribution, some companies have resorted to tax avoidance* practices, which consist of artificially transferring profits to countries with low rates of tax. These practices, although often acceptable from a legal point of view, are nevertheless morally questionable. Developing countries are particularly badly affected by tax avoidance*. In fact, the loss of income to tax avoidance* in developing countries, according to an Organisation for Economic Cooperation and Development (OECD) estimate, stands at US\$100 billion³² per year. According to an International Monetary Fund (IMF) report, the loss of tax revenues due to the practices of certain multinationals is proportionately 30% higher in developing countries than in OECD countries³³. Faced with this fact, the great majority of PWYP national coordinators have declared in the PWYP report "Implementing Vision 20/20, successes, challenges and the way forward"³⁴, that in their view tax justice will be a major priority for the years to come.

This document will describe three widespread tax avoidance practices*, which deprive governments of developing countries of significant revenues, to help familiarise civil society organisations with these practices and to enable them to deal with them and to include them in their advocacy.

➔ **THREE EXAMPLES OF TAX AVOIDANCE MECHANISMS: MANIPULATING TRANSFER PRICES, UNDER-CAPITALIZATION AND DOUBLE DEDUCTION OF INTEREST**

A fictitious case is described below to show how companies can, within the same group, transfer some of their profits to a low tax country, because

of the lack of harmonisation between the various tax systems.

This example is based particularly on the "Calling time" report³⁵ produced by ActionAid United Kingdom, which highlights the tax avoidance* practices of certain multinational corporations in developing countries. This report sparked a number of reactions in the international community, and has been debated by authoritative economic bodies such as the IMF and the OECD.

32 OCDE (2010). "Promoting Transparency and Exchange Information for Tax Purposes". Available on: <http://www.oecd.org/newsroom/44431965.pdf>

33 Crivelli E., De Mooij, R. A. and Keen, M. M. (2015). "Base Erosion, Profit Shifting and Developing Countries " (No. 15-118). International Monetary Fund.

34 PWYP (2012). "Vision 20/20, Strategy 2012-2016. Extracting the truth". Available on: <http://www.publishwhatyoupay.org/vision-2020-strategy/>

35 The report is available on the following link: http://www.actionaid.com/files/default/files/doc_lib/calling_time_on_tax_avoidance.pdf

1 | DOUBLE DEDUCTION OF INTEREST



2 | MANIPULATING TRANSFER PRICES



1/ DOUBLE DEDUCTION OF INTEREST

- The parent company RoyalBA, based in the United Kingdom
- The hybrid company GuahyBA and the company GUA BA, subsidiaries of RoyalBA in Guatemala.

GuahyBA is a hybrid company set up solely to make loans. GuahyBA is attached to RoyalBA and pays no taxes in the United Kingdom (as it has no legal identity of its own). It is, however taxable on all its profits in Guatemala (where it has its own legal identity). The parent company RoyalBA, based in the UK, indirectly owns GUA BA through the intermediary of a third company: GuahyBA. The effect of arrangements of this type is that the repayment of one single loan taken out by GuahyBA can give rise to two deductions of interest, one in Guatemala and another in the United Kingdom whereas, without these arrangements, only one single deduction would have been possible.

2/ MANIPULATING TRANSFER PRICES

- The company AfrBA, a subsidiary of RoyalBA in Ghana.
- The company NederBA, based in the Netherlands, also a subsidiary of RoyalBA.

With transfer prices*, it is sometimes difficult to decide the fair price, particularly for intangible assets* or supplies of services, simply because they are not tangible. Abuses therefore become possible. A company can therefore overstate or understate the price of a service or intangible asset, to maximise the transfer of profits to a low tax country.

3/ UNDER-CAPITALISATION

- The company AfrBA
- The company HonkBA, a subsidiary based in Hong Kong

To explain this practice simply, we will break it down into two linked actions.

Firstly, the subsidiary AfrBA will be under-capitalised. That is to say that its capital will be kept deliberately low in relation to its real business.

To be able to operate properly, AfrBA will therefore have to borrow, particularly from its group company HonkBA.

It is more advantageous for AfrBA to take on debt because it can, thereafter, deduct the interest that it pays on its loan from its taxable profits.

The three main ways in which multinationals avoid taxes

Here is a fictitious scenario of a multinational made up of a parent company and various subsidiaries in the same group. The illustration of these mechanisms shows that large corporations can often take advantage of loopholes in the international tax system by using the differences between national legal systems. Knowing about them makes it easier for civil society to put pressure on the tax authorities and the government of their country to bring in fair systems for taxing the activities of major corporations operating in that country.

3 UNDER CAPITALISATION

For use of the BA logo AfrBA has to pay a royalty to NederBA, the holder of the BA group trademarks. This allows it artificially to reduce the profits that it declares to Ghana. These are taxed at 25%, whereas intra-group transactions are taxed at only 8% in the Netherlands.

INTEREST PAYMENTS

AFRBA is deliberately under-capitalised, so it has to take out a loan from HONKBA, a group company, to fund its business, for example to buy machines. The interest on this loan reduces the profits declared in Ghana.

LOAN

REPAYMENT

LEGEND



Parent company, headquarters of the multinational RoyalBA



Real place of business of BA's subsidiaries GuaBA and AfrBA



Subsidiaries or hybrid companies for artificial transactions to minimise taxes



Bank not part of the Royal BA multinational



Commercial transaction



Fictitious transaction to minimise taxes



Portion of profits avoiding tax

Portion of profits staying in the country in which the business was conducted

➔ COUNTRY BY COUNTRY REPORTING: EXTENDING TRANSPARENCY TO ALL MULTINATIONALS, A FIRST STEP TOWARDS COUNTERING TAX AVOIDANCE*

Country-by-country reporting (CBCR for short) is currently the main response envisaged for countering tax avoidance* by multinationals. Civil society organisations working on transparency issues have long been calling for this type of report.

It is a matter of extending transparency to all multinational companies, requiring them to publicly disclose specific accounting data on their businesses, particularly turnover, profit, number of employees and taxes paid in each country in which they operate, so as to judge whether the taxes paid correspond to the reality of the company's economic activity.

This proposal is a condition and an alternative to purely and simply banning them from operating in tax havens. It would, in fact, appear to be difficult to ban companies from operating in tax havens. Particularly because the presence of some of a company's subsidiaries in tax havens, such as Ireland or Luxembourg, could be justified if the company carried out real activities there.

Requiring country-by-country accounting transparency for all multinationals and ensuring access by the public to this information could meet four objectives:

- have a dissuasive effect on companies thinking of abusively and artificially shifting their profits,
- enable the tax authorities, and also the regulatory authorities and the courts, to identify companies with a high risk of tax avoidance*.

Spotlight: When the transparency throws light on the activities of banks in tax havens

Civil society organisations tackling tax havens and shelters have long been seeking answers from decision-makers as to what the banks are doing in these places. The series of scandals that has rocked the international banking system¹ has brought to light certain tax avoidance practices* that take place in tax havens². In spite of very strong suspicions that tax avoidance and tax evasion were being practised, along with large-scale speculative and risky operations involving European banks operating in these territories, it was never possible to obtain precise details of their results and activities in these places.

In 2013, under heavy pressure from civil society and as a result of the French banking law³, the European Union

adopted a Directive⁴ requiring European banks to publish information on their activities annually.

CCFD-Terre Solidaire, Oxfam France and Secours Catholique-Caritas France, in partnership with the Plateforme paradis fiscaux et judiciaires (PPFJ), the French platform combating tax havens and shelters, analysed the data for the 2014 fiscal year in detail in a report on the practices of the five biggest French banks in tax havens⁵.

Analysis of this data showed that tax havens are still a core part of the international strategies of French banks. Indeed, the report shows that French banks make one third of their international profits in tax havens, although they carry

out only one quarter of their international business there, and employ only one sixth of their international staff in them⁶. The writers suggest three reasons for using tax havens: (i) banks can artificially transfer their profits to them to pay less taxes; (ii) they can help their clients engage in tax avoidance*⁷; (iii) they can sidestep their regulatory obligations and carry out highly lucrative but very risky speculative activities.

The writers of the report are now waiting for the tax authorities to make use of the information disclosed, and for them to initiate investigations to recover taxes that have not been paid properly. They also hope they will take legislative and political measures to counter the tax avoidance* practices that the report has brought to light⁸.

This European Directive, transposed into the various national legal systems, is a significant victory for transparency. Since it came into force in 2013, the disclosure obligation has not imposed any excessive cost burden on companies,

1 We might also mention the Swissleaks and Luxleaks scandals, along with the use of tax havens in the Lehman Brothers and Northern Rock bank failures during the 2007-2008 financial crisis.

2 Tax havens and non-cooperative jurisdictions. "Luxleaks II: the European Union's response must involve tax harmonisation". Available on: Luxleaks II: the European Union's response must involve tax harmonisation

3 The law of 26 July 2013, segregating and regulating banking activities. Available on: <https://www.legifrance.gouv.fr/affichLoiPubliee.do?idDocument=JORFDOLE000026795365&type=general>

4 Directive 2013/36/EU of the European Parliament and Council of 26 June 2013 on access to credit institutions' activities and the prudential oversight of credit and investment institutions amending Directive 2002/87/EC and repealing Directives 2007/48/EC and 2006/49/EC. Available on: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0036&from=EN>

5 Secours catholique- Caritas France, CCFD-Terre Solidaire and Oxfam France (2015). "Report: "In search of transparency, on the trail of French banks in tax havens". Available on: http://www.secours-catholique.org/sites/scinternet/files/publications/rapport_enquete_en_bd.pdf

6 *Ibid.*

7 These assumptions were reinforced by the Panama Papers scandal in April 2016.

8 "Report: In search of transparency", Recommendations, *op. cit.* page 35.

- put the company's investors, customers and employees in a better position to judge the various risks (geopolitical, legal, financial, etc.) to which group may be exposed,
- give civil society and politicians access to key information necessary for their civic oversight work.

Such country-by-country *reporting* has already been introduced for European banks (see insert). The OECD has included this measure in its draft of BEPS* (plans to counter Base Erosion and Profit Shifting) by extending it to all multinationals – as a first step towards global transparency – but it does not recommend making it public. It recommends that the data should be transmitted only to the tax authorities in the company's home country, which can pass it on to the tax authorities of other countries that have signed up to this action plan. This will make it far harder for developing countries

and civil society in general to access this data. A detailed analysis of this action plan is available in appendix 5 on page 44.

Global country-by-country *reporting* has also been discussed at the European level in the context of a draft Directive which also currently contains many loopholes that could be closed during negotiations.

and it has shed much light on what banks do in tax havens. This positive example of regulation should encourage the European authorities to extend this country-by-country reporting obligation to all multinational corporations in all sectors. This would make transparency the norm throughout the whole economy, and ensure that companies made their fair contribution to the development of the countries in which they operate.

The data available (summary data by country) under European financial regulation Directive 2013/36/EU:

The European Directive applies to all European banks. They are required to report their activities in all the territories in which they operate.

From 1 January 2015, banks are required to disclose for each country in which they operate (by Member State and by other country):

- their company name(s), the type of business and their geographical location,
- their turnover,
- the number of their employees on a full time equivalent basis,
- their profit or loss before tax,
- the tax paid on their profit,
- public subsidies received.

An initial set of data (subsidiaries, turnover and employee numbers) was published in November 2014 for the 2013 fiscal year⁹. In addition, in 2015 the banks disclosed their profits, taxes paid and subsidies received for the 2014 fiscal year.

This information was published in the banks' annual reports (or in the notes to their accounts). To be processed it needs to be converted to machine readable files, such as Excel workbooks¹⁰, a laborious task for so long as the data is not published in standard format.

An analysis of the performance of European banks in every country of the world can then be produced. Civil society organisations in any given country can compare the performance achieved by these banks in their country (and/or by category of country such as developing countries or at a continental level) against the performance achieved in other countries or groups of countries, such as tax havens.

⁹ The French banking data has already been analysed by the Plateforme paradis fiscaux et judiciaires, the French tax haven watch: <http://www.stopparadisfiscaux.fr/nos-actions/productions/article/2014-que-font-les-plus-grandes-banques-francaises-dans-les-paradis-fiscaux>

¹⁰ For example, see the summary details prepared for French banks: http://www.stopparadisfiscaux.fr/IMG/xlsx/Donnees_Rapport_banques_paradis_fiscaux_Oxfam_-_CCFD_-_SC_1_.xlsx

By using these analyses and the conclusions drawn from them, civil society organisations can then ask searching questions of the tax authorities to encourage them probe more deeply, and perhaps to recover amounts of unpaid tax. These organisations can also encourage their governments and elected politicians to beef up the tax legislation and regulations applicable to banks.

Information not available:

The published data is not broken down by activity or by subsidiary in each country, which limits its usefulness where banks carry out a very wide range of types of business, such as retail banking, wealth management, and financial markets activities. Furthermore, the information does not make it possible to measure the activities carried out on behalf of clients. Finally, the subsidies figure does not include tax exemptions* granted, nor all types of state aid such as loans and tax credits.

1.3 USING THE INFORMATION AVAILABLE AND CHALLENGES FOR THE FUTURE

The aim of transparency is to put the economy at the service of all, and to allow for better civic oversight of public policies. Once the data from the transparency mechanisms has been identified and collated, it can produce valuable information on a given economic sector in a country as well as on the effectiveness of the country's tax system. It can therefore be used to tackle the problems of tax justice, to combat illicit flows of funds and in countering corruption.



At the time of drafting this document, the information already published relates almost exclusively to the extractive industries*. The emphasis therefore goes on the extractive industries, but the possible uses of the information from European and/or global country-by-country *reporting* covering all multinational activities are also described, in the event that *reporting* of this type is made public, as demanded by civil society organisations working on the subject, particularly PWYP.

➔ USE OF THE DATA TO ENSURE MULTINATIONAL COMPANIES MAKE A FAIR CONTRIBUTION TO A COUNTRY'S ECONOMY

Regarding the extractive industries*, civil society needs accurate and full information for the best possible understanding of the sector, to enable it to evaluate the merits and means of extracting resources and to evaluate what a fair share for the country's citizens would be. The natural resources of a country belong to it and to its people. It is therefore reasonable that they, through their government, should derive a fair benefit from them when these resources are exploited.

✓ Appropriateness of extractive industries for society

Even before considering the benefits to the state or companies' contribution to the economy, civil society should be asked to consider the appropriateness of permitting extractive activities in the country. Extractive industries* can have undeniable adverse effects on populations, the local environment, water resources, the ground, and the areas in which local populations live, etc., but also, in the case of fossil energies, they can contribute towards climatic change.

Information on the quantity, quality and location of a country's natural resources on the ground can

be valuable. Information of this type can be found in impact studies. Other contextual factors, particularly environmental, ecological and social factors should also be taken into account in evaluating the impact of the extractive sector.

As stated above on page 7, the challenges of gradually breaking free from fossil energies and throughout the world developing means of producing reliable, low carbon energy, mentioned in the Paris Agreement via the international community's commitment to keep global warming down to 2°C or even 1.5°C, should also be taken into account when assessing the appropriateness of whether or not to extract fossil resources.

Assessing the appropriateness of extracting resources is a complex task with many factors in play. Regarding the appropriateness of extracting fossil materials, it is worth taking various aspects into account, such as climate issues and the international political and scientific frameworks that govern them, the country's development requirements, its historic responsibility for greenhouse gas emissions, the alternatives in terms of renewable resources and their national or regional potential, the existing means of support for developing alternatives, the long-term sustainability of the project, etc.

Information on amounts received from oil, mining and gas operations can help measure a country's dependence on extractive industries*. By dividing total revenues from the extractive industries by the country's GDP, the value of these revenues can be expressed as a percentage of GDP. By dividing the same amount by total government revenue, the extractive industries' contribution to the state's total revenues can be worked out. The more dependent a country is on its extractive industry, the more vulnerable it will be to fluctuations in mineral or oil prices. Oil prices slumped dramatically in 2016. A fall in prices such as this has a direct influence on economic life in producer countries, and they will be all the harder hit if they have built an economic model based mainly on their extractive industries*.

? Questions we need to ask ourselves when evaluating the contribution of extractive industries to a country's economy:

- How do fluctuations in commodity prices impact revenues received from the extractive industries in my country?
- What is my government doing about these fluctuations in prices? About the limited nature of this production?
- What place do the extractive industries have in my country's economy?
- What public policies have been implemented to diversify the economy more?
- What non-fossil resources does my country have? What renewable energies potential does my country have? What types of financial and technological support are available to my country to help it in its transition towards cleaner energies?

✓ What would a fair level of tax be? The country's tax framework, fairly negotiated for the country, state profits

Taxation traditionally performs several functions:

- Public funds: it enable the state to finance the amenities shared by all in a society: public services, communication infrastructure (road network), etc.;
- Redistribution: it can distribute resources in a fair way (social security benefits, healthcare systems, etc.);
- Regulation: it can seek to mitigate the harmful effects of certain activities (pollution, health risks, etc.) by taxing them more heavily than other types of activity and it can promote activities that are seen as of public utility, by giving them tax breaks;
- Representation: citizens' tax contributions to the public finances are intimately linked to the opportunity to express their opinions on the management of public funds in representative democracies.

Once the decision has been made to extract a resource, civil society should be able to assess whether ordinary people are deriving the fairest profit from the activities of the extractive industries'. One of the questions that transparency can clarify in part is that of a fair system of taxation for the extractive industries.

If it has an effective tax system, suited to the specific features of the country's extractive sector, the state can succeed in taking its fair share of the industry's revenues.

A state's tax policy is laid down in law, but it is also adjusted on a case-by-case basis in contracts entered into between the state and companies. For the extractive industries, the effectiveness of a tax regime in a state can be measured as a function of various contextual variables:

- The quality and the quantity of the natural resources;
- Fluctuations in commodity prices;
- The stage of progress of the various extractive projects in the country (are they in the exploration phase rather than the exploitation phase?);
- The level of integration of the extractive industry into the country's economic system;
- The social and environmental impacts of the extractive activity;

Because there are so many factors, there is no one single standard tax regime. To assess and oversee tax policy, civil society must consider all these criteria and compare them to the tax choices made by its government to check whether the policy is satisfactory as regards the needs of its population.

It is essential that a tax regime should not be regressive, but instead should be stable or progressive. In other words, if the company's profits increase over time, the state's revenues should also increase proportionately, or even more than proportionally if the profits are very high.

? The questions to ask when assessing the effectiveness of a country's tax system for the extractive sector:

- What stage of progress have the extractive projects in my country reached?
- What tax instruments are used in my country?
- Are there special levies on the extractive sector in national legislation?
- How is the tax regime applicable to extractive industries decided? By a set of laws and public policies? Is it negotiated with companies on a case-by-case basis? If so, what criteria are used?

The government's share represents the percentage of the total value received by the state. It can prove a useful indicator in judging whether the state is receiving its fair share.

The government's share is the value received by the state out of the total value of production, being the total volume of production multiplied by commodity prices

The government's share will vary according to circumstances and will depend on the stage of production. During the first phases of exploration and production, the government's share is very often rather low. Companies deduct the costs and therefore declare lower profits. The government's share will tend to increase when the initial phase is over. This government share should not be evaluated in isolation, but rather its pattern of change over time should be compared to changing project profitability. So, if the government's share stays the same while project profitability increases, questions should be asked as to the appropriateness of the tax system and the need to revise it.

In Ghana, when the EITI reports showed up how low the revenues from the extractive industries were, the country reformed its tax system as a result of a civil society campaign.

The future Dodd-Frank, European, Canadian and Norwegian approach to project-by-project reporting will be crucial for comparing projects with each other. Many variables need to be taken into account when comparing projects within one country, for example the project stage of progress, the quality of the material extracted, and what type of project it is

(*offshore*/onshore**). If an analysis shows that one project apparently at the same stage as another does not bring in the same amount of revenue as the other, reasons should be sought for this difference, particularly by questioning the government about any incentives granted to the first project.

➔ USE OF DATA FOR COMBATING CORRUPTION

In addition to the issue of the fair taxation of companies, this data may also prove very useful for tackling the problem of corruption. EITI was originally thought of as a tool for combating corruption in the extractive industries. Corruption may be defined as the misappropriation or abuse of office for private purposes. We talk of passive corruption when an individual allows himself to be bought by offers, promises, gifts, to do or not to do something connected with his office; we talk of active corruption where an individual, using the same means, pays for the acquiescence of someone in office.¹ There are several stages in the value chain where revenues may disappear or be misappropriated. Data on the revenues paid by companies – and

1 Cornu, G. (2007). Article "Corruption" In: *Legal vocabulary, 2007 version*. Paris: PUF, p. 243.

Spotlight on corruption in the public procurement process

Public procurement contracts can be defined as official contracts placed by public sector organisations for works, supplies or services¹. In most cases, public procurement contracts are awarded by a tendering system: competing businesses put in bids on the best possible terms to win the contract. Businesses may also put in bids uninvited. Finally, in some cases, the "first come first served" system prevails: the first company to comply with the state's regulations wins the contract.

In some countries this procedure is particularly exposed to corruption, particularly because of the high amounts involved and the leeway allowed to government officials, which is inherent in the mechanism².

1 Cornu, G. (2007). Article "Public procurement" In: *Legal vocabulary, op. cit.*, p. 566.

2 Transparency International (2014). "The role of putting the public procurement process on line in countering corruption". Available in French on: <https://www.transparency.org/whatwedo/answer/>

The OECD estimates that the amounts lost to corruption represent between 10% and 20% of public procurement budgets (all countries together)³.

There is a risk of corruption at each stage of the public procurement process.

During the tendering preparations phase: calls for tenders can be manipulated to overestimate or alternatively underestimate the cost of the works⁴. The specifications can also be manipulated to give an inherent advantage to some bidders and to rule out others. The impartiality

le_role_de_la_passation_de_marches_publics_en_ligne_dans_la_lutte_contre_la

3 OCDE (2013). "The OECD Principles for Public Integrity in Public Procurement", p. 9. Available on: <http://www.oecd.org/gov/ethics/48994520.pdf> [Viewed on 3 June 2016].

4 Boehm, F. and Olaya, J. (2006). "Corruption in Public Contracting Auctions: the Role of Transparency in Bidding Processes". *Annals of Public and Cooperative Economics*, 77 (4), p. 434.

of the tendering process will depend on, amongst other things, the number of bidders. The higher the number, the less likely the process is to be biased⁵.

During the public contract award phase: this phase is usually the one most closely scrutinised for corrupt practices, particularly for payments of bribes to obtain the contract (called vertical corruption), but also for collusion between bidders (horizontal corruption). The bidders may agree in advance on the price and the services to be offered in their bids, which distorts the arm's-length competition principle, to the detriment of the state. When a small number of companies engage in such behaviour, it is called a cartel. Public contracts are particularly at risk of cartels, because only a small number of companies have the technical and finan-

5 *Ibid.*

received by governments – helps civil society to identify possible losses of funds, and also to identify at what point they disappeared and, where possible, to help them recover that money.

In 2013, the 2010 EITI report from the Democratic Republic of Congo revealed that US\$88 million paid to the DRGAD public treasury agency had not been accounted for. As a result of a civil society campaign, a judicial enquiry found the money and set up a better system for supervising the collection of mining revenues.

? **The questions to ask yourself when assessing the risks of corruption in a country:**

- Are contracts made public in my country? If not, why not? If they are, are they easy to access?
- Which parties (government or companies) want to prevent these contracts being published? Why do they object to publication?
- How are public procurement contracts awarded in my country? By calls for tenders or by a system of uninvited bids?
- Is the tendering process open to everyone and transparent? Does it operate on the principle of arm's-length competition?

➔ USING TRANSPARENCY DATA FOR COMBATING TAX AVOIDANCE*

Once the tax framework for an industry has been laid down (in contracts and in the country's legislation), it may be worth checking that all amounts that should have been paid by companies have actually gone into the state's coffers. In other words, it is worth ensuring that some companies have not artificially reduced their taxable profits, at least in

cial resources to meet the specifications.

During any phases of negotiation or re-negotiation of the terms of the contract between the state and the successful company: where the winner has been selected, it will negotiate the contract terms with the state. They may then perhaps come to an agreement to take undue advantage of the contract, for example by misappropriating some of the funds.

Corruption harms the interests not only of the state and, more widely, of its citizens, who are the direct beneficiaries of these services, but also the interests of companies, because corruption undermines the principle of competition. To prevent such practices during the award of public contracts, almost all states have laws regulating the public procurement process and particularly contract award. The following main principles usually have to

be observed when placing public procurement contracts, to ensure this is done fairly: transparency measures, unrestricted access to the public procurement system, mandatory bidding, and fair treatment of bidders.

This regulatory framework should in particular lay down:

- the terms for publication and circulation of the calls for tenders,
- objective criteria for selecting the company that wins the contract,
- the process procedures and duration,
- possibly setting up an independent budget supervisory body,

During their work on combating corruption, civil society organisations could in particular look into whether the various public contracts (particularly extraction licenses) were indeed awarded using a transparent and fair process. Such a

check will be made easier through the publication of the contracts signed as a result of these procurement procedures.

Spotlight on transparency in contracts:

When it comes to combating corruption, transparency in contracts currently poses a major challenge. In fact, unlike laws which are public, contracts between states and companies are still confidential, in most cases. Publishing these contracts would enable civil society:

- to analyse the decisions of its government and assess whether the contract was negotiated properly (in the interests of its citizens),
- to dissuade the parties (the state and the companies) from negotiating deliberately inequitable agreements,
- to give access to the contract terms to check that the state and the company are indeed fulfilling their obligations. For example, the state might grant a company a tax break in exchange for it funding a social welfare project, such as building a school in the region or renewing a road. The terms of the agreement are set out in the contract. If civil society had access to it, it could check that the project had indeed been completed on the terms laid down in the contract, and also that it did not represent a loss of income for the state compared to the tax revenue foregone.

Transparency in contracts is increasingly being referred to as an example of good practice. Some countries formally provide in their laws that all contracts entered into between the state and companies must be published, particularly extractive sector contracts. This is the case for instance in Australia, Canada, the DRC, Ecuador, the Republic of Guinea, Liberia, Norway, Peru, the UK and the United States. Other countries make some contracts accessible to the public.

The Resourcecontracts.org website makes over a hundred extractive industry contracts available to the public on line.

part, to keep down the tax they pay. This watch on tax avoidance* should be carried out on all multinational corporations operating in developing countries, and should not be restricted to the extractive industries.

At the time of drafting this document, the financial transparency mechanisms in existence still do not require *country-by-country reporting* to be made public. One of the main challenges for the future for all civil society organisations tackling the problem of tax avoidance*, in both developed and developing countries, is to keep up their advocacy work to have *country-by-country reporting* made public and widely available.

This country-by-country financial data, if published and available to civil society organisations, could be very useful for monitoring certain corporate activities and exposing any harmful practices such as tax avoidance* in all sectors of the economy.

All available figures need to be analysed and com-

pared against each other, and a number of calculations need to be made to identify any anomalies, particularly on shifting profits, artificially or otherwise. The report "In search of transparency, on the trail of French banks in tax havens"² is based on comparing performance indicators between various countries and groups of countries, and throws up a number of ideas and pointers for analysing data published by companies. Here are a few tips for questions that could be asked about tax avoidance*:

- Firstly, a look at reported turnover can help assess the company's real business activity. High business turnover is not necessarily the same thing as high profits, since companies can quite properly declare high deductible expenses and liabilities. However, if a company reports only a very low profit when its turnover suggests it has substantial business activity in the country, it is worth looking into the reasons for this discrepancy.
- For the extractive sector, production volumes should be assessed in conjunction with the taxable profit declared by the company. Here again, if declared profits are low but production volumes are normal, it is worth looking into the reasons for the low profit: can it be explained by a fall in commodity prices, or higher levies, or might it be that some of the profits are being shifted to evade tax?
- The number of employees working for a company, where applicable, can also help identify the genuine business activity being carried out by some companies located in tax havens³. The fact that very high profits are being made by a very small number of employees could show that these companies are used as tax mitigation vehicles. The productivity of a company's employees is calculated by dividing the profit by the number of employees in the company. It is worth comparing this productivity between the various entities in a group, to identify any disparities between the various countries in which it operates, and then trying to understand the reasons for it. If, within a group, one entity generates profits well above

² See box on banks one pages 24-25

³ We have used the 2009 Tax Justice Network (TJN) list of tax havens because it is the most comprehensive when compared to official lists such as the OECD, European Union, and the home countries of large companies. These are somewhat curtailed as a result of diplomatic and commercial manoeuvres. See appendices 2 and 3 of the report on French banks in tax havens: http://www.secours-catholique.org/sites/scinternet/files/publications/rapport_enquete_en_bd.pdf

the group average, while at the same time having relatively few employees and if, furthermore, this entity is located in a tax haven, it is worth asking whether profits may have been shifted within the group to this entity.

- The share capital figure may be useful for bringing to light the technique of deliberately under-capitalising a subsidiary.

Addressing the subject of tax avoidance* can enable civil society to alert the tax authorities if it suspects that companies operating in its country are engaged in fraudulent behaviour.

? Questions to ask yourself about tax avoidance* practices that may be taking place in a country:

- Is my country's tax system able to cope with practices such as tax avoidance*?
- Are the officials in my country's tax authorities aware of the problem of tax avoidance* and trained to deal with it? Do they have the technical and human resources to ensure that companies pay all they are due to pay?
- Do the tax authorities know about the international mechanisms for combating tax avoidance* (such as the OECD's BEPS* action plan)? Do they know how to obtain the data on the large corporations operating in the country and are they aided by support programmes?
- Is my government ready to set up an initiative (or to promote a sub-regional initiative) requiring companies to publish country-by-country data?

2 TRANSPARENCY MECHANISMS AND TECHNIQUES FOR OVERSEEING STATE EXPENDITURE – AND HOW TO USE THEM

After having explored the legal provisions relating to state revenues, it is important to go through some of the basics of monitoring expenditure. This section contains explanations on what civil society organisations can do in this field, and it cites references to additional tools to help them take their work further.

The state is responsible to its citizens for its policies, particularly for its management of public expenditure. In other words, the public policies operated by the government should incorporate and reflect the priorities and needs of its people¹. The people themselves have a role in watching over the policies operated by their government and, if necessary, holding the state to account on its choices. This illustrates one of the major functions of tax (see page 27), its representation function, which necessarily involves accountability by the authorities to the people for the use of tax revenues raised. This civic scrutiny is exercised by voting at elections for political leaders, and also through the work of civil society organisations monitoring public and budget policies. The state budget is therefore a central component of these civic initiatives. An analysis of it often yields information that is key to evaluating a state's public policies.

A state's budget is not restricted to budget documentation, but in reality takes the form of a budget cycle made up of four main steps:

- Budget preparation,
- The appropriate authorities voting on the budget
- Budget implementation,
- Post-budget audit: that is to say an after-the-event assessment of budgetary policy.

Civil society organisations monitoring public expenditure may find it worth becoming involved in all these various stages of the budget cycle²:

- Right at the very outset, asking for substantial funding for budget lines financing priority development programmes;
- While the finance act is being approved, taking part in public debate and, if appropriate, making comments and recommendations on the budget proposed by the government;
- Once the budget has been voted through, monitoring implementation and checking that the allocated funds have been used properly;
- Finally, after the implementation phase has been completed, by being involved in assessing the effectiveness of the budgetary policies operated.

The second part of this work will focus on the three phases of monitoring public expenditure:

- access to budget documentation and its analysis,
- checking that funds have been allocated properly
- after-the-event checking that projects have been completed.

2.1 ACCESS TO BUDGET INFORMATION: FROM LEGAL THEORY TO THE REALITY ON THE GROUND FOR CIVIL SOCIETY ORGANISATIONS

One of the first challenges for citizens monitoring public expenditure is obtaining access to budget information. This would entail civil society organisations being entitled to have access to budget documentation and also that this documentation should be intelligible to and usable by civil society. After describing what useful information can be found in a budget, this section tackles the question of whether budget data is actually accessible and the obstacles that civil society organisations may encounter when they try to obtain this documentation. It also suggests a few courses of action. Finally, it goes through some initiatives put in place to help civil society with monitoring public expenditure and advocacy.

➔ THE NATIONAL BUDGET

A state budget may be defined as a document by which the income and expenditure of public bodies

1 International Budget Partnership. *The Power of Making it Simple: A Government Guide to Developing Citizens Budgets*. Available on: <http://www.internationalbudget.org/wp-content/uploads/Citizen-Budget-Guide.pdf>

2 International Budget Partnership (2001). *A guide on budget work*. Available on: <http://www.internationalbudget.org/publications/a-guide-to-budget-work-for-ngos/>

are decided upon and authorised³. It is one of the country's most important documents, because it sets out the government's choices on public policy and development strategy.

In practice, each ministry prepares budget proposals which are then debated and possibly amended by parliament (or the legislative assembly) before being voted on finally as part of the national budget. The budget is adopted as part of the finance act. For each calendar year, this act lays down the type, the amount and the allocation of state expenditure. It sets out both the revenues received (split by source: oil, mining, gas, taxes, etc.) and state expenditure (allocated between the various ministries).

In France, there are various types of finance act, all voted on by parliament:

- The initial finance act (LFI)
- Amended finance acts (LFR) may amend the provisions of the LFI initial finance act for any difference between projected revenues and actual revenues, and also for projected expenditure and actual expenditure.
- The final settlement law (LR) documents the final totals for budget revenues and expenditure, together with the budget deficit or surplus arising from them.



INFORMATION AVAILABLE

A first step that must be taken if public expenditure is to be monitored properly is to identify in the budget, which may be very complicated, the key information that can be derived from it. It is essential for civil society organisations to be able to understand and disentangle the information contained in these documents.

There are now many voluntary standards and recommendations issued by international economic organisations (IMF⁴, OECD,⁵ etc.) which lay down guidelines on how states should manage public finances, and that set standards of good practice to ensure transparency in budgets and clarity in the data deriving from them. Budget transparency may be defined as "always giving full knowledge,

automatically and in good time, of all information in the budget"⁶.

Each ministry or public entity has an operational budget (officials' salaries, running costs) and also a capital expenditure budget. These two budgets together form a ministry's budget. Of these two, the capital expenditure budget is of the greater interest.

There are various different sources of information in state budgets: on the one hand, the national budget, which gives the overall totals allocated to each ministry; on the other hand, the detailed budgets for each entity; finally, the budgets for each ministry, which are given in detail, project by project or by individual line of expenditure.

In the view of the International Budget Partnership (IBP)⁷, a full and transparent budget should contain the following information:

- The budget debate containing the main elements that need to be understood, such as tax strategy, the main thrust of the budget and new budget strategies;
- A budget summary;
- The budget law published according to the recommendations in the effect in the country;
- A detailed description of public receipts, categorised by economic type⁸;
- A detailed description of public expenditure, by administrative unit, and by economic and functional classification⁹. As a minimum, the details for each project should include its name, location, total cost, funds already spent and the authority responsible for it;

6 Ibid.

7 IBP (2010). *Guide to Transparency in Government Budget Reports: Why are Budget Reports Important, and what should they Include?* Available on: <http://www.internationalbudget.org/wp-content/uploads/Guide-to-Transparency-in-Government-Budget-Reports-Why-are-Budget-Reports-Important-and-What-Should-They-Include-English.pdf>

8 The classification system can divide revenues into two categories: tax and non-tax. However, a more detailed classification system (tax, gifts and legacies, social security contributions, property income and sales of goods and services) is used to an ever-increasing extent.

9 Expenditure is detailed by recipient official body: expenditure should be categorised by ministry and by department within the ministry. This classification also makes it possible to include information on the geographical location of the department and therefore also to incorporate information on the programme and/or the extent to which allocation of the expenditure is decentralised. Expenditure should be broken down into programmes and initiatives within the ministries. A classification of this sort is very useful for assessing state public policies and their funding and/or purpose: all expenses for the same purpose would be grouped together (for example: defence or health expenditure) and/or by economic type.

3 Cornu, G. (2007). "Budget" article in: *Legal vocabulary, 2007 version*. Paris: PUF, p. 121.

4 IMF (2014). *Government Finance Statistics Manual 2014 (GFSM 2014)*. Available on: <https://www.imf.org/external/Pubs/FT/GFS/Manual/2014/gfsfinal.pdf>

5 OCDE (2002). *OECD Best Practices for Budget Transparency*. Available on: <http://www.oecd.org/gov/budgeting/Best%20Practices%20Budget%20Transparency%20-%20complete%20with%20cover%20page.pdf>

- Contextual information on funding the budget, and also on the national debt;
- Information on the financial activities of state-controlled businesses.

Internationally, the IMF has laid down a standard set of classification terms for budget data so that state budgets can be compared against each other. This classification can be found in the IMF's *Government Finance Statistics Manual*¹⁰.

Regionally, budgets of the African States in the West African Economic and Monetary Union (WAEMU)¹¹ and those in the Economic Community of Central African States (ECCAS)¹² have, for example, adopted directives to harmonise their state budget classification within these economic areas. To be able to monitor public expenditure properly, members of civil society need to identify the project relating to each line of expenditure accurately, to enable them to assess its progress. They therefore need all the information on the location of the project, on the type of work planned and on its scale. Not all of this information is necessarily available from one single classification system, which is why it is important that budgets should as a minimum contain the recipient administrative body and the economic and/or programme classification as the first component of the data.



DISSEMINATION METHODS AND OBSTACLES ENCOUNTERED

In a great majority of countries, the finance act, since it is a law, is in principle public and has to be published in the official gazette within the time limits applicable within the country.

It is not unusual for the time limit for publishing the finance act to be very long, which makes the work of civil society organisations more difficult. For example, the Congolese PWYP coalition in its report on monitoring public investment in the healthcare sector, deplored the fact that the 2014 final budget settlement law in Congo was not put before Parliament until October 2015¹³.

10 IMF (2001). *Government Finance Statistics Manual*. Available on: <http://www.imf.org/external/Pubs/FT/GFS/Manual/2014/gfsfinal.pdf>

11 WAEMU (2009). Directive no. 08/2009/CM/WAEMU on the budget classification system for WAEMU states.

12 ECCAS (2011). Directive no. 04/11-UEAC-190-CM-22 on state budget classification system.

13 The Congolese PWYP Coalition (2015). *Overseeing public investment in the healthcare sector. Budget 2014. About the urgency of improving the effectiveness of public expenditure*. Available on: http://www.publishwhatyoupay.org/wp-content/uploads/2016/01/Rapport_suivi_des_investissements_pub-

During the pan-African seminar organised by the Tournons la Page (Let us turn over a new leaf) coalition¹⁴ "Civic movements and democratic processes" which was held in Ouagadougou in Burkina Faso from 24 to 29 January 2016, the representatives of civil society organisations working on the subject of civic scrutiny of public expenses in various Francophone African countries recounted the difficulties they ran into in accessing key information on budgets and on capital expenditure in their states. They lamented the fact that the authorities found difficulty or were unwilling to release budget documentation that was supposed to be readily available. Some ministry officials refused to release budget documentation even though the law required this documentation to be made public and to be accessible to any citizen requesting it.

Transparency in public expenditure first and foremost requires that citizens should have access to budget documentation. As one of the participants at the Ouagadougou seminar remarked: "The point is not to know what documents are available, but rather actually to be able to access them. ". The criticisms on document accessibility are reiterated by many members of civil society, not only in Africa but also in Asia and in Latin America. The Burmese NGO Myanmar Alliance for Transparency and Accountability (MATA) emphasises the convoluted administrative procedures required, which hinder it from accessing budget information. Even when a state's budget documentation is made available to civil society, it is often difficult to use and it may contain a greater or lesser level of detail.

However, NGOs have sometimes succeeded in finding ways of working around these obstacles and accessing the budget information they need to carry out their civic work of monitoring public expenditure.

Civil society organisations in developing countries today face many challenges in connection with transparency in public expenditure. The first challenge is to ensure that budget data is publicised. Progress on meeting it can be made gradually, particularly by engaging in discussions and partnerships with key government bodies and in particular with state sub-national entities, to inculcate a long-term culture of transparency. These actions need to go hand in hand with legislative reforms to improve access to public information. Once these laws have been passed, they will provide an avenue of appeal if access to information is denied.

lics-PCQVP-Congo.pdf

14 <http://tournonslapage.com>



OTHER TOOLS AVAILABLE

To give civil society organisations backing in their advocacy work and in their task of overseeing public expenditure, several international initiatives are available.

Open data initiative: The Open Data Partnership is a joint initiative between the World Bank, the Open Data Institute and Open Knowledge. Its task is to promote to governments, NGOs and the citizens of developing countries the benefits of mass publication of data (*open data*) as a way of encouraging development. Their website contains, amongst other things, case studies and educational guides that may provide material for civil society in its advocacy work, and will be very helpful to understanding and using budget data. <https://theodi.org/odp4d>

International Budget Partnership: The International Budget Partnership is an organisation working on the subject of budget transparency, which in particular ranks countries according to their budget transparency. The IBP <http://www.internationalbudget.org/>

Open Government Partnership: The Open Government Partnership (OGP) is a multilateral initiative intended to give backing to several countries that have committed to budget transparency and to combating corruption. After having undertaken in a public declaration to introduce the necessary reforms, states particularly undertake to produce and implement an action plan and then to publish reports on the progress made and the challenges that still remain. These states commit to work transparently with civil society organisations. In a forum run under the OGP initiative, they receive technical support on introducing reforms and in assessing their effectiveness. The initiative currently has 69 member states. <http://www.opengovpartnership.org/>



The questions to ask yourself:

- Is budget documentation publicly available in my country? If not, what obstacles are encountered that hinder access to these documents?
- Is there any transparency law covering budget data? If there is, is this law properly applied in my country?
- What classification system is used in this budget documentation? Does the classification system make these documents easy to understand?

Tips and ideas

for accessing budget data

Here are some examples of what members of civil society have done when faced with difficulties in accessing public budget documentation:

- Collaborate with key people: it is important to identify the people in government departments who can provide budget documentation.
- Involve key ministry officials by inviting them to take part in discussions arranged by civil society on the subject of monitoring public expenditure, such as conferences, and local debates with citizens.
- Obtain documents that are supposed to be locally available from international institutions and economic and financial organisations that already have this budget information.
- Lobby for greater budget transparency by putting pressure on governments, particularly using complementary tools such as the International Budget Partnership's Open Budget Index¹, which ranks countries by their budget transparency. Social Watch Benin, for example, has shared its successful experience of lobbying the Benin government using this index. The NGO highlighted Benin's bad ranking to put pressure on the government to bring in reforms to improve the country's budget transparency.

¹ IBP (2015) *The Open Budget Survey*. Available on: <http://www.internationalbudget.org/opening-budgets/open-budget-initiative/open-budget-survey/>.

2.2 OVERSEEING THE REDISTRIBUTION OF INCOME

Once budget laws have been passed, civil society can check on the one hand that the funds allocated to each project by the budget are in fact sufficient to meet the people's needs and, on the other hand, that they comply with the laws in force in the country. National laws often lay down the methods by which state revenues are to be distributed between central government and regional and local authorities. For example, in many resource rich countries, the law provides that a fixed percentage of revenues from extractive industries should go directly to the regions affected by the extractive projects. The project-by-project data referred to on page 10 is and will be very useful in checking that local governments do indeed receive the amounts that they are supposed to receive from central government. The Niger 'Réseau des organisations pour la transparence et l'analyse budgétaire' (ROTAB), the Niger budget analysis and transparency organisations network, is in particular working with EITI project-by-project data to check that mining revenues are indeed paid over to the regions affected. The members of this organisation have been able to demonstrate that the amounts required under mining and oilfield laws to be paid over to local authorities were in fact very seldom paid over.

Transparency in managing and allocating resources from the extractive industries: an example of Chad law on managing oil revenues

After major discoveries of reserves of hydrocarbons in Chad at the beginning of the 1990s, plans were made to build a pipeline to carry Chad's hydrocarbons to the Atlantic coast via Cameroon. The World Bank agreed to back this project by contributing funding and sharing its expertise in managing natural resources¹.

After an international campaign by a number of civil society organisations, the World Bank pressured the Chad government at the time into passing a law governing the management of oil industry revenues². This law was warmly welcomed at that time, particularly because it allocated 10% of its oil resources directly to a future generations fund (taking its lead from the Norwegian model).

The initial law provided not only for a future generations fund, but also that 80% of the direct funds deposited in special accounts (which represent the remaining 90%) should be allocated to funding the priority sectors identified in the 1999 law (public health and social welfare, education, infrastructure, rural development and the environment, and water resources). This law was amended in 2006³, then in 2014⁴.

The 2006 law did away with the future generations fund. Since the authoritarian government was faced with powerful social and political challenges and uprisings, and because it wanted to buy arms, the list of priority sectors was extended to include justice, security and territorial administration. The 2014 law added energy, oil, mines, commerce and industry together with defence to this already

long list of priority sectors. Furthermore, the share of direct resources allocated to these expenses decreased, falling from 80% of the remaining direct funds (dividends and royalties together) to only 50% of dividends and 50% of royalties.

Against a background of falling oil prices (which necessarily went hand-in-hand with a fall in the state's oil royalties), this new distribution of oil revenues came at the expense of the social welfare expenditure that the population actually wanted.

Furthermore, the 1999 law provided that 5% of oil royalties should go to the decentralised local authorities of the producer regions.

Finally, the 1999 law set up the CCSRP (Collège de contrôle et de surveillance des ressources pétrolières) oil resources supervisory College, made up of representatives of the state and of its institutions, along with members of civil society. The task of this college was to ensure the proper amount of revenue was included in the state budget before the event, and to check on the investments funded by oil revenues after the event⁵. Although setting up this college was acclaimed as an advance in the transparent management of oil revenues, in practice it ran into many operational difficulties⁶

5 The task of the CCSRP oil resources supervisory College was to monitor and check that the use of direct oil revenue; to check the use of the special treasury accounts was in compliance with the initial finance act; to authorise and supervise payments out of the special accounts and the allocation of funds; to carry out on-site checks to ensure that the investments were genuine and to assess their impact on reducing poverty. The College published reports annually on the use of oil revenues.

6 In 2012, because of lack of resources, the countrywide public relations and outreach campaign on the proposals and laws for governing the management of oil revenues still had not happened. This campaign is, however, very important because it could reach all levels of civil society which, once they knew about these laws, could play a more active role in overseeing the proper use of oil revenues. *Fact checking* at the local level by the populations directly affected by investments is in fact a very effective way of countering corruption.

(because of the low level of funding allocated to it); and it also ran into hostility from certain officials while trying to perform its oversight function. These checks revealed malpractices in the award of public contracts, and a strong proclivity for awarding negotiated contracts, without putting them out to tender or to competition. Making companies compete against each other is particularly good at driving down prices and results in more advantageous bids (see the feature on awarding public contracts on page 28). This represents a loss of income for the state. However, the recommendations resulting from these checks were very seldom put into action⁷. The amended laws of 2006 and 2014 seemed to set aside the initial objective of the prudent management and fair division of oil revenues. They enabled the government to finance arming the country, in the process automatically reducing the funding going to healthcare, education and poverty reduction projects.

The civil society organisations in Chad working on budget monitoring therefore faced many challenges. They had to ensure that oil funds were properly shared out from the legal point of view, which is to say check that the government of Chad complied with this law. They also had to check that the oil revenues actually went to serve civic interests by funding projects which made a real contribution to development.

7 The CCSRP oil resources supervisory College recommendations are contained in its annual reports available on the College website: <http://www.ccsrp-tchad.org/w1/>

1 Massuyeau, B. et Dorbeau-Falchier, D. (2006). "Oil governance in Chad: the oil revenues management law". *Afrique contemporaine* (4), pp. 139-156.

2 Law no. 001/PR/1999 on managing oil revenues.

3 Law no. 02/PR/2006 amending law no. 001/PR/1999.

4 Law no. 06/PR/2014 amending law no.02/PR/2006 and the law no. 001/PR/1999.

Public development policies can also help judge how consistent the budget is with the state's development strategies. In the PWYP coalition 2014 report on healthcare¹⁵, the writers asked why there was a sharp decrease in healthcare expenditure, while at the same time this was a priority sector in the country's development strategy.

This check on the redistribution of revenues can be undertaken at various different levels. Firstly at the national level, by in particular checking that the funds required by law are indeed allocated to sub-regional authorities. At the regional level, it is possible to check that the funds allocated have indeed been received, and that they have been properly redistributed between the various intended projects.

Work on monitoring the redistribution of revenues can also act as a resource for the advocacy work of civil society organisations, both at the national level in calling, for example, for the adoption of a law on the fair distribution of state revenues, and also at the local level, to put pressure on the appropriate local authorities to fund priority projects.

In South Africa¹⁶, a national poverty reduction programme allocated funding to the country's young children, to cover expenditure on their basic needs (food, personal care and education). Initially, a grant of 100 South African rand was paid to children up to the age of seven. By analysing the government budget, civil society organisations realised that there were in fact more funds available to finance the project. They therefore lobbied the public treasury, the social development department and parliament to have this help measure increased to take account of inflation and to extend the grant to children up to the age of 18 in 2012 (nine years of age in 2003, increasing gradually up to 15 years in 2009).

At the local level, citizens can also take part in this work of monitoring the redistribution of revenues and find material to help with lobbying the appropriate local authorities to help assert their rights.

In Indonesia, the first stage in preparing the government budget is done at local village and district level, within popular forums in which everyone is invited to take part. In practice, most often only

the local elites are represented. The NGO KSPPM¹⁷ conducted an outreach campaign to raise awareness of the issue of monitoring budget expenditure amongst the farmers of the North Tapanuli district¹⁸. Once the budget issues had been explained to them, the farmers started to evaluate budget documentation before making proposals for civic budgets at district forums, exercising their rights and obtaining increased financial aid.

15 The Congolese PWYP Coalition (2015). *Op. cit.*

16 <https://www.one.org/international/follow-the-money/case-studies/using-budget-data-helped-huge-increase-in-grants-to-the-poorest-children/>

17 <http://www.ksppm.org/englishhomepage>

18 ONE (no date). "Budget Monitoring Empowers Farmers to Achieve Increased Funding". Available on: <https://www.one.org/international/follow-the-money/case-studies/budget-monitoring-empowers-farmers-to-achieve-increased-funding/>

2.3 CIVIC INITIATIVES FOR CHECKING BUDGETS AFTER THE EVENT

Budget scrutiny work can particularly make it possible to monitor the outcomes of state investment budgets and check that public funds have been properly used locally. It can show up any misappropriation of funds, highlight delays in some work or spot that some projects have not taken place, even though the funds have been paid out.

Civil society and particularly local populations are the people at the forefront of budget scrutiny work. In the Congo-Brazzaville 2014 health budget report, the Congolese PWYP coalition gave details of how it formed local groups to monitor public expenditure¹⁹. Firstly, the participants were trained in budget monitoring methods and in project-by-project assessment techniques. Persuading citizens to involve themselves in these projects, however, is still a major challenge. The lack of information on these budget issues and the apparent complexity of the data unfortunately tends to cause the population to show a definite lack of interest in budgets. The purpose of these training sessions is therefore to make important budget information available to local populations, and also increase the culture of accountability, that is to spread the

idea amongst the citizens that they can hold the state to account.

On the ground, citizens working on budget transparency have been able to ascertain the state of progress of various projects. Although some of them are under way, most have not yet kicked off (or are on hold) even though the money allocated to them has been paid out. Once the groundwork has been done, the participants have been able to identify a number of malfunctions in the budget cycle and make recommendations for the government bodies concerned.




If public budget data is to be used to foster a country's development, it is absolutely crucial that this information should be used by most political, social and economic civic movements (trades unions, rural organisations, consumer organisations, parents of schoolchildren, etc.). The challenge then becomes to broaden the campaign to bring all civil society organisations on board, in addition to the movement already working on the subjects of transparency and budget monitoring.

¹⁹ The Congolese PWYP Coalition (2015). *Op. cit.*

APPENDICES



APPENDIX N°1: SUMMARY TABLE OF MECHANISMS FOR PUBLISHING MULTINATIONALS' FINANCIAL DATA	40
APPENDIX N°2: MAIN MINING RIGHTS	43
APPENDIX N°3: HYDROCARBONS CONTRACTS	44
APPENDIX N°4: THE MAIN SPECIAL LEVIES IN MINING AND HYDROCARBONS REGIMES	45
APPENDIX N°5: THE OECD'S BEPS PLAN AND THE DRAFT EUROPEAN COMMISSION DIRECTIVE AGAINST TAX AVOIDANCE.	47
GLOSSARY	52

APPENDIX N°1: SUMMARY TABLE OF MECHANISMS FOR PUBLISHING MULTINATIONALS' FINANCIAL DATA

	INDUSTRIES AND COUNTRIES AFFECTED	COMPANIES AFFECTED	PUBLICATION AND ACCESSIBILITY	PAYMENTS TO BE PUBLISHED	CONTEXTUAL INFORMATION
 United States of America: The Dodd Frank Act, section 1504 (2010)	All extractive activities from exploration through to marketing. All countries in which these extractive activities are carried out.	All US and non-US oil and mining companies registered with the Securities and Exchange Commission (SEC), for their own activities and those of their subsidiaries and controlled companies.	Public. For each fiscal year, within 150 days of the end of the fiscal year* in standard XLS format. Data available from the start of 2019.	All payments greater than US\$100,000: <ul style="list-style-type: none"> • Taxes and dues • Royalties* • Production rights, bonuses • Fees (for example license fees) • Dividends* • Payments for improving infrastructure 	<ul style="list-style-type: none"> • Business segment making the payments • The government and the country receiving the payments • The various projects • The specific resources exploited • The geographical areas in which the projects are located
 European Union: Directives 2013/34/EU and 2013/50/EU (2013)	Extractive industries and primary forests logging from exploration through to the extraction phase. All countries in which these extractive and logging activities are carried out.	All "large companies" (see page 9) of in the extractive and primary forests industries.	Public. For each fiscal year, with each state making its own publication arrangements. No standard format. Data available from the beginning of the 2015 fiscal year for companies in countries that have transposed the Directives.	All payments greater than €100,000): <ul style="list-style-type: none"> • Taxes and dues • Royalties* • Production rights, bonuses • Fees (for example license fees) • Dividends* • Payments for improving infrastructure 	
 Norway: Country-by-country reporting regulations (2014)	Extractive industries and primary forests logging from exploration through to the extraction phase. All countries in which these extractive and logging activities are carried out	All companies in the extractive and primary forests industries for their own activities and those of their subsidiaries.	Public. For each fiscal year. PDF or XLS format. Data available since March 2015.	All payments equal to or greater than NOK 800,000 (US\$95,536.64) in each financial year.	

INDUSTRIES AND COUNTRIES AFFECTED	COMPANIES AFFECTED	PUBLICATION AND ACCESSIBILITY	PAYMENTS TO BE PUBLISHED	CONTEXTUAL INFORMATION
<p> Canada: Extractive Sector Transparency Measures Act (ESTMA) (2015)</p>	<p>All mining, oil and gas companies for their own activities and those of their controlled companies.</p>	<p>Public. For each fiscal year. No standard format. Data available from June 2017.</p>	<p>All payments (single or series of connected payments) equal to or greater than CAD 100,000 (around US\$77,300) in each financial year.</p>	
<p> EITI (Extractive Industries Transparency Initiative)</p>	<p>All companies operating in the extractive industries</p>	<p>Public. Annual publication. The availability of the data varies with country (sign-up date and implementation time limits)</p>	<p>All payments greater than the materiality threshold (decided by the multi-stakeholder group):</p> <ul style="list-style-type: none"> - income taxes* - host government production share (such as profit oil*); - state-controlled company's share of production royalties*; - dividends*; - bonuses (for example signature, discovery or production bonuses); - license rights and fees, leasing fees, entry fees and other consideration for licenses and/or concessions; - all other payments or significant advantages received by the state and its parts. 	<p>Contextual information on: contracts, licenses, beneficial ownership*, production, export and prospection data, quasi-tax expenses, welfare expenditure* and economic impact data. (See details on pages 14-15)</p>

APPENDIX N°1: SUMMARY TABLE OF MECHANISMS FOR PUBLISHING MULTATIONALS' FINANCIAL DATA

	INDUSTRIES AND COUNTRIES AFFECTED	COMPANIES AFFECTED	PUBLICATION AND ACCESSIBILITY	PAYMENTS TO BE PUBLISHED	CONTEXTUAL INFORMATION
 <p>OCDE/G20: BEPS action plan (2015)</p>	<p>All sectors of activity All countries</p>	<p>All multinationals located in OECD or G20 countries with a turnover of greater than €750 million for their own activities and those of their subsidiaries.</p>	<p>Not public, submitted by companies to the tax authorities in the country in which the company's head office is registered. Submitted to the tax authorities in countries that are signatories to the BEPS* plan The date of submission to the tax authorities varies according to how the BEPS* action plan is applied in national legal systems.</p>	<ul style="list-style-type: none"> - Turnover - Pre-tax profits* - Taxes on profits* paid and due - Number of employees - Share capital - Undistributed profits* - Tangible non-current assets 	
 <p>European Union: Country-by-country reporting project -Amendment to accounting Directive 2013/34/EU (amendment started in April 2016)</p>	<p>All sectors of activity. European Union country + set of countries defined as tax havens (list expected during 2017) Note: the extension to all countries may be adopted during negotiations on the Directive expected during 2017.</p>	<p>All multinationals with business activity within the European Union, with a turnover of greater than €750 million for their own activities and those of their European subsidiaries and those located in tax havens.</p>	<p>Public. Date of availability of the data depends on the date of adoption of the Directive and its transposition into national law by the Member States of the European Union</p>		

RIGHT	RIGHTS CONFERRED
Exploration permit	<p>Permit: A permit is not a mining right. It gives its holder no exclusive right.</p> <p>Non-exclusive permit to explore a specific area.</p> <p>In other words, the holder of an exploration permit has the right to prospect for minerals in a defined area, but the permit does not give it any specific right over the substances discovered.</p> <p>An exploration permit cannot be granted over an area already covered by an exploitation permit.</p>
Exploration license	<p>License: A license is a standard legal document which the state uses to grant exploration or exploitation rights over natural resources in an area. The license lays down a set of conditions that vary very little from one project to another.</p> <p>Exclusive right to carry out exploration work to look for deposits of substances suitable for mining.</p> <p>The exploration permit gives exclusive right to obtaining an exploitation license if minerals are discovered.</p>
Exploitation license	<p>Exclusive right to prospect, explore and exploit a specific mineral.</p> <p>The holder of the right is free to do as it wishes with the products extracted as a result of surveys, exploration or exploitation.</p>
Mining concession:	<p>Exclusive right to prospect, explore and exploit a specific mineral.</p> <p>The holder of the right is free to do as it wishes with the products extracted as a result of surveys, exploration or exploitation.</p>
<p>Some countries differentiate in their mining code between a concession and an exploitation license. Other countries use only one of these two rights. As a general rule, concessions are awarded for a longer length of time where the feasibility study reveals deposits with large reserves that need major investment. For these reasons, concessions are granted for longer lengths of time (usually a minimum of 20 years) than exploitation licenses, so that the company can recover the cost of its investment over a longer period of time. Exploitation licenses are granted for deposits of smaller size.</p>	

APPENDIX N°3: HYDROCARBONS CONTRACTS

CONTRACTS	RIGHTS CONFERRED
Concession	An oil concession, like a mining concession, confers exclusive rights on a company to explore, exploit and export oil from an area for a predetermined length of time. The company owns the oil extracted from this area.
Production Sharing Contract* (PSC)	<p>In a PSC, the company bears all the costs. It will deduct them from profits* to calculate the profits to be shared with the state.</p> <p>"Profit Oil*" (profit-generating Oil) = Profits* - "Cost Oil*" (oil covering the cost of production)</p> <p>The "Profit Oil*" is then shared between the government and the company in the proportions previously laid down in the PSC. The main challenge, both for the government and the company, is to negotiate the best deal possible.</p>
Risk sharing contract (<i>joint venture*</i>)	This contract is based on the government and the company sharing the management. It particularly involves sharing the profits* but also the risks and responsibilities.

For further information:

Open Oil (2016), Oil Contracts, how to read and understand them, available on: <http://openoil.net/2012/10/05/how-to-read-and-understand-oil-contracts/>

Natural Resources Governance Institute (2015), NRGi Reader, Granting rights to national resources-, available on: http://www.resourcegovernance.org/sites/default/files/documents/nrgi_primer_granting-rights.pdf

Ernst & Young, Global Oil and Gas tax Guide (2015), available on: [http://www.ey.com/Publication/vwLUAssets/EY-2015-Global-oil-and-gas-tax-guide/\\$FILE/EY-2015-Global-oil-and-gas-tax-guide.pdf](http://www.ey.com/Publication/vwLUAssets/EY-2015-Global-oil-and-gas-tax-guide/$FILE/EY-2015-Global-oil-and-gas-tax-guide.pdf)

APPENDIX N°4: THE MAIN SPECIAL LEVIES IN MINING AND HYDROCARBONS REGIMES

This table gives a simple summary of the main types of special levy that apply to the extractive industries. No one type of levy is better than another. To judge the quality of the tax regime applied to the extractive sector, various contextual criteria have to be taken into account, such as the quality and quantity of the natural resources, fluctuations in commodity prices, the state of progress of the various extractive projects in the region (are they mostly in the exploration phase or rather in the operational phase?), or whether they are offshore or onshore type projects (offshore projects often mean higher costs for the company, which is very often exempted from certain taxes to compensate). There is, therefore, no standard template for a tax regime, and each state has to adapt its tax system for the specifics of its extractive industry. However, it is crucial that this tax regime should not be regressive, but instead should be stable or progressive. In other words, if the company's profits increase over time, the state's revenues should also increase proportionately, or even more than proportionally if the profits are very high.

the state of progress of the various extractive projects in the region (are they mostly in the exploration phase or rather in the operational phase?), or whether they are offshore or onshore type projects (offshore projects often mean higher costs for the company, which is very often exempted from certain taxes to compensate). There is, therefore, no standard template for a tax regime, and each state has to adapt its tax system for the specifics of its extractive industry. However, it is crucial that this tax regime should not be regressive, but instead should be stable or progressive. In other words, if the company's profits increase over time, the state's revenues should also increase proportionately, or even more than proportionally if the profits are very high.

LEVY	BASIS OF LEVY	ADVANTAGES	DISADVANTAGES	TIMING OF RECEIPTS
Royalty*/levy based on number of units	Price per unit extracted, for example in US dollars per tonne or US dollars per cubic metre.	Stable revenues; Transparency; Reasonable administrative burden both for the state and for the company.	It is not good at maximising revenues. With this fixed levy, the state does not necessarily receive an optimal share of the economic rent. It would not yield a share of exceptional profits in the event of a steep rise in commodity prices, for example.	The state does not receive any revenues until production starts.
ROYALTIES*: Sums paid in exchange for use of a deposit (owned by the state).	Value of sales made or Gross value of the ore/metal /hydrocarbon content of the product.	Guarantees a royalty* for so long as the mine or oil reservoir is being worked. Reasonable administrative burden both for the state and for the company.	Market risks are shared between the government and the company because the levy is based on the sale of metal/ore/hydrocarbons. If commodity prices are low, the state will receive lower revenues.	The state does not receive any revenues until production starts.
Royalty*/levy based on profit	A percentage of profits per the project accounts is taken by the state.	This is good at maximising receipts.	Very uneven receipts and high compliance costs for the company and the government.	The state will not receive any revenues until production starts to generate profits.
Royalty*/hybrid levy	Specified minimum royalty* + a percentage share of profits	Guarantees a minimum stable income and avoids the state not receiving anything if the company does not make a profit.	Since the mechanism is complicated, the compliance expenses are high for both the company and the state.	The state does not receive any revenues until production starts.

APPENDIX N°4: THE MAIN SPECIAL LEVIES IN MINING AND HYDROCARBONS REGIMES

LEVY	BASIS OF LEVY	ADVANTAGES	DISADVANTAGES	TIMING OF RECEIPTS
<p>PRODUCTION SHARING CONTRACT* (PSC): Between a company and the state.</p>	<p>The state still owns the natural resources. The company bears all the costs. It will deduct them from profits* to calculate the profits to be shared with the state.</p>	<p>Transparent; costs borne by the company, few risks for the state.</p>	<p>The main challenge for the state is to negotiate the best deal possible. Such negotiations between the state and the company will need environmental, technical and/or financial expertise. In practice, however, governments in developing countries often have poorer access to key information and to technical know-how than the oil companies, which disadvantages the state during these negotiations.</p>	<p>The state does not receive any revenues until production starts to generate profits.</p>
<p>DIVIDENDS*: The portion of a company's net profits* paid to the shareholders at the end of each financial year.</p>	<p>The state may be a shareholder in the company and therefore, at its option, it will receive either dividends or part of the production in kind, which can then sell.</p>	<p>Dividends* are considered to be stable even when prices slump.</p>		<p>At the end of each financial year.</p>
<p>UPLIFT LEVY: A levy to capture a share of any exceptional profits.</p>	<p>A percentage of the company's exceptional profit is paid over to the state.</p>	<p>This levy maximises revenues if there is a sharp rise in commodity prices.</p>		<p>If the company has exceptional profits. Bonus paid on signing the contract. Bonus paid on the first discovery. Bonus paid when production reaches a pre-set level.</p>
<p>BONUSES</p>	<p>Signature bonus Discovery bonus Production bonus</p>			

APPENDIX N°5: THE OECD'S BEPS PLAN AND THE DRAFT EUROPEAN COMMISSION DIRECTIVE AGAINST A TAX AVOIDANCE.



TO TAKE IT FURTHER

Upcoming key dates:

BEPS*: The date of submission to the tax authorities varies according to how the BEPS* action plan is applied in national legal systems.

The European Union's country-by-country reporting project: the proposal adopted by the Commission has been passed to the Parliament and the Council and is being negotiated between these three institutions. Once adopted, it will be transposed into domestic law by each Member State at the latest one year after it comes into force.

Where to follow the progress of this mechanism (helpful websites):

- The European commission's website:
http://ec.europa.eu/finance/company-reporting/country-by-country-reporting/index_en.htm
- BEPS section of the OECD website:
<http://www.oecd.org/ctp/beps.htm>
- The BEPS plan civil society group website:
<https://bepsmonitoringgroup.wordpress.com/>

Although it was long sidelined by international economic organisations, the issue of tax avoidance* now occupies centre stage. At the request of the G20, the OECD has brought in an action plan for countering tax avoidance* by multinational corporations. The European Union is in the process of preparing a Directive which will implement the OECD action plan. These two international political processes are described in the appendix because currently (December 2016) they do not provide for public access to the information in question and because their geographical scope does not yet include the developing countries.

➔ DESCRIPTION OF THE MECHANISMS



The BEPS project

The OECD/G20's BEPS* (Basis Erosion and Profit* Shifting) project, formally adopted in November 2015 at the G20 Summit in Antalya in Turkey, is intended to put an end to the techniques of tax avoidance* used by multinationals, specifically through harmonising international tax rules, to ensure a tax transparent environment. It makes recommendations for states and lays down minimum standards that countries must then implement in their respective territories. This is a voluntary process ("soft law"), which is to say that countries are free to implement or not implement the plan in their territories. States have already planned to meet again in 2020 to learn the initial lessons from implementing the plan, and to revise it if necessary.

The BEPS project breaks down into 15 actions.

Each action targets one component of tax avoidance* used by companies, and makes a series of recommendations for states. Since tax avoidance* does not impact OECD countries and developing countries in the same way, some actions are more appropriate than others from the point of view of developing countries and are dealt with in greater detail below (these actions are highlighted in the following list). The problem situations that they are intended to resolve are set out on pages 22-23.

Action 1: Addressing the tax challenges of the digital economy

Action 2: Neutralising the effects of hybrid mismatch arrangements*

Action 3: Designing effective controlled foreign company* (CFC) rules

Action 4: Limiting base erosion involving interest deductions and other financial payments

Action 5: Countering harmful tax practices more effectively, taking into account transparency and substance

Action 6: Preventing the granting of treaty benefits in inappropriate circumstances

Action 7: Preventing the artificial avoidance of permanent establishment status

Actions 8-10: Aligning transfer pricing outcomes with value creation

Action 11: Measuring and monitoring the BEPS plan

Action 12: Mandatory disclosure rules

Action 13: Transfer pricing documentation and

country-by-country reporting

Action 14: Making dispute resolution mechanisms more effective

Action 15: Developing a multilateral instrument to amend bilateral tax treaties

✓ **Erosion of the tax base by financing and deducting interest (Action 4)**

This is one of the most widespread tax avoidance* practices, which consists of a company obtaining more than one deduction for interest on borrowings* (see diagram pp.22-23). The great majority of tax systems allow companies to deduct an amount from their tax base, sometimes up to 50%, for the interest that they pay to reimburse a loan. The lack of tax harmonisation between countries facilitates double deduction arrangements.

BEPS* Action 4¹ recommends that countries limit entities' deductions for interest to a certain percentage of their profits, before deduction of taxes, interest charges, depreciation and amortisation (EBITDA – *Earnings Before Interest, Taxes, Depreciation and Amortization*). The OECD recommends a bracket of between 10% and 30%. In other words, the company will not be able to deduct more than 30% of its profit for tax in respect of interest. This approach links it directly to the company's taxable profit generated by its economic activity. If the company declares low profits*, it will be charged less corporate income tax (on its profits*), but will be restricted in the amount it can deduct for interest paid. The lower the profits*, the greater restriction on the deduction for interest.

Action 4 is crucial because the practice of abusive deduction is very widespread, and deprives states of substantial tax receipts. In its report "Calling Time"², the NGO Action Aid estimates that deliberate under-capitalisation of a Ghanaian subsidiary of a group of companies (the parent company of which was based in the United Kingdom), which was financed using intra-group loans and the interest on which it deducted from its tax base, resulted in a loss of income for Ghana of £76,000 (around US\$107,415).

✓ **Countering transfer price manipulation (Action 8 and 10)**

Actions 8 and 10 are intended to keep transfer price* practices in check (see diagram pp.22-23)

1 OECD (2015), final BEPS Reports 2015, Action 4: Limiting base erosion involving interest deductions and other financial payments, available online at: <http://www.oecd.org/tax/beps/limiting-base-erosion-involving-interest-deductions-and-other-financial-payments-action-4-2015-final-report-9789264241176-en.htm>

2 Op. Cit.

Action 8 focuses on the manipulation of transfer prices* for intangible assets* and the value placed upon them. In particular, it puts forward recommendations on the arm's-length competition principle and an approach to setting appropriate transfer prices for these intangible asset* transfers. Action 10 deals with risky transactions and their re-categorisation as transfer prices*.

Other important measures for developing countries are described in the table opposite.



European Commission draft Directive against tax avoidance

In January 2016, the European Commission put forward a "package of measures" aimed at introducing a simpler and fairer tax system within the EU. The package contains a draft Directive against tax avoidance* by businesses which incorporates the recommendations of the BEPS* plan and is intended to bring in controls on:

› The rules on controlled foreign companies*: to discourage European companies from transferring their profits* abroad to a controlled foreign company* to avoid taxes, the Directive provides that these funds, even though they may be transferable, can be taxed in the European Union.

› The tax exemption rules: to prevent double non-taxation, EU states can tax dividends³ if they think they have not been properly taxed in their home country. Formerly, these dividends* were considered to have been taxed already, and could therefore not be taxed again in Europe.

› Exit tax: to discourage companies from transferring their patents to low tax countries and thus decrease the amount of tax on profits* payable within the EU, the Directive provides that EU countries can tax the patent at the time it is transferred.

› Deductibility of interest: as recommended in the BEPS* plan, there will be restrictions on the deductibility of interest⁴.

› The framework for combating hybrid mismatch arrangements*⁵: to counter the use of hybrid mismatch arrangements* involving obtaining more

3 Company A invests in another company B located in another country B with an advantageous tax system. Company B pays back the dividends* to company A. These dividends* are considered as having already been taxed in country B, which is why in practice many countries do not tax these dividends.

4 The draft Directive incorporates the ratio recommended by BEPS. See above.

5 See the diagram on pages 22-23

- Other BEPS plan measures with a substantial impact on developing countries

ACTIONS	PRACTICES TARGETED	IMPACT ON DEVELOPING COUNTRIES	BEPS* RECOMMENDATIONS
Action 6	The granting of abusive tax advantages to multinational companies by states.	Developing countries are the main victims of the grant of abusive tax advantages. To attract foreign investment, these countries use many tax breaks, which have the effect of eroding the country's tax base while giving them very few benefits in exchange ¹ . In 2005, 80% of sub-Saharan African states granted temporary tax breaks to multinational companies ² .	The BEPS* plan recommends the adoption of anti-abuse rules which particularly target treaty shopping*. The OECD model tax Convention has been revised to include a statement that these treaties should not be used to allow double non-taxation. Finally the, OECD recommends that countries cooperate at regional level.
Action 7	Abusive use of Controlled Foreign Companies* by multinationals to transfer their profits* to low tax countries.	In theory, the profits* generated by a foreign company's activities are only taxable in a state if the company has a permanent establishment there. To avoid paying taxes in developing countries, companies may for example use agents rather than set up a subsidiary. The activities carried out are the same as those of the subsidiary, but the profits* generated in the country are not taxed.	BEPS* recommends a revision of the definition of controlled foreign companies to put an end to these practices.

than one tax deduction, these deductions will henceforth be allowed in only one member state.

Finally, the draft Directive also contains a general anti-avoidance clause, which gives member states powers to act against aggressive tax planning if any of the other rules referred to above do not apply.

This Directive will come into force in the European Union and will not have an impact on developing countries, which is why it is described so briefly here.

Country-by-country reporting

Another of the main features of this package of measures is country-by-country reporting as per Action 13 of the BEPS* plan, which will also be transposed into European law by the amendment, announced in April 2016, of accounting Directive 2013/34/EU which rounds off the anti tax avoidance* package of January 2016

INDUSTRIES AND COMPANIES AFFECTED

Industries

Unlike other mechanisms which only target the extractive industries or the banks, the BEPs* project and the European package of measures affect all

types of activity without exception.

Companies affected



BEPS*

All multinationals located in an OECD or G20 country with a turnover in excess of €750 million. This threshold will in itself exempt 85% to 90% of groups of companies from the reporting requirement⁶.



Proposed EU country-by-country reporting

All multinationals carrying out activities within the European Union with a turnover greater than €750 million. The companies affected are required to publish information on their activities and those of their subsidiaries within the European Union and in territories defined as tax havens⁷. Developing countries are therefore excluded from this reporting requirement. It should be noted that rather than using the OECD criteria as the basis, the European Union might have decided (and still could decide)

6 OECD (2015), BEPS plan final reports, Action 13: the regulation on documenting transfer prices and on country-by-country reporting [on line]. Available on: <http://www.oecd.org/ctp/beps-action-13-guidance-implementation-tp-documentation-cbc-reporting.pdf>

7 The new European Union list of tax havens is expected to be published during 2017

to use a less restrictive definition of multinational companies, since officially it considers that a company is to be defined as being large if it has a turnover of greater than €40 million only (see page 9)



INFORMATION AVAILABLE

For each of the tax jurisdictions in which they operate, the companies concerned must produce a report annually, giving:

- Turnover
- Pre-tax profits
- Corporate income tax (tax on profits*) paid and due
- Number of employees
- Share capital
- Undistributed profits
- Tangible non-current assets

They must identify each group entity that operates in the given tax jurisdiction, and state the nature of their activities.



DATA PUBLICATION AND DISSEMINATION REQUIREMENTS

✓ Data publication



BEPS

The BEPS plan* recommends that the first reports should be submitted by multinationals to the tax authorities in the country in which the company is headquartered for the fiscal year beginning 1 January 2016, but each state is free to set its own rules on this matter.



Proposed EU country-by-country reporting

This draft Directive is now being passed to the European Parliament and the Council of the European Union. Once adopted, it will have to be transposed into the national legal systems of each of the Union's member states, within one year of coming into force⁸.

✓ Accessibility of the data



BEPS

Under the BEPS* plan, this data does not have to be made public. It has to be submitted to the tax authorities of the country in which the company is headquartered.

For OECD countries, there is a system of automatic exchange of information between tax authorities. This system currently applies only to OECD countries and a few non-G20 countries. The tax authorities in developing countries will therefore not for the moment have access to this information, and neither will civil society or organisations working on this matter.

Although not public, this information could potentially be transferred to the tax authorities of developing countries if they request it under a tax information exchange agreement between the countries, which is often included in double tax treaties.

Furthermore, in January 2016 the OECD invited those countries that so wished to join a new forum for implementing the BEPS* plan. To join the forum, countries must sign up to the BEPS* plan and apply the minimum standards in each of the BEPS* plan actions⁹. Taking part in it gives developing countries a good opportunity to have an influence in shaping the final BEPS* project tax regulations, and thereby see that their own interests are taken into account. However, this also represents a huge challenge because these countries do not necessarily have the legal, administrative and technical resources fully to implement the measures recommended by the BEPS* plan. Developing countries would, for example, have to beef up their data exchange capabilities considerably to comply with

⁸ It comes into force 21 days after publication of the Directive in the European Union official Journal.

⁹ OECD (2016), Centre for Tax Policy and Administration, All interested countries and jurisdictions can join in the work of the international community, initiated by the OECD and the G20, on closing loopholes in the international tax system [on line], available at: <http://www.oecd.org/ctp/all-interested-countries-and-jurisdictions-to-be-invited-to-join-global-efforts-led-by-the-oecd-and-g20-to-close-international-tax-loopholes.htm>

the requirements of the OECD's "Global forum on transparency and exchange of information" as regards the automatic exchange of information. The automatic exchange of tax information is based on the principle of reciprocity between tax authorities, which entails harmonisation of the methods and formats for transmitting tax data between all countries. In other words, these countries would have to acquire the legal, technical and human resources (by training specialist officials, for example) to bring themselves up to developed country standards. This constitutes a major cost for developing countries. It is therefore crucial that countries wanting to join the forum to implement the OECD's plans should receive aid, at least technical aid.

The OECD tax and development working group have set up two pilot projects in Kenya and Ghana to help these countries to build a set of mechanisms for exchanging information between states¹⁰. Furthermore, the OECD is currently working with two regional tax organisations, the ATA (African Tax Administration forum¹¹) and CIAT (Inter-American Center of Tax Administrations¹²), on setting up an aid programme for developing countries on the subjects of tax base erosion and tax avoidance*.

While seeing this action plan as a major step forward in combating tax avoidance*, many civil society organisations nevertheless lament the fact that it has been prepared without any developing country being able to participate fully in the decision-making process (some were only "consulted") while they are strongly encouraged to apply it and are often the main victims of the practices that the plan is intended to counter¹³.



Draft European Directive

Over the last few months, European civil society organisations have applied to the European Commission to achieve full public country-by-country reporting, of broad application not only to companies but also to their subsidiaries. On 12 April 2016, the Commission made its country-by-country reporting proposal public. Civil society organisations found the proposals very disappointing. Although public, this European reporting system will have no direct impact on developing countries because it applies solely to the activities

of multinationals within Europe and in tax havens, the list of which is expected to be prepared during 2017. Perhaps, during negotiations between the European Commission, the Parliament and the member states, it will be possible to beef up the draft legislation and extend the reporting system to all countries and all large companies as per the European Union definition (see page 9)

10 the OECD Tax and Development Programme, available at: <http://www.oecd.org/tax/tax-global/tax-and-development.htm>

11 <http://www.ataftax.org/en/Pages/default.aspx>

12 <https://www.ciat.org/?lang=en>

13 For further details of the civil society organisation position see <https://bepsmonitoringgroup.wordpress.com/>

GLOSSARY:

The definitions compiled in this glossary are based mainly on the following documents: the EITI glossary¹, the glossary of the French report "En quête de transparence, sur la piste des banques françaises dans les paradis fiscaux" (Seeking transparency, on the trail of French banks in tax havens)² as well as the Open Oil report glossary on oil contracts³.

Intangible assets: Assets with no physical, material or tangible components, the existence of which is founded on the rights that they confer on their owner. Intangible assets are usually made up of intellectual and/or industrial property rights: patents, designs and models, trademarks, literary and artistic property (copyrights and rights of reproduction), software and databases.

Fiscal year: Period used for a country's financial calculations, which may be different to the calendar year.

Profit: Surplus of income over expenditure, in accordance with applicable accounting rules. Profit may be arrived at before and/or after deducting applicable taxes due.

BEPS: *Base Erosion and Profit Shifting.* Term used to describe the transfer of taxable profits from the country in which the revenues were generated to a country with low taxes or even no tax, which made no contribution at all to the creation of economic value. This transfer results in "the erosion" of the figure on which taxes are charged (the tax base) in the countries in which the activities are carried out, therefore reducing the

tax revenues of that country. This acronym is also the name of the OECD action plan adopted by the G20 in November 2015, to combat these practices.

Extractive industries value chain: Phases that run from the extraction of natural resources to the final use of the revenues from them, including processing and selling these resources.

Treaty shopping: Treaty shopping is a practice that consists of comparing and systematically researching international tax treaties to find ways of allowing one or more companies to minimise their tax contributions.

Production Sharing Contract: Oil production contract by which the oil company responsible for exploitation bears all the exploration and production expenses, with these expenses not being reimbursable if no discovery is made in the area covered by the contract; the government and the subcontractor are both paid in kind out of the resources produced.

Cost oil: Oil (or gas) which is shared with the oil (or gas) company at a pre-set rate, according to a formula set out in the corresponding production sharing contract. This allows the company to recover the expenses it has incurred on the project.

Social welfare expenses: Payments made in kind by companies for social welfare services, such as building schools, roads or similar, or these companies providing these services directly.

Hybrid mismatch arrangements (OECD definition⁴): Arrangements that exploit differences in instruments, entities or transfers between tax systems between two or more countries. These arrange-

ments are most commonly used to obtain double tax deductions (as shown in the fictitious illustration on pages 22-23) or a deduction/non-inclusion, meaning that a company deducts the interest in one country but is not liable to tax on the amount received in the other country.

Dividends: Payment to a partner or shareholder, made out of a company's profits as a return on investment.

Tax avoidance: Practice by which private individuals or companies reduce their tax contributions by transferring income and assets to low tax or no tax countries, to the detriment of the country in which the wealth is generated. Tax avoidance stays within the bounds of the law (unlike tax evasion) but hovers in a "grey area" created by the room left for interpretation in the wording of laws, and by the differences between each country's tax systems, and therefore from the lack of international tax harmonisation.

Tax exemption: Government incentive measure to reduce a company's taxes or to exempt it from them for a certain period of time. Tax breaks are often used in developing countries to help stimulate foreign investment.

Illicit capital flows: These are funds that are received, transferred or used illegally. These funds normally come from three sources: commercial tax avoidance, falsification of invoices in international trade, and abusive transfer prices; criminal activities such as drug dealing, people trafficking, illegal arms dealing, smuggling, active bribery and embezzlement by corrupt officials.⁵

1 EITI (no date). Glossary. Available on: <https://eiti.org/document/glossary>

2 Secours catholique-Caritas France, CCFD-Terre Solidaire and Oxfam France (2016). "Report: In search of transparency, on the trail of French banks in tax havens" (in French). op. cit.

3 Open Oil (2016), Oil Contracts, how to read and understand them, available on: <http://openoil.net/understanding-oil-contracts/>

4 http://www.oecd.org/tax/aggressive/HYBRIDS_ENG_Final_October2012.pdf

5 Definition used in the high-level Group Report on flows of illegal diamonds from Africa (2015). Joint African Union/Conference of Finance Ministers - Economic Commission for Africa on economic planning and development. [on line] Available at http://www.francophonie.org/IMG/pdf/fluxfinanciersillicites_rapport_francais.pdf

Sovereign wealth fund: Sovereign wealth funds are *public investment funds* run by states seeking to make a return on the country's accumulated savings.

Extractive industries: Usually means the oil, gas and mining industries.

Joint-venture: Groups of companies, which may include a state-controlled company, that have joined together for the purpose of prospecting for and extracting deposits of ore or hydrocarbons in a given area under the terms of a joint contract.

Signature bonus: Upfront payment required by the authorities in certain host countries before exploration can begin in exchange for the right to start exploration in a given area.

Transfer price: Price at which a subsidiary of a large company buys and sells goods or services or shares resources with another subsidiary of the same corporation in another country. Exaggerated transfer prices can inflate profits in low tax jurisdictions and reduce them in high tax jurisdictions. For example, the sale by one subsidiary to another of the ore produced at a price below market value can have the effect of reducing the income declared by the company to the government, thus bringing down the amount of tax it has to pay. Similarly, the purchase of goods or services from a sister company at an inflated price can increase the costs that the company declares, thus increasing its deductions and reducing its income tax payments.

Such intra-group trading is governed by the OECD principle of "arm's-length competition", requiring groups to trade on the same terms within the group as they do with other companies. The finger

is often pointed at intra-group transactions in the context of tax avoidance, particularly as regards prices charged for intangible assets, such as brands and patents.

Kimberley Process: The international certification and tracking system for the trade in uncut diamonds. The main objective of this certification is to prevent the trade in uncut diamonds being used to fund armed conflicts.

Profit oil: Quantity of crude oil/gas remaining to be divided between the government and the operator oil/gas company after covering its costs, by the cost oil/cost gas system, and after paying royalties and other levies (if any) under a production sharing contract.

Offshore/Onshore: A term used for oil reserves and installations located in the sea. The opposite of onshore projects, which are located on land.

Beneficial ownership: Means the natural person or persons who owns or ultimately controls a company, a license or any other property.

Accountability: A principle that, for an individual or an organisation, consists of rendering account for its activities, of accepting responsibility for them and of disclosing the necessary information with complete transparency.

Royalties: Payment for the extraction of mineral resources, paid to the host government (which may also be a regional, provincial and/or local government body).

Materiality threshold: The threshold at which a payment becomes material. Payment is considered to be material if omitting it or declaring it inaccurately could have a major impact on the comprehensiveness of the final disclosure report.

Controlled foreign company: Subsidiary of a company that is domiciled abroad.

Value Added Tax: Tax applied at each stage of the manufacture or sale of a product or service. Abbreviation: VAT. The rules of VAT systems are laid down at national level and vary from one country to another. The VAT that a business pays for goods can usually be deducted from the VAT that it bills on the sale of goods or the supply of services. The difference is paid to the government (or paid by the government). Oil and gas exports are usually exempt from VAT.

WITH THE HELP OF:



Authors: Amaya London and Grégoire Niaudet

With contributions from: Charlotte Boyer (Publish What You Pay Coalition Congo - Brazzaville), Javier Jahnke (Red Muqui), Emilie Johann (Secours Catholique-Caritas France), Brice Mackosso (Commission Diocésaine Justice et Paix de Pointe Noire), Christian Mounzeo (Rencontre pour la Paix et les Droits de l'Homme, RPDH), Alice Powell and Abdoulaye Seydou (Réseau des Organisations pour la Transparence et l'Analyse Budgétaire, ROTAB PCQVP-NIGER).

We wish to thank the following persons for their comments and their valuable contributions: Zara Aghanyan (Caritas Armenia), Gustave Assah (Social Watch Benin), Jean Marc Bikoko (CSP public sector central trade union) Christian Chavagneux, Aurore Chaillou, Monseñor Héctor Fabio Henao (Secretary of the National Social Pastoral organisation - Caritas Colombia), Elver Fernando Herrera Arenas (Secretary to the National Social Pastoral organisation - Caritas Colombia), Félix Koane Kouamé (CERAP, the research and action Centre for peace), Emannuel Njiikam (Citizens' Movement), Marc Ona Essangui (Brain Forest Gabon), Quentin Parrinello (PCQVP-France/OxfamFrance), Ni Ni Winn (Myanmar Alliance Transparency and Accountability Coalition, MATA).



SECOURS CATHOLIQUE - CARITAS FRANCE

INTERNATIONAL ADVOCACY UNIT

dept.plaidoyerinternational@secours-catholique.org

www.secours-catholique.org

 caritasfrance

 Secours Catholique-Caritas France