



Transparency and Accountability In Africa's Extractive Industries: **THE ROLE OF THE LEGISLATURE**

EDITED BY SHARI BRYAN & BARRIE HOFMANN

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The National Democratic Institute for International Affairs (NDI) is a non-profit organization working to strengthen and expand democracy worldwide. Calling on a global network of volunteer experts, NDI provides practical assistance to civic and political leaders advancing democratic values, practices, and institutions. NDI works with democrats in every region of the world to build political and civic organizations, safeguard elections, and promote citizen participation, openness, and accountability in government.

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I. PREFACE & ACKNOWLEDGMENTS

Africa's natural resources have for many decades been a source of power and wealth for the continent's ruling elites and multinational corporations, and less often for Africans themselves. Tragically and repeatedly, competition for control of revenues from natural resources has fueled cycles of corruption, conflict and poverty, forestalling opportunities to spur economic growth and social development.

As global mineral and petroleum resources grow scarcer on other continents, and new African sources come into production, resource-rich African nations are earning rising profits from their natural wealth. If these resources are to be used effectively and harnessed for development, more accountable and transparent mechanisms must be developed and supported by governments, multinational corporations, legislative bodies, political parties, civic organizations and the media.

This report is an effort to help elected political officials – particularly those in the legislative branch of government – serve as constructive leaders in improving the oversight and management of their countries' natural resources.

Democratic governance requires legislatures to serve three purposes: representing citizen interests; making or shaping laws and policies; and overseeing the executive. In the management of natural resources, legislators bear responsibility for ensuring that policy and regulatory frameworks support their sustainable use and exploitation, and that government agencies appropriately allocate and account for revenues.

The National Democratic Institute for International Affairs (NDI) believes that African legislatures could play more robust roles in creating viable oversight mechanisms to monitor the collection and use of revenues from extractive industry revenues, and in ensuring that the interests of civil society and citizens are taken into account, from community-level environmental concerns to the allocation and disbursement of revenues collected by central governments.

To that end, the Institute developed a program to identify and raise awareness of effective policies, structures and techniques for monitoring extractive industry revenue flows with the goal of assisting reform-minded legislators and their

partners in civil society in the design and implementation of workable strategies in a select group of pilot countries.

This report identifies the challenges that African legislators face in overseeing their countries' oil and mining industries, as well as best practices in use around the world and recommendations for future engagement. Nine countries were selected for this study: Angola, Botswana, Chad, the Republic of Congo (Congo-Brazzaville), the Democratic Republic of Congo (DRC), Ghana, Nigeria, Sierra Leone and South Africa. The report draws extensively on interviews with over 200 individual elected legislators, politicians, civic leaders and business representatives as well as desktop research conducted on Sao Tome and Principe's emerging oil sector.

The survey findings present a mixed picture. Many legislators who were interviewed demonstrated the determination and political acumen necessary to affect change in this area, and a number of legislative bodies on the continent were attempting to play more active roles in providing oversight of this sector. However, political and financial constraints prevent many of these individuals and bodies from conducting oversight activities effectively and independently, while others lack the support of skeptical public audiences that have little confidence in their capacity or political will to improve management and oversight in industries long seen as the source of personal wealth for those in power.

There are a number of international initiatives underway to promote accountability and transparency, such as the Extractive Industries Transparency Initiative (EITI), the Publish What You Pay (PWYP) Coalition and Transparency International's Revenue Transparency Project. NDI believes that reform-minded legislators should more proactively engage with these and other initiatives in search of workable strategies and programs to meet the specific challenges of their countries' environments. We hope that this report will serve as a resource for these individuals and those willing to support their efforts.

NDI's survey team included: Sefakor Ashiagbor, NDI Senior Program Manager; Susan Booyesen, Ph.D., Graduate School of Public and Development Management, University of the Witwatersrand, Johannesburg, South Africa; Philippe

I. PREFACE & ACKNOWLEDGMENTS (CONT'D)

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Drawing on the country research, Sefakor Ashiagbor and Barrie Hofmann prepared this final document with assistance from NDI Program Officer Brionne Dawson. Skyler Badenoch, Masipula Sithole, Ashley Smith and Kehinde Togun served as project assistants. Our gratitude goes to Joel Barkan, Ph.D., Chris Fomunyoh, Ph.D., and Peter Manikas who provided guidance and helped edit the report.

This study would not have been possible without the cooperation and confidence of the political leaders, civic advocates, executive branch officials and business representatives who willingly offered their insights on this sensitive issue. NDI sincerely thanks all those who made the report possible.

NDI works with democrats in every region of the world to build political and civic organizations, safeguard elections, and to promote citizen participation, openness and accountability in government. The Institute does so in the belief that democracies promote economic growth and development more consistently and equitably than non-democratic political systems. It is no coincidence that the world's most prosperous and peaceful nations are also the most democratic. Without the checks and balances critical to democratic governance, unchecked governments are more able to squander resources, often resulting in economic decline. Democracy building programs are, above all, an investment in peace and stability, both of which are prerequisites for sustainable development.

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II. EXECUTIVE SUMMARY

While current efforts to increase transparency and accountability in the management of natural resources emphasize the roles and responsibilities of a broad range of actors, relatively little attention has been paid to the potential contribution of elected legislators. Yet, the three core functions of legislative bodies – representing constituent interests, making or shaping public policy, and overseeing policy implementation by executive branch agencies – are central to any effort in this area.

Legislatures that are able to fulfill this role effectively are well placed to help mitigate the various risks that management of oil and other resources may pose. After the discovery of significant oil deposits on Norway’s continental shelf in the late 1960s, for example, contributions from elected legislators helped shape the design of sound management systems for the country’s new wealth.

Rising revenues from the growing world-wide demand for Africa’s oil and other mineral resources could spur broader economic growth and development. The recognition of the need to improve management of the extractive industries in Africa’s poorest resource-rich countries presents a unique opening for legislators to establish themselves as relevant and credible actors in the movement toward greater transparency, accountability and responsiveness in government. Initiatives like the Extractive Industries Transparency Initiative (EITI) and Publish What You Pay (PWYP) Coalition have drawn worldwide attention to the need for increased transparency and accountability in the management of extractive industries. The result is unprecedented international political will, information and tools for reforming management of the extractive industries.

Lessons learned from the experiences of countries that have fallen victim to the ‘natural resource curse’ suggest that prospects for successful management of natural resources significantly improve when democratic institutions are in place prior to the exploitation of mineral wealth. Unfortunately, these institutions and processes often take longer to develop than the time needed to exploit mineral wealth. The window of opportunity for many countries is narrow: by the time democratic institutions develop, vested interests may already be in place, making it more difficult for well-meaning legislators to

ensure transparency and accountability. Similarly, the window of opportunity for legislators to prove themselves as relevant and capable actors in the debate over extractive industry management may be closing in countries where legislatures have limited credibility in the eyes of citizens. Continued inaction risks perpetuating negative perceptions of legislatures and their role in reform processes.

Domestic civic groups and international advocacy organizations are far ahead of African legislators in their efforts to promote increased transparency and accountability in the extractive industries. Nevertheless, legislative bodies have the potential to serve as open and accessible forums where stakeholders can work together, even in those instances where legislatures lack the capacity to analyze legislation or other issues that affect extractive industry management. Regular, public exchanges between legislators and other groups and individuals on extractive industry issues can also serve as springboards for reform.

African legislators face many constraints in fulfilling their roles and responsibilities, including weak individual and institutional capacity, little independence from more powerful executives and ruling political parties, and limited political will. Oversight of the extractive industries is further complicated by a common perception held by many legislators themselves that the industry’s technical complexity is beyond their comprehension. Faced with proposals from well-informed or connected executive branch agencies or officials, legislators often lack both the information and the confidence to influence legislation, policy or management of the extractive industries.

In the course of interviews conducted in nine African countries – Angola, Botswana, Chad, the Republic of Congo (Congo-Brazzaville), the Democratic Republic of Congo (DRC), Ghana, Nigeria, Sierra Leone and South Africa – research teams met a number of legislators who are champions for reform or have the will and potential to play such a role. Though the island nation of Sao Tome and Principe is not yet an oil-producing country, NDI included relevant examples of the country’s efforts to establish a legal and regulatory framework designed to ensure that oil proceeds are used to meet the country’s broader

II. EXECUTIVE SUMMARY (CONT'D)

development needs. NDI's impetus in undertaking this project was to help identify ways in which these motivated legislators and those willing to support them could contribute to the development of legislative bodies as important and effective actors in the struggle to develop more transparent and accountable management of the extractive industries.

Key Findings:

- **International organizations, local advocacy groups, and multinational corporations have played a key role in increasing public access to information and awareness of the importance of government oversight.**

Initiatives like EITI and the PWYP campaign have drawn worldwide attention to the need for increased transparency and accountability in the management of extractive industries. As a result, a number of African countries, including Nigeria, Angola and Congo-Brazzaville, now publish financial and other information in the press and on government websites, including the results of audits and other assessments that have highlighted management weaknesses and other shortcomings. Though local organizations engaged in these initiatives often face great personal risk in carrying out advocacy activities and encouraging public dialogue, their efforts have played an important role in stimulating reform.

- **A growing number of African legislatures are more active in the management and oversight of the extractive industry sector.**

The legislatures of Nigeria, Sao Tome and Principe, and South Africa have passed legislation intended to ensure the sustainable and accountable management of their countries' natural resources. Legislatures in several countries, including Ghana, Nigeria and South Africa, regularly request access to information in order to conduct oversight and investigatory activities, and are increasingly holding public hearings on proposed legislation. Lawmakers from Nigeria, Chad and the DRC participate in working groups, commissions and other bodies designed to improve sector management.

The legislatures in a number of the survey countries are improving their ability to fulfill their responsibilities by strengthening committee systems, research and analysis capacity, and rules of procedures. South Africa's National Assembly Research Unit produces briefs for use in reviewing executive branch budget proposals. Nigeria's National Assembly is establishing a budget and research office to improve its ability to engage the executive more substantively on budget and public expenditure issues.

- **Political and institutional constraints are the principal stumbling blocks to improved management and oversight of the extractive industries.**

In many of the survey countries, a long-standing veil of secrecy over extractive industry activities has limited public, as well as legislative, access to information on the oil and mining sectors. Efforts to hide corrupt practices at the highest level of government have been a primary cause, but opacity in the industry has also resulted in a lack of technical knowledge that limits the ability of outsiders to engage on complex issues.

Weak legislative bodies cannot serve as counterweights to more powerful executive branches. In many of the survey countries, legislatures are marginalized from decision-making processes and dissuaded from conducting oversight activities. In countries where ruling party control is pervasive, legislatures are often used to rubber stamp executive policy after little or no debate. Constitutions, legislation and other rules of procedure often vest significant legal authority in the executive, thereby diminishing the ability of legislatures to oversee the oil and mining sectors.

While regulating and overseeing the industry requires an understanding of policy options that are often highly technical, a psychological barrier can also prevent legislators and citizens from accessing and using simplified information that is readily and increasingly available, and often in the public domain.

- **Civic leaders and reform-minded legislators who share goals often miss opportunities to work together or reinforce each other's efforts.**

Though many of those interviewed were highly critical of general legislative inaction and of the conflicts of interest that prevent individual members from fulfilling their responsibilities, the NDI survey teams met legislators in each of the nine countries who demonstrated both interest and ability in playing more active roles in extractive industry management and oversight. In most of the survey countries, civic leaders and organizations are similarly engaged, and often work closely with international initiatives. A combination of mutual distrust and a lack of understanding or awareness of ways to work together has left little room for coordination or cooperation between civil society and legislators.

Recommendations:

To Legislative Bodies and Individual Members:

- Take advantage of international interest and support for increased transparency and accountability in the management of extractive industries to develop more specialized knowledge of the extractive industry, and become more engaged in management and oversight issues.
- Seek representation on multi-stakeholder bodies, such as local EITI committees, that provide a forum for addressing accountability and management challenges posed by extractive industry activities. Legislators who participate in such groups should provide regular updates to their colleagues and constituents.
- Develop contacts with international organizations, local advocacy groups, and the private sector -- which may have developed access to information normally withheld or not made readily available by governments -- to increase understanding of areas of concern and any policy recommendations made by advocacy groups. Improved cooperation and coordination between civil society, the private sector and legislatures can help transform recommendations into law and reinforce the legislature's responsibility to represent citizens.
- Establish contact with peers from other resource-rich countries who confront similar challenges or have played a role in addressing them. The Southern Africa Development Community Parliamentary Forum (SADC-PF), the Global Organization of Parliamentarians Against Corruption (GOPAC) and the Commonwealth Parliamentary Association are examples of organizations that regularly bring legislators together to share information, best practices and lessons learned on a variety of policy issues.
- Make better use of existing legislative resources to influence policy and conduct oversight activities, from standing committees that deal directly with the extractive industry to finance and budget committees that have an impact on revenue management. Improved utilization of existing resources and even the most limited oversight powers over the short term can help legislators build a stronger case for increased resources – whether financial, human or technical – in the medium to long term.
- Improve ethical conduct to build public confidence and increase legitimacy. Concern over standards of ethics in public office is one of the reasons for widespread skepticism about legislators' capacity and will for improved transparency and accountability in the extractive industries. Ethical standards may be spelled out in codes of conduct or rules, and may include provisions on financial disclosure and declarations of interests, as well as restrictions on conflicts of interests, outside employment, gifts and travel. To be effective, such systems must include enforceable sanctions and penalties for non-compliance.

To International Advocacy Groups and Local Civic Activists and Organizations:

- Seek opportunities to work with legislative bodies, and promote legislative participation in extractive industry initiatives. Identify and support reform-minded legislators who can influence legislation and promote transparency and accountability by conducting investigatory and oversight activities.
- Seek access to relevant legislative committees and opportunities to brief them on developments in the mining and oil industries. Reinforce the link between legislators and their constituents by encouraging public outreach, civic input and more effective use of committee systems and other legislative resources to address constituent concerns.

To Members of the International Community and the Private Sector:

- Include legislative bodies and individual legislators in capacity building programs to improve extractive industry management and oversight. Such programs could include the facilitation of access to policy support from recognized universities, research institutions and other relevant organizations, as well as private sector experts.
- Widen engagement on extractive industry reform to include legislative bodies and individual legislators. Encourage legislative participation on multi-stakeholder bodies such as local EITI committees, and provide legislative briefings on important industry related activities.
- Help adapt lessons learned and best practices from donor-funded pilot projects in countries like Chad and Sao Tome and Principe in the development of future legislative strengthening programs intended to help African governments make better use of oil and mineral wealth to achieve longer term economic and political goals.

III. INTRODUCTION

Revenues from oil, gas and mining should spur economic growth and social development in developing countries. In practice, however, economies that are overly dependent on oil and mineral wealth have often encouraged authoritarian rather than democratic forms of governance, particularly in countries with weak legal or regulatory frameworks. Profits from natural resources allow ruling elites to consolidate power through patronage systems, while revenue mismanagement may fuel devastating spirals of corruption, conflict and poverty. Competition for control over natural resources has led to armed conflict in Nigeria, the Democratic Republic of the Congo, Liberia, and Sierra Leone, and to the suppression of political dissent and the violation of human rights in countries like Congo-Brazzaville and Chad.

The efforts of various local organizations and advocates to promote greater transparency in the management of their countries' natural resource wealth have garnered increased international attention in recent years. A growing number of initiatives target oil and mining companies, governments and international financial institutions in their advocacy efforts.

The Kimberly Process – a joint initiative of governments, civic groups and the private sector – aims to limit the unregulated sale of rough diamonds as a source of funding for conflict. The Publish What You Pay (PWYP) Coalition, a network of over 300 non-governmental organizations worldwide, promotes mandatory disclosure of the payments made by oil, gas and mining companies to governments. Led by the United Kingdom's Department for International Development (DFID) and the World Bank, with support from the private sector, the Extractive Industries Transparency Initiative (EITI) encourages governments and their private sector counterparts to adhere to a voluntary set of principles that include publication and verification of company payments and government revenues from oil, gas and mining. Research conducted by a number of other organizations, including Catholic Relief Services and International Alert, has also stimulated interest in the development of more accountable and transparent resource management systems.

To be effective, these initiatives must foster cooperation beyond ministries, multilateral organizations and multinational corporations to include legislative bodies, political parties, civic organizations, and the media. Each of these groups has a distinct and complementary role to play in demanding and enforcing accountability, and in ensuring that a nation's natural wealth benefits broader populations.

This report is intended to help strengthen the capacity of legislatures to design and implement more accountable and transparent mechanisms for monitoring extractive industries generally, as well as the collection and use of extractive industry revenues. Through research into the management and oversight of extractive industries in nine African countries, NDI has sought to identify and raise awareness of effective policies, strategies, structures and techniques for overseeing revenues from extractive industries. Over the longer term, will assist reformers in selected countries to develop strategies for increasing democratic oversight of extractive industry revenues.

IV. OIL AND MINERAL WEALTH - AFRICA'S MIXED BLESSING

Africa is home to some of the world's largest deposits of minerals and oil. As non-renewable resources decline in many parts of the world and global demand grows, African countries are set to earn increasingly high profits from this sector. Between 1997 and 2001, for example, West Africa's gold output increased 56 percent, at a time when production in many other countries was declining.¹ A majority of the world's diamonds – 65 percent, worth \$8.4 billion a year – are sourced to African countries.² Chinese oil imports from Africa increased from \$3.6 billion in 2000 to \$13.2 billion in 2005.³ Soon, African countries could provide as much 25 percent of all oil imports to the United States.

If properly managed, revenues from these exports could help alleviate poverty and spur development in many countries that, despite their wealth, are currently near the bottom of international human development indicator rankings. Paradoxically, many countries with abundant mineral and oil deposits have seen less economic growth or human development than countries without such endowments. Some have experienced declines in the competitiveness of other economic sectors, macroeconomic vulnerability to fluctuations in world commodity prices or crippling indebtedness because of excessive government borrowing during 'boom' years. The economies of less developed mineral-rich countries are further disadvantaged by the need to sell raw materials that cannot be refined locally. Although 80 percent of the known global reserves of coltan are found in Africa, for example, few of the countries possessing the resource have the capacity to maximize their export earnings by refining the mineral, a key component in the manufacture of cellular telephones.

Large and unregulated inflows of funds into government accounts serve as great temptations for those in power. In the absence of transparency and other controls, ruling cliques use resource profits to enrich themselves and consolidate power through corruption and

patronage, while the general citizenry remains impoverished. In countries like Angola, the Democratic Republic of the Congo (DRC), Nigeria and Sierra Leone, mineral and oil wealth has fuelled conflict, with devastating consequences for their societies.

The complexity of multinational business negotiations and the time lapse before profits accrue can frustrate efforts by civic groups, host governments, the international community and corporations to promote transparency and accountability. Significant capital investments are often required to extract or develop natural resources like gold, diamonds, oil and gas and in many countries, only those with political power – a relatively small circle, in most cases – have the authority to grant access to those resources.

Published literature on countries that have fallen prey to what is often called the "natural resource curse" points to multiple causal factors. These include: multinational corporations whose business practices have serious human rights, political, economic and environmental implications; the home governments of corporations who often fail to hold the international practices of their corporate citizens to acceptable standards; and export credit agencies that support the destructive behavior of their clients.

Ultimate responsibility for the management of a country's natural resource wealth lies with that country's elected government. The principal means of ensuring sound management at all stages of natural resource exploitation – from extraction to the collection and expenditure of revenues – is through the adoption of practices that adhere to and reinforce agreed upon standards of accountability and transparency. Countries that have successfully used proceeds from the extractive industries for national development purposes, including Australia, Canada and Norway, have such practices in common.

According to a study commissioned by the World Bank,

"Our findings stress the importance of strong (or at least strengthened) institutions in the wake of natural resource discoveries as a way to curb the negative growth effects

Ultimate responsibility for the management of a country's natural resource wealth lies with that country's elected government.

1 Sierra Leone Eyes a Golden Future, www.bbc.co.uk/08/20/2006

2 Fact # 9, www.diamondfacts.org.

3 Broadman, Harry G. et al., *Africa's Silk Road: China and India's New Economic Frontier*, 2007. The World Bank, Washington, D.C.

Ideally, host governments negotiate the most beneficial contracts for the exploitation of mineral wealth, oversee corporate compliance with contracts and the nation's laws, and manage revenues properly.

*of corruption. This is especially true in less developed countries where natural resource discoveries have a much higher relative impact on both the capital stock and the extent of corruption, and are confronted with generally weaker and less adaptable institutions.*⁴

Ideally, host governments negotiate the most beneficial contracts for the exploitation of mineral wealth, oversee corporate compliance with contracts and the nation's laws, and manage revenues

4 Leite and Weidman, quoted in Marshall, Ian, *A Survey of Corruption Issues in the Mining & Mineral Sector*. England: International Institute for Environment and Development, 2001. Available online at: http://www.iied.org/mmsd/mmsd_pdfs/marshall_corruption.pdf

properly. Even in the absence of willful corruption or influence-peddling, however, public officials often lack the expertise to accomplish these critical tasks, or the foresight to invest or save portions of the proceeds for the future. In many cases, the discovery of oil and other resources creates unrealistic expectations about future income, leading to increases in current expenditure, often on large and impractical projects (See Box 1: Oil and Mining Industries Often Create Temptations for Rent-Seeking Behavior and Loss of Fiscal Discipline).

Increases in budget expenditures – often before revenues begin accruing – lead to deficits and rising inflation that undermine longer term development priorities. For example, many newly

BOX 1: OIL AND MINING INDUSTRIES OFTEN CREATE TEMPTATIONS FOR RENT-SEEKING BEHAVIOR AND LOSS OF FISCAL DISCIPLINE

- Concentration of power over resources in the hands of a select few. Where significant capital investments are required to extract or develop natural resources and only a relatively small circle have the authority to grant access to those resources, power can become concentrated in the hands of a select few, creating opportunities for corruption. In the absence of transparency and other controls, resource profits allow ruling classes to consolidate power through corruption and patronage.
- Loss of fiscal discipline. Public officials often lose sight of the need to spend carefully during boom times. Loose fiscal policy often leads to large but impractical “prestige” projects that quickly become seen as “white elephants.” Further, public officials may be tempted to use patronage to provide short-term fixes to social and economic problems rather than addressing their root causes.
- Relationships between governments and citizens are undermined. In many instances, political elites become increasingly dependent on revenues from the extractive sector and patronage systems to maintain their authority. Other sources of revenue and the relationship between government and citizens are neglected by leaders as secondary and unimportant.
- Other industries neglected or undermined. Windfalls from natural resource exploitation often increase the value of the country's currency. Imports become cheaper, creating disincentives for local production, especially in the agricultural sector, while exports become more expensive and less competitive.
- Unrealistic expectations about future income. The discovery of oil and other resources often create unrealistic expectations about future income that lead to sustained increases in public spending. Inflation and debt rise, while loans are secured (often on favorable terms) with the backing of unreasonable projections of future earnings.

Sources: Gary, Ian and Karl, Terry Lynn, *Bottom of the Barrel: Africa's Oil Boom and the Poor*, 2003. Catholic Relief Services, Baltimore, MD.

Karl, Terry Lynn, *The Paradox of the Plenty*, 1997, University of California Press, Berkeley and Los Angeles, California.

IV. OIL AND MINERAL WEALTH - AFRICA'S MIXED BLESSING (CONT'D)

wealthy mineral producing states have historically increased foreign imports, regardless of indigenous production ability, destroying local incentives to produce items that can be either imported at lower cost or whose prices may be lowered through state subsidies.

The nature of the resource often defines the set of challenges surrounding its management. For instance, oil sector revenues typically outstrip income from solid minerals. According to a 2005 International Monetary Fund (IMF) report, revenues from oil and gas account for 52.7 percent of total fiscal revenues in oil dependent economies, on average. The average income from the mining sector in economies dependent on solid minerals is only 12.7 percent. Mining sector receipts are smaller and less complex than those from the oil and gas industry, whose contracts typically involve confidentiality clauses, signature bonuses and production sharing agreements. Questions over transparency in the management of revenues paid to local and regional governments is more often, though not exclusively, an issue in the solid minerals industry than it is in the oil and gas sector. Further, a broader range of operators and investors, including large transnational companies, medium to small scale local business and individual prospectors, is engaged in the mining industry than is the case in the oil and gas sector. State-owned companies control the mining sector in certain countries but lack the size and influence of similar bodies in oil and gas sectors. Finally, civil society groups and other activists monitoring the solid minerals industry are often more focused on the sector's broader contribution to economic and social development than they are on the specific issues of revenue management.⁵

In Sierra Leone and parts of the DRC, artisanal miners play a larger role than multinational corporations in the extraction of minerals. Small-scale miners often lack capital, use labor-intensive methods, have poor access to markets and support services, and work under conditions with low standards of safety and health. Sierra Leone's alluvial diamonds have a high overall unit value and can be extracted with relative ease: the vast majority of diamond miners use handheld tools,

including basic shovels and sieves. Such factors, in addition to the ease with which diamonds can be transported, make the sector more vulnerable to illicit trade practices, mainly smuggling. In many countries where agriculture is the principal occupation of most rural citizens, mining communities are more concerned with environmental damage and issues of land compensation and access rather than revenue management. In Ghana and the DRC, for example, human rights abuses in the artisanal mining sector, including allegations of forced labor, are a principal concern of local populations, as is the management of other natural resources affected by extractive operations, such as forest reserves.

In recent years, the efforts of various local organizations and individuals to promote greater transparency in the management of their countries' natural resource wealth have garnered increased international attention. Presently, there are a variety of advocacy initiatives targeted toward oil companies, governments and international financial institutions. The Kimberly Process, a joint initiative of governments, civic groups and the private sector, aims to limit the unregulated sale of rough diamonds as a source of funding for conflict. The Publish What You Pay (PWYP) Coalition, a worldwide network of over 280 non-governmental organizations (NGOs), promotes mandatory disclosure of the payments made by oil, gas and mining companies to governments for the extraction of natural resources. The Extractive Industries Transparency Initiative, (EITI), developed by the United Kingdom's Department for International Development (DFID) and the World Bank, encourages governments to sign onto a voluntary set of principles that include publication and verification of company payments and government revenues from oil, gas and mining. Transparency International's Revenue Transparency Project aims to set and support the adoption of industry and government standards for revenue transparency, and to measure revenue transparency performance and diagnose areas for improvement

International corporations have increasingly adopted higher standards of corporate responsibility, and many private sector companies and their representatives appear committed to greater transparency, and to contributing to the sustainable development of the countries in which they operate.

In environments where all branches of government are engaged in the management and oversight of extractive industry activities, citizens are more likely to channel grievances through formal government institutions, rather than take them directly to private companies.

⁵ Rader, Jim and Christina Sabater. *EITI and the Mining Sector: Stakeholder Research Report*. Undated. Avanzar LLP. Also see IMF "Guide on Resource Transparency," June 2005 (In most countries where data is available, the mining sector accounts for 10 percent or less. However, Botswana's 56 percent raises the average).

Irrespective of corporate social responsibility programs, however, resource extraction has often led to conflict between local communities and the private sector that highlight broader governance failures. In environments where all branches of government are engaged in the management and oversight of extractive industry activities, citizens are more likely to channel grievances through formal government institutions, rather than take them directly to private companies. Analyzing the conflict in Nigeria's Niger Delta, the International Crisis Group (ICG) notes, "When asked why oil companies should be expected to provide for communities when it is the government's job to collect taxes and offer services and an equitable regulatory framework, many Delta residents reply: government officials are inaccessible, live far away and do not care."⁶

⁶ International Crisis Group, *The Swamps of Insurgency: Nigeria's Delta Unrest*, Africa Report No. 115, 3 August 2006, p.17.

V. DEVELOPING SOUND LEGAL AND REGULATORY FRAMEWORKS

Accountable governments face two principal challenges in determining the policy framework for the exploitation of oil and minerals in their countries. First, they must create a business climate that attracts private investment, a necessary precondition to the development of the extractive industries. Second, they must address relevant domestic policy issues, such as the environmental impact on communities affected by extraction activities, and ensure the equitable distribution of profits from the industry.

Policy or regulatory frameworks and laws governing the exploitation and management of natural resources are often spread across different pieces of legislation and other government instruments. In most cases, constitutions vest natural resources in the people but grant the government the authority to manage those resources on their behalf. In some cases, constitutions specify formulae for revenue sharing between national and state or provincial levels of government.

Mining or oil codes specify procedures and parameters for the granting of concessions and other rights of access, general conditions for exploitation, royalties, taxes, and other incentives specific to the extractive industries. Corporate tax structures and laws governing employment, the environment, and occupational health and safety also have implications for extractive industry management.

Through their lawmaking functions, legislators can support the passage of laws or other instruments that create an enabling environment for sustainable and accountable management of oil and minerals. Recommendations made by the Norwegian Parliament helped determine the appropriate management systems when large offshore oil and gas deposits were discovered in the late 1960s. The Norwegian legislature continues to play a central role in overseeing management of the extractive industries. (See Box 2: Norway's Legislature Plays an Important Role in Oversight of the Gas and Oil Industry).

Regrettably, legislators from a number of African countries described situations in which they were under pressure to move legislation forward quickly, often without amendment, because funding from international development part-

ners depended on the passage of legislation. In other cases, executive branch officials argued that changes proposed by legislators would discourage foreign investment in the country's mining sector. Confidentiality clauses are also often used to prevent public scrutiny of contract details.

"In the most successful economies, the state's role as facilitator of investment is balanced by its role, for example, as regulator – establishing laws and policies that provide for regional land use planning, ameliorate environment and social impacts, or take advantage of the opportunity to develop roads, schools, and better health care."¹

A Crowded Field of Actors and Interests

The range of actors involved in managing or monitoring the extractive industries varies across industries. Large multinational corporations like AngloGold Ashanti, British Petroleum, de Beers and Shell wield enormous power in the extractive industries in countries like Angola, Botswana, the DRC, Ghana, Nigeria and South Africa. In Sierra Leone and parts of the DRC, however, small-scale artisanal miners control the extraction of minerals.

State-owned companies often carry out a range of functions in the oil and gas industries. Examples include the Nigerian National Petroleum Corporation (NNPC), a holding company that includes subsidiaries in oil exploration, production, refining, storage and marketing of oil, gas and refined products. NNPC also negotiates joint venture equity participation agreements with private oil companies. In Angola, the *Sociedade Nacional de Combustíveis de Angola* (Sonangol), plays a central role in the overall management of the country's hydrocarbon resources, serving as a concessionaire, equity partner and operator in the industry.

The type and number of executive branch agencies involved varies from country to country but

Through their lawmaking functions, legislators can support the passage of laws or other instruments that create an enabling environment for sustainable and accountable management of oil and minerals.

1 The Mining, Minerals and Sustainable Development Project. *Breaking New Ground: Mining Minerals and Sustainable Development*. London: Earthscan Publications Ltd, 2002. Report for the International Institute for Environment and Development and the World Business Council for Sustainable Development.

Corruption thrives in states where overall government capacity is weak.

typically includes ministries like Chad's Ministry of Petroleum Resources; Ghana's Ministry for Lands, Forestry and Mines; finance ministries; public revenue management agencies like central banks and tax collection agencies; and environmental agencies. Their capacity varies considerably from country to country.

In Ghana, Sierra Leone and Botswana, traditional authorities play an important role in the management of natural resources, either by exercising their authority over land use decisions (including the approval of concessions and licenses) or in the control and expenditure of revenues received.

International corporations, donors and advocacy organizations also play critical roles in resource management. In some cases, transparency initiatives have been a condition of donors. In others, technical assistance from international development partners has influenced national policies and processes as the World Bank has been involved in the development of new mining and oil codes for several countries, including Chad.

Uneven Capacity Hurts National Interests

A lack of technical expertise puts the governments of resource-rich countries at a disadvantage when negotiating with potential foreign investors over oil and mineral rights. Limited local capacity can also hamper oversight efforts. In Chad, for example, the lack of formal banking and payment systems outside the capital makes it difficult to ensure that public funds are properly spent and accounted for in priority development projects.

An independent audit of Nigeria's Petroleum Directorate, the body responsible for calculating the royalties owed to the government by oil companies, recently uncovered serious deficiencies in staff capacity. Months after passage of a new mining code in the DRC, mining ministry representatives in eastern Congo had no knowledge of it. In Sierra Leone, severe understaffing in the Mines Department and the Geological Survey Division of the Ministry of Mineral Resources limits the ministry's ability to regulate the diamond industry. South Africa's Auditor General has raised concerns about shortcomings in the Department of Minerals and Energy.

Corruption thrives in states where overall government capacity is weak. In 2003, 30 former senior executives of Elf were convicted for corporate fraud in a French court. The convicted individuals included senior executives involved in making secret payments to African leaders from countries such as Congo-Brazzaville, who were offered loans backed by anticipated oil revenues and received assistance to facilitate the exchange of oil revenues for arms purchases. In Congo-Brazzaville, both the Congolese government and the broader public are often criticized as "dupes" of foreign companies.²

Laws and Practices Can Make a Difference

South Africa's mining code and related legislation encourages the diversification of mine ownership to include historically disadvantaged groups, as well as job creation and industrial development. South Africa's Mine Health and Safety Act of 1996 led to important improvements in occupational health and safety conditions in the mining industry. Botswana's diamond revenues have helped fund investments in infrastructure, education, health and other development programs. (See Box 4: Exploiting Minerals for National Development: Lessons from Botswana).

During the DRC's recently concluded transition period, a number of laws were promulgated to improve natural resource management. Though untested, Sao Tome's new Revenue Management Law includes provisions for oversight, auditing and disclosure of oil revenues, as well as guidelines to ensure fiscal discipline. (See Box 3: Key Features of Sao Tome and Principe's Revenue Management Law).

Following approval by the House of Representatives, Nigeria's Senate passed the Nigeria Extractive Industries Transparency Initiative (NEITI) Bill in March 2007, making annual independent audits and disclosure of extractive industry revenues mandatory.

The development of a legal framework for the management and use of oil revenues from Chad's Doba oilfields was a precondition for World Bank support for the construction of a pipeline

² See Global Witness. "Time for Transparency." March, 2004.

to carry land-locked Chad's oil to port through Cameroon. Seen as a model for other less developed oil-producing countries, Chad's 1999 Petroleum Revenue Management Law included the establishment of an independent advisory group and the creation of an independent committee, the *Collège de Contrôle et de Surveillance des Ressources Pétrolières* (CCSRP or *Collège*), to authorize and monitor the use of funds set aside for five priority sectors: education, health, rural development, infrastructure, and water and environmental resources.

Recent internal political conflict and the spill-over effect of Sudan's Darfur crisis, however, has weakened the law's effect on development. The government has sought more direct control over oil revenues, and the National Assembly passed legislation in December 2005 eliminating the government's Future Generation Fund and increasing the percentage of oil revenues dedicated to general government expenditures. In response, the World Bank suspended funding to Chad until a compromise was reached that

commits Chad to using 70 percent of its annual oil revenues on development and other poverty alleviation programs. Chadian civil society organizations question whether Chad's current government will abide by the agreement.

BOX 2: NORWAY'S LEGISLATURE PLAYS AN IMPORTANT ROLE IN OVERSIGHT OF THE GAS AND OIL INDUSTRY

When oilfields were discovered in the North Sea off Norway in the late 1960s, the country was already one of the world's wealthiest and most open societies. Norway's highly efficient and professional civil service offered better career prospects than the private sector, though societal norms and the threat of heavy criticism by the legislature and the media discouraged political leaders and other interests from trying to influence their work. Strong institutions of accountability, in place since the eighteenth century also guarded against political interference.

During Norway's national debate over the exploitation of the country's oil resources, farmers, fishermen and environmental activists were among the groups who expressed concerns over the possible risks of becoming an oil-dependent economy. Their concerns were taken into account in the recommendations made by the Norwegian Parliament in 1974 favoring moderation and long-term planning in oil sector development.

Decades later, Norway's legislature plays an important role in overseeing management of the oil and gas industry. For instance, the legislature creates the framework for the oil and gas sector by: passing legislation and other instruments; debating white papers outlining executive branch proposals; and revising and approving major development projects.

An independent Auditor General's Office that reports to the legislature conducts regular financial and performance audits of all government accounts and state-owned enterprises and monitors management of state interests in companies.

Sources: Karl, Terry Lynn, *The Paradox of the Plenty*, 1997, University of California Press, Berkeley and Los Angeles, California.

The Norwegian Ministry for Foreign Affairs, *Transparency in the Norwegian Petroleum Sector*, 2006, downloaded from www.eitioslo.no

BOX 3: KEY FEATURES OF SAO TOME AND PRINCIPE'S REVENUE MANAGEMENT LAW

- An independent commission including executive branch, legislative (including ruling and opposition party) representatives and civil society will oversee implementation of the law. All oil revenues are to be deposited in a National Oil Account to be held by an international custodial bank.
- To ensure fiscal discipline, withdrawals from the National Oil Account are limited by amount (as a percentage of the Account balance) and frequency. Borrowing against the Account is prohibited.
- A portion of oil proceeds will be set aside in a Permanent Fund and invested to create an "endowment" for use after oil resources have been exhausted. A committee, comprising legislative and executive representatives, determines the investment policies for the Permanent Fund. To guard against conflicts of interest, investment in STP or enterprises in which the island's citizens are involved is prohibited.
- All withdrawals, revenues and holdings of the Oil Account and the Permanent Fund are subject to mandatory public disclosure. Confidentiality clauses in contracts in the extractive industries are illegal.
- The National Oil Account is subject to annual audit by the national audit chamber and by international independent auditors. The results of the audit must be shared with the oversight commission, various public officials and a public information office.
- The legislature is required to hold an annual debate on oil and gas policy and the audit reports. These sessions must be open to the public and should be preceded by public consultations with civil society.

Source: Bell, J. C. and Faria, T.M., "Sao Tome and Principe Enacts Oil Revenue Law, Sets New Transparency, Accountability and Governance Standards" in *Oil, Gas & Energy Law Intelligence*, Vol. 3, Issue 1, March 2005, www.gasandoil.com/ogel/

BOX 4: EXPLOITING MINERALS FOR NATIONAL DEVELOPMENT: LESSONS FROM BOTSWANA

Botswana is widely perceived as a model of the successful management of natural resources for development. Since the discovery of diamonds in 1967, diamond revenues have helped fund investments in infrastructure, education, health and other development programs. The diamonds are mined by private companies in which the government has significant shareholding. The largest operator is Debswana, in which De Beers and the Government of Botswana are equal partners. Although the revenue sharing agreement between the two partners is confidential, some analysts estimate that the government takes approximately 75 percent of the profits through taxes, royalties and dividends.^a

According to one study, Botswana's success can be attributed to:

- A stable political system that values honesty, transparency, accountability and commitment to citizen welfare;
- A stable socio-political environment enabling properly regulated extraction, processing and marketing of national resources;
- A fiscal environment whose monetary laws, taxes, inflation levels and financial management attract foreign and local investment; and
- Sound partnerships between government and the private sector, underpinned by a mutual commitment to the sustainable utilization of resources.^b

Traditional concepts of dialogue, as embodied in the use of *kgotla* (village councils) and commitment to consensus or *kogisano* (social harmony) continue to have an important influence on political processes. Through various economic policies, Botswana has been able to limit external debt, stabilize growth and encourage economic diversification.^c

In 2006, De Beers and the government of Botswana signed an agreement to establish a new company – Botswana Diamond Trading Company – that will sort, value and market diamonds. These functions were previously carried out in London. Diamonds will also be cut and polished in Botswana in the future. These initiatives are expected to create new jobs and increase the diamond industry's contribution to the country's economy.

Sources: a. Modise, Modise D, Deputy Permanent Secretary (Development), Office of the President, Botswana, *Speech Presented at the Workshop on Growth and Diversification in Mineral Economies*, (Organized by UNDTAD) in Cape Town, South Africa. November 7-9, 2000.

b. Mtunzi, Silibasizo, "The Private-Public Partnership Model: The Debswana Case", in *OPENSPACE, Vol., No. 4*, 2006. Open Society Institute for Southern Africa.

c. Sarraf, Maria and Jiwajji, Moortaza, *Beating the Resource Curse, The Case of Botswana*, 2001, Environmental Economics Series, The World Bank Environment Department.

VI. ENCOURAGING PUBLIC ACCOUNTABILITY AND TRANSPARENCY

Public dialogue on the management of national extractive industries stimulates improved transparency and oversight by governments.

The more that governments respect democratic freedoms, uphold standards of transparency and accountability, and demonstrate a commitment to building administrative capacity, the more likely that oil and mineral wealth will be used for broad development purposes that improve the lives of citizens. In many of the countries surveyed, commitment to these standards is weak, where they exist at all. In countries where government capacity is weak, a commitment to reform can be tracked through participation in initiatives such as the Extractive Industries Transparency Initiative (EITI). In some of the countries that have joined the EITI, such as Nigeria, efforts are underway to enshrine the program's principles in law, thus making the disclosure of company payments and government receipts compulsory. On the other hand, in countries that have developed effective management and oversight systems over time, such as Botswana, a decision not to engage in such initiatives need not be interpreted as a lack of commitment to transparency and accountability.

In many of the countries surveyed, citizens and civil society organizations seeking greater accountability in the oil and mining sector have put their lives at risk by opposing the powerful vested interests of politicians and members of the business community. Nigerian environmental activist Ken Saro Wiwa, who spoke out about human rights abuses and environmental degradation in the Niger Delta, was hanged during the dictatorship of military ruler Sani Abacha in 1995. More recently, advocates for increased transparency and accountability in Congo-Brazzaville's oil sector have faced government harassment. In Angola, critics of corruption have in the past faced defamation charges.

In some African countries where efforts to improve transparency and accountability are underway, there is doubt about the sincerity of governments, and a general perception that reforms were only being undertaken in response to international pressure.

Providing Information to the Public and Responding to Citizen Concerns

In many countries, citizens lack basic knowledge of the extractive sector, including information on

industry operators' obligations to the state, government revenues from these sources and how those funds are allocated, disbursed and reconciled. In the most extreme cases, this lack of information exacerbates already weak relations between citizens and their governments.

International advocacy organizations, such as Global Witness, Human Rights Watch, the International Crisis Group and the Publish What You Pay (PWYP) Coalition, are often able to obtain access to information that may be withheld by governments. Their efforts often influence public debate at local, regional and international levels, particularly in countries that traditionally limit discussion of oil or mineral wealth.

Public dialogue on the management of national extractive industries stimulates improved transparency and oversight by governments. For decades, public discussion of Congo-Brazzaville's oil wealth was taboo until a loose coalition of civil society and church-based groups mounted an advocacy campaign that highlighted the government's misuse of oil revenues. Sustained public pressure led the government to publish financial information about the oil sector on a government website, including the results of a partial audit of the state-owned oil company that identified inconsistencies between the company's accounts and oil revenues recorded in government accounting records.¹

In the Democratic Republic of Congo (DRC), public debate centers on regaining and extending state control over the country's resources following decades of government corruption, mismanagement and armed conflict that claimed millions of lives. Civic activists in Ghana advocate for government policies to ensure that appropriate royalties are paid and jobs created, and that benefits or other forms of compensation accrue to communities where natural resources are extracted. They also raise concerns about environmental damage and human rights abuses by mining companies. Over the past several years, Ghana's Chamber of Mines has voluntarily disclosed information

¹ In concluding that much valuable information was not available, such as the state-owned enterprise's foreign accounts, the auditors did not certify the company's accounts.

VI. ENCOURAGING PUBLIC ACCOUNTABILITY AND TRANSPARENCY (CONT'D)

on payments by its member corporations, publishing the information in the most widely read newspapers.

In response to growing international pressure, Angola has taken marginal steps to improve transparency and accountability. In 2004, a published audit of Angola's oil sector highlighted management weaknesses. In November 2005, the National Bank of Angola submitted its financial accounts for 2003-2004 to the National Assembly, apparently the first time it had done so. During the assessment team's visit, new procedures formalizing and expanding the Angolan Ministry of Finance's oversight of the state-owned oil company, Sonangol, were being developed. However,

significant details of the country's oil revenues remain obscure.

Audits are critical to sound industry management, and can provide legislators and the general public with useful information on problem areas, as well as recommendations for reform. In Nigeria, extensive audits of the oil sector have generated significant amounts of information that could help inform further efforts to deter corruption and mismanagement. They include recommendations that the government strengthen systems to assess, collect and monitor royalties, and more generally improve accounting and record keeping systems. (See Box 5: The Nigerian Extractive Industries Transparency Initiative).

BOX 5: THE NIGERIAN EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE

Nigeria was one of the first countries to commit to the EITI principles. To date, the country's local process – the Nigerian Extractive Industries Transparency Initiative (NEITI) – remains the most ambitious and the most advanced. Nigeria has conducted and published independent audits of payments and revenues, and was the first to insist that information be published in a disaggregated fashion, making it possible to identify revenues company by company, category by category and well by well. Under NEITI, Nigeria has gone further, commissioning and publishing external audits of the physical systems and business processes as well. The audits, conducted by the Hart Group and available on the NEITI website, have generated a large quantity of information that could help inform further efforts to deter corruption and mismanagement. They include recommendations that the government strengthen its assessment, collection and monitoring of royalties and improve government accounting and record keeping systems. President Obasanjo has endorsed the auditors' reports and expressed commitment to addressing identified weaknesses. NEITI is developing a workplan for implementing the recommended reforms.

EITI is based on the premise that increased access to information will enhance citizens' capacity to hold their governments to account for the use of revenues. In order to achieve this goal, the key findings of the audits must be simplified and communicated to the public, along with information about the reform agenda. The recommended improvements in public sector capacity will require significant technical and financial resources. For instance, improved accounting systems and information technology infrastructures would help the Department of Petroleum Resources, the regulator of oil and gas industry, ensure proper assessment and calculation of royalties. Through their representational functions, Nigerian legislators have a key role to play in helping to communicate information about the audits. Through their lawmaking and budgetary responsibilities, they will be involved in ensuring that the necessary legal reforms are put in place and appropriate spending priorities are identified, including ensuring that various executive branch agencies receive the resources they need to improve performance. Through oversight, legislators can also monitor progress towards implementation of the recommendations of the audit.

Sources: www.neiti.org

Nigeria's Struggle with Corruption: The Success of Nigeria's Extractive Industries Transparency Initiative, Testimony of David Goldwyn Before the House International Relations Committee Subcommittee on Africa, May 18th, 2006.

VII. PROMOTING LEGISLATIVE ENGAGEMENT AND OVERSIGHT

Effective legislative engagement creates a multiplier effect, reinforcing the efforts of civic groups and others to improve management of the extractive industries.

Legislative bodies are designed to serve as critical links between citizens and their elected governments. Functioning legislatures are avenues for citizens – through their elected representatives – to influence and oversee the implementation of government policies. Effective legislators pass laws that respond to the needs and interests of their constituents. Through oversight, legislatures ensure the efficacy and fairness of government laws and policies.

In many resource-rich countries around the world, legislative engagement and oversight plays an important role in strengthening accountability and transparency in the extractive industry sector. Well-informed legislators use the skills and resources at their disposal to improve government accountability and responsiveness by engaging regularly with civil society, the media and broader populations on substantive issues. Using the “power of the purse,” legislatures help direct the allocation of national revenues in ways that alleviate poverty and promote improved healthcare, education and economic development. They also increase fiscal accountability by monitoring public expenditures and the private sector. Effective legislative engagement creates a multiplier effect, reinforcing the efforts of civic groups and others to improve management of the extractive industries.

Legislators in many of the survey countries face a host of challenges in fulfilling these roles. They are not insurmountable, however and there are efforts underway in each of them – some more effective than others – to address shortcomings.

Disproportionate Balance of Power

In a large number of the countries surveyed, legislators are sidelined by more powerful executives, and often lack the information and skills to fulfill their core functions. When the role of the legislative branch as a counterbalance to executive power is not fully developed, customary practice frequently gives the executive disproportionate power and authority. The complex environment in which oil and mineral exploitation frequently occurs makes it particularly difficult for legislatures in such countries to exercise effective oversight.

Though diamond-rich Botswana has a generally positive record of resource management, cultural practices that emphasize participatory discussion and consensus-building led by a powerful executive have traditionally limited the role of Botswana’s legislature. Legislators nonetheless passed a motion in 1988 that called on the executive to take steps to ensure that Parliament becomes an independent institution detached from the Office of the President where it has historically been relegated to the lower status of a minor department. There was little or no action on the motion until 2002, when the Speaker of Parliament appointed a taskforce that subsequently issued recommendations. As of 2006, the recommendations had yet to be implemented.

While budget approval is often vested in the legislature, in many countries the power to amend or change budgetary line items is severely limited. For example, in Congo-Brazzaville, the parliament has approval authority, but it can be overridden by presidential decree.¹ In Ghana, the parliament is prevented from passing amendments that would lead to an increase in the budget. In Nigeria, constitutional provisions that are subject to multiple interpretations have contributed to friction between the executive and legislative branches of government. Overlapping responsibilities across various levels of government creates further confusion, making it difficult to hold public officials accountable. In South Africa, there are concerns over the lack of legislation regulating the national legislature’s authority to amend budgets. Angolan law does not grant the National Assembly the power to investigate state-owned companies.

Legislators are often under pressure to pass budgets within timeframes that do not allow for diligent review. According to one study, over the past three years, the Nigerian executive has presented the Appropriation Bill to the National Assembly one month before the end of the year, when meaningful consideration of its provisions would require approximately four months.² For many years, Ghana’s Parliament did not receive the budget until after the start of the fiscal year.

1 Constitution of Congo-Brazzaville, Article. 127

2 Classens, Merritt and Van Zyl, Albert, op.cit.

Conflicts of Interest and Other Disincentives to Action

In countries with weak ethical standards, legislators are just as likely as members of the executive branch to maintain business or personal ties perceived to be conflicts of interest. In Ghana, for instance, elected representatives and government ministers may serve on the boards of corporations over which they have direct or indirect oversight.³ The Ghana Center for Democratic Development, a leading civic organization and democracy watchdog, argues that, “Already a majority of Ministers serve as MPs (by constitutional stipulation). Co-opting the rest of the MPs on the majority to serve on the boards of public corporations and agencies effectively turns all of the majority MPs into paid agents of the executive branch. The constitutional system of checks and balances is fatally undermined by this practice.”⁴ Extractive industry oversight may be further undermined by legislators’ private business dealings with mining or oil companies.

Political party loyalty often takes precedence over basic legislative functions, especially in countries where proportional representation electoral systems tie candidates more closely to their parties than to their constituents. Voting in the legislatures of most of the countries surveyed is largely along party lines. Where the ruling party holds a large majority, executive initiatives are rarely questioned or debated in legislative bodies, as opposition legislators often lack the ability or motivation to raise divergent points of view.

Other rules and practices reinforce party discipline in ways that limit oversight. Demonstrations of party loyalty increase the likelihood of ministerial appointments in Ghana, for example, where a percentage of ministers are drawn from parliament. In Sierra Leone, a legislator’s seat can be declared vacant “if by his conduct in

Parliament by sitting and voting with members of a different party, the Speaker is satisfied after consultation with the Leader of that Member’s party that the Member is no longer a member of the political party under whose symbol he was elected to Parliament.”⁵

In countries where flawed elections have taken place, legislative bodies often lack popular legitimacy. Limited public interest or faith in legislative deliberations can act as a disincentive to independent action. Individual legislators may also face specific political constraints to carrying out their oversight and representational duties, whether due to conflicts of interest or involvement in corruption scandals, for example.

In countries where oversight activities are conducted, or at least attempted, cash-strapped legislative committees have turned to extractive industry companies to help finance extractive industry site visits, creating the impression of a conflict of interest. In one country, it was described how a legislative committee planning to visit a mining operation requested that the company cover all the costs associated with an overnight site, including honoraria for each legislator participating in the program.

In countries where a high level of poverty correlates with a poor understanding of democratic processes, constituents’ relationships with their legislators are often limited to demands for personal favors, such as financial assistance to cover school fees and costs associated with weddings, funerals or other traditional ceremonies. Studies of legislatures in Africa have argued that these persistent requests encourage legislators to place a premium on servicing those needs rather than fully performing their policymaking or oversight functions. This, in turn, puts pressure on legislators, many of whom may be poorly paid themselves, to raise funds from outside sources to meet their constituents’ demands. One study concludes that higher legislative salaries correlate to increased time spent on lawmaking and oversight functions.⁶ While an examination of this

3 Ghana Center for Democratic Development. “Ghanaian Public Office Holders Remain Impervious to Conflicts of Interest?” *Democracy Watch*, Vol. 6, Nos. 3 & 4, Sept. – Dec. 2005. Under the current government, the chair of the Committee on Mines and Energy simultaneously held seats on the boards of Goldfields Mining Company Limited and the National Petroleum Authority. Under the past government, the Ministers of Finance and of Mines and Energy held membership on the board of the Ashanti Goldfields Corporation.

4 Ibid

5 Constitution of Sierra Leone, Article 77 (1).

6 Barkan, Joel D. et al.. “Emerging Legislatures : Institutions of Horizontal Accountability.” Ed. Levy, Brian and Kpundeh, Sahr. *Building State Capacity in Africa*. Washington, D.C: World Bank Publications, 2004.

issue is beyond the scope of this study, it is recognized as an important influence on how elected representatives carry out their duties.

Overcoming Capacity, Resource and Institutional Constraints

In several African countries, legislators have a limited understanding of their roles and responsibilities, and how the institutions in which they serve are meant to function. In Sierra Leone, legislators invited to a discussion about mining legislation declined to do so, explaining that this was not their role. Instead, they referred the organizers to the Ministry of Mines and Resources. In Botswana, a 2002 legislative needs assessment concluded that although the functions and authority of Parliament needed to be better defined, already existing rules were not being used because of Members' limited understanding of their provisions.

Budgetary resources at the disposal of the legislature in countries like Angola, Chad, the DRC, Congo-Brazzaville and Sierra Leone pale in comparison to those at the disposal of South Africa's National Assembly, while those of Ghana's Parliament and Nigeria's National Assembly fall somewhere in between the two extremes. In the case of Nigeria, the National Assembly adopts its own budget, though the executive controls disbursement and the amounts received are typically less than the approved budget.

In most of the countries surveyed, legislative staff are poorly trained and often stretched thin. For example, each of the seven committee clerks in Sierra Leone's Parliament serves six to seven committees. On occasion, even the limited resources provided for the legislature in the budget fail to materialize, leaving legislative staff salaries in arrears and staff themselves even less inclined to perform their functions.

Regulation and oversight of the extractive industries requires an understanding of complex technical and financial issues. In every country surveyed, concerns were raised about the capacity of individual legislators to understand and contribute to extractive sector management and oversight. Some pointed to a lack of formal education among certain legislators. Others explained that high turnover in the legislature

made it difficult for legislators to build up specific areas of expertise over time. In Nigeria's 2003 elections, turnover was approximately 80 percent. In Ghana, turnover in the legislature was 63 and 44 percent respectively after the 1996 and 2000 elections.

In some cases, the perception of the sector's complexity serves as a psychological barrier to the extent that legislators and others often do not take advantage of simplified information that may be readily available and even in the public domain, as is the case in Angola and Congo-Brazzaville, for example. Committee appointment systems that do not take legislators' backgrounds into full account also miss opportunities to build on existing capacity in specific areas.

Efforts are underway to improve the resource and technical capacities of legislatures in most of the countries surveyed. These include attempts to increase budget support and raise standards through training programs that target general capacity constraints as well as more issue-based support to individual committees. As of 2007, a bill was pending in Sierra Leone's parliament that would enable the legislature to hire additional research staff, including consultants, and help fund constituency and other site visits, though few legislators seemed to understand the bill's potential benefits.

At the forefront of the countries surveyed, South Africa's Parliamentary Service employs approximately 969 staff and includes a research unit and a language services section that provides simultaneous translation of deliberations into all of the country's official languages. The research unit provides analytical support to legislators in the form of briefs and questions that can be used to review executive branch budget proposals. During the 2004-2005 fiscal year, a computer and television network were installed and a new state-of-the-art data center and training room completed.⁷

The Nigerian legislature is establishing a National Assembly Budget and Research Office (NABRO) that could radically improve the Assembly's abil-

⁷ Parliament of the Republic of South Africa, *Annual Report, Financial Year 2004/05*. Capetown: Parliament of the Republic of South Africa. http://oldwww.parliament.gov.za/pls/portal/web_app.utl_output_doc?p_table=publications&p_doc_col=document&p_mime_col=mime_type&p_id=639414

In most of the countries surveyed, legislative staff are poorly trained and often stretched thin.

BOX 6: STRATEGIES FOR ENSURING ADEQUATE LEGISLATIVE RESOURCES

Legislatures in emerging democracies have received substantial amounts of development assistance. However, gains from this form of support are likely to be lost unless budgetary resources are ensured to sustain and build on the additional capacity provided through donor programs. Following are strategies legislators may consider to ensure adequate legislative resources.

- **Identify ways to influence the budget** (formally and informally) at each of the different stages of the budget cycle – preparation, drafting, legislative review, implementation and audit. Develop the capacity to evaluate the importance of legislative requests for resources relative to other proposed expenditures in the national budget.
- **Build cross-party support.** Many legislatures have found Parliamentary Service Commissions (PSC) effective in building cross-party consensus on issues relating to the legislature’s budget. Typically composed of legislators (and sometimes members of the executive branch) these bodies are generally responsible for managing or making recommendations about the legislature’s budget, its staffing issues, and other administrative priorities. Independent commissions that include distinguished former legislators can also be used to review funding for the legislature.
- **Gain public support** by working with the media and civic organizations to raise public understanding of the key role played by legislatures in ensuring systems of democratic governance. For instance, media coverage of public hearings can heighten public awareness of the legislature’s contribution to policy-making.
- **Link legislative expenses to services.** Allowances for drivers, security, fuel and other logistical requirements facilitate the work of legislators and are, most often legitimate expenses. When parliamentary salaries are used to cover these costs, they may seem inordinately high to those who may not understand the out-of-pocket costs that individual legislators cover out of their salaries. One way to address this problem is to ensure that legislative salaries are, in fact, just salaries – and that systems exist for reimbursing or paying other necessary and reasonable costs of serving as a legislator.

Source: NDI, *Strategies for Ensuring Adequate Parliamentary Resources*, Unpublished.

ity to engage the executive on an equal footing in what have often been acrimonious, one-sided exchanges on budget and other public expenditure issues. Legislators hope that the new office will provide objective budget analysis, enabling them to exercise their budgetary powers more conscientiously and effectively.⁸

Legislators themselves must engage in efforts to raise standards, make more effective use of the powers available to them and build the resource base necessary for them to fulfill their responsibilities. According to one study, “[I]ncreased resource flows to legislatures are not the cause of increasing legislative authority, but rather a reflection of efforts made by members to expand the

role of the institution. The amount of resources available to legislators and their institutions is unlikely to rise unless forcefully demanded by the legislators themselves.”⁹

More recently, donor-supported legislative strengthening programs have experimented with ways to provide policy support in such areas as poverty reduction and health, particularly HIV/AIDS. Academic and legal support from Columbia University’s Earth Institute helped Sao Tome and Principe develop oil sector legislation in 2004 through a process that included town hall meetings to encourage public debate on how oil revenues should be spent.

Legislators themselves must engage in efforts to raise standards, make more effective use of the powers available to them and build the resource base necessary for them to fulfill their responsibilities.

8 National Democratic Institute. *Toward the Establishment of a National Assembly Budget and Research Office and Institutional Development Initiatives within Nigeria’s Assembly*, 2005. Unpublished.

9 Barkan, Joel. “Emerging Legislatures: Institutions of Horizontal Accountability.” Ed. Levy, Brian and Kpundeh, Sahr. *Building State Capacity in Africa*. Washington, D.C.: World Bank Publications, 2004. <http://oldwww.parliament.gov.za>

Through the 'power of the purse,' legislators can shape the allocation of revenues in ways that promote fiscal discipline and limit funding for high-profile projects that have little impact on citizens' quality of life.

Strengthening Fiscal Oversight

Through the 'power of the purse,' legislators can shape the allocation of revenues in ways that promote fiscal discipline and limit funding for high-profile projects that have little impact on citizens' quality of life. In many countries, however, budget formulation is the reserve of the executive branch, while budget enactment may be little more than a legislative rubber stamp.

Depending on how revenues are collected, deposited and reported, extractive industry revenue management and oversight can be very difficult. In Ghana, for example, mineral revenues are deposited into a general treasury account where they are co-mingled with other government funds. The implementation of Extractive Industries Transparency Initiative (EITI) disclosure regulations could make it easier to distinguish mineral revenues from other government income.

Weak capacity also affects the ability of legislators to debate budgets. Nigeria's NABRO is intended to enhance the Assembly's capacity to engage the legislature on budget-related and public expenditure issues, and could serve as a model for other countries. Even without the NABRO, however, Nigeria's National Assembly has used its legal authority over the appropriations process to revise the executive's budget proposals significantly. In December 2003, for example, President Obasanjo presented his proposed budget to the National Assembly less than three weeks before the start of the fiscal year on January 1. Despite pressure from the executive to quickly approve its proposals, the Assembly extensively reviewed the budget and made significant changes before finally passing it on March 23.

Many of the amendments concerned the oil industry, including: a requirement for National Assembly approval for any payments from the country's excess crude oil account; monthly updates from Nigeria's Accountant General to the legislature on the account's status; and quarterly reports from each Ministry detailing progress on budget implementation.

Nigeria's National Assembly has also initiated investigations into the use of public funds. Dur-

ing its 1999 – 2003 term in office, the House Public Accounts Committee examined the records of dozens of government agencies that had not been audited for several years. During a two-day workshop in August 2000, the committee met with the Auditor General, the Accountant General and the Public Accounts Commission to discuss oversight roles and possibilities for cooperation. Also in 2003, the House Committee on Petroleum Resources held a public hearing to investigate allegations that the Nigerian National Petroleum Company had failed to forward millions of dollars in oil revenues to the appropriate federal account. The hearing sparked extensive media coverage regarding oil revenues and federal collection mechanisms, increasing the information available to the public.

In most countries, the constitution and other laws provide for an annual audit of public finances that is submitted to the legislature. In the case of Botswana, Ghana and South Africa, this responsibility falls under the Auditor General. In the DRC and Chad, this function is carried out by the *Cour des Comptes*. The independence and capacity of these agencies varies widely. In Angola, for instance, the Ministry of Finance had limited access to the accounts of Sonangol. According to a KPMG Audit, the Central Bank was "unaware of the values of export sales [by Sonangol] and the foreign currency generated and the related effect on Angola's balance of payments."¹⁰ In November 2005, Angola's National Bank issued a financial report for the 2003/2004 fiscal year to the National Assembly, the first time it had done so.

Under the Ghanaian Constitution, the Auditor General is required to submit its annual report on public accounts to parliament within six months of the end of the fiscal year. Interviewees pointed out that the report is often submitted years after the legally mandated deadline. A study of budgetary processes in Africa concluded that the Ghanaian Auditor-General's dependence on the executive for funding undermines its independence.¹¹ Likewise, legislatures in Angola, Chad,

10 KPMG. Assessment of Angolan Petroleum Sector – Final Report, Vol 1B. March 2004, p. 12

11 Classens, Merritt and Albert Van Zyl, eds., *Budget Transparency and Participation II: Nine African Case Studies*. Cape Town, South Africa: Africa Budget Project,

and Nigeria receive final audited accounts more than two years after the end of the fiscal year.¹²

Making Use of Special Audits, Reviews and Commissions

Legislatures provide venues where the findings of executive oversight bodies, such as Auditors General, can be publicized, reviewed and discussed. In many cases, such as those involving state-owned enterprises, legislators can take action to resolve problems. In addition to utilizing procedures for reviewing public revenues, legislators

are taking advantage of special audits or reviews conducted in response to international and local pressure for greater transparency in the oil and mining sectors.

Audits have been conducted by executive branch agencies, international development partners and independent audit companies in many of the NDI survey countries. In Nigeria, the Hart Group conducted an extensive audit of the oil sector. Audits of Congo-Brazzaville's Société National des Pétroles du Congo (SNPC) are available on a government website. In Angola, the results of a KPMG assessment of the petroleum sector were published in 2004. Such audits can provide legislators with useful information on the strengths and weaknesses in the management of their countries' extractive industries. In most cases, audit reports provide recommendations that can help inform legislative efforts to monitor progress

2005.

12 African Budget Project, 2005. The International Budget Project. "Open Budget Initiative: More Public Information Needed to Hold Governments to Account." Washington, D.C.: Center on Budget and Policy Priorities, 2006. Accessed March 28, 2007 <http://www.openbudgetindex.org/SummaryReport.pdf>.

BOX 9: INVESTIGATING MINING CONTRACTS IN THE DRC

Under resolutions DIC/CEF/04 and DIC/CEF/01 of the Inter Congolese Dialogue, DRC's transitional legislature created a special commission within the transitional legislature to review various contracts signed during the wars of 1996-7 and 1998. The Commission, chaired by Honorable Christophe Lutundula, was charged with:

- Compiling an inventory of all contracts signed during the two wars;
- Analyzing the terms and financial impact of each agreement;
- Recommending validation, amendment or cancellation of each contract as appropriate; and
- Recommending compensation to the Congolese State or its nationals for any losses suffered as a result of any of the stated contracts.

Members conducted field trips to different geographic zones around the country where mining contracts/concessions were signed or granted. They also traveled overseas in efforts to obtain additional documents on the flow of funds generated from contracts during the war. In October 2005, at the time of the team's visit, the Commission was close to finishing its work. The preliminary report had been finalized and was about to be distributed to the 500 members of the national assembly for debate and final vote.

Versions of the report are now available on the internet. Its recommendations include: passage of new legislation to regulate public-private partnerships; and systematic and periodic review of all mining conventions and contracts of 10 years or more with the possibility of termination where signatories have failed to meet their contractual obligations. To limit the use of the country's natural resource wealth for personal or political gain, the Commission recommended a moratorium on any new contracts or concessions until the institutions to be elected in the transition elections had been put in place.

a A full copy of the report, in French, is available at <http://www.freewebs.com/congo-kinshasa/>. In addition, translated extracts are available at http://www.raid-uk.org/docs/Lutundula/Unofficial_Translation.pdf

A robust committee system is the framework for effective legislative involvement in lawmaking and executive oversight, as well as the platform for citizen engagement.

towards addressing problems. In many instances, however, survey teams found that legislators were unaware of the existence of such reports, or dismissed them as “too technical.”

Under the provisions of the DRC’s 2001 peace accords, the transitional legislature established a special commission charged with reviewing the various contracts signed during the war years of 1996-7 and 1998. The commission, chaired by Christophe Lutundula, completed and submitted its report to the transitional legislature in 2005. While its results and recommendations were not debated, it represented an important step forward in the struggle to place the DRC’s mineral wealth under government control. The commission’s report is now available on the internet, where it sheds light on the many challenges the DRC government faces. (See Box 9: Investigating Mining Contracts in the DRC).

Utilizing Committee Systems

A robust committee system is the framework for effective legislative involvement in lawmaking and executive oversight, as well as the platform for citizen engagement. Committee systems allow legislatures to simultaneously perform various tasks that would otherwise require more time or prove impossible. Committee meetings are settings for informal interaction between members that promote collegiality and compromise on divisive issues. Committees that hold public meetings, conduct outreach visits and invite expert testimony help members increase their understanding of issues before the committee.

African countries face different challenges in building more effective committee systems. In Sierra Leone, for example, limited staff cannot support the approximately 30 committees, which in any case do not meet regularly. A 2002 needs assessment of Botswana’s parliament determined that its 16 committees lack the specialized skills to enable them to conduct oversight of individual ministries.

In a number of countries, efforts by legislative committees to exercise oversight were ultimately undercut by the absence of follow-through. In Sierra Leone, for example, a parliamentary committee created to investigate the reported smug-

gling of over 1,400 carats worth of diamonds failed to produce a report. Likewise, an *ad-hoc* committee established by Nigeria’s National Assembly to investigate irregularities in the exportation of crude oil and the importation of refined oil products also failed to produce a record of its findings.

In all the countries studied, legislatures could exercise greater oversight of the extractive industries through a variety of standing committees. These include “portfolio” committees like the Ghana’s Mines and Energy Committee, South Africa’s Committee on Minerals and Energy and Nigeria’s Solid Minerals, Petroleum Upstream and Niger Delta Committees.

Engaging With the Public

Public hearings are the most participative, and potentially productive venues for legislative engagement with the executive branch and broader public audiences. Following the introduction of South Africa’s Mineral and Petroleum Resource Development Bill in 2002, for example, the Committee for Minerals and Energy and the Select Committee for Economic and Foreign Affairs held joint public hearings in Parliament and in the three provinces that would be most affected by the bill’s provisions, largely in response to public concerns that the executive had not adequately consulted stakeholders in drafting the bill. The final bill reflected input from the hearings, and completely overhauled South Africa’s mining sector. (See Box 7: Using Public Hearings to Solicit Public Input to Policy in South Africa).

In Sao Tome and Principe, a series of public forums on the country’s potential oil wealth were held with the participation of legislators to engage citizens on how best to manage and utilize oil revenues for the public good. (See Box 8: Public Outreach on the Extractive Industries in Sao Tome E Principe and Box 9: The Sao Tome E Principe Advisory Project).

In addition to accessing already published materials, legislators can reach out to civil society groups, sector experts, representatives of the private sector and others with particular extractive industry expertise. Interlocutors may include

BOX 7: USING PUBLIC HEARINGS TO SOLICIT PUBLIC INPUT TO POLICY IN SOUTH AFRICA

“When this amendment Bill was presented to the Portfolio Committee for consideration, the Committee felt that the Department [of Minerals and Energy] had not sufficiently consulted with stakeholders. Our intervention led to an improved Bill and one which did not cause a lot of raucous within the industry... The public hearings were conducted in a manner which gave all parties an opportunity to express their views on the Bill and present alternatives to the proposals presented by the Executive. The hearings were open to all those who wished to participate. It is therefore the view of the committee that we have sufficiently consulted with the public. Therefore, the Bill presented to this house today, broadly represents the view of all stakeholders in the minerals and petroleum industries.”

Source: *Speech by the Chair of the Parliamentary Portfolio Committee on Mineral and Energy on the Passing of the Mining Titles Registration Amendment Bill, 2003.* Statement issued by the ANC-Parliament, www.anc.org.za/ancdocs/speeches/2003/sp0619.html

BOX 8: PUBLIC OUTREACH ON THE EXTRACTIVE INDUSTRIES IN SAO TOME E PRINCIPE

With assistance from an advisory group of international experts, the government of Sao Tome and Principe (STP) carried out a series of public forums on the country's oil potential. A total of 55 community meetings were held, providing civic and political leaders as well as the general public an opportunity to discuss what oil might mean for the country and how oil revenues should be used. The messages conveyed at these meetings were also reinforced through radio and television coverage as well as bulletins and posters printed in plain language and with graphics. They emphasized:

- Although there is a high probability of oil in STP's territorial water, quantity and quality are not guaranteed.
- The area with the highest exploitation lies in the Joint Development Zone, which means that decisions and revenues must be shared with Nigeria.
- If the oil is exploitable, it might take years for STP to see the first revenues.
- The government has created an oil law to ensure transparency and the efficient use of oil money.
- All Santomeans have the right to know how this money is being used
- Within the current budget, the oil money cannot solve all the country's problems.
- Oil revenues can be a curse if they are not managed carefully.

Source: Albuquerque, Clara et. al, *Final Report on Columbia University Support for the National Forum in Sao Tome and Principe*, accessed at the Sao Tome Advisory Project website

executive branch officials, civic activists, academics or international development partners who focus on budgetary, oil/mining, environmental or corruption issues. These groups and individuals may have valuable information and perspectives that could increase the effectiveness of oversight activities, whether through written reports or oral briefings to relevant legislative committees.

Engaging Catalysts for Reform

In a number of the countries studied, commissions or working groups that are formally located outside the executive and the legislature provide a forum where representatives from a variety of interests can work together on issues related to the extractive industries. The composition, mandate

Legislative representation on multi-stakeholder oversight bodies should not be considered a substitute for the broader engagement of legislative bodies in oversight activities.

and authority of these mechanisms vary.

International and local extractive industry initiatives often focus their efforts on executive branch agencies, multilateral organizations, and the corporate sector. These initiatives should more effectively engage legislative bodies, civic organizations and the media in developing oversight systems for the expenditure and management of resource revenues.

EITI steering committees or working groups, present in Congo-Brazzaville, DRC, Ghana and Nigeria, are designed to oversee the application and implementation of the program's principles in a given country. Recognizing that EITI processes and stakeholders will vary from one country to the next, EITI sets no specific requirements for the composition of steering committees but rather provides general guidelines and examples from different countries. According to the EITI Sourcebook, "A stakeholder is defined as an individual, community, group or organization with an interest in the outcome of the EITI, including both those who are affected by it (positively or negatively) and those who are able to influence it (in a positive or negative way) ... Since the number of stakeholders is likely to be large and membership of a coordination committee will necessarily be limited, a pragmatic decision needs to be made about membership – reflecting the diversity and representation of stakeholders."¹³

Given the broad range of extractive industry issues that may be at stake in any given country, the general mandate of EITI (independent audit and disclosure of company payments and government receipts) is relatively narrow. However, to the extent that EITI steering committees provide an opportunity for sharing information and collaborating among various stakeholders, they may also be forums where committee members, including legislators, can learn about the management of extractive industries from a variety of perspectives; share information with wider audiences; build or maintain relationships with a range of stakeholders; and collectively support the implementation of EITI principles.

13 Extractive Industries Transparency Initiative. *EITI Source Book*. 2005.

EITI steering committees in Congo-Brazzaville, DRC and Ghana include representatives from executive branch agencies, civil society and the corporate sector, but none from the legislature.¹⁴ This omission did not seem to be a willful attempt to exclude the legislature. Rather, it seemed that organizers did not consider including legislators in the process.

The National Stakeholders' Working Group (NSWG) for Nigeria's EITI includes four legislators: two from State Houses of Assembly and one each from the federal-level National Assembly. Fourteen representatives from executive branch agencies are included in the 28-member group. Civil society, the media and private sector companies are also represented. While critics argue that membership of the NSWG is heavily tilted in favor of the executive, the fact that the legislature is represented at all sets Nigeria apart from other countries in the sample. Chad's legislature is similarly represented on the *Collège* that oversees the use of oil proceeds for poverty reduction programs.

However, legislative representation on multi-stakeholder oversight bodies should not be considered a substitute for the broader engagement of legislative bodies in oversight activities. But legislators who are engaged in such initiatives have a special role to play in keeping their colleagues informed of developments and openings to influence the process through legislative action. In contrast, despite legislative representation on the NSWG, many Nigerian legislators lacked meaningful information about the Hart Group audit reports, a major outcome of the NEITI process thus far. Similarly, there appears to be relatively little formal communication between Chad's *Collège* and its legislature.

14 Ibid.

BOX 9: THE SAO TOME E PRINCIPE ADVISORY PROJECT

The island nation of Sao Tome and Principe stands on the cusp of a potential economic boom fuelled by revenues from massive oil fields that are suspected to lie beneath the Gulf of Guinea. Projected revenues could spur significant economic development and fund poverty alleviation programs in a country that ranks 127th out of 177 countries in the United Nations Development Program (UNDP) 2006 Human Development Report (HDR). As the result of a meeting between Professor Jeffrey Sachs of Columbia University and President Menezes, a team of experts was put together to provide pro-bono advice to the government on the management of oil. The sole condition is that the Santomean government act honorably and transparently.

The team includes lawyers and experts on oil revenue management, energy and infrastructure, tourism, development planning and malaria control. With the overriding goal of making Sao Tome and Principe a model of sustainable and accountable management of natural resources, the Advisory Project assistance has included:

- Providing recommendations for, and drafting model language that helped inform the development of a comprehensive law governing management of oil revenues. The multi-partisan Santomean commission charged with overseeing the development of the law included representatives of the executive, the legislature and representative or ruling and opposition parties. In the lead up to the debate of the draft legislation by the Santomean legislature, the team provided legislators with a summary and explanation of the bill.
- Producing projections of oil-finance spending under various rules to help inform debate over appropriate spending rules for oil revenues.
- Supporting the government in designing and carrying out a series of public forums on the country's oil potential. A total of 55 forums were held, providing civic and political leaders as well as the general public an opportunity to discuss what oil might mean for the country and how oil revenues should be used.

The Open Society Institute and the United Nations Development Program have provided funding for travel and miscellaneous expenses associated with the project's work.

Sources: Sao Tome Advisory Project Website at www.earthinstitute.columbia.edu/cgsd/STP/index.html Albuquerque, Clara et. al, *Final Report on Columbia University Support for the National Forum in Sao Tome and Principe*, accessed at the Sao Tome Advisory Project website

VIII. CASE STUDIES AND COUNTRY-SPECIFIC RECOMMENDATIONS



Angola has taken some steps to improve transparency and accountability in the management of extractive industry revenues that previously helped fuel the country's devastating civil war. These steps, however, fall short of the measures needed to ensure that Angola's vast mineral wealth benefits the broader population. Further progress depends on the political will of the current government, as well as increased pressure from both civil society and the international community for greater transparency. Political power is concentrated at the executive level of government, but future elections could open the door to increased legislative engagement in this sector.

Political and Economic Context

In the years following independence from Portugal in 1975, Angola was wracked by armed conflict. After 16 years of civil war, fought between the government-backed Popular Movement for the Liberation of Angola (MPLA) and the National Union for the Total Independence of Angola (UNITA), Angola held its first general election in 1992. An unresolved dispute over the result of the first round of the presidential election – in which incumbent President dos Santos, representing the MPLA, secured 49 percent of the vote against 40 percent for UNITA leader Jonas Savimbi – led to renewed conflict between the two groups. Angola's civil war continued for another 10 years, despite repeated international and regional efforts to broker a peace agreement, and only ended after Savimbi's death in

2002 opened the door to a negotiated settlement. President dos Santos has repeatedly postponed elections, however, despite passage of an electoral code in 2005 and other electoral preparations underway. It is increasingly difficult for opposition parties to challenge the political dominance of the MPLA.

Angola is Africa's second largest oil producer after Nigeria. The country produces approximately 1 million barrels of oil per day, most of it offshore, which accounts for approximately 90 percent of government revenues.¹ Angola also exports around \$1 billion dollars of diamonds annually. The IMF forecasts oil output to double by 2007 or 2008, raising government revenues to an estimated \$10.3 billion. The exploitation of Angola's offshore reserves was largely immune to the civil war, though an armed struggle persists in the oil-rich enclave of Cabinda.

Despite its abundant natural resources, Angola ranks 161 out of 177 countries in the 2006 Human Development Report (HDR).² Oil revenues accruing to the MPLA government and diamond profits controlled by UNITA were enough to finance the long civil conflict. The "Angolagate" scandal, which broke in December 2000, uncovered influence peddling, money laundering and illegal arms-for-oil deals. It implicated the Angolan government and members of the French political establishment, as well as prominent international arms dealers. In 2004, KPMG conducted an audit of the oil sector which found that revenues routinely bypassed the Ministry of Finance and the central bank, going directly to the state-owned oil company, Sonangol, and to the Presidency.³ From 1997 to 2002, missing funds amounted to some \$4.22 billion. In 2004, nearly one-third of Angola's state income was unaccounted for.⁴

Legal and Regulatory Framework

President dos Santos and his key ministers wield exceptionally broad powers. Legislation, includ-

1 U.S. Department of State, Bureau of African Affairs *Background Note: The Republic of Angola* November 2005.

2 United Nations Development Program, *Human Development Report 2006*: <http://hdr.undp.org/hdr2006/statistics/>

3 KPMG Ministry of Finance, *Assessment of Angolan Petroleum Sector*, March 2004.

4 Human Rights Watch Report, *Some Transparency, No Accountability*, January 2004.

ing law 13/78, reinforces executive control over all aspects of the country's oil and diamond industries, and dos Santos has been directly involved in negotiating concessions to multinational oil companies. Despite the 2002 KPMG assessment and other investigative reports, indicating that substantial profits have been unrecorded by the government, few efforts have been made to address the discrepancies. Moreover, Angolan law does not grant the National Assembly the power to investigate state-owned enterprises.

Public Accountability and Transparency

The government has undertaken a series of reforms to improve public accountability and transparency, and participates in the diamond industry's Kimberly Process. Many of these reforms fall short of full disclosure, however. Angola's government is protected by a law on state secrets, passed by the National Assembly in 2002, that gives it wide power to control the release and publication of information deemed potentially damaging to national interests. Under this law, the government can censor publications that expose evidence of corruption. Confidentiality clauses are also common in Angola's oil contracts, and only a handful of high-level cabinet ministers have full access to these agreements.

In 2004, the government published the results of the 2002 KPMG assessment of Angola's oil sector that uncovered serious weaknesses in the management sector. The KPMG assessment was conducted under the auspices of a Staff Monitoring Program proposed by the IMF as a first step towards future lending and cooperation between the IMF, the World Bank and the Angolan Government.⁵ KPMG was engaged to develop mechanisms to improve transparency and accountability in the oil sector, however, and not to perform a full audit.

In partnership with the IMF and the World Bank, Angola has introduced a unified national budget and other measures designed to improve the tracking of public funds. In November 2005, Angola's national bank submitted financial reports to the National Assembly. At present, however, Sonangol does not provide information

on its accounts to the National Assembly, though a protocol designed to expand and formalize access to Sonangol accounts by the Ministry of Finance was being formulated during the survey team's visit.

Angolan civic groups have struggled to raise public awareness about issues relating to Angola's extractive industries, and are unable to hold the government accountable for extractive industry management. In 2005, the Coalition for Reconciliation, Transparency and Citizenship, or *Coligacao de Reconciliacao, Transparencia e Cidadania* (RTC), which brings together trade unions and civic organizations, launched an initiative to "Free Angola of Corruption." RTC began by conducting research into corruption and bribery in the oil sector, and has since organized programs and activities to promote transparency in the management of oil sector revenues, including an approach to the National Assembly on the need for budget transparency.

Without a greater commitment by Angola's political leaders to increase accountability and transparency, multinational corporations have little incentive to engage on these issues. The Angolan government threatened to withdraw the British Petroleum and Shell concessions when those companies attempted to disclose information on payments made to the government. Sonangol also performs a monitoring role. For example, multinational corporations must submit all planned activities to Sonangol for approval, including corporate social responsibility programs.

Legislative Engagement and Oversight

The MPLA holds 129 seats in the 220-member National Assembly, while UNITA controls 70 seats, and another 16 parties maintain the remainder. Angolan politics are highly partisan and National Assembly members often prioritize party loyalty above representing their constituent interests. There are accusations that elected members extract personal gain from public resources, making them complicit in the mismanagement of the country's extractive resources and disinclined to promote transparency and accountability.

Although the National Assembly has summoned executive branch officials to answer questions on various issues, it rarely goes further or conducts

Without a greater commitment by Angola's political leaders to increase accountability and transparency, multinational corporations have little incentive to engage on these issues.

⁵ Human Rights Watch Report, *Oil Diagnostic in Angola: an Update*, March 2001

Information on the oil industry tends to be concentrated within the presidency, key ministries and the state-owned oil company, Sonangol, with little information provided to the legislature on contracts and other oil related legislation or policy.

investigations on issues of interest. Lack of access to information, and reluctance on the part of legislators to challenge ministerial counterparts from the same political party also frustrate legislative oversight.

Information on the oil industry tends to be concentrated within the presidency, key ministries and the state-owned oil company, Sonangol, with little information provided to the legislature on contracts and other oil related legislation or policy. While this was noted as a major obstacle to legislative oversight, respondents also suggested that internal party discipline and lack of political will are more significant constraints towards greater accountability.

In the few instances when the opposition has attempted to exercise legislative oversight, the MPLA has either used its majority to quash debate in parliament or the executive has not provided requested information. This occurred when the opposition asked for a committee to be set up to investigate TAAG, Angola's national airline company, on corruption-related issues.

Beyond the political constraints that deter legislative oversight of the extractive industry sector, most legislators lack the technical knowledge and support to conduct such activities effectively and thoroughly. In addition, because legislators are not directly elected, but are appointed through party lists, members do not represent specific constituencies. As a result, the public demands little, if anything, from their elected representatives. Following the civil war, opposition to the MPLA government was seen as tantamount to undermining reconciliation efforts.

War weary citizens have been more concerned with maintaining peace and freedom of movement than demanding greater transparency and accountability from the government. As a result, legislators rarely consider the needs or interests of their constituents. The lack of contact between legislator and constituents had been exacerbated by delays in organizing the country's first election since 1992. Parliamentary and presidential elections are now set for 2008 and 2009, respectively.

Angola's 2004 Land Law, law 21C/92, could serve as a potential model for strengthening dialogue between the National Assembly and civil soci-

ety that could extend to the country's extractive industries. In December 2002, *Rede Terra*, a network of national and international civic organizations, began conducting a series of public debates in Luanda and in provincial capitals on a draft land law. Given concerns over rapid privatization, along with the increasing number of transactions involving land and development rights, many called for passage of the law to be delayed until a new constitution had been adopted. The law eventually passed in August 2004, and contained some of the provisions that civic groups had advocated for, including the allowance of a 3-year timeframe in which citizens can officially register their land titles. While other recommendations were not reflected in the final law, the high level of public debate over the issue is often described as a uniquely participatory process by Angolan standards.⁶

The Publish What You Pay Coalition has a relatively strong presence in the country, and has conducted training and lobbying with the National Assembly, suggesting that openings exist for civil society to influence decision makers and provide greater input on government policies.

Recommendations

To Legislators:

- Make use of the current attention to Angola's extractive industries to educate themselves on the issues and identify areas for improvement in the management of the country's oil sector.
- Reach out to knowledgeable civil society groups for additional background and expertise on extractive industry issues.
- Consider organizing or participating in public debates on future legislation governing the extractive industries to ensure citizen input.

To Civil Society:

- Maintain pressure for increased transparency and accountability by continuing to monitor the extractive industries and advocating for appropriate additional reforms.

⁶ Chatham House, *Angola: Drivers of Change*, April 2005. Available at: <http://gsdrc.ids.ac.uk/docs/open/DOC90.pdf>.

- Reach out to reform-minded legislators as potential allies in efforts to promote greater transparency and accountability.
- Produce and disseminate information on the cost of corruption and its negative impact on Angola. Citizens must understand the issues of corruption and use of public resources so they can better exert positive pressure on their government.

To the International Community:

- Continue to support efforts to reassert state control over Angola's extractive revenues, including support to ensure the technical capacity to exercise control effectively.
- Continue to support efforts for increased transparency and accountability and the timely conduct of legitimate elections. A legitimate and timely process would allow citizens to hold their leaders to account for management of the country's resources and broaden political discourse in the country.

ANGOLA BACKGROUND INFORMATION

ECONOMIC PROFILE

Major Resources¹	Petroleum, diamonds
Oil/Mining Revenues (2000 -2003)²	
<i>Average Annual Hydrocarbon Exports (in percent of Total Exports)</i>	90.3
<i>Average Annual Hydrocarbon Revenues (in percent of total fiscal revenue)</i>	80.9
<i>Average Annual Hydrocarbon Revenues (in percent of GDP)</i>	33.9
GDP per Capita (PPP)³	\$2,180
Human Development Index Rank (Out of 177 Countries)⁴	161

GOVERNANCE INDICATORS

Freedom Rating (2006)⁵	Not Free
Governance Indicators (2005)⁶ ±	
<i>Voice and Accountability</i>	17
<i>Political Stability</i>	23
<i>Government Effectiveness</i>	18
<i>Regulatory Quality</i>	9
<i>Rule of Law</i>	8
<i>Control of Corruption</i>	10

EITI STATUS

As of 2006, Angola is considering EITI implementation⁷

1 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/ao.html#Geo>

2 International Monetary Fund, *Guide on Resource Revenue Transparency*, 2005:
<http://www.imf.org/external/pubs/ft/grrr/eng/060705.pdf>

3 United Nations Development Program, *Human Development Report 2006*:
http://hdr.undp.org/hdr2006/statistics/countries/country_fact_sheets/cty_fs_AGO.html

4 United Nations Development Program, *Human Development Report 2006*:
<http://hdr.undp.org/hdr2006/statistics/>

5 Freedom House website: <http://www.freedomhouse.org/template.cfm?page=15&year=2006>

6 Kaufmann, Daniel, Kraay, Aart and Mastruzzi, Massimo, *Governance Matters V*, 2006, World Bank:
www.govindicators.org

± Percentile rank indicates the percentage of countries worldwide that rate below Angola (subject to margin of error).
Higher values indicate better governance ratings.

7 Extractive Industries Transparency Initiative Website: <http://www.eitransparency.org/section/countries>

LEGISLATIVE PROFILE

Legislative System⁸	Unicameral
Constitutional Rules and Powers⁹	
<i>Rules for forming government</i>	The office of Prime Minister, Minister, Secretary of State and Deputy Minister shall be incompatible with the office of Member of the National Assembly (Article 107)
<i>Oversight powers</i>	Members of the National Assembly may constitute parliamentary commissions of inquiry to examine acts of the Government and administration. Parliamentary commissions of inquiry shall have the investigating powers of judicial bodies (Article 101)
<i>Budgetary authority</i>	The National Assembly shall approve, on the proposal of the Government, the National Plan and the General State Budget (Article 88)
Legislative Electoral System¹⁰	List Proportional Representation
Most Recent Legislative Election¹¹	1992
Distribution of Seats¹²	Majority party, Movimento Popular de Libertação de Angola (MPLA), holds 129 out of 220 seats in the National Assembly
Relevant Committees¹³	<ul style="list-style-type: none"> • Constitutional and Legal Affairs • Economics and Finance

8 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/>

9 The Constitution of Angola: http://www.oefre.unibe.ch/law/icl/ao00000_.html

10 International Institute for Democracy and Electoral Assistance website: <http://www.idea.int/esd/world.cfm>

11 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/>

12 The Embassy of Angola: <http://www.embangola.at/legislative.htm>

13 Amundsen, Inge, Abreu, Cesaltina, Hoygaard, Laurinda, *Accountability on the Move: The Parliament of Angola*, 2005, Chr. Michelsen Institute: <http://www.cmi.no/publications/2005/wp/wp2005-11.pdf>

BOTSWANA

Botswana's democratic practices and the government's commitment to transparency are grounded in traditions exemplified by the kgotla, or village councils, which use customary practice and law to limit the powers of their leaders.



Botswana is considered to be a model for the effective management of extractive industry revenues, even though legislative oversight in this area is weak. A strengthened legislature could play a larger and more productive role in ensuring longer term accountability and in helping to address the country's remaining development challenges.

Political and Economic Context

Botswana is the world's leading diamond producer and generates approximately 35 percent of GDP and 50 percent of its tax revenues from the mining industry. The government's use of diamond revenues to propel economic and social development has led to levels of political stability and economic prosperity unparalleled in the southern African region. Though ruled by the Botswana Democratic Party (BDP) since independence in 1966, the country has experienced eight rounds of peaceful multiparty elections and two presidential successions. Botswana's democratic practices and the government's commitment to transparency are grounded in traditions exemplified by the kgotla, or village councils, which use customary practice and law to limit the powers of their leaders.

The BDP dominates Botswana's political landscape and currently holds 44 of 57 seats in parliament. The party's founder and the country's first president, Seretse Khama, a leader in the country's independence movement, died in office in 1980. Vice President Ketumile Masire

succeeded him and was subsequently elected to the presidency in his own right in 1984 and re-elected in 1989 and 1994. Masire retired in office in 1998 and was replaced by Vice President Festus Mogae, who won the presidential election held the following year. Mogae won a second five-year term in 2004. The leading opposition party, the Botswana National Front (BNF), outpolled the BDP in a number of urban areas during the 2004 elections.

Botswana was ranked as Africa's least corrupt country by Transparency International in 2006 and in the same year received Standard and Poor's highest sovereign credit rating in Africa.¹ Economic growth from 1967-97 averaged over 9 percent per year. With forecasts of real GDP growth of 3.5 percent in 2006/07, the World Economic Forum rates Botswana as one of the most economically competitive nations in Africa.

Although economic growth has been impressive, wealth disparity between the country's richest and poorest citizens is among the highest in the world. Botswana also recorded a significant drop in its human development index from 0.674 in 1990 to 0.57 in 2006, while simultaneously experiencing rapid economic growth.²

Botswana's record has been built on using revenues generated from diamond mining to fuel economic development; adhering to prudent fiscal policies; and maintaining a negligible level of external debt.³ Notably, the government has effectively managed strategic public-private ventures to generate revenue. Two mining companies dominate the industry: Debswana and Bamangwato Concessions Limited. The government is a significant equity partner in both of these ventures.⁴

1 Transparency International Corruption Perceptions Index 2006. Available at www.transparency.org. Standard and Poor's credit ratings available at: www.standardandpoors.com

2 United Nations Development Program Human Development Report statistics available at: <http://hdr.undp.org/hdr2006/statistics/>

3 Sarraf, Maria, and Jiwaji, Moortaza. "Beating the Resource Curse: The Case of Botswana." The World Bank. Environmental Economic Series. October 2001.

4 Economist Intelligence Unit. Botswana Country Report. Botswana http://store.eiu.com/index.asp?layout=show_sample&product_id=50000205&country_id=BW

The agreement governing the revenue distribution between the government, and mining giant De Beers is confidential. However, diamonds account for 75 percent of Botswana's export earnings, about 50 percent of government revenue, and 37.5 percent of gross domestic product.⁵ The partnership between De Beers and the Botswana government is so critical to revenue generation in the country that President Mogae noted that "the partnership between De Beers and Botswana has been likened to a marriage. I sometimes wonder whether a better analogy might not be that of Siamese twins."⁶

In May 2006, the Mogae government signed an agreement establishing the Diamond Trading Company International (DTCI), a new company intended to extend Botswana's long-term partnership with De Beers. DTCI is expected to replace De Beers' marketing arm, the London-based Central Selling Organization (CSO). The CSO currently controls between 70-80 percent of the world's total diamond sales, with Botswana accounting for an estimated 30 percent of this total. Although the mining sector has historically employed only five percent of the country's workforce, the establishment of DTCI is expected to create approximately 3,000 jobs in polishing and cutting factories. The agreement also extends government licenses for Botswana's most productive mines, the Jwaneng and Orapa mines, and for the smaller Lethlakane and Damatshaa mines, until 2029.

In addition to the country's gem-quality diamond exports, Botswana also produces copper, nickel and soda ash. The development of a coal methane gas field and the discovery of gold deposits in 2003 may be future sources of government revenue. The country's economic priorities include private sector diversification as well as tourism and service sector development.

Although Botswana has translated its mineral wealth into infrastructure, education, and health and poverty alleviation programs, the country continues to face development challenges, par-

ticularly in the health sector. An estimated 24 percent of Botswana's population is living with HIV/AIDS, making it one of the worst-affected countries in the world.⁷ According to the United Nations, AIDS cut life expectancy in Botswana from 64 years in 1990 to just 34.9 years in 2004. In its efforts to address the pandemic, Botswana's government was the first in Africa to provide free anti-retroviral treatment in 2002.

Debswana is an important partner in countering the workforce impact of AIDS in the mining industry. Debswana underwrites all costs for anti-retroviral treatment for employees, their spouses and up to three children under the age of 21. Reported AIDS prevalence at the country's two largest mines closely mirror national prevalence rates.⁸

Legal and Regulatory Framework

A key feature of the legal and regulatory environment of the mining industry in Botswana is the required government involvement in all mining ventures through equity participation and board representation. Minimum controls are exercised on business operations, and management is left entirely to the private sector. The government of Botswana and De Beers, for example, are equal shareholders in Debswana, although the government maintains an arms length approach in the day-to-day operations of the company. The government of Botswana is represented on the board of Debswana by representatives of the Ministries of Finance, Trade, Minerals Energy and Water Resources, as well as the Central Bank and the President.

In 1999, Botswana amended its 1977 Mines and Minerals Act to streamline the issuance of exploration and mining licenses and to make government involvement in new developments more attractive to investors. The legislation simplifies the licensing regime by conferring three types of mineral rights (a reconnaissance permit, a prospecting license and a mining lease) that may be

5 President Festus Mogae State of the Union Address, November 13, 2006.

6 Debswana website: <http://www.debswana.com/NR/exeres/872AB9D7-852E-47C5-A71D-66B0C43479F8.htm>.

7 December 2006 AIDS Epidemic Update, published by the Joint United Nations Program on HIV/AIDS (UNAIDS).

8 Highly Active Antiretroviral Treatment, Patient Enrollment Update, National ARV Team, Department of AIDS Prevention and Care, Botswana Ministry of Health, December 2006.

A 2002 parliamentary needs assessment found that the legislature was not always fulfilling its oversight role, particularly in the extractive industries sector.

granted to individuals or companies. Applications for mineral rights are made to the Ministry of Mineral Resources and Water Affairs through the Geological Survey Department, or the Department of Mines.

The legislation also imposes a variable income tax rate of between 25 and 50 percent on companies, which is determined annually by reference to the mining company's profit ratio. The legislation allows the government to retain the right to acquire interest in new mines up to a maximum of 15 percent.

Mining revenue is considered to be "national" in nature. Revenues from the mines and other sources are placed in a Central Bank account and dispatched to different governmental branches, according to national development plans (NDP). The plans are developed every six years, and include annual budgets and mid-term reviews. The current NDP runs from 2004-10.

Botswana's economy is heavily dependent on world diamond demand, and is therefore vulnerable to market volatility. International concern over "conflict" or "dirty" diamonds has been a source of concern for Botswana's political leaders. Although such diamonds are estimated to account for only 4 percent of world output, concerns that these diamonds finance civil wars undermines confidence in the world's diamond industry.⁹ Such concerns have not significantly impacted world diamond demand, however. Botswana announced its intention to join the Extractive Industries Transparency Initiative (EITI) in March 2007, and is also a key participant in the Kimberly Process, a voluntary certification system that imposes extensive requirements on participants to certify that shipments of rough diamonds are "conflict free."

Public Accountability and Transparency

Botswana's tradition of openness and transparency, grounded in regular consultations between leaders and citizens at the local level, complements the country's modernizing political system. Through the government's requirements for

board representation and equity participation in the mining sector, Botswana serves as an example of how to organize the extractive industries and the relationship between government and international mining companies. Since independence, the country has built a reputation as a model of good governance and economic progress.

However, respect for these traditions – and the positive role they play in ensuring good governance – depends more on the political will of Botswana's leaders than on government laws or practices. Irrespective of societal norms, accountability mechanisms tend to erode over time in countries whose governments are controlled by a single political party.

Legislative Engagement and Oversight

A 2002 parliamentary needs assessment found that the legislature was not always fulfilling its oversight role, particularly in the extractive industries sector. This was due to a lack of understanding on the part of legislators on their roles and responsibilities, and apparent confusion over the specific functions of parliamentary committees.

Moreover, the president's cabinet is selected from the legislative branch, and, as a result, roles between the legislature and the executive often overlap. Because cabinet-level ministers have greater access to information and the confidence of the president, their voices tend to carry more weight in the legislature. Members of parliament may therefore be reticent to exercise their powers of scrutiny over the extractive industries sector, particularly where the composition of parliament is dominated by the ruling party. High turnover within the legislature, a need to better define the specific functions of parliamentary committees, and the tendency for parliament to approve or "rubber stamp" legislation, are obstacles towards greater legislative oversight and government accountability.

Parliament is excluded from the negotiation of agreements between the government and the private sector, and tends to be more reactive than proactive on policy issues. Renegotiation between De Beers and Botswana on 25-year lease renewals for the country's four mines, for example, was presented to MPs only after the negotiation process was finalized. This pattern could, over the

9 Modise, Modise. "Management of Mineral Revenues: The Botswana Experience." Presented at the workshop on Growth and Diversification in Mineral Economies in Cape Town, South Africa. November 2000.

long term, undermine the role of the legislature in building consensus on government policies, particularly in relation to other pressing development challenges such as HIV/AIDS, economic diversification and growing dissatisfaction at the local level on distribution of resources resulting from the mining sector.

According to one study, the National Assembly does not play a role in the ratification, appointment, or removal of officials from certain high offices, such as the Auditor General, the Ombudsman, the Director on Corruption and Economic Crime and the Secretary of the Independent Electoral Commission. While these offices have a reputation for independence, strengthening legislative oversight in this area could protect them from partisanship in the future.

Regardless of their limited role, a number of legislators are interested in becoming more engaged in extractive industry oversight and recognized that this area would require greater independence from the executive branch of government.

Recommendations

To Legislators:

- *Strengthen the committee system* in order to play a more active role in shaping and overseeing public policy. Provide a platform to individual members and parties for voicing opinions within the institution.
- *Promote legislative independence, efficiency and integrity* by reviewing parliamentary standing orders, creating a parliamentary service commission, developing a code of conduct for members of parliament, and conducting a comprehensive review of the functions of parliamentary committees.
- *Develop a strategy to gain access to policy discussions between mining companies and the government.* Such a strategy could involve summoning key government ministers, civic groups, and industry experts to testify at public hearings and initiating more regular communication between relevant parliamentary committees and focal representatives in the mining sector.

- *Seek a larger role in approving the appointment and guaranteeing the independence of key executive branch oversight positions* such as the Auditor General, the Ombudsman, the Director on Corruption and Economic Crime, and the Secretary of the Independent Electoral Commission.

- *Work closely with the executive branch* to improve understanding of the legal framework and government policies toward the extractive industry.

To Civil Society:

- *Engage political leaders in discussions on the growing concern that local communities are not benefiting sufficiently from mining operations in Botswana.* Include legislators in a longer term strategy to promote awareness of issues arising from extractive industries.

To the International Community:

- *Provide legislative training and technical assistance to help legislators better understand their roles and responsibilities,* especially in the extractive industry sector.
- *Share Botswana's best practices with other African countries* through study missions and other international meetings that include political and business leaders as well as civil society activists.

A number of legislators are interested in becoming more engaged in extractive industry oversight and recognized that this area would require greater independence from the executive branch of government.

BOTSWANA BACKGROUND INFORMATION

ECONOMIC PROFILE

Major Resources¹	Diamonds, copper, nickel
Oil/Mining Revenues (2000 -2003)²	
<i>Average Annual Hydrocarbon Exports (in percent of Total Exports)</i>	75.5
<i>Average Annual Hydrocarbon Revenues (in percent of total fiscal revenue)</i>	56.2
<i>Average Annual Hydrocarbon Revenues (in percent of GDP)</i>	24.8
GDP per Capita (PPP)³	\$9,945
Human Development Index Rank (Out of 177 Countries)⁴	131

GOVERNANCE INDICATORS

Freedom Rating (2006)⁵	Free
Governance Indicators (2005)⁶	
<i>Voice and Accountability ±</i>	68
<i>Political Stability</i>	81
<i>Government Effectiveness</i>	75
<i>Regulatory Quality</i>	71
<i>Rule of Law</i>	69
<i>Control of Corruption</i>	82

EITI STATUS

EITI Status (2007) **Announced intention to sign in March 2007.**

1 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/bc.html>

2 International Monetary Fund, *Guide on Resource Revenue Transparency*, 2005:
<http://www.imf.org/external/pubs/ft/grrr/eng/060705.pdf>

3 United Nations Development Program, *Human Development Report 2006*:
http://hdr.undp.org/hdr2006/statistics/countries/country_fact_sheets/cty_fs_BWA.html

4 United Nations Development Program, *Human Development Report 2006*:
<http://hdr.undp.org/hdr2006/statistics/>

5 Freedom House website: <http://www.freedomhouse.org/template.cfm?page=15&year=2006>

6 Kaufmann, Daniel, Kraay, Aart and Mastruzzi, Massimo, *Governance Matters V*, 2006, World Bank:
www.govindicators.org

± Percentile rank indicates the percentage of countries worldwide that rate below Botswana (subject to margin of error). Higher values indicate better governance ratings.

LEGISLATIVE PROFILE

Legislative System ⁷	Bicameral
Constitutional Rules and Powers ⁸	
<i>Rules for forming government</i>	The President appoints Cabinet Ministers from among Members of Parliament (Article 42)
<i>Oversight powers</i>	Cabinet Ministers and Assistant Ministers are responsible to the National Assembly for all things done by or under the authority of the President, Vice-President or any Minister in the execution of their office (Article 50)
<i>Budgetary authority</i>	Bills and amendments in the National Assembly cannot impose a charge on the revenues or other public funds of Botswana or alter any such charge other than by reduction; nor can they impose a tax or alter a tax other than by reduction (Article 88)
Legislative Electoral System ⁹	First Past the Post
Most Recent Legislative Election ¹⁰	2004
Distribution of Seats ¹¹	
<i>National Assembly</i>	Majority party, Botswana Democratic Party (BDP), holds 44 out of 57 seats
<i>House of Chiefs</i>	Not party-affiliated
Relevant Committees	<ul style="list-style-type: none"> • Foreign Affairs, Trade and Security • Public Accounts • Finance and Estimates • Agriculture and Environment

7 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/bc.html>

8 Botswana Constitution: <http://www.idasa.org.za/gbGovDocs.asp?RID=1>

9 International Institute for Democracy and Electoral Assistance website: <http://www.idea.int/esd/world.cfm>

10 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/bc.html>

11 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/bc.html>



Chad's legal framework for the management of its oil wealth is viewed as a potential model for developing countries. However, growing insecurity, weak capacity at all levels of government, and limited political will have undermined its implementation, and oil revenues are not presently being used effectively to alleviate poverty and foster development. The ruling party controls the majority of seats in Chad's legislature, and members make little effort to conduct oversight activities that could challenge presidential prerogatives. Chad's oil revenue oversight body, the "Collège de Contrôle et de Surveillance des Ressources Pétrolières," has played an important role in drawing attention to oil revenue management issues, but its recommendations are rarely followed by the government.

Political and Economic Context

Chad, Africa's newest oil producing state, is a country with a long history of civil war, political instability, widespread corruption and poor infrastructure. Since independence in 1960, Chad has been one of the poorest countries in the world, experiencing more years of war than peace. Rising tensions in the region pose a continuous threat to internal stability.

President Idriss Déby, a former general who came to power in a 1990 coup, won Chad's first multi-party presidential elections in 1996. Déby's *Mouvement Patriotique du Salut* (MPS) also won a majority of seats in legislative elections a year later. Presidential and legislative elections in 2001 and 2002 returned Déby and the MPS to power,

but were marred by widespread irregularities and opposition boycotts. Opposition parties boycotted a 2005 referendum that approved a constitutional amendment that allowed Déby to run for a third term in 2006.

Members of civil society and opposition politicians attempted to organize a national conference in advance of the May 2006 election. Organizers hoped that such a conference could serve as a forum for discussion on the political and economic challenges facing the country, including a growing rebel insurgency and insecurity along the border with Sudan's Darfur region. Their efforts failed and the presidential election was held as scheduled. Opposition parties boycotted the election, voter turnout was low and Déby was easily re-elected.

There is a long history of conflict between Chad's traditionally northern-dominated government and ethnic groups in southern Chad, where most arable land and oil deposits are located. Opposition groups and civil society representatives accuse Déby of ruling through a patronage system that favors members of his northern Zaghawa clan and its allies. Chad was ranked near the bottom of Transparency International's 2006 Corruption Perceptions Index and slipped to 171 out of 177 countries in the 2006 Human Development Report.¹

Oil was discovered in Chad in the 1970s, but decades of political instability and the country's limited infrastructure hampered progress in developing the industry. In the late 1990s, the World Bank announced that it would provide financial support for the construction of an oil pipeline from the Doba oil fields, connecting Chad to port facilities on Africa's west coast via Cameroon. Local and international groups launched an advocacy campaign against the project, citing Chad's history of corrupt governance and political repression. The campaign criticized the World Bank for failing to address how oil profits would benefit the poor. Critiques also centered on the potential environmental and socio-economic impact on com-

¹ Transparency International Corruption Perception Index Report. Available online at: www.transparencyinternational.org

United Nations Development Program Human Development Index Report available online at: <http://hdr.undp.org/hdr2006/statistics/>

munities in Chad and Cameroon that would be displaced by the pipeline's construction.

This successful campaign led the World Bank to negotiate with the Chadian government (as part of its loan agreement) on a legal framework for the management and use of oil revenues from the Doba oilfields that included the establishment of an independent advisory group, a revenue management law, and the creation of the *Collège de Contrôle et de Surveillance des Ressources Pétrolières* (CCSRP or *Collège*). The *Collège* was designed as an independent committee to authorize and monitor the use of funds set aside for five priority sectors: education, health, rural development, infrastructure, and water and environmental resources. The World Bank loan was approved in 2000 and oil production began in 2003.

Over the last few years, an armed insurgency has challenged President Déby's government and led to defections by high-ranking members of Chad's military. In April 2006, rebels stormed the capital and attempted to overthrow Déby. Although forces loyal to the government put down the coup attempt, significant numbers of security forces remain posted around the city. Sudan's Darfur conflict has also spilled over Chad's eastern border, where growing refugee settlements have increased tensions in the region. By late 2005, it had become increasingly difficult to distinguish between the war in Darfur and rebel attempts to oust Déby.²

Legal and Regulatory Framework

Chad's 1999 Petroleum Revenue Management Law (known as Law 001) has been lauded as an example for other oil-producing countries. Under its provisions, direct oil revenues from Chad's Doba fields – net of Chad's debt payments – are to be distributed according to the following formula:³

- 72 percent of oil revenues would be distributed to expenditures in five priority sectors (education, health, rural development, infrastructure, and water and environmental resources);
- 10 percent to be placed in a 'Future Generations Fund' to be invested and used when oil reserves have been exhausted; and
- 4.5 percent to be allocated to communities in oil-producing areas.

Through 2007, the remaining 13.5 percent was to be allocated to recurrent government expenditures. After 2007, when the government is expected to begin receiving indirect revenues from the Doba fields, the 13.5 percent was to be spent on the five priority sectors.

The government demonstrated its lack of commitment to the provisions of Law 001 in 2005 when, citing Chad's growing security crisis, it amended the law to suppress the Future Generations Fund, increased the allocation to recurrent government expenditures, and expanded the definition of priority sectors to include security. The World Bank considered these amendments in breach of the 2000 loan agreement, and the bank suspended payments until a fresh agreement was reached in 2006.⁴ This new agreement contained several concessions to the Chadian government including: the suppression of the future generations fund; an increase in the percentage of the oil revenues available to the government for everyday expenses and the addition of security as a priority sector for development. The new agreement means that money initially allocated for development projects is now at the disposal of the government for discretionary spending.

Law 001 will likely survive beyond the Déby regime. While weakened by the above mentioned amendments, it can certainly serve as a model for legislators in other African countries. In Chad, however, the absence of political will and the weakness of the institutional capacity has reduced the reach of Law 001. Likewise, the Doba

Chad's 1999 Petroleum Revenue Management Law (known as Law 001) has been lauded as an example for other oil-producing countries.

2 Polgreen, Lydia. "Refugee Crisis Grows as Darfur War Crosses Borders," New York Times, February 2007. <http://www.nytimes.com/2006/02/28/international/africa/28border.html?ei=5087&en=8498bf1ffc7cb025&ex=1187154000&pagewanted=print%20/>

3 Revenues accruing to Chad from the oil industry include: signature bonuses; direct revenues (royalties and dividends on the government's shares in the pipeline); and indirect revenues (income and other taxes on oil companies and customs duties).

4 According to the World Bank, the government of Chad has committed 70 percent of its 2007 spending to poverty reduction programs, excluding security. Updates are available on the World Bank's website on The Chad-Cameroon Petroleum Development and Pipeline Project: www.worldbank.org/afr/ccproj

Although the *Collège* has made promising strides toward establishing itself and exerting its authority and independence, the Déby regime has partly jeopardized the positive impact of the innovative experiment.

fields hold only a fraction of Chad's estimated oil revenues. ExxonMobil plans to expand its production beyond the Doba fields, while other companies are also conducting exploration activities in Chad. These activities are to be governed by a new oil code, and not Law 001. In March 2006, the new oil code was pending, and the government had indicated its intent to establish a state-owned oil company.

Public Accountability and Transparency

Public debate about transparency and mismanagement of oil revenues is tolerated, though the government routinely ignores public criticism. Chadian civic groups have established a local chapter of the Publish What You Pay (PWYP) Coalition and increasingly direct their efforts toward international advocacy. Many groups are developing solid expertise in the area of oil revenue management. These groups provided input into the World Bank sponsored Poverty Reduction Strategy Paper Process (PRSP) developed in 2001, and currently in effect through 2015.

Despite technical assistance and financial support from the World Bank and other international organizations, Chad's public sector does not have the material nor the human resources to effectively manage the country's rapidly increasing revenues. Civil servants lack the training to master the technical aspects of monitoring oil production and determining revenues. Those who demonstrate capacity are often lured away by the private sector. Frequent cabinet changes prevent the accumulation of expertise by political appointees. Weak financial institutions make it difficult to absorb increased funding or develop effective spending plans.

The *Collège*, a unique institution designed to help ensure that a portion of oil proceeds is spent on programs that alleviate poverty, plays a critical role in a country that lacks an effective system of checks and balances in government. The nine members of the *Collège* represent Chad's Supreme Court, the national treasury, labor unions, human rights groups, non-governmental organizations and religious groups. Two members of Chad's National Assembly are also members.

According to Law 001, the *Collège* exercises its oversight by:

- Verifying oil production information against deposits into Chad's accounts;
- Ensuring that direct revenues are allocated in line with the provisions of Law 001;
- Participating in budget preparation for the five priority sectors (education, health, rural development, infrastructure, and water and environmental resources); and
- Overseeing expenditures in the five priority sectors by checking for compliance with procurement regulations and monitoring project implementation through desk reviews and investigative missions.

Since its creation in 2002, the *Collège* has exercised its authority by refusing to approve the disbursement of funds for projects that do not meet the criteria of Law 001, issuing reports on malfeasance in the expenditure and use of public funds, commenting on the executive's budget proposals and providing recommendations to improve the efficiency of various executive branch agencies charged with implementing projects in the five priority sectors.

Although the *Collège* has made promising strides toward establishing itself and exerting its authority and independence, the Déby regime has partly jeopardized the positive impact of the innovative experiment. In many instances, the *Collège* has been unable to access required information on the oil sector. In most instances where problems have been identified, corrective action has not been taken by the government.

While in theory the *Collège* can influence the budget process, and investigate the execution of projects it approves, ultimately its ability to ensure that oil revenues are used for poverty reduction depends on government cooperation, including the prosecution of any wrongdoing identified. While some officials accused of malfeasance have been reassigned or asked to resign, thus far no one has been prosecuted. Moreover, there have been no significant efforts to address problems cited by the *Collège* in its reports.

Moreover, financial constraints have made site visits difficult, severely limiting the oversight function of the *Collège*. Its work has also been hampered by limited human resources. In February 2006, the nine-member committee was supported by only

four technical staff members, whose work is currently assisted by experts from the IMF and the United States Treasury.

Though the *Collège* is built on a solid foundation, its oversight authority is limited to direct revenues from the Doba oil fields. Significant oil revenues fall outside of the jurisdiction of the *Collège*. Indirect revenues (including corporate taxes and custom duties generated by the oil project) go directly into ordinary Treasury accounts rather than being channelled into “priority sectors.” As other oil fields are explored and developed, and as indirect revenues accrue beginning in 2007, funds overseen by the *Collège* will represent a smaller share of Chad’s oil revenues.

Unless mechanisms for increased accountability are addressed as part of a broader effort to strengthen the country’s political institutions, Chad is likely to remain at the bottom of development rankings. Solid and consistent backing and technical support from the international community for the *Collège* and increased support for governance initiatives could still meaningfully impact efforts to increase accountability and transparency in Chad.

Legislative Engagement and Oversight

President Déby’s MPS party holds a majority of seats in the National Assembly. The President uses his party’s overwhelming majority in the legislature to pass legislation and budget appropriations with relative ease and limited debate. Individual legislators, including members of the MPS and its allies, do express views divergent from the executive, but are unwilling or fearful of voting against the President, especially since voting in the chamber is not secret. Although the 1996 Constitution stipulates that legislative elections are to be held every four years, the current Assembly’s mandate was recently extended through 2007.

Beyond questions of political will, the National Assembly suffers from the same capacity weaknesses as other government institutions. Governance was not identified as a priority area in Law 001, which regrettably prevents direct oil revenues from being spent on building the country’s democratic processes and institutions.

Prevalent authoritarianism in the county and a lack of autonomy on the part of MPs jeopardizes the effectiveness of Law 001, and impairs meaningful follow-up from the work the *Collège* has been able to conduct to date. Efforts to strengthen democratic institutions could significantly improve the effectiveness of Law 001 and complement other initiatives to improve revenue management. Ensuring that Chad’s oil boom benefits the poor requires not only building government capacity, but altering policies and, ultimately, changing politics.

Recommendations

To Legislators:

- *Make use of the reports generated by current attention to Chad’s oil industry* to educate themselves on the issues, identify areas for improvement, and call for sanctions in cases of proven malfeasance.
- *Consider whether and how Law 001 should be amended* to ensure its implementation and applicability to all future oil exploration and production activities.
- *Ensure that the pending oil code includes provisions that foster accountability and transparency.*

To Civil Society and the Collège:

- *Maintain pressure for increased transparency and accountability* by continuing to monitor the oil sector and budgetary processes, exposing problems where they exist, and advocating for appropriate reforms.
- *Identify and reach out to reform-minded legislators* to inform and engage them in potential oversight activities as part of a longer term strategy to build stronger and more productive relationships between civic groups and the legislature.
- *Participate in the process of monitoring priority areas identified in the PRSP process* to contribute to the debate on how best to use oil revenues to alleviate poverty.

Unless mechanisms for increased accountability are addressed as part of a broader effort to strengthen the country’s political institutions, Chad is likely to remain at the bottom of development rankings.

To the International Community:

- *Identify and reach out to reform-minded legislators* as part of a longer term strategy to promote the development of a legitimate legislature that fulfills its core functions of representing constituents, conducting oversight activities, and crafting legislation.
- *Continue to support civil society* advocacy and monitoring of the extractive industries, and help groups develop the capacity to monitor broader budgetary processes and public expenditures.
- *Increase technical and financial assistance to the Collège.* The assistance provided by US Treasury Advisors to the *Collège* has been particularly helpful, but could be expanded. Similarly, with additional support, the *Collège* could expand its public outreach activities, recruit additional staff, obtain additional office equipment and meet other needs required to increase its effectiveness.
- *Use leverage to support adherence to the rule of law and compliance with revenue management safeguards.* In Chad, where citizens have limited influence on their government, external actors such as the World Bank, the IMF, and the US and French governments can be important sources of pressure for greater transparency and accountability.
- *Encourage fair and credible legislative elections in 2007* by supporting efforts to improve Chad's electoral process. Such efforts could include support for the development of an inter-party dialogue mechanism to promote agreement on reforms and peaceful campaign conduct. The international community could also support nonpartisan monitoring of the process to deter fraud and build public confidence through more active citizen engagement.

CHAD BACKGROUND INFORMATION

ECONOMIC PROFILE

Major Resources¹	Petroleum
Oil/Mining Revenues (2000 -2003)²	
<i>Net Oil Revenue (in percent of national budget)</i>	42
	***It is estimated that over their 25 year production span, Chad's first three oilfields could earn the government as much as \$5 billion. Other oil fields which are not yet in development could generate additional revenues. ³
GDP per Capita (PPP)⁴	\$2,090
Human Development Index Rank (Out of 177 Countries)⁵	171

GOVERNANCE INDICATORS

Freedom Rating (2006)⁶	Not Free
Governance Indicators (2005)^{7 ±}	
<i>Voice and Accountability</i>	12
<i>Political Stability</i>	10
<i>Government Effectiveness</i>	11
<i>Regulatory Quality</i>	18
<i>Rule of Law</i>	9
<i>Control of Corruption</i>	7

EITI STATUS

EITI Status (2006)⁸	Signatory
<i>Appointed a leader</i>	No
<i>Multi-Stakeholder Committee</i>	No
<i>Drafted a Working Plan</i>	No
<i>Published Audited and Reconciled Report(s)</i>	No

1 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/cd.html>

2 The World Bank website: <http://www.worldbank.org>

3 "Chad's Oil: Miracle or Mirage? Following the Money in Africa's Newest Petro State," Catholic Relief Services, 2005

4 United Nations Development Program, *Human Development Report 2006*: http://hdr.undp.org/hdr2006/statistics/countries/country_fact_sheets/cty_fs_TCD.html

5 United Nations Development Program, *Human Development Report 2006*: <http://hdr.undp.org/hdr2006/statistics/>

6 Freedom House website: <http://www.freedomhouse.org/template.cfm?page=15&year=2006>

7 Kaufmann, Daniel, Kraay, Aart and Mastruzzi, Massimo, *Governance Matters V*, 2006, World Bank: www.govindicators.org

± Percentile rank indicates the percentage of countries worldwide that rate below Chad (subject to margin of error). Higher values indicate better governance ratings.

8 Once a country signs on to EITI, their progress towards implementation is measured against the following benchmarks. Revenue Watch Institute, *Eye on EITI*, 2006, <http://www.publishwhatyoupay.org/english/pdf/pubs/eyeoneiti.pdf>

LEGISLATIVE PROFILE

Legislative System ⁹	Bicameral according to the Constitution <i>*Senate has not yet been formed</i>
Constitutional Rules and Powers ¹⁰	
<i>Rules for forming government</i>	The President is directly elected and appoints a Prime Minister by decree. The President forms a government based on the Prime Minister's proposals. Governments must present their programs to the legislature for approval. Legislators cannot serve in the executive. (Articles 94, 95, 105 and 142)
<i>Oversight powers</i>	Right to question the executive in writing or orally, through investigative committees and in committee hearings. (Article 145) Right to censure the executive by a motion supported by a majority of legislators. Successful motions require the resignation of the Prime Minister and Government. However, if the legislature censures the executive twice in the same year, the president has the right to dissolve the National Assembly and call for elections within 45 days. (Articles 83 and 142)
<i>Budgetary authority</i>	Legislative amendments to the budget cannot reduce or increase public revenues unless accompanied by compensatory measures. (Article 134 and 135)
Legislative Electoral System ¹¹	Party Block Vote
Most Recent Legislative Election ¹²	2002
Distribution of Seats ¹³	
<i>National Assembly</i>	Majority party, Mouvement Patriotique de Salut (MPS), holds 110 out of 155 seats
Relevant Committees	<ul style="list-style-type: none"> • 2 members of the <i>Collège</i> represent the National Assembly

9 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/cd.html>

10 The Constitution of Chad: <http://www.cefod.org/Fichiers%20web/Constitution%20Tchadienne.html>

11 International Institute for Democracy and Electoral Assistance website: <http://www.idea.int/esd/world.cfm>

12 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/cd.html>

13 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/cd.html>

CONGO-BRAZZAVILLE



More information on Congo-Brazzaville's oil sector is publicly available than in the past, due in part to an advocacy campaign led by the Publish What You Pay (PWYP) Coalition. Despite improved access to information, however, the public continues to view oil sector operations and revenue management as opaque, and a taboo subject for discussion. Political freedoms are limited, and civic activists are regularly threatened or harassed by security officials. The legislature is overwhelmingly controlled by the ruling party coalition, and makes little effort to conduct independent oversight activities.

Political and Economic Context

After nearly three decades of one-party Marxist rule, Congo-Brazzaville (or Congo) held its first multi-party presidential election in 1992. Pascal Lissouba won the presidency in a race against incumbent President Sassou-Nguesso, who had held power since 1979. In 1993, after legislative elections were held, violence broke out between private militias loyal to President Lissouba and groups supporting former Prime Minister Bernard Kolelas. Although a peace agreement was reached in 1994, tensions flared again – this time between groups supporting Lissouba and Sassou-Nguesso – in the lead up to presidential elections scheduled for July 1997. Angolan forces intervened on behalf of Sassou-Nguesso, and the Lissouba government fell in mid-October.

Sassou-Nguesso declared himself President in 1997, but continued to combat armed resistance from opposition militias. A negotiated peace

agreement led to a constitutional referendum and national elections in 2002. Sassou-Nguesso was declared president with almost 90 percent of the vote after his main challenger claimed that the poll was rigged and dropped out of the race. Lissouba and Kolelas, who had sought refuge abroad, were not parties to the agreement and were barred from contesting. They were eventually tried, convicted and sentenced to death in absentia on a variety of charges, including treason, though Kolelas, who returned to Congo in 2006, has since been pardoned.

Recurrent violence has significantly damaged the capital and the country's infrastructure. Except for urban enclaves such as Brazzaville and Pointe-Noire, large tracts of the country are beyond state control. Banditry and militia activity is especially rife in the Pool region, where Pasteur Ntoumi and his Ninja militia are based.

Congo-Brazzaville is the fourth-largest oil producer in Sub-Saharan Africa. The economy is heavily dependent on oil revenues and multinational corporations have played a major role in developing the sector. The trial and conviction of 30 former Elf-Aquitaine (now Total) executives in France in 2003 demonstrated how mismanagement in the oil sector has fuelled corruption and conflict in the country, with oil revenues diverted to private accounts, used to back unfavorable loans, and siphoned to finance clandestine arms purchases.¹

In November 2005, the *Boston Globe* published an investigative report on malpractice in the sale of Congo's oil, including allegations that the head of the *Société Nationale des Pétroles du Congo* (SNPC), the state-owned oil company, may have made a personal profit of US\$4.2 million on the sale of oil in a single transaction.² In October 2005, the *Wall Street Journal* carried a similar story, likening the looting of the Congolese national economy with "Oil for Food-like corruption."³ Allegations of gross impropriety also surrounded a gift made by energy giant Total, to the Congolese government. The gift was

1 Global Witness, *Time for Transparency*, March 2004.

2 "In Oil-Rich Nation, Charges of Skimming; Congolese Officials Said to Reap Benefits," *Boston Globe* 25 November 2005.

3 Claudia Rosett, "Dollars for dictators," *Wall Street Journal*, 19 October 2005.

For decades, public discussion of Congo-Brazzaville's oil wealth was taboo.

of a share of the rich Likouala oil field that was passed on not to SNPC, but to Likouala SA, a private company owned by interests close to President Sassou-Nguesso.⁴

In addition to oil, Congo also produces diamonds, but the country was suspended from the diamond industry's Kimberly Process in 2004 after identified discrepancies between production and exports raised concerns that Congo was a transshipment point for illicit diamonds from the Democratic Republic of Congo (DRC) and other neighboring countries.

Legal and Regulatory Framework

In the late 1990s, the government agreed to a program of reforms with the World Bank and the International Monetary Fund in exchange for assistance with its heavy debt burden. In 2002, the government signed a grant with the World Bank to fund audits of the state-owned oil company, and to make reports and other information available on the Ministry of Finance's website. As a result, the country's Paris Club debt service payments were slashed, and debt forgiveness is set to rise further under the Highly Indebted Poor Country (HIPC) program. However, the KPMG audit found major improprieties in the management of Congo's oil revenues, including significant discrepancies between SNPC accounts and oil revenues in the national budget, and noted that valuable information was either withheld or falsified.⁵

Created in 1998, SNPC replaced the inefficient previous national oil company, Hydrocongo. Its main function is to sell the country's share of oil production, an estimated 33 percent of the total, through its trading office in London. Although SNPC has a variety of reporting relationships with state institutions such as the Petroleum and Finance Ministries, in reality it operates autonomous from Congo's national administration, and reports directly to President Sassou-Nguesso. Current laws applying to the oil and mining sector are known as the Hydrocarbons Code, and the Mining Code, respectively.⁶

4 For details, see Global Witness, *Time for Transparency*, 2004, pp. 18-35.

5 Audit reports available at the Republic of Congo's Ministry of Finance website: <http://www.mefb-cg.org/eiti.htm>

6 The Hydrocarbons Code is Law 24-94 of 23 August 1994,

In June 2004, the government joined the Extractive Industries Transparency Initiative (EITI). A national-level working committee was not nominated until September 2005, and at the time of the team's visit, 18 months after Congo joined the EITI, the President had yet to sign the decree that would have allowed the committee to begin its work.⁷

Public Accountability and Transparency

For decades, public discussion of Congo-Brazzaville's oil wealth was taboo. In the late 1990s, Congolese civil society organizations, led by ecumenical groups such as the Catholic Justice and Peace Commission, initiated a public dialogue on oil and governance in Congo. Together, they launched an international advocacy campaign that involved petitioning the government and legislators, and lobbying oil companies and international financial institutions to draw attention to the mismanagement of Congo's oil proceeds. A 1999 statement of the Catholic Bishop of Congo-Brazzaville noted: "*How can one understand that during the last three decades, the frequent discovery and start-up of oil wells, always important, has not been accompanied by any kind of visible sign of economic transformation or rectification of the social situation of our population? Our oil must be an instrument for the life and not the death of our people.*"⁸

In June 2002, Congolese Bishops advocated for President Sassou-Nguesso and the country's new parliament to: introduce a law to manage oil revenue; form an oversight committee with representatives from the state, church and civil society; make provisions for infrastructural investment in prioritized areas; and require SNPC to regularly publish information concerning its oil revenues and financial activity.⁹ Since September 2003, Congolese civic groups, working through the Publish What You Pay (PWYP) Coalition, have actively campaigned for better oversight and management of oil revenues.

while the Mining Code is Law 23-82 of 7 July 1982.

7 President Sassou-Nguesso signed decrees creating an executive committee under the authority of the Ministry of Finance, as well as a consultative committee under the Ministry of Hydrocarbons in October 2006.

8 Gary, Ian and Karl, Terry Lynn, *Bottom of the Barrel*, 2003, Catholic Relief Services, p. 35

9 Gary, Ian and Karl, Terry Lynn, *Bottom of the Barrel*, 2003, Catholic Relief Services, pp. 56 - 57.

In October 2003, the Congolese government began disclosing audited information through a Ministry of Finance website, and the country joined EITI in June 2004.¹⁰

In February 2005, the PWYP coalition organized a roundtable discussion on oil and transparency that included national and international civil society leaders, government representatives, and World Bank officials. Subsequently, the Congolese government, civil society and companies held a workshop in which they nominated an EITI committee comprised of twenty-five members.¹¹

The government has taken limited measures to improve openness, such as the hosting by SNPC of *les journées ouvertes*, or “open days,” during which members of the public were invited to learn more about the country’s oil industry. An increasing number of Congolese officials have participated in broader discussions of oil revenue management and good governance.

Despite the efforts of the PWYP coalition and the government’s limited attempts to meet demands for transparency, the public’s perception of restricted access to information persists. Confidentiality clauses still in effect for contracts in the oil sector protect against the release of certain types of information to the public, while the level of technical data currently provided is not easily understood by individuals without specific expertise in the oil industry. Ongoing harassment of civic activists casts doubts on the government’s commitment to meaningful, long-term reform. However, many of those with whom the team met do not appear to be making use of information that is available, whether through the government or members of the PWYP coalition, which has produced a number of useful leaflets and pamphlets.

Legislative Engagement and Oversight

The 2002 general elections were held against the backdrop of a tenuous security environment and the ongoing insurgency in the Pool region of the country. Key opposition leaders were prevented from standing as presidential candidates. Observers noted a number of flaws in the electoral process, and

10 Extractive Industries Transparency Initiative website. Available at: http://www.eitransparency.org/section/countries/_congo republic

11 Ibid.

consequently questioned the legitimacy of both the executive and legislative branches of government. Sassou-Nguesso’s Congolese Labor Party (PCT), an alliance of seven parties known as the Democratic and Patriotic Forces (FDP), effectively controls 90 percent of the seats in Parliament.

Limited by a constitution that grants significant powers to the president, Congo’s current legislature rarely conducts oversight activities, whether questioning ministers on policy decisions or conducting investigations. According to one interviewee, “many of those deputies will sound very progressive if contacted individually, but then go on to vote as they are told.” Another noted, “what the government wants to see going through, goes through.” According to another, legislators are “the only well paid people in this country...no one wants to risk losing the money and respect this gives them.”

The constitution confers “extraordinary power” to the President, who presides over the Council of Ministers, proposes legislation, and personally nominates three members and the Head of the nine-member Constitutional Court (as well as having an indirect say on the choice of four other members). While parliament votes on the annual budget, the President can override the vote by decree after two rejections.¹²

Despite the powers accorded to the Executive in the constitution, many of those interviewed indicated that the Constitution gave more than enough powers to Parliament, but members were unwilling to exercise their oversight authority by summoning ministerial officials, for example. As one observer noted, “parliament doesn’t even use the powers it has.”

However, parliament has conducted debates on oil issues, as was the case in 2006 when parliament discussed how revenue resulting from oil windfalls could be spent. One proposal originating from a 2004 IMF report included the creation of a future generations’ fund, but the debate in parliament was inconclusive.

12 Republic of Congo Report on Human Rights Practices, 2002, Bureau of Democracy, Human Rights and Labor, US Department of State, <http://www.state.gov/g/drl/hrrpt/2002/18178.htm>

Also see Article 127 of the Constitution and Title VII of the “Constitution on the Relations Between the Executive Power and the Legislative Power”

However, parliament has conducted debates on oil issues, as was the case in 2006 when parliament discussed how revenue resulting from oil windfalls could be spent.

“Petroleum is an extremely sensitive issue here ... what if we investigate SNPC? So what? What would we do then?”

Although there have been discussions on the country's oil revenues in parliament, the overwhelming ruling majority votes in favor of the president's proposals. Votes are cast by hand-count, resulting in the risk of greater exposure for dissenting members. Some interviewees indicated that the disincentives for greater parliamentary activism are too substantial. The legislature has not taken an affirmative stance in discussing some of the most important issues in Congo's politics, including the KPMG audit results, and the indicting news of widespread corruption within SNPC, nor does the legislature have representation on either of the newly created EITI committees. In the words of one legislator “Petroleum is an extremely sensitive issue here ... what if we investigate SNPC? So what? What would we do then?”

Recommendations

To Legislators:

- *Make use of the vast amount of user-friendly information generated by current attention to Congo-Brazzaville's oil industry to educate themselves on issues of concern to constituents and identify areas for improvement in the management of the country's oil sector. Legislators should seek the views of PWYP members and other groups with specialized knowledge of, or interest in the oil sector, to include international organizations.*
- *Conduct a review of Congo's legal and regulatory framework to ensure that Congo's laws discourage corrupt practices, while encouraging full measures of transparency and openness in the collection, management and expenditure of oil revenues.*
- *Engage with the newly created EITI executive and consultative committees with a view toward eventual representation on either or both of them.*

To Civil Society:

- *Maintain pressure for increased extractive industry transparency and accountability by continuing to monitor the oil sector and advocating for appropriate additional reforms.*

- *Identify and reach out to reform-minded legislators to inform and engage them in potential oversight activities as part of longer term strategy to build stronger and more productive relationships between civic groups and the legislature.*
- *Develop and conduct activities to better inform the public of oil sector activities, and of their rights as citizens to information on the management of oil revenues.*
- *Take advantage of membership on both the EITI executive and consultative committees to press for the Congo's full adherence to EITI principles, and to educate the broader public on the EITI process.*

To the International Community:

- *Identify and reach out to reform-minded legislators as part of longer term strategy to promote the development of a legitimate legislature that fulfills its core functions of representing constituents, conducting oversight activities and crafting legislation.*
- *Continue supporting civil society to advocate and monitor the extractive industries, by applying pressure on the government to protect and honor the rights of activists to conduct their activities in a lawful manner.*
- *Continue engaging Congo's government on issues of transparency and accountability, as well as improved management and oversight of oil revenue collection and expenditure to encourage the use of oil profits to fund anti-poverty and other socio-economic initiatives designed to benefit the broader population.*
- *Support efforts to improve Congo's electoral process to encourage fair and credible elections in 2007. Such efforts could include support for the creation of an independent electoral commission; the development of an inter-party dialogue mechanism to promote agreement on reforms and peaceful campaign conduct; and support for nonpartisan monitoring of the process to deter fraud and build public confidence through more active citizen engagement.*

REPUBLIC OF CONGO BACKGROUND INFORMATION

ECONOMIC PROFILE

Major Resources¹	Petroleum
Oil/Mining Revenues (2000 -2003)²	
<i>Average Annual Mineral Exports (in percent of Total Exports)</i>	89.5
<i>Average Annual Hydrocarbon Revenues (in percent of total fiscal revenue)</i>	70.6
<i>Average Annual Hydrocarbon Revenues (in percent of GDP)</i>	20.2
GDP per Capita (PPP)³	\$978
Human Development Index Rank (Out of 177 Countries)⁴	140

GOVERNANCE INDICATORS

Freedom Rating (2006)⁵	Partly Free
Governance Indicators (2005)^{6 ±}	
<i>Voice and Accountability</i>	29
<i>Political Stability</i>	11
<i>Government Effectiveness</i>	8
<i>Regulatory Quality</i>	11
<i>Rule of Law</i>	5
<i>Control of Corruption</i>	14

EITI STATUS

EITI Status (2006)⁷	Signatory
<i>Appointed a leader</i>	Yes
<i>Multi-Stakeholder Committee</i>	No
<i>Drafted a Working Plan</i>	No
<i>Published Audited and Reconciled Report(s)</i>	No

1 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/cf.html>

2 International Monetary Fund, Guide on Resource Revenue Transparency, 2005: <http://www.imf.org/external/pubs/ft/grrt/eng/060705.pdf>

3 United Nations Development Program, Human Development Report 2006: http://hdr.undp.org/hdr2006/statistics/countries/country_fact_sheets/cty_fs_COG.html

4 United Nations Development Program, Human Development Report 2006: <http://hdr.undp.org/hdr2006/statistics/>

5 Freedom House website: <http://www.freedomhouse.org/template.cfm?page=15&year=2006>

6 Kaufmann, Daniel, Kraay, Aart and Mastruzzi, Massimo, Governance Matters V, 2006, World Bank: www.govindicators.org

± Percentile rank indicates the percentage of countries worldwide that rate below the Republic of Congo (subject to margin of error). Higher values indicate better governance ratings.

7 Once a country signs on to EITI, their progress towards implementation is measured against the following benchmarks. Revenue Watch Institute, Eye on EITI, 2006, <http://www.publishwhatyoupay.org/english/pdf/pubs/eyeoneiti.pdf>

LEGISLATIVE PROFILE

Legislative System⁸	Bicameral
Constitutional Rules and Powers⁹	
<i>Rules for forming government</i>	The President is directly elected and appoints his ministers by decree. Legislators cannot serve as ministers. (Articles 74, 75)
<i>Oversight powers</i>	Right to question the executive in writing or orally, through investigative committees and in committee hearings. (Article 89)
<i>Budgetary authority</i>	Legislative amendments to the budget cannot reduce or increase public expenditures unless accompanied by compensatory measures. If the legislature does not approve the budget within a specified time frame, the President can adopt it by decree. (Article 119 and 127)
Legislative Electoral System¹⁰	Direct election by the two round system to the National Assembly, indirect election by local councils to the Senate.
Most Recent Legislative Election¹¹	2002
Distribution of Seats¹²	
<i>National Assembly</i>	The President's coalition, the Democratic and Patriotic Forces or FDP, hold 83 of the 137 seats.
<i>Senate</i>	The President's coalition holds 56 out of 66 seats.
Relevant Committees	<ul style="list-style-type: none"> • Economy and Finance • Health, Population, Environment and Family and Social affairs

8 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/cf.html>

9 The Constitution of Congo-Brazzaville: <http://www.congo-site.net/v4x/instit/download/CONSTITUTION.doc>

10 International Institute for Democracy and Electoral Assistance website: <http://www.idea.int/esd/world.cfm>

11 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/cf.html>

12 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/cf.html>

DEMOCRATIC REPUBLIC OF CONGO



Emerging from decades of autocratic rule and conflict, transitional elections held in 2006 raised public expectations for improved governance and accountability, particularly in the oversight and management of the DRC's vast mineral wealth. The transition period resulted in increased legislative engagement, a new constitution that provides for checks and balances on a traditionally powerful executive, and a mining code with important measures aimed at improving regulation of the sector and reducing corruption. Weak state capacity will remain a significant challenge to improved governance, however, while lingering conflict, especially in the eastern part of the country, remains a threat to longer term stability.

Political and Economic Context

Almost all of the Democratic Republic of Congo (DRC)'s first 30 years of independence were spent under the corrupt dictatorship of President Mobutu Sese Seko. Cronies and members of Mobutu's family controlled and ultimately squandered much of the country's vast mineral wealth. The decline of central state control under Mobutu's rule in the late 1980s and early 1990s led the country to economic, political and social collapse.

Over one million Rwandan Hutus sought refuge in the eastern DRC following the 1994 Tutsi genocide in Rwanda. Tensions between the refugees and local ethnic groups rose as Eastern Congolese groups of Tutsi origin, denied citizenship by Mobutu, sought assistance from Rwanda's

new Tutsi-led government to protect their land. Rwanda lent its support to exiled rebel leader Laurent Désiré Kabila, whose *Alliance Démocratique des Forces de Libération du Congo-Zaire* (AFDL) marched on Kinshasa and toppled Mobutu's government in 1997.

Kabila proved no more adept or honest at managing the country than Mobutu. In 1998, his demand that Rwanda and Uganda withdraw troops stationed in the country sparked a return to war when Rwanda invaded several weeks later. Angola, Zimbabwe and Namibia intervened on the government's behalf. As the conflict widened, numerous rebel groups emerged. An estimated four million Congolese lost their lives in the war, and many millions more were displaced.

After Laurent Kabila was killed by one of his bodyguards in 2001, his son, Joseph Kabila, took power. Unlike his father, Kabila focused considerable effort on ending the conflict. The signing of a peace agreement in 2002 after protracted mediation efforts led to the withdrawal of foreign forces and the deployment of one of the world's largest UN peacekeeping forces.

Under the peace agreement, a transitional government was formed with Joseph Kabila as president and four vice presidents representing the main political factions. A bicameral legislature was appointed, and all signatories to the agreement obtained representation in the executive branch. Laws were passed to ensure the basic functioning of the state and to implement the provisions of the peace agreement, including the drafting of a constitution.

The DRC's first democratic polls since independence were held on July 30, 2006. A presidential run-off election was held on October 29 between Kabila and Jean-Pierre Bemba, one of the transitional vice-presidents and leader of the Movement for the Liberation of the Congo (MLC). Voting was largely along ethnic lines, and sporadic violence preceded and followed the July 30 election and occurred again on October 29. Kabila won the second round and his coalition, the Alliance for the Presidential Majority (AMP), now holds 270 of the National Assembly's 500 seats.

The DRC contains Africa's largest deposits of copper, cobalt and coltan, as well as significant reserves of diamonds, gold and other minerals,

Although the establishment of the Mining Code represents a major step forward, insecurity and government mismanagement have undercut reform initiatives.

and produces approximately 25 thousand barrels of oil per day, mainly offshore. Despite the end of the war, competition for control of mineral wealth - a key driver in the conflict - continues to threaten the stability gained through the peace agreement and the subsequent elections. Investigations by a UN Panel of Experts demonstrate how the DRC's neighbors, private companies and powerful individuals have profited from the unregulated trade and exploitation of the country's mineral wealth.¹ Groups such as Global Witness and Human Rights Watch have also documented illicit activity and human rights abuses linked to these activities.²

The DRC has been a member of the Kimberly Process since 2003. In 2005, the DRC joined the Extractive Industries Transparency Initiative (EITI), created a national committee to set a course for the implementation of EITI principles, and allocated a budget for its operations.³ The legislature is not represented on the committee.

Legal and Regulatory Framework

The transitional government's first steps toward extractive industry reform came in July 2002, when President Kabila ratified the country's new Mining Code. The Code is intended to reduce government intervention in the mining sector while strengthening its regulatory role, and to encourage private investment through the establishment of a sound legal framework. The Code limits government investment to 10 percent in the mining sector, and establishes guidelines for granting exploratory and exploitative licenses, regulations on the transportation and sale of resources, and a framework for artisanal mining. The Minister of Mines is responsible for overall policy formulation and implementation. The Mining Registry, established in June 2003, is tasked with enforcing the Code's regulations and carries out a number of administrative functions, including the processing, re-issuing, or cancelling mining exploration and exploitation permits.

1 The United Nations Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo produced four reports until it was disbanded in 2003.

2 See for instance, Human Rights Watch, *The Curse of Gold*, 2005; Global Witness, *Under-Mining Peace*, 2005

3 More information available at the Democratic Republic of the Congo EITI website: <http://www.eitransparency.org/section/countries/democraticrepublicofcongo>

Many of the country's small scale, artisan miners remain dependent and heavily indebted to various middle men. To address this issue, the government created the *Service d' Assistance et d'Encadrement du Small Scale Mining* (SAESS-CAM) in 2003. Focused on the diamond sector, the organization provides miners with technical assistance, as well as tools and other materials.

The DRC's taxation framework for the mining sector was also brought into compliance with the new Mining Code in 2004. Two specific taxes have been introduced to increase transparency in mining concessions: an area tax (*taxe de superficie*) and an administrative fee (*droit superficiaire*). The Mining Code also provides a revenue sharing scheme for mining royalties that grants 60 percent to the central government, 25 percent to the provinces, and 15 percent to social service projects at the local level. Civic groups contend that the Mining Code contradicts articles of the Forestry Code, and have expressed concern about a 10-year ban on any changes to the Code.

Although the establishment of the Mining Code represents a major step forward, insecurity and government mismanagement have undercut reform initiatives. After an ally of President Kabila was appointed to lead the Mining Registry, allegations of political interference in the granting of concessions prompted the government to suspend its activities less than one year after it opened. Following the implementation of recommendations from financial and organizational audits, the Mining Registry was re-opened in 2005 under the leadership of its fourth general director in less than three years.

Public Accountability and Transparency

The reassertion of central government authority over the entire country is a critical element in promoting greater transparency and accountability in the extractive industries. Daunting logistical and communication constraints across the country's vast area mean that citizens in Kinshasa are largely unaware of developments beyond the capital, while residents in outlying areas are even less informed of news in Kinshasa. Civil servants assigned to the provincial level are often unaware of official directives or changes in government policy that could affect their work. Several months after passage of the new Mining Code, for example, provincial employees of the

Ministry of Mines were unaware of its provisions until a civil society group organized activities to raise public awareness about the code.

Prior to the implementation of the Mining Code, and in the absence of effective central government control, contracts were signed on the DRC's behalf by various groups who were not authorized to do so. In some cases, self-appointed representatives may have kept copies of the contracts, and in others any documentation may have been destroyed or displaced during the war. Verbal agreements may have sufficed or contracts may have been superseded by subsequent deals in places that changed hands from one group to another. As such, the DRC is undoubtedly a signatory to various mining concessions or contracts of which Kinshasa is unaware. Therefore, one of the greatest challenges the DRC faces is cataloging who is operating, or operated in the country's extractive industries, and under what conditions. A number of steps have been taken to rectify this problem, including actions taken by legislators themselves.

Legislative Engagement and Oversight

The Transitional Legislature

Members of the transitional legislature were appointed, rather than elected, to represent the different signatories to the peace accord. The inclusive nature of the peace agreement meant that many of those engaged in pillaging the country during the war held positions of authority in the legislature, and were often seen as serving their own personal interests rather than those of the broader population.

The transitional legislature faced many of the same challenges that confront elected bodies in emerging democracies. Committee members complained of the lack of basic resources such as computer equipment, adequate office space and support staff. Requests by legislators for funds from the executive branch to conduct oversight activities, such as investigatory trips outside Kinshasa, were often ignored or denied.

Nevertheless, the transitional legislature established precedents for the future that lay the groundwork for more effective representation by members elected in 2006. The transitional legislature on occasion submitted questions to, or summoned ministers to address issues of con-

cern, and investigated allegations of corruption and mismanagement in a number of state-owned enterprises and ministries in 2004. In conducting its enquiry, the Budget and Finance committee drew upon the results of audits conducted by the country's supreme audit institution, the *Cour des Comptes*, and ultimately called for the suspension of several ministers.

The Lutundula Commission

As called for under the peace agreement, the transitional legislature created a special commission to review contracts signed during the conflict periods of 1996-97 and 1998. Under its Chairman, Christophe Lutundula, the Commission was charged with the following:

- Compiling an inventory of all contracts signed during the two wars;
- Analyzing the terms and financial impact of each agreement;
- Recommending validation, amendment or cancellation of each contract as appropriate;
- Recommending compensation to the government or its nationals for any losses suffered as a result of any of the stated contracts.

The Commission consisted of legislators representing the traditional pre-war opposition parties, government, and civil society. Commission members visited parts of the country where mining contracts and concessions were signed or granted, and traveled overseas to obtain information on the flow of funds generated from contracts during the war. The Commission also drew upon the work of the UN Special Panel and other groups such as the All Party Parliamentary Caucus of the Great Lakes in the British Parliament and records maintained by various sides of the war.

In October 2005, the Commission was preparing to distribute its final report to the 500 members of the transitional legislature for debate and approval, and subsequently released thereport publicly.⁴ In the report, the Commission expressed regret that it did not receive full coop-

4 A full version is available at <http://www.freewebs.com/congo-kinshasa/>. Other websites have posted extracts, some of them, translated.

The transitional legislature faced many of the same challenges that confront elected bodies in emerging democracies. Committee members complained of the lack of basic resources such as computer equipment, adequate office space and support staff.

The legislature may bring motions of no confidence against the entire government or specific ministers.

eration from the DRC's former warring factions, and that its ability to fully investigate a number of cases was hampered by ongoing instability in parts of the country. The report, which outlines findings and recommendations on each of the individual contracts or cases investigated, more generally recommended:

- That the DRC engage its Great Lakes neighbors in an agreement or code of conduct to improve management of natural resources;
- An end to impunity for crimes;
- An extension in the mandate of the Commission to allow for the investigation of additional cases;
- The investigation of contracts signed during the transition, given concerns that certain public officials used their immunity from prosecution to continue drawing personal benefits from the country's resources;
- A moratorium on new contracts to limit the potential for use of the country's resources for political gain during the transition elections;
- The establishment of a structure to follow up on the implementation of report recommendations.

Yet, by the time the legislative elections were held in July 2006, the Commission's report had not been debated by the legislature, possibly because various factions or individuals within the transitional assembly blocked discussion to prevent potential damage to their electoral chances. The report's legitimacy has already been undermined by the delay in debating its findings and recommendations. Its utility will depend on whether and how quickly the new elected assembly acts on the report and its contents.

The Elected Legislature

The DRC's new constitution provides for a two chamber legislature: a Senate whose members are elected by provincial assemblies and a National Assembly elected by direct universal suffrage. Each house of the legislature has the right to its own budget and financial and administrative autonomy. The President appoints a Prime Minister from the legislative majority. The legislature

has the authority to pass laws, and to oversee the executive, state-owned enterprises and public services or agencies. Certain government polices or actions in areas that include public finance, property rights, taxes and the exploitation of natural resources must be determined by parliament.

The traditional tools of oversight are available to the new legislature, including oral or written questions, summons, commissions of enquiry and committee hearings. Significantly, the legislature may bring motions of no confidence against the entire government or specific ministers. Parliament's role in the budget process includes a timetable for the executive's submission of the budget to the legislature. Legislative amendments that reduce or increase government expenditure must be accompanied by compensatory measures. Similar to the restriction on budget amendments, private member legislation must not reduce public income or cause additional expense to the state unless compensatory measures are included.

The new constitution also provides for semi-autonomous provincial governments and legislatures with significant authority to manage local affairs. Each province is entitled to 40 percent of royalties on any minerals extracted within its boundaries.

No specific provisions have been made for newly elected legislators to sit on the EITI *Comité de Pilotage*. Some interviewees pointed out that although no specific role is foreseen for legislators in EITI's formal structures and processes, the Initiative will put much more information in the public domain about the management and income of the country's mineral and oil wealth. This is expected to improve legislators' ability to exercise their oversight functions. Legislative involvement in the EITI processes can not only help strengthen parliament's capacity to perform its basic functions, but could also help advance the country's unfolding process to improve accountability.

Recommendations

To Legislators:

- *Make use of the information and opportunities generated by the international community's attention and support to the DRC's democratic transition to develop the skills and knowledge required to fulfill their responsibilities, including the development*

of effective strategies to promote more transparent and accountable management of the extractive industries by executive-level ministries and other government entities.

- *Monitor the enforcement of the new mining and forestry codes passed during the transition period* to ensure that the government is implementing or adhering to their provisions, and ensure that constituents are not unfairly disadvantaged by them.
- *Review and take advantage of resources on the extractive industries that could help identify policy issues and recommendations for reform.* These include publications by organizations like Global Witness and the International Crisis Group, as well as the World Bank, which was deeply involved in efforts to restructure the extractive sector during the transition period.
- *Debate and act upon the recommendations of the Lutundula Commission Report.* Timely debate and action on the report's recommendations would send an important signal of legislative commitment to reforms that benefit the broader population.
- *Seek representation on the DRC's EITI committee* and contribute to its efforts to ensure that policies and processes are in place to ensure adherence to EITI principles.
- *Conduct public outreach activities to engage citizens on extractive industry sector reform.* Public expectations for improved government performance are high following the 2006 elections. Regular interaction between legislators and citizens at local, regional and national levels, including sharing information on the legislative process, is often seen as evidence that legislators are working to address the needs of their constituents. Sustained communication between legislators and citizens on extractive industry management and oversight issues could help limit and eventually bring to an end many of the industry practices that fueled conflict, corruption and human rights abuses in the past.

To Civil Society:

- *Maintain pressure on the country's new institutions to work toward increased transparency and accountability* by continuing to monitor the extractive sector, exposing problems where they exist and advocating for appropriate additional reforms.
- *Identify and support reform-minded legislators at the national and provincial level* as part of a longer term strategy of engagement with the DRC's emerging democratic institutions.

To the International Community:

- *Maintain support for the DRC's fragile recovery, in particular mining sector reform efforts.* In many respects, the recent elections marked the beginning, and not the end, of the DRC's road to peace. A premature rollback in international engagement or attention to strengthening the country's political institutions could create openings for potential spoilers, many of whom are motivated by competition for the country's mineral wealth.
- *Support efforts to build the capacity of the newly elected legislature.* A two-pronged strategy should focus on: helping build parliamentary capacity to carry out its core functions, as outlined in Articles 100, 122, 126, 127 and 138 of the new constitution; and providing specialized assistance to target legislators, committee members and staff, including a review of the Mining Code, revenue streams from the extractive industries, and various executive branch and parastatal structures involved in managing the country's mineral and oil wealth.
- *Engage the legislature on extractive industry issues.* International development partners should include legislative representatives in training programs or briefing sessions that may be offered to executive branch or civil society officials as part of the EITI process or other initiatives related to the extractive industries.

Legislative involvement in the EITI processes can not only help strengthen parliament's capacity to perform its basic functions, but could also help advance the country's unfolding process to improve accountability.

DEMOCRATIC REPUBLIC OF CONGO BACKGROUND INFORMATION

ECONOMIC PROFILE

Major Resources¹	Cobalt, copper, petroleum, industrial and gem diamonds, gold, silver
Oil/Mining Revenues (2000 -2003)²	
<i>Average Annual Mineral Exports (in percent of Total Exports)</i>	50.3
<i>Average Annual Hydrocarbon Revenues (in percent of total fiscal revenue)</i>	--
<i>Average Annual Hydrocarbon Revenues (in percent of GDP)</i>	--
GDP per Capita (PPP)³	\$705
Human Development Index Rank (Out of 177 Countries)⁴	167

GOVERNANCE INDICATORS

Freedom Rating (2006)⁵	Not Free
Governance Indicators (2005)⁶	
<i>Voice and Accountability [±]</i>	7
<i>Political Stability</i>	1
<i>Government Effectiveness</i>	1
<i>Regulatory Quality</i>	5
<i>Rule of Law</i>	1
<i>Control of Corruption</i>	3

EITI STATUS

EITI Status (2006)⁷	Signatory
<i>Appointed a leader</i>	Yes
<i>Multi-Stakeholder Committee</i>	Yes
<i>Drafted a Working Plan</i>	No
<i>Published Audited and Reconciled Report(s)</i>	No

1 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/cg.html>

2 International Monetary Fund, *Guide on Resource Revenue Transparency*, 2005: <http://www.imf.org/external/pubs/ft/grrr/eng/060705.pdf>

3 United Nations Development Program, *Human Development Report 2006*: http://hdr.undp.org/hdr2006/statistics/countries/country_fact_sheets/cty_fs_COD.html

4 United Nations Development Program, *Human Development Report 2006*: <http://hdr.undp.org/hdr2006/statistics/>

5 The 2007 survey notes an upward trend in political rights and civil liberties since the 2006 survey. Freedom House website: <http://www.freedomhouse.org/template.cfm?page=15&year=2006>.

6 Kauffmann, Daniel, Kraay, Aart and Mastruzzi, Massimo, *Governance Matters V*, 2006, World Bank: www.govindicators.org

[±] Percentile rank indicates the percentage of countries worldwide that rate below the Democratic Republic of Congo (subject to margin of error). Higher values indicate better governance ratings.

7 Once a country signs on to EITI, their progress towards implementation is measured against the following benchmarks. Revenue Watch Institute, *Eye on EITI*, 2006, <http://www.publishwhatyoupay.org/english/pdf/pubs/eyeoneiti.pdf>

LEGISLATIVE PROFILE

Legislative System⁸	Bicameral
Constitutional Rules and Powers⁹	
<i>Rules for forming government</i>	The President is directly elected and appoints a Prime Minister from, and in consultation with the majority in the legislature. The President appoints other members of the executive based on the Prime Minister's proposals (Article 78).
<i>Oversight powers</i>	Right to question and oversee the executive, state-owned enterprises and public agencies in writing or orally, through investigative committees and in committee hearings (Article 138). Right to censure or bring motions of no confidence against the entire government or specific ministers (Articles 147 & 148).
<i>Budgetary authority</i>	Legislative amendments to the budget cannot reduce or increase public revenues unless accompanied by compensatory measures (Articles 126 and 127).
Legislative Electoral System¹⁰	Election to the lower house is by majority for single-member constituencies and proportional representation in multiple member constituencies based on open lists. Senators are elected by the Provincial Assemblies.
Most Recent Legislative Election¹¹	2006
Distribution of Seats¹²	
<i>National Assembly</i>	President Kabila's <i>Parti du Peuple pour la Reconstruction et la Democratie</i> (PPRD), holds 111 out of 500 seats.
<i>Senate</i>	The PPRD holds 22 out 108 seats.
Relevant Committees	<ul style="list-style-type: none"> • Economic and Financial • Environment and Natural Resources • Installation of Territory and Infrastructure

8 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/cd.html>

9 The Constitution of DRC: <http://www.presidentrdc.cd/constitution.html>

10 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/cd.html>

11 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/cd.html>

12 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/cd.html>



There is open public debate over Ghana's extractive industries, particularly concerning the regulatory framework, environmental issues, resource allocation and the impact of mining activities on local communities. Ghana's democratic institutions are relatively strong, and the legislature often exercises its independence from the executive in constructive ways. Legislative oversight of the mining sector is limited, however, and undermined by conflicts of interest.

Political and Economic Context

Ghana's first 35 years of independence were marked by a series of military coups. After leading the country as a military ruler for nearly a decade, Jerry Rawlings initiated a political reform process and was elected president in 1992. President Rawlings served two four-year terms, in accordance with Ghana's constitution. His party, the National Democratic Congress (NDC), held a parliamentary majority until 2000, when John Kufour's New Patriotic Party (NPP) campaigned on an anti-corruption platform, and won a majority in the 2000 elections. Kufour was re-elected in 2004, and the NPP held on to its lead in parliament.

Over the past fourteen years, Ghana has been lauded for steady political and economic progress. The country is scheduled to receive comprehensive debt relief under the Highly Indebted Poor Income Country (HIPC) Initiative. While still heavily dependent on donor support to finance anti-poverty, health and education sector initiatives, the NPP-led government has sought to improve

Ghana's macroeconomic environment by reducing inflation and encouraging foreign investment. Efforts are also underway to diversify the economy by promoting non-traditional exports and encouraging new business creation. Nevertheless, Ghanaians complain that their standard of living has not improved and in many cases has declined in recent years. There is growing frustration with the Kufour government for its perceived failure to honor its key campaign promise of "zero tolerance" for corruption.

Under British colonial rule, Ghana was known as the Gold Coast because of its abundant gold reserves. At present, gold accounts for an estimated 31 percent of foreign exchange earnings, but only five percent of Ghana's Gross Domestic Product (GDP). Gold is the country's third largest export—following cocoa and timber. Ghana's other natural resources include industrial diamonds, manganese and bauxite. Ghana's government began privatizing the mining industry in the 1980s, and now serves principally a regulatory function. The government is a shareholder in a number of private companies, including Anglo-gold Ashanti and Goldfields.¹

Legal and Regulatory Framework

Parliament passed mining legislation in late 2005 that was intended to make Ghana a more competitive destination for foreign investment, despite public concerns that current policies unduly favor investors over Ghana's broader population. Efforts to raise Ghana's minimum royalty rate from three to four percent failed, while under the 2005 legislation the provisions of certain mining contracts will be protected against future changes through so-called stability agreements, a provision that civic groups have criticized.

The proposed code includes several positive features, such as measures to give hiring priority to Ghanaian workers and increase mining company obligations for land use compensation. The new legislation will streamline the licensing procedures and reduce ministerial discretion in the process, and will also allow residents of mining communities to seek court rulings in disputes with mining companies over compensation for land usage.

¹ While state-owned enterprises still operate in the manganese and diamond sectors, gold mining is carried out by a range of private companies large and small.

Parliament's Committee on Mines and Energy held extensive public consultations on the code, but civic groups complained that few of their suggestions were reflected in the final version. Civil society representatives with whom the team met regretted that the new legislation did not go far enough in terms of environmental protection, taxation of companies, and compensation for the loss of land use. Some claimed that unspecified loans and grants to Ghana and/or its investors may have been contingent on passage of the legislation.

Under Ghanaian law and practice, 80 percent of mining revenues is dedicated to the Consolidated Fund, 10 percent goes into a Minerals Development Fund, and one percent is put into a land administration authority. The remaining nine percent of mining royalties are allocated to the local districts from which the minerals are extracted, and shared between locally elected officials and traditional authorities.² There is no legal stipulation on how these funds should be spent at the local level. Interviewees noted that in some cases allocations are used to cover the recurrent and/or operating costs of the local government authority. Others suggested that an increase in the portion of royalties allocated to mining communities could help alleviate the impression that local communities have not benefited from mining.

Public Accountability and Transparency

Much of the debate over Ghana's extractive industries focuses on the impact of mining on local communities. Critics of the sector point to environmental damage, continuing poverty in mining communities and a pattern of human rights abuses committed by security agents working on behalf of mining companies. In contrast, companies point to dividends and taxes paid, as well as the number of jobs created and voluntary social responsibility projects funded. For the past several years, members of the Chamber of Mines have voluntarily disclosed information

2 In Ghana, the Consolidated Fund is the general term used to describe the public treasury or general state account through which the national budget is managed. As the name suggests, the general purpose of the Minerals Development Fund is to assist in the development of the mining sector in Ghana. The formula for distributing revenues between central and local government is largely based on practice rather than law. However, see Article 257 (6) of the Constitution and PNDC Law 153, dating from 1988, as amended by the Minerals and Mining Amendment Act of 1993.

about their royalties, taxes and other required payments to the government, as well as their voluntary social responsibility projects. The Chamber publishes the information in the Ghanaian print media.

Ghana announced its intention to adhere to the Extractive Industries Transparency Initiative (EITI) principles in 2003, but has been slow to fund and implement the program. After a number of delays, an independent aggregator was eventually selected to oversee the audit and disclosure process of mining revenues, in accordance with the principles. In a statement delivered at the October 2006 EITI conference, Ghana's Deputy Minister for Lands, Forestry and Mines announced that the first audit report would be ready by February 2007. In early 2007, the government announced the launch of a website, where information on revenue flows would be made available to the public.³ Civic groups argue that Ghana's EITI reporting process should capture the social and environmental costs of mining as well. Separately, Ghana's Finance Ministry has announced plans to establish a gold audit unit that could strengthen executive branch capacity to oversee mining companies.

A number of interviewees also emphasized the need for greater transparency and accountability in the management of the country's forestry sector, an area that some believe should be included in the EITI process. Timber accounts for a greater share of export earnings than minerals, though projections suggest that the resource could be exhausted within the next 5 to 20 years. There is also widespread speculation that the sector is a source of patronage. According to some, a number of steps had been taken to increase transparency in the management of timber, but no effort has yet been made to apply the lessons learned from that experience to other sectors like mining.

Legislative Engagement and Oversight

Over the past 14 years, the legislature has made significant progress in a number of areas. In the late 1990s, there was a backlog of hundreds of pending questions from parliamentarians to various ministers, many committees were inactive and there was no established practice of seeking public input to pending legislation. Today, min-

3 Republic of Ghana EITI website: <http://www.geiti.gov.gh>

Legislative oversight of the mining sector is limited and hampered by apparent conflicts of interest.

isters regularly appear in Parliament to respond to questions and media announcements informing the public of pending bills. Since 2004, the executive has presented budget proposals to Parliament in a more timely fashion. For many years, Parliament did not receive the budget until after the beginning of the fiscal year.

As is often the case in emerging democracies, however, Ghana's legislative branch has limited material and human resources, including a lack of office and meeting space for members and insufficient staff to assist them in analyzing and carrying out their duties.

Of the eight registered political parties, four have seats in parliament: the ruling National Patriotic Party with 128 seats, opposition National Democratic Congress at 94 seats, and two smaller parties, the People's National Convention and the Congress People's Party share the remaining seats. While opposition legislators can and do voice their opinions on a broad range of issues, voting is typically along party lines and executive branch proposals are rarely defeated.

However, the opposition has succeeded in drawing significant public attention to its point of view. For example, opposition leaders participated in public demonstrations against the bill on voting for Ghanaians overseas, which helped to garner public favor. A constitutional requirement mandates that a majority of ministers be appointed from the ranks of parliament, which means that a ruling party legislator who fails to vote with the party risks his or her chance of securing a ministerial appointment. Interviewees pointed that legislators are often unwilling or unable to break ranks with the party in order to examine issues objectively.

Legislative oversight of the mining sector is limited and hampered by apparent conflicts of interest. For example, mining companies often fund the travel and other associated costs of legislative visits to mining sites. Moreover, one interviewee alleged that members seek honoraria from companies when they conduct such visits. Ghana's EITI Steering Committee does not include legislative representatives and MPs seemed to lack basic information about the initiative and Ghana's membership process.

Representatives from Ghana's civil society, the media and the opposition expressed concern over the practice of allowing elected representatives and ministers to serve on the boards of corporations, including those in the mining sector, over which they have direct or indirect oversight. According to a leading Ghanaian civil society organization, "Already a majority of Ministers serve as MPs (by constitutional stipulation). Co-opting the rest of the MPs on the majority to serve on the boards of public corporations and agencies effectively turns all of the majority MPs into paid agents of the executive branch. The constitutional system of checks and balances is fatally undermined by this practice."⁴ Some groups have argued that such conflicts of interest not only damage the public's confidence in their elected leaders but that the practice could also be interpreted as a violation of Article 284 of Ghana's constitution, which stipulates that "[A] public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office."⁵

The EITI process in Ghana seems largely confined to those directly involved in the industry, including executive branch agencies and mining companies. For instance, none of the members of the Mines and Energy Committee had heard of EITI, and were unaware that Ghana was participating in the process. There was therefore little discussion about how to use the information that will be eventually published or what the release of the data could mean in terms of increased pressure on the government for accountability.

Recommendations

To Legislators:

- *Press for increased legislative resources.* In addition to ongoing efforts to improve Parliament's physical infrastructure, hiring legislative staff with knowledge of, or experience in the mining industry could enhance the effectiveness of legislators who lack the technical knowledge required to oversee the mining sector effectively and would improve Parliament's overall ability to fulfill its over-

4 Ghana Center for Democratic Development, 'Ghanaian Public Office Holders Remain Impervious to Conflicts of Interest' in *Democracy Watch*, Vol. 6, Nos. 3 & 4, Sep - Dec. 2005.

5 Constitution of the Republic of Ghana. Available online: http://www.parliament.gh/const_constitution.php

sight function. In the short-term, such policy support could be secured through civic groups that currently focus on mining sector activities or other sector experts already operating in Ghana.

- *Abolish the practice allowing legislators to sit on the board of corporations over which they have direct or indirect oversight.* Legislators must constantly balance competing interests, whether national, constituent-based, political or personal. These challenges are amplified when legislators simultaneously hold positions in the private sector. Concern over standards of ethics in public office fuels skepticism over legislators' will to enforce higher standards of transparency and accountability in the extractive industries.
- *Seize the opportunity created by Ghana's EITI and other developments to play a more active role in determining how Ghana's mineral resources can best contribute to poverty reduction and sustainable development.* At the institutional level, Parliament should seek representation on the EITI Steering Committee and request regular briefings on progress towards implementation of the program. Such actions would provide legislators with opportunities to strengthen their credibility as concerned and engaged representatives in the debate over how best to ensure that Ghana's natural wealth contributes to national and local development goals. Legislators who represent mining communities have an especially important role to play in responding to community concerns and demonstrating in discussion with mining companies their responsibility to represent their constituents.

To Civil Society:

- *Continue lobbying legislators for important reforms in the extractive industries sector.* Advocacy efforts could focus on encouraging the inclusion of the forestry sector into the EITI initiative, pressing for EITI implementation, raising awareness about potential conflicts of interest, and promoting greater accountability for revenue disbursement at the local level.

To the International Community:

- *Inform the public about the potential benefits of the EITI.* Unlike other countries, like Nigeria, where moving forward with EITI and other initiatives is a prerequisite for some foreign aid, Ghana has already qualified for a broad range of assistance programs including HIPC and Millennium Challenge Account funding. Publicizing the EITI process in Ghana could help to build greater awareness of the transparency agenda in Ghana.
- *Engage the legislature on extractive industry issues.* International development partners should include legislative representatives in training programs or briefing sessions that may be offered to executive branch or civil society officials as part of the EITI process or other initiatives related to the extractive industries.

GHANA BACKGROUND INFORMATION

ECONOMIC PROFILE

Major Resources¹	Gold, industrial diamonds, bauxite, manganese, timber
Oil/Mining Revenues (2000 -2003)²	
<i>Average Annual Mineral Exports (in percent of Total Exports)</i>	34.3
<i>Average Annual Hydrocarbon Revenues (in percent of total fiscal revenue)</i>	--
<i>Average Annual Hydrocarbon Revenues (in percent of GDP)</i>	--
GDP per Capita (PPP)³	\$2,240
Human Development Index Rank (Out of 177 Countries)⁴	136

GOVERNANCE INDICATORS

Freedom Rating (2006)⁵	Free
Governance Indicators (2005)⁶	
<i>Voice and Accountability ±</i>	59
<i>Political Stability</i>	51
<i>Government Effectiveness</i>	54
<i>Regulatory Quality</i>	50
<i>Rule of Law</i>	48
<i>Control of Corruption</i>	45

EITI STATUS

EITI Status (2006)⁷	Signatory
<i>Appointed a leader</i>	Yes
<i>Multi-Stakeholder Committee</i>	Yes
<i>Drafted a Working Plan</i>	Yes
<i>Published Audited and Reconciled Report(s)</i>	No

1 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/gh.html>

2 International Monetary Fund, Guide on Resource Revenue Transparency, 2005: <http://www.imf.org/external/pubs/ft/grrr/eng/060705.pdf>

3 United Nations Development Program, Human Development Report 2006: http://hdr.undp.org/hdr2006/statistics/countries/country_fact_sheets/cty_fs_GHA.html

4 United Nations Development Program, Human Development Report 2006: <http://hdr.undp.org/hdr2006/statistics/>

5 Freedom House website: <http://www.freedomhouse.org/template.cfm?page=15&year=2006>

6 Kaufmann, Daniel, Kraay, Aart and Mastruzzi, Massimo, Governance Matters V, 2006, World Bank: www.govindicators.org

± Percentile rank indicates the percentage of countries worldwide that rate below Ghana (subject to margin of error). Higher values indicate better governance ratings.

7 Once a country signs on to EITI, their progress towards implementation is measured against the following benchmarks. Revenue Watch Institute, Eye on EITI, 2006: <http://www.publishwhatyoupay.org/english/pdf/pubs/eyeoneiti.pdf>

LEGISLATIVE PROFILE

Legislative System⁸	Unicameral
Constitutional Rules and Powers⁹	
<i>Rules for forming government</i>	The President appoints Ministers and Deputy Ministers of State with the approval of Parliament. With the exception of the Speaker and Deputy Speaker, all Members of Parliament are eligible to serve in the executive (Article 78 and 79).
<i>Oversight powers</i>	Parliament may conduct investigations and inquiries into the activities and administration of ministries and departments as they may determine. Parliamentary committees have the powers, rights and privileges of the High Court or a Justice of the High Court at a trial, including questioning of witnesses under oath or affirmation, and compelling the production of documents (Article 103).
<i>Budgetary authority</i>	Parliamentary amendments cannot impose a charge on the Consolidated Fund or other public funds of Ghana or alter any such charge other than by reduction; nor can amendments impose a tax or alter a tax other than by reduction (Article 108).
Legislative Electoral System¹⁰	First Past the Post
Most Recent Legislative Election¹¹	2004
Distribution of Seats¹²	Majority party, National Patriotic Party (NPP), holds 128 out of 230 seats in the Parliament
Relevant Committees¹³	<ul style="list-style-type: none"> • Economic and Financial • Environment and Natural Resources • Installation of Territory and Infrastructure

8 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/gh.html>

9 The Constitution of Ghana: http://www.parliament.gh/const_constitution.php

10 International Institute for Democracy and Electoral Assistance website: <http://www.idea.int/esd/world.cfm>

11 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/gh.html>

12 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/gh.html>

13 The Parliament of Ghana: http://www.parliament.gh/member_committee.php

NIGERIA



Nigerian participation in the EITI process has led to increased transparency in the oil sector. After years of authoritarian military rule, however, the historical pattern of a strong executive has been difficult to change. Though Nigeria's National Assembly is increasingly exercising its oversight function, negative public perceptions of the National Assembly in the aftermath of flawed elections in 1998/99 and in 2003 have hampered the effectiveness of oversight activities, as has the legislature's weak capacity to master the complicated technical environment in which oil sector activities are conducted. Contentious relations between the legislative and executive branches of government have prevented cooperation on a number of extractive industry issues, including final passage of legislation to formalize Nigeria's EITI process.

Political and Economic Context

Nigeria is Africa's largest oil producer and the world's tenth largest, with current reserves of crude oil estimated at approximately 36 billion barrels. Nigeria also has an estimated 185 trillion cubic feet of proven natural gas reserves, making it the seventh largest holder of gas reserves in the world. While total revenues from oil over the last three decades are estimated at more than US\$300 billion, Nigeria's citizens remain among the world's poorest citizens.

Britain created the boundaries of present day Nigeria by uniting the colonial protectorates of Southern and Northern Nigeria in 1914. Competition between the country's three dominant eth-

nic groups – the Hausa-Fulani, the Yoruba and the Igbo – led to civil war during Nigeria's first decade after gaining independence from Britain in 1960. Ethnic identity, as well as religious affiliation and regional identification, continue to fuel conflict in many parts of the country. Oil was first discovered in the Niger River Delta in 1956 and is a key component of the country's unstable and complex political landscape.

Nigeria's oil profits increased exponentially in the 1970s. Revenue increases from oil profits jumped from US\$2.1 billion in 1972 to an astounding \$11.2 billion by 1974, and led to massive public spending on prestigious but unsustainable projects, while corruption-fuelled patronage networks spread throughout the country. Crashing oil prices in the early 1980s sparked a series of economic and political crises. A succession of military rulers who promised to implement reform programs brought the country closer to collapse.

Two decades of increasingly brutal and corrupt military rule came to an end after the death of Nigeria's last dictator, Sani Abacha, in 1998. General elections held in 1998-99 and in 2003 were flawed but nevertheless represented a break with the country's authoritarian past. President Olusegun Obasanjo, a former military leader, won election in 1999, and was re-elected in 2003. Efforts by his supporters to amend Nigeria's constitution to allow him to run for a third term in 2007 failed.

Poverty and environmental degradation in Nigeria's oil-producing Niger Delta has fueled conflict at the local level. Community advocates demanding a greater share of the country's oil wealth were brutally repressed under military rule. Despite hopes that democratic rule – along with higher world oil prices – would lead to improved socioeconomic conditions, government mismanagement and neglect in the region has continued to stymie development efforts. Communities are regularly threatened by conflict between rival ethnic groups, while oil company operations are routinely disrupted by acts of sabotage, kidnappings and the occupation of oil company facilities by armed groups.

Organizations like the Movement for the Emancipation of the Niger Delta (MEND) are using increasingly confrontational and violent tactics to achieve their goals. In early 2006, MEND began to stage attacks, kidnappings and bombings with

a degree of organizational coherence not previously witnessed in the region.

Legal and Regulatory Framework

Debate over the control of oil revenues has had a significant and long-lasting influence on the country's politics. At the conclusion of the civil war in 1970, Nigeria's federal government centralized revenue allocation in a way that undermined fiscal control at the state level. Multiplying ethnic claims on oil revenues led to the creation of additional states wholly dependent on the federal government.

President Obasanjo made oil reform central to his campaign platform in 1999. His first term resulted in an increase in the percentage of oil revenues allocated directly to oil-producing states, and the government worked with multinational oil companies to develop a new corporate social responsibility agenda. The Niger Delta Development Commission (NDDC) was created to plan, fund and oversee development projects in the region, though the efficiency and transparency of its operations are frequently called into question.

The government joined the Extractive Industries Transparency Initiative (EITI) in November 2003 and launched the Nigeria Extractive Industries Transparency Initiative (NEITI) in February 2004. NEITI, chaired by the former Minister for Solid Materials, is one of the most comprehensive and advanced efforts to apply the initiative's principles by a signatory country.

A 28-member National Stakeholders Working Group (NSWG) oversees the implementation of NEITI. NSWG members include representatives from state and federal government agencies, Nigeria's National Assembly, civil society, the media and the private sector. Legislation that would institutionalize reforms introduced under NEITI was passed by the National Assembly's lower chamber in January 2006 and by the Senate in March 2007. The bill was signed by President Obasanjo in May 2007.

Unlike most other African oil producers where sector activities are controlled by one or more government ministry or a national oil company, Nigeria has a wider and more complicated array of institutions engaged in the sector. These include:

1) The Nigerian National Petroleum Corporation (NNPC), a holding company that manages subsidiary interests in oil exploration and production, refining, pipelines, and storage terminals, as well as the marketing of oil, gas, refined products and petrochemicals, and which also operates joint venture equity participation agreements with oil companies.

2) The Ministry of Petroleum, which through the Department of Petroleum Resources (DPR) serves as the regulator of the oil industry,

3) The Crude Oil Reconciliation Committee, tasked with performing the reconciliation of the different revenue streams held in public accounts.

4) The Petroleum Products Sales Committee, which reconciles revenues received from the sale of refined petroleum products.

The Federal Inland Revenue Service, the Central Bank of Nigeria, and the Office of the Accountant-General of the Federation also play a role in revenue collection.

Public Accountability and Transparency

In 2000, a series of sector reviews and management audits by the World Bank identified a number of inconsistencies and areas of concern over Nigeria's oil industry. These included reported levels of crude output and disposal, fund inflows, fund outflows and institutional effectiveness. In order to shed light over these issues, three inter-linked audits (physical, financial and process audits) were commissioned under NEITI and carried out by the Hart Group in 2005 and made public in 2006. Covering the five year operational period (1999-2004), the audits unearthed several discrepancies and deficiencies in the process.

For example, the Financial Audit revealed that that Central Bank records were missing approximately \$230 million that companies claimed to have paid to the bank.¹ The Process Audit cited discrepancies between the crude oil lifted from

NEITI, chaired by the former Minister for Solid Materials, is one of the most comprehensive and advanced efforts to apply the initiative's principles by a signatory country.

1 "Nigeria's Struggle with Corruption: The Success of Nigeria Extractive Industries Transparency Initiative," Testimony of David L. Goldwyn, President, Goldwyn International Strategies before the House International Relations Committee Subcommittee on Africa, Global Human Rights and International Operations, May 18, 2006.

Since the end of military rule in 1998, however, the National Assembly has become increasingly active in fulfilling its oversight responsibilities and regularly challenges executive branch policies and practices.

terminals and received at refineries, amounting to an estimated 200,000 tons. Overall, the audits revealed recording, reporting, and other inefficiencies at all levels within the industry. The highly public nature of these reports is unprecedented for the industry in Nigeria. However, NEITI does not specify what is to be done with the information in the reports. This will remain a key challenge for Nigeria's future management of the industry.

Nigeria's Economic and Financial Crimes Commission (EFCC), established in 2002 as the central body charged with combating corruption, has received international and domestic praise for a number of its accomplishments.² Investigations have led to the dismissal and even arrest of prominent political figures, including a former chief of police, a state governor, and a government minister. Although the EFCC claims that it has recovered more than \$5 billion in the past two years and has successfully prosecuted 82 people, critics note that the gravest issues, such as oil theft by well-connected crime syndicates, are neglected, and that the organization is a vehicle for targeting President Obasanjo's political enemies.³

Legislative Engagement and Oversight

Years of authoritarian rule under civilian and military leaders left little room for the development of an independent legislative branch. Since the end of military rule in 1998, however, the National Assembly has become increasingly active in fulfilling its oversight responsibilities and regularly challenges executive branch policies and practices. Nigeria's current constitution, adopted in 1999, broadened the National Assembly's powers to establish committees, conduct investigations and approve the President's budget.⁴ Despite the ruling People's Democratic Party (PDP) majority in both chambers, it was defeated in 2006 on a constitutional reform measure that would have increased presidential term

limits and allowed President Obasanjo to run for a third term in 2007. This defeat exemplified the National Assembly's independent nature.

Both the Senate and the House have committees devoted to various extractive industries issues, as well as budget, appropriations, and public accounts committees to oversee budget formulation and implementation. Several of these committees have initiated "call-ups," of ministers and other high-level government officials to request information on their activities, while budget committee members regularly meet with ministers to discuss budget implementation. The anticipated creation of the National Assembly Budget and Research Office (NABRO), whose primary mission would be to conduct research and analysis on budgetary issues, will significantly enhance budget oversight capacity.

In 2001, the House Speaker established an ad-hoc committee to investigate the exportation of crude oil and the importation of refined products. Its findings uncovered discrepancies that allegedly implicated prominent executive branch officials. Although the report may have been influenced by a power struggle between the Speaker and President Obasanjo, and was never released publicly, it nonetheless set a precedent for the National Assembly's scope to conduct oversight activities. More recently, an ad-hoc Senate committee investigated and produced a report on the alleged misuse of funds intended to finance scholarships to develop Nigerian capacity in the oil sector.⁵ The National Assembly has also taken up a number of important pieces of legislation that could impact the legislature's involvement in extractive industries issues in the future. The Fiscal Responsibility Bill, for example, would commit each of Nigeria's three tiers of government to fiscal prudence in the management of public resources and improve inter-governmental fiscal coordination and revenue management.⁶

These positive steps have been undercut by executive branch efforts to limit legislative reach. For

2 Economics and Financial Crimes Commission website: http://www.efccnigeria.org/index.php?option=com_content&task=blogcategory&id=91&Itemid=90

3 British Broadcasting Corporation story "The Politics of Nigerian Corruption," September 13, 2006. Online at: <http://news.bbc.co.uk/2/hi/africa/5339030.stm>

4 Section 88 of the Federal Republic of Nigeria's Constitution provides the National Assembly with the authority to conduct investigations. Chapter 5, Section E outlines the framework for control over public funds.

5 "PDP Rejects Senate PTFDF Review Report", Chuks Okocha., Vanguard, March 23, 2006,

6 Presentation on the Role of Fiscal Rules in Oil Revenue Management: Nigerian Experience, Dr. Bright E. Okogu, Senior Special Advisor to the Minister of Finance, Nigeria. Available online at: <http://siteresources.worldbank.org/INTANGOLA/Resources/BrightOkoguNigerianExperience.ppt>

example, when NNPC officials were called before the National Assembly, interviewees reported that they had been provided with extremely limited information. President Obasanjo's direct management of the Ministry of Petroleum until the appointment of a new minister in 2006 also made oversight activities more complicated to conduct. Day-to-day management of the ministry was left to presidential advisors who, contrary to ministers, cannot be summoned by the National Assembly. The executive branch has also made budget oversight difficult, either by not responding to requests for information, or by providing incomplete responses. According to one interviewee, the executive neither "properly engages nor consults" with parliament on budgetary issues.

Tensions between the executive and legislative branches have erupted periodically on policy grounds, as was the case when the long awaited NEITI bill lingered in the House of Representatives for one year before final passage by both houses in 2007. Although the NEITI bill was designed to strengthen extractive industry management and oversight, the National Assembly delayed passage of the bill. The general consensus among legislators was that the delays were attributable to the manner in which the executive has engaged the National Assembly on extractive industry issues.

Another related issue in Nigeria is that political leaders hold different visions over what type of state Nigeria should be, whether it should have a strong or weak central government, as well as differences in opinion about the proper representation of states and the country's six geopolitical zones.⁷ The period since 2003 has also seen a much stronger commitment to tackle the reform agenda, including the fight against corruption, management of oil revenues, debt relief and privatization of state property. Some expressed concern over the impact of these reforms at the state and local levels. In light of Nigeria's unstable political history and an uneasy balance of power between the different tiers of government at both the national and sub-national levels, strong mechanisms for dialogue are needed to manage expectations about efforts to improve transparency and accountability.

⁷ These are northwest, northeast, west-central, east-central, southwest and southeast. The Niger Delta is often referred to as the South-South.

The irregularities that marred the 2003 legislative election alienated constituents from their elected representatives, and many Nigerians believe that the National Assembly lacks the credibility and political will to work in the public interest. While the overall result of the 2003 elections results were deemed by observers to have broadly conformed to popular choice, electoral fraud was extensive and well-documented, especially in the critical southern region where the bulk of the country's oil is extracted. Allegations of intimidation at the polls, ballot stuffing, and other types of election fraud were widely reported.

Legislators are broadly perceived to have vested interests in the status quo, in part due their perceived dependency on the income that comes from political connections and a position of power. To some extent, this perception is a carry-over from many years of corruption and scandals perpetrated by public officials, and lingering dissatisfaction over the fact that many individuals have never been investigated or charged for their offenses. However, much of the perception is likely due to the behavior of current legislators. Many constituents also believe their representatives to be unresponsive and out of touch, as they rarely visit their constituencies after being elected.

Though many of Nigeria's legislators are highly educated, few have the technical knowledge required to carry out oversight activities over the country's complex oil industry. Staff members similarly lack the technical knowledge and skills to provide policy analysis and recommendations on oil industry issues, though members may engage technical consultants on a temporary basis.

Recommendations

To Legislators:

- *Use newly accessible information on Nigeria's oil sector to enhance oversight activities.* More data on the oil sector is available than ever before, mainly through audit reports. Legislators should use this information to better inform themselves of critical issues, and to determine which of them should be further investigated by the National Assembly.

- *Engage in dialogue with constituents on extractive industry issues.* Constituents may not fully understand the role that National Assembly members can play or have played in extractive industries issues. Constituency visits, town hall meetings and other public forums allow for the exchange of information between citizens and their elected representatives, and should be used to engage the public on key issues.
 - *Enhance engagement with executive branch officials on extractive industry issues, in particular the NEITI NSWG.* To better understand and help shape NEITI priorities, request regular NEITI updates and participation in committee hearings on the oil industry, and collaborate with the NSWG on the development of public outreach materials.
 - *Reach out to oil companies, NGOs, universities, and think tanks with technical expertise on extractive industry issues.* Many Nigerian-based companies and organizations are heavily involved in extractive industry issues and have technical expertise that could be beneficial to legislative oversight proceedings on the topic.
 - *Continue progress on the establishment of NABRO.* NABRO has the potential to enhance the capacity of the National Assembly to conduct budgetary oversight by improving its research and analysis capabilities on the national budget.
- islative roles and responsibilities, and key structural and organizational enhancements. Additional assistance should be provided on the complicated technical policy issues surrounding the National Assembly's role in extractive industry revenue oversight.
- *Provide support to state legislatures.* State-level governments have increased autonomy over their budgets, mainly comprised of oil revenues distributed by the federal government. State legislatures have very limited capacity to monitor budget expenditures, or to investigate allegations of corruptions that taint many state governments.

To Civil Society:

- *Seek avenues to provide substantive technical input and advice to support oversight efforts conducted by the National Assembly.*

To the International Community:

- *Support the establishment of the NABRO by funding capacity building programs aimed at facilitating its implementation.*
- *Provide increased technical and financial assistance to the National Assembly, targeted towards improving legislators' capacity to tackle extractive industry issues.* Many capacity building programs are currently working with the National Assembly on general leg-

NIGERIA BACKGROUND INFORMATION

ECONOMIC PROFILE

Major Resources	Petroleum
Oil/Mining Revenues (2000 -2003)	
<i>Average Annual Mineral Exports (in percent of Total Exports)</i>	95.8
<i>Average Annual Hydrocarbon Revenues (in percent of total fiscal revenue)</i>	77.2
<i>Average Annual Hydrocarbon Revenues (in percent of GDP)</i>	32.6
GDP per Capita (PPP)	\$1,080
Human Development Index Rank (Out of 177 Countries)	159

GOVERNANCE INDICATORS

Freedom Rating (2006)	Partly Free
Governance Indicators (2005)	
<i>Voice and Accountability</i>	30
<i>Political Stability</i>	5
<i>Government Effectiveness</i>	20
<i>Regulatory Quality</i>	16
<i>Rule of Law</i>	6
<i>Control of Corruption</i>	6

EITI STATUS

EITI Status (2006)	Signatory
<i>Appointed a leader</i>	Yes
<i>Multi-Stakeholder Committee</i>	Yes
<i>Drafted a Working Plan</i>	Yes
<i>Published Audited and Reconciled Report(s)</i>	Yes

- 1 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/ni.html>
- 2 International Monetary Fund, *Guide on Resource Revenue Transparency*, 2005: <http://www.imf.org/external/pubs/ft/grrt/eng/060705.pdf>
- 3 United Nations Development Program, *Human Development Report 2006*: http://hdr.undp.org/hdr2006/statistics/countries/country_fact_sheets/cty_fs_NGA.html
- 4 United Nations Development Program, *Human Development Report 2006*: <http://hdr.undp.org/hdr2006/statistics/>
- 5 Freedom House website: <http://www.freedomhouse.org/template.cfm?page=15&year=2006>
- 6 Kaufmann, Daniel, Kraay, Aart and Mastruzzi, Massimo, *Governance Matters V*, 2006, World Bank: www.govindicators.org
- ± Percentile rank indicates the percentage of countries worldwide that rate below Sierra Leone (subject to margin of error). Higher values indicate better governance ratings.
- 7 Once a country signs on to EITI, their progress towards implementation is measured against the following benchmarks. Revenue Watch Institute, *Eye on EITI*, 2006: <http://www.publishwhatyoupay.org/english/pdf/eyeoneiti.pdf>

LEGISLATIVE PROFILE

Presidential, Parliamentary or Hybrid	Presidential
Legislative System	Bicameral
Legislative Electoral System	First Past the Post
Most Recent Legislative Election	2003
Distribution of Seats	Majority party, People's Democratic Party of Nigeria (PDP), holds 223 out of 360 seats in the National Assembly PDP holds 76 out of 109 seats in the Senate
Relevant Committees	
<i>Senate</i>	Public Accounts Petroleum Solid Minerals Industries Commerce Niger Delta
<i>House</i>	Public Accounts Finance Industries National Planning and Economic Development Petroleum Resources Anti-Corruption, Natural Ethics and Values Commerce Solid Minerals Development

8 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/sl.html>

9 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/sl.html>

SIERRA LEONE



Government management and control of Sierra Leone's diamond sector has improved since the end of the country's decade-long civil war, with significant assistance from the international community. However, overall government capacity remains weak, and coordination and communication between institutions engaged in extractive industry issues is ineffective and sometimes antagonistic. Parliament serves neither as a check on executive power or as a channel for communication with constituents. Resource constraints, both financial and human, hamper the ability of the institution and individual legislators to engage effectively on extractive industry issues, while weak opposition in Parliament and opportunities for graft are powerful disincentives to independent action and reform. In the approach to elections in 2007, many of the challenges that sparked the war remain, including widespread poverty, high unemployment, poor educational institutions and endemic corruption, and could become the source of renewed conflict.

Political and Economic Context

Since gaining independence from Britain in 1961, Sierra Leone's troubled political history has included military coups and long periods of corrupt, single party rule. High levels of poverty spurred discontent among many citizens and helped fuel the formation of the Revolutionary United Front (RUF) in 1991. Promising free education and medical care, as well as an end to corruption, nepotism, and tribalism, the RUF drew support from the country's large pool of

unemployed and disenfranchised youth. By the mid-1990s, the RUF had gained control over diamond-rich areas in the east of the country and had begun to use profits from the illicit diamond trade to purchase arms and fund its operations. As war spread, tens of thousands of people were killed and approximately one-third of the population was displaced. Sierra Leone's infrastructure was completely destroyed, much of the formal economy was ruined, and the country's weak institutions and fragile government structures collapsed.

A series of peace agreements led to the deployment of United Nations peacekeepers in 2001 and an end to fighting in early 2002. Presidential and parliamentary elections were held in May 2002, just four months after the formal declaration of peace. Sierra Leone People's Party (SLPP) leader Ahmad Tejan Kabbah, was elected President, and the party gained a majority of parliamentary seats. Presidential and parliamentary elections scheduled for July 2007 represent the country's first opportunity in several decades to transfer power from one elected government to another.

Sierra Leone's vast natural wealth includes diamonds, iron ore, gold, bauxite and rutile. Diamonds were first mined commercially in Sierra Leone in the 1930s, and by 1960 were being produced at approximate peak annual levels of two million carats.¹ Beginning in the 1970s, official production figures declined steadily because of illicit mining activities and increased corruption in the sector.

The majority of Sierra Leone's diamonds are alluvial. Mining of these diamonds is often carried out by individuals using handheld tools, a method that is difficult to regulate and monitor. Sierra Leone's kimberlite mining sector has grown since the war, however, and is largely governed by formal licensing agreements. In 1999, there were fewer than 100 mining licenses. By 2004, the number was close to 2,300.²

Wide discrepancies continue to mark estimates of overall diamond production. Official exports

Corruption remains a significant obstacle to improving diamond sector management.

1 Ministry of Mineral Resources of Sierra Leone, 'Back in Business,' Sierra Leone Mining Journal special publication, 2006, p. 9. Available online at: http://www.mmr-sl.org/4_1rep.htm

2 Coakley, George, US Geological Survey "The Mineral Industry of Sierra Leone, 2004," p. 34.1.

have steadily increased, though they remain below estimated production levels. Sierra Leone officially exported \$126 million in 2004,³ in contrast to \$26 million exported in 2001.⁴ Sierra Leone's Ministry of Mineral Resources estimated illicit diamond production at \$20 million in 2004, but notes that the trend is declining.

Corruption remains a significant obstacle to improving diamond sector management. Sierra Leone's Anti-Corruption Commission (ACC) is tasked with identifying and reducing corruption within government institutions, but serves largely as an advisory body and lacks enforcement authority. According to Transparency International's Corruption Perception Index, Sierra Leone dropped from 126 in 2005 to 142 in 2006 in country rankings worldwide. The inability to reduce corruption in the country has undermined economic growth and prospects for sustainable development, and is a principal cause of popular dissatisfaction in the country. Although Sierra Leone has implemented economic and political reforms since the end of the war, the country's population remains overwhelmingly poor.

Legal and Regulatory Framework

The international donor community has provided substantial support to the government to improve the management and oversight of the diamond sector since the end of the civil war. From 2000-2003, the United Nations Security Council prohibited the direct or indirect importation of all rough diamonds from Sierra Leone not accompanied by certificates of origin. In 2003, Sierra Leone became one of the first countries to join the Kimberly Process, and the government has since passed legislation to tighten control over the diamond trade. Since January 2004, Sierra Leone has limited diamond exports to countries that participate in the Kimberly Process. The government began taking steps toward implementing the Extractive Industries Transparency Initiative (EITI) with support from the World Bank in 2004, though progress has been slow and the government has not yet designated an institution to oversee the process.⁵

3 Diamonds and Human Security Project, "Diamond Industry Annual Review, Sierra Leone 2006," p. 1.

4 Diamonds and Human Security Project, "Diamond Industry Annual Review, Sierra Leone 2004," p. 6.

5 Extractive Industries Transparency Initiative website.

Sierra Leone's diamond sector is now governed by a basic regulatory framework designed to enhance transparency. Parliament has amended the Mines and Minerals Act, to include penalties for the unlawful possession and smuggling of precious minerals, and has passed laws in related sectors, such as banking. Sierra Leone's National Revenue Authority, established by parliament in 2002, acts as a central body for the collection and assessment of government revenues, and has both administrative and enforcement powers. In practice, however, interview respondents noted that the various government institutions involved in the diamond sector – including the Ministry of Mineral Resources, the Ministries of Finance and Justice, the Office of National Security, and the Department of Immigration and Customs and Excise – do not communicate effectively or coordinate policy.

Government revenues come chiefly from mining, dealing, and export licenses, as well as a three percent tax collected on exports. Companies are charged a corporate tax, but the total annual amount collected is very small. Approximately 90 percent of diamond-related revenue comes from artisanal alluvial mining. In 2004, alluvial mining accounted for \$112.7 million of the \$126 million worth of diamonds officially exported out of Sierra Leone. However, government revenue from licenses and taxes was only \$5.2 million from the alluvial sector in 2004 with licenses making up \$2.9 million of that amount. Export tax revenues, which constitute approximately 40 percent of overall diamond revenues, are shared between the state treasury, the Government Gold and Diamond Office, external valuers and the Diamond Area Community Development Fund (DACDF).

The DACDF was created in 2000 to support development projects in diamond mining communities while encouraging transparency and a reduction in illicit mining activities. The DACDF is funded through an allocation of 25 percent of revenue from diamond export taxes. Although results have been mixed, several localities have received tangible benefits from these funds.⁶

Updates are available at: http://www.eitransparency.org/section/countries/_sierraleone

6 A 2005 USAID report, "Improving the Effective Use of the Diamond Area Community Development Fund," noted that oversight had proved inadequate in several chiefdoms. Major problems cited included limited accountability for

Several USAID-funded programs, such as the Peace Diamond Alliance (PDA) and the Integrated Diamond Management Program (IDM) have sought to improve diamond sector management. The PDA, launched in December 2002, promotes cooperation at the local level between government institutions, civil society and business interests. The IDM, in partnership with the Ministry of Mineral Resources and the Ministry of Trade and Industry, works with diamond diggers to improve their management, financial and diamond valuation skills, as well as access to new mining technologies and options for loans and other forms of financial support.

Public Accountability and Transparency

Sierra Leone's diamond certification process currently meets several of the minimum standards required by the Kimberly Process. The most significant shortcoming is the continuing lack of a verifiable audit trail from diamond mine to market, though efforts are underway to develop a database of diggers, dealers, and export license holders. In addition, financial resources available to the government to carry out oversight activities are limited.

The Ministry of Mineral Resources is responsible for issuing the licenses that regulate the mining, sale and export of diamonds. It also has monitors, wardens and superintendents – many of them extension workers – who conduct the actual oversight of the industry on the ground. Within the ministry, the Mines Department monitors and regulates the mining and marketing of precious minerals, while the Geological Surveys Division (GSD) issues prospecting licenses and monitors the activities of exploration companies.

Both the Mines Department and the GSD are understaffed, with few qualified personnel capable of fulfilling the more technical aspects of their mandates. A recent internal government review found that many of the wardens and superintendents working for the Mines Department were not qualified for their jobs. Conflicts of interest are reportedly an issue in the GSD, where several

use of the funds as well as low capacity at the local level for prioritization of projects. In some cases, local officials were believed to have used the funds for personal benefit.

senior staff members have worked concurrently for private mining companies. Mine Monitoring Officers, the frontline government employees tasked with patrolling mines on a regular basis, do not receive law enforcement training. Their work is hampered by logistical shortcomings, including lack of transportation and communication. Low pay (approximately \$50/month) for those responsible for enforcing many of the rules and regulations of the diamond certification scheme encourages corruption.

Civic organizations in Sierra Leone have long campaigned for better management of the mining sector. The Campaign for Just Mining (CJM), launched in 2000, has engaged both government and citizens in dialogue on diamond industry management. CJM lobbied the government for a review of mining laws and policies, and encouraged public outreach to discuss and ultimately reduce the sector's adverse social and environmental impact on affected communities. The National Advocacy Coalition on Extractives (NACE), a broader coalition that includes CJM members and representatives from other civic organizations and government, has actively promoted Sierra Leone's participation in EITI. Other civic organizations have advocated on behalf of local communities for public access to information on the mining sector, including the terms of contracts and other agreements between the government and mining companies.

Legislative Engagement and Oversight

More than 70 percent of the seats in Sierra Leone's Parliament are held by the governing SLPP with remaining seats being held by the All People's Congress and the Peace and Liberation Party. Ruling party members are often reluctant to assume their responsibility to provide a check and balance on the executive, and opposition parties have little political space to affect deliberations. A key disincentive to independent action is a constitutional provision requiring legislators to vacate their seats if they cease to be a member of their political party, or if they sit and vote with members of different parties.⁷

Parliament's oversight role in the mining sector is poorly exercised by legislators and poorly under-

Parliament's oversight role in the mining sector is poorly exercised by legislators and poorly understood by executive branch officials.

⁷ The Constitution of Sierra Leone, 1991. Chapter VI, Part I, Section 77.

stood by executive branch officials. Though parliament has the authority to comment and suggest changes to mining agreements, agreements are commonly negotiated and concluded without parliamentary oversight. Its budget is small and controlled by the executive branch, and does not include provisions for the hiring of technically qualified staff to draft and review legislation.

Although Sierra Leone's constitution calls for a constituency based system of representation, high population displacement resulting from the war, combined with the lack of a census, led the country to temporarily adopt a district block system for the 2002 elections. Parties submitted lists of candidates for each of Sierra Leone's 14 administrative districts, with seats awarded according to the percentage of votes won by a party in a district, or on a proportional representation basis. While such a proportional representation system has benefits, particularly in post-conflict societies, Parliament's representative role has ultimately been diluted by the district block system. Under this system, elected members are more closely tied to parties rather than their constituents, and in practice have only limited contact with their constituents. In November 2006, Sierra Leone's parliament ratified a constituency-based system for the upcoming 2007 elections.

Low remuneration for legislators in Sierra Leone also affects legislative performance and integrity. With monthly salaries of less than \$400, it is generally accepted for legislators to use their position and influence to obtain additional compensation from outside interests. A common public perception holds that the main motivation for gaining elected office is the ability to profit from government contracts, including those that cover the extractive industry sector, as well as foreign trips and other benefits, such as per diem allowances.

For legislators attempting to fulfill their roles and responsibilities, the country's ineffective legislative process often does not allow for the review of draft legislation, while parliamentary debate, when it does occur, is often limited in both time and content. This occurs when the executive marks bills as "certificates of emergency," which prevents parliament from deliberating their contents in depth, but also occurs when parliament fails to conduct proper reviews or analysis of legislation.

Individual parliamentarians frequently have only a minimal awareness or understanding of draft legislation, even on issues of potential importance to them. At present, a total of seven committee clerks with limited technical expertise serve between 40-50 parliamentary committees and are not able to review or analyze critical pieces of legislation. The Mineral Resources Committee is charged with regulating the import and export of diamonds, but this is done in a superficial manner and does not engage specifically with the issuance of licenses and export of diamonds. Regrettably, many legislators were unaware of the provisions of the Parliamentary Services Act, introduced in 2006 and still pending, even though the act was drafted to increase financial resources for the hiring of research staff and external consultants, and to fund constituency and other site visits in the districts.

Recommendations

To Legislators:

- *Reach out to constituents* to exercise and demonstrate a commitment to representing their interests.
- *Consider how to enhance the structure and organization of committees with responsibility for extractive industry issues*, including the engagement of qualified staff with technical industry expertise.
- *Work more closely and collaboratively with executive branch officials involved in the mining sector* to determine resource needs and assess the effectiveness of programs designed to help constituents, such as the Diamond Area Community Development Fund (DACDF).

To Civil Society:

- *Explore ways to engage with Sierra Leone's Parliament* in the conduct of extractive industry activities to educate and mobilize the public, monitor the sector and advocate for reform.

To the International Community:

- *Support efforts by legislators to conduct constituency outreach activities*, including assistance for programs to better educate leg-

islaters and their constituents on each other's roles and responsibilities, and how to engage with each other effectively.

- *Continue to support structural reform within Sierra Leone's Parliament, and the development of a more transparent and efficient legislative process.* Specific training programs on legislative procedures represent a critical need, and will be especially so for new members after the 2007 elections. Additional support should be considered to strengthen the committee system and to improve the quality of bill drafting and analysis.
- *Provide targeted support for Parliament's Mineral Resources Committee.* Despite its current level of weakness, this committee has the most potential to conduct meaningful oversight of extractive industry activities. With additional independence and expertise, this committee could serve as the springboard for extractive industry reform in areas such as licensing and the diamond exportation process, and funding for ministry activities to improve the regulation of the industry.
- *Support legislators to carry out oversight to monitor the implementation of the Kimberly process.*

ECONOMIC PROFILE

Major Resources¹	Gold, industrial diamonds, bauxite, manganese, timber
Oil/Mining Revenues (2000 -2003)²	
<i>Average Annual Mineral Exports (in percent of Total Exports)</i>	94.2
<i>Average Annual Hydrocarbon Revenues (in percent of total fiscal revenue)</i>	0.5
<i>Average Annual Hydrocarbon Revenues (in percent of GDP)</i>	0.1
GDP per Capita (PPP)³	\$561
Human Development Index Rank (Out of 177 Countries)⁴	176

GOVERNANCE INDICATORS

Freedom Rating (2006)⁵	Partly Free
Governance Indicators (2005)⁶	
<i>Voice and Accountability [±]</i>	35
<i>Political Stability</i>	31
<i>Government Effectiveness</i>	10
<i>Regulatory Quality</i>	18
<i>Rule of Law</i>	12
<i>Control of Corruption</i>	17

EITI STATUS

EITI Status (2006)⁷	Signatory
<i>Appointed a leader</i>	No
<i>Multi-Stakeholder Committee</i>	No
<i>Drafted a Working Plan</i>	No
<i>Published Audited and Reconciled Report(s)</i>	No

1 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/sl.html>

2 International Monetary Fund, *Guide on Resource Revenue Transparency*, 2005: <http://www.imf.org/external/pubs/ft/grrt/eng/060705.pdf>

3 United Nations Development Program, *Human Development Report 2006*: http://hdr.undp.org/hdr2006/statistics/countries/country_fact_sheets/cty_fs_SLE.html

4 United Nations Development Program, *Human Development Report 2006*: <http://hdr.undp.org/hdr2006/statistics/>

5 Freedom House website: <http://www.freedomhouse.org/template.cfm?page=15&year=2006>

6 Kaufmann, Daniel, Kraay, Aart and Mastruzzi, Massimo, *Governance Matters V*, 2006, World Bank: www.govindicators.org

[±] Percentile rank indicates the percentage of countries worldwide that rate below Sierra Leone (subject to margin of error). Higher values indicate better governance ratings.

7 Once a country signs on to EITI, their progress towards implementation is measured against the following benchmarks. Revenue Watch Institute, *Eye on EITI*, 2006: <http://www.publishwhatyoupay.org/english/pdf/pubs/eyeoneiti.pdf>

LEGISLATIVE PROFILE

Legislative System⁸	Unicameral
Constitutional Rules and Powers⁹	
<i>Rules for forming government</i>	The President is directly elected and designates a Vice President. The President appoints other members of the executive including the Cabinet and ministers (Article 42, 43, 54 and 56).
<i>Oversight powers</i>	Parliamentary committees are entitled to investigate or inquire into the activities or administration of such Ministries or Departments as may be assigned to it, and such investigation or inquiry may extend to proposals for legislation (Article 93).
<i>Budgetary authority</i>	No moneys shall be withdrawn from the Consolidated Fund except to meet expenditure that is charged upon the Fund by the Constitution or approved by an Act of Parliament. No moneys shall be withdrawn from any public fund, other than the Consolidated Fund and the Contingencies Fund, unless the issues of those moneys have been authorized by or under the authority of an Act of Parliament (Article 111 and 112).
Legislative Electoral System¹⁰	List Proportional Representation
Most Recent Legislative Election¹¹	2002
Distribution of Seats¹²	Majority party, Sierra Leone People's Party (SLPP), holds 83 out of 112 elected seats in the Parliament
Relevant Committees	<ul style="list-style-type: none"> • Public Accounts • Finance • Trade • Mineral Resources • Transparency

8 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/sl.html>

9 Constitution of Sierra Leone: <http://www.statehouse-sl.org/constitution/>

10 International Institute for Democracy and Electoral Assistance website: <http://www.idea.int/esd/world.cfm>

11 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/sl.html>

12 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/geos/sl.html>

SOUTH AFRICA



South Africa has developed a number of best practices in the extractive industry sector, including a sound legal and regulatory framework. Avenues for healthy dialogue between government, the private sector and civil society also exist, and have played a role in fostering improvements in mining sector health and security conditions. However, the complexity of South Africa's legal and regulatory framework, coupled with a lack of a culture of executive oversight, has detracted legislators from exercising this important function.

Political and Economic Context

The discovery of large diamond and gold deposits in the 19th century accelerated British and Dutch immigration to South Africa, a development that, in turn, increased the marginalization of the country's black majority. *Apartheid* (from the Afrikaans word for "apartness") began as a social custom with the onset of white settlements in the 17th century and was systematized under law in 1948. Anti-apartheid pressure from within and outside South Africa led President F.W. de Klerk to begin to dismantle the system in the early 1990s. Early reform measures included the legalization of formerly banned black political organizations and the release of imprisoned leaders, including Nelson Mandela. The country's constitution was rewritten and free general elections were held for the first time in South Africa's history in 1994.

Nelson Mandela's election as South Africa's first black president marked the formal end of apart-

heid. Backed by the African National Congress (ANC), Mandela's government focused on uniting the country's diverse and splintered population, and on bringing South Africa into the global economy following the lifting of all remaining economic sanctions imposed during the apartheid era. In its attempt to address the country's deep socio-economic inequities, the government adopted a market-driven economic plan known as Growth, Employment and Redistribution (GEAR). This plan, however, is also being supplemented with a relatively extensive social security net and other interventions to supplement the market mechanism.

The ANC is the dominant force in South African politics. President Mandela ceded leadership of the ANC in 1997 to Thabo Mbeki, who became president of South Africa following the 1999 elections. In the country's third multiparty elections in April 2004, the ANC won nearly 70 percent of the national vote, and Mbeki was reelected for his second 5-year term. Under Mbeki's leadership, the ANC-led government renewed efforts to increase the economic power of South Africa's black majority. Despite the government's efforts to redistribute wealth through its Black Economic Empowerment (BEE) and its Broad Based Black Economic Empowerment (BBBEE) programs, the country's wealth remains unequally distributed along racial lines. While the GEAR strategy brought greater financial discipline and macroeconomic stability to the county, but redistributing the country's wealth remains an important challenge.

Since the discovery of diamonds at Kimberley in 1870 and the discovery of large gold deposits in the Witwatersrand region of the then Transvaal in 1886, South Africa has been globally recognized as the leading supplier of a variety of minerals and mineral products. It is the world's largest producer of gold, platinum group metals and chromium, and is the fourth-largest producer of diamonds. In 2000, platinum overtook gold as South Africa's largest foreign exchange earner. The country's mineral wealth includes antimony, chromite, cobalt, copper, iron ore, lead manganese, nickel, silver, steel, titanium, uranium, vanadium, zinc and zirconium. The sophisticated mining sector supports comprehensive research and development activities, and employs a workforce with high levels of technical and production expertise.

South Africa's economy is highly developed in many areas, and increasingly competitive. Foreign investment has risen dramatically over the past several years, while the rand currency appreciated by 39 percent between 2001 and 2003. At the same time, the exclusionary nature of apartheid and the distortions caused in part by years of international isolation left behind major challenges. High unemployment and poverty rates persist, while rising criminality affects all segments of society. The HIV/AIDS crisis is taking a heavy toll, with an estimated 5.5 million South Africans living with HIV/AIDS in 2005.¹ While both the government and the private sector have made efforts to slow the spread of the disease and to provide affordable treatment for those infected, the epidemic threatens to undermine the country's longer term economic performance.

Legal and Regulatory Framework

South Africa's mining industry is highly regulated and grounded in a legal framework that could serve as a model for other African countries. Notably, information on South Africa's legal framework, and responses to public comment, are available in the public domain through the National Treasury, Department of Minerals and Energy, and the Government Communication and Information System (GCIS) websites.²

In 1995, the ANC government initiated a review of South Africa's mining policies and legal framework that led to the publication in 1998 of the "White Paper on Minerals and Mining Policy." In late 2000, the draft Minerals Development Bill was released for public comment. Many of the paper's findings were codified into law with the passage by South Africa's Parliament of the Minerals and Petroleum Resources Development Act (MPRDA) in October 2002.³ Parliament also passed in 2002 the "Broad-Based Socio-

Economic Empowerment Charter for the South African Mining Industry," or the Mining Charter. In addition to the legislation, industry-specific scorecards have been developed to measure industry progress in implementing the principles of the Mining Charter. Both the MPRDA and the Mining Charter were subject to extensive and prolonged periods of negotiation and consultation between the government, the mining industry, labor unions and other stakeholders.⁴ The MPRDA was promulgated by the government in 2004, and became law in May 2005.

At the center of the MPRDA is the recognition, enshrined in South Africa's constitution, that the country's natural resources belong to all its citizens, and that the government bears responsibility for ensuring that the benefits from the exploitation of these minerals are equally shared by all South Africans. A key reform is that all mineral rights now belong to the government, rather than to individuals or companies, as was the case in the past. In practice, however, two-thirds of South Africa's mineral rights continue to be privately owned, with the remainder vested in the state. Other provisions endorse security of tenure for existing rights, the regulation of prospecting and mining rights and a "use it or lose it" principle to provide all South Africans with equal opportunities on prospecting and mining applications.⁵ Under the MPRDA, existing mineral rights revert to the government unless companies act within five years to convert "old order" exploration and mining rights into "new" rights under terms specified in the new legislation.

An equally important aspect of the MPRDA is in its encouragement and promotion of the participation of junior and smaller entrepreneurs from black communities in the mining sector. The Mining Charter includes the following targets: 15% ownership of mines by historically disadvantaged South Africans within five years; 40% of historically disadvantaged South Africans in both junior and senior management positions in five years; 26% ownership within 10 years; and 10% participation by women within five years.

South Africa's mining industry is highly regulated and grounded in a legal framework that could serve as a model for other African countries.

1 Joint United Nations Program on HIV/AIDS (UNAIDS) AIDS Epidemic Update: December 2006. Available online at: http://www.unaids.org/en/HIV_data/epi2006/default.asp

2 National Treasury website: <http://www.treasury.gov.za/>, South African Government Communication and Information System website: <http://www.info.gov.za/aboutsa/minerals.htm>

3 Speech by Minister Buyelwa Sonjica at the Mining Summit, Johannesburg, South Africa, September 12, 2006, available through the Department of Minerals and Energy website: http://www.dme.gov.za/pdfs/speeches/mining_week_presentation.pdf

4 A summary of the Mining Charter is available online at the Department of Minerals and Energy website: http://www.dme.gov.za/minerals/mining_charter.stm

5 The Mining and Petroleum Resources Development Act, No. 28 of 2002, available online: <http://www.info.gov.za/gazette/acts/2002/a28-02.pdf>

Oversight of the extractive industry sector is largely conducted by the executive branch, which is also responsible for formulating and implementing policy.

In 2005, two new pieces of legislation, the Second Diamond Amendment Act and the Precious Metals Act, were enacted to allow for further value addition and investment in the diamond manufacturing sector. The legislation also repealed the provisions of the Mining Rights Act that had been in place under the apartheid regime.⁶ Implementation of these pieces of legislation is currently underway. Plans for a Diamond Export Center are also expected to allow foreign buyers to purchase diamonds.

South Africa's Department of Minerals and Energy (DME) regulates the country's extractive industry sector, and is also responsible for overseeing the exploration, development, processing, utilization and management of minerals in South Africa. The DME also plays a central role in overseeing the payment of royalties for license holders. The Royalties Bill, which will come into effect in 2009, is expected to result in a higher volume of royalties payments. The DME is expected to focus on the implementation of the MPRDA and a number of complementary bills, which are designed to ensure the sustainable exploration and mining of minerals, as well as encouraging the involvement of previously disadvantaged communities in South Africa's mineral industry.

A number of parastatal institutions are associated with the DME, including the Atomic Energy Corporation, the Central Energy Fund (Pty.) Ltd., the Council for Geosciences, the Council for Mineral Technology (Mintek), the Council for Nuclear Safety, the National Electricity Regulator and the South African Diamond Board. The Central Energy Fund, for example, is responsible for managing the operation and development of oil and gas assets and operations of the South African government, and manages some of the cash resources of the Mine Health and Safety Council, an entity within the DME.

Interviewees expressed a large measure of consensus that South Africa's legislative and regulatory frameworks are world-class. Requirements for job creation, for example, are praised as best

practice, especially by political parties and labor. The Mining Charter is also generally regarded as a major achievement in terms of consultation and cooperation between government and the minerals and mining industry. These frameworks ensure that the benchmarks and expectations for implementation, compliance and transformation are clearly specified.

Many industry experts agree that South African mining companies are becoming more socially responsible in their mining operations as a result of post-apartheid reforms. Such support is qualified, however, by questioning the appropriateness and sustainability of imposing social responsibility in the mining sector. Though the Chamber of Mines expressed its support for the underlying objectives of the MPRDA, it voiced concerns over provisions that could be seen as undermining property rights, giving excessive decision-making powers to a single person (the Minister of Minerals and Energy) and offering no right of appeal through the judiciary.

Public Accountability and Transparency

The South African government has used mining revenues to spur economic growth and development. In addition, there is a high level of public confidence in the legal and regulatory framework, as well as the DME's ability to ensure implementation of programs aimed at addressing past imbalances. Existing mechanisms that promote dialogue and consultation between the private sector, government and civil society, including labor unions, have helped to improve health and security conditions in the mining sector, and contributed to sector productivity.

However, oversight of the extractive industry sector is largely conducted by the executive branch, which is also responsible for formulating and implementing policy. Moreover, the South African State has some semblance of a corporate state, which detracts from the political will to practice oversight of close governing partners on whom the government largely relies for the stimulation of investment and economic growth. The larger mining companies are believed to donate generously to the ANC, which could also serve as a disincentive to criticizing the industry.

Although there is a broad array of civil society organizations active in South Africa, there do not

⁶ The Diamonds Amendment Act, No. 29 of 2005, available online: <http://www.info.gov.za/gazette/acts/2005/a29-05.pdf>. Diamonds Second Amendment Act, published in Government Gazette No. 27929, available online: <http://www.info.gov.za/gazette/bills/2005/b39-05.pdf>. The Precious Metals Act, No. 37 of 2005, available online: http://www.dme.gov.za/pdfs/minerals/Precious_Metals_Act.pdf

appear to be any groups that specifically focus on extractive industry issues.

Legislative Engagement and Oversight

Despite their role in passing the very important pieces of legislation that govern South Africa's extractive industries, legislators are not fully engaged in conducting oversight activities. A large part of oversight of implementation in the South African system of regulating the minerals and mining environment is located in the state's executive bureaucracy, where implementation and accompanying monitoring is conducted. Industry's level of compliance with legislation is regarded as high.

Capacity constraints appear to be the largest single impediment to higher levels of oversight and accountability. The level of expertise within Parliament's Committee on Minerals and Energy (CME) is limited, and member turnover is frequent. As a result, parliamentary influence over the extractive industries is often limited to the adoption of legislation and regulatory frameworks proposed by the executive branch. The committee does hold public hearings, however, which promote the flow of information between industry experts, interested members of the public and members of the committee.

South Africa's Auditor-General, rather than Parliament, is the body that routinely monitors fiscal and budgetary compliance, and mining income is paid directly to the South African Revenue Service. Parliament's Standing Committee on Public Accounts (SCOPA) shares with the CME oversight responsibility for aspects of the budgetary process, and issues reports when required. However, the SCOPA is constrained by low levels of specialization and expertise within the committee. Ruling party domination within Parliament has also stunted the development of a critical oversight culture.

RECOMMENDATIONS

To Legislators:

- *Take advantage of opportunities to build sector-specific expertise and access to research materials.* Increased research capacity, access to pertinent reports and other reading materials and opportunities for informed site

visits would empower committee members and lead to improved monitoring and oversight capacity.

- *Take advantage of current worldwide attention on the need for increased transparency and accountability* in the management of extractive industries by using existing powers to influence national budgets, investigate corruption, oversee public expenditures, and initiate field visits.
- *Reach out to civil society organizations and the public* by conducting public hearings, consultations with relevant stakeholders, and soliciting public input on South Africa's legal and policy framework on extractive industries.

To Civil Society:

- *Lobby for increased transparency and accountability over the extractive industries sectors by using extensive information, already available in the public domain,* and work toward increased transparency and accountability by monitoring the extractive sector, exposing problems where they exist and advocating for appropriate reforms.

To the International Community:

- *Facilitate legislative capacity building for enhanced oversight of the extractive industries* against the backdrop of South Africa's political realities. Promoting greater legislative oversight could be supported through field visits to mining companies, focusing on technical aspects of regulating the industry; systematic assessments on the progress on implementation of the legal and regulatory framework; and strengthening dialogue between the legislative and executive branches of government on extractive industry issue areas. Legislative involvement with industry experts is also needed.

SOUTH AFRICA BACKGROUND INFORMATION

ECONOMIC PROFILE

Major Resources¹	Gold, chromium, gem diamonds, platinum
Oil/Mining Revenues (2000 -2003)²	
<i>Average Annual Mineral Exports (in percent of Total Exports)</i>	23.5
GDP per Capita (PPP)³	\$10,346
Human Development Index Rank (Out of 177 Countries)⁴	121

GOVERNANCE INDICATORS

Freedom Rating (2006)⁵	Free
Governance Indicators (2005)^{6 ±}	
<i>Voice and Accountability</i>	70
<i>Political Stability</i>	42
<i>Government Effectiveness</i>	30
<i>Regulatory Quality</i>	15
<i>Rule of Law</i>	19
<i>Control of Corruption</i>	57

EITI STATUS

EITI Status (2006)⁷	Not a Signatory
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1 The CIA World Factbook: : <https://www.cia.gov/cia/publications/factbook/>

2 International Monetary Fund, *Guide on Resource Revenue Transparency*, 2005: <http://www.imf.org/external/pubs/ft/grrr/eng/060705.pdf>

3 International Monetary Fund, World Economic Outlook Database. <http://www.imf.org/external/pubs/ft/weo/2006/02/data/index.htm>

4 United Nations Development Program, *Human Development Report 2006*: <http://hdr.undp.org/hdr2006/statistics/>

5 Freedom House website: <http://www.freedomhouse.org/template.cfm?page=15&year=2006>

6 Kauffmann, Daniel, Kraay, Aart and Mastruzzi, Massimo, *Governance Matters V*, 2006, World Bank: www.govindicators.org

± Percentile rank indicates the percentage of countries worldwide that rate below South Africa (subject to margin of error). Higher values indicate better governance ratings.

7 Once a country signs on to EITI, their progress towards implementation is measured against the following benchmarks. Revenue Watch Institute, *Eye on EITI*, 2006: <http://www.eitransparency.org/section/countries>

LEGISLATIVE PROFILE

Legislative System⁸	Bicameral
Constitutional Rules and Powers	
<i>Rules for forming government</i>	The National Assembly chooses the President, who in turn appoints the Deputy President and Ministers. Ministers are selected from the National Assembly; no more than two Ministers can be from outside the Assembly (Article 91).
<i>Oversight powers</i>	Both houses of Parliament may summon any person to appear before it to give evidence on oath or affirmation, or to produce documents. Members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions (Articles 56 and 92).
<i>Budgetary authority</i>	All money bills and amendments to such bills must be approved by both the National Assembly and National Council of Provinces and submitted to the President for assent (Article 77).
Legislative Electoral System⁹	List Proportional Representation
Most Recent Legislative Election¹⁰	2004
Distribution of Seats	
<i>National Assembly</i>	Majority party, African National Congress (ANC), holds 279 out of 400 seats
<i>National Council of Provinces</i>	The political parties in each provincial legislature are entitled to be proportionally represented in that province's NCOP delegation
Relevant Committees	
<i>Joint</i>	<ul style="list-style-type: none"> • Budget
<i>National Assembly</i>	<ul style="list-style-type: none"> • Finance • Minerals and Energy • Trade and Industry
<i>National Council of Provinces</i>	<ul style="list-style-type: none"> • Economic • Finance

8 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/>

9 International Institute for Democracy and Electoral Assistance website: <http://www.idea.int/esd/world.cfm>

10 The CIA World Factbook: <https://www.cia.gov/cia/publications/factbook/>

IX. APPENDICES

Methodological Approach

In 2005, the National Democratic Institute (NDI) launched a program to improve the ability of African legislatures in resource-rich countries to understand and respond to the political and economic challenges often posed by the exploitation of natural resources. To achieve this goal, NDI conducted an assessment of the challenges faced by legislatures in sub-Saharan Africa in their efforts to promote transparency in the extractive industries, and identified best practices and other strategies some countries have developed to meet them. NDI included the following countries in its survey: Angola, Botswana, Chad, the Republic of Congo, the Democratic Republic of Congo, Ghana, Nigeria, Sierra Leone and South Africa. NDI assessment teams visited and gathered information in each country, including copies of national legislation and other relevant government documents, and conducted interviews with representatives from legislative bodies and executive branch agencies, civil society, the media, the corporate sector and international development partners. Over 200 individual interviews were conducted. Interviews were conducted between November 2005 and April 2006. In addition, information on Sao Tome's Revenue Management Law was gathered through a desktop survey.

Resources and Initiatives on the Extractive Industries

A Parliamentarians' Guide to the World Bank, World Bank, 2005

This guide provides parliamentarians with basic information about the World Bank and how it operates. It explains the role the World Bank plays in global development and how it works with actors in the international community including: civil society groups, intergovernmental organizations, and international financial institutions. It outlines funding opportunities that exist through the World Bank and describes how parliamentarians can engage the Bank in dialogue on development issues. Each section of the guide is followed by web links that provide additional information.

Web Access:

http://siteresources.worldbank.org/EXTPARLIAMENTARIANS/Resources/Parliamentarians_Book_Revised.pdf

Committees in Legislatures: A Division of Labor, *NDI Legislative Research Series – Paper #2*, National Democratic Institute, 1996

This paper describes the crucial role of legislative committee systems. It describes the key functions of committees and offers suggestions on how these bodies can be structured to make legislatures more effective. The paper also provides a comparative analysis of committee structures in use in different countries around the world.

Web Access:

http://www.accessdemocracy.org/library/030_ww_committees.pdf

Covering Oil: A Reporters Guide to Energy and Development/Revenue Watch, Edited by Svetlana Tsalik and Anya Schiffrin, Open Society Institute, 2005

This publication, the product of workshops presented to journalists in three oil exporting countries, provides reporters with useful background information on the impact that petroleum production can have on oil-rich countries. It includes sample press stories as well as tips on possible questions and leads. The document's glossary defines key financial, geological and legal terms to enhance reporters' understanding terminology used in the oil sector. Although its target audience is journalists, the content is useful to others interested in learning more about energy and development.

Web Access:

<http://www.revenuewatch.org/reports/072305.pdf>

Follow the Money: A Guide to Monitoring Budgets and Oil and Gas Revenues by John Schultz, Open Society Institute, 2005

This publication aims to provide citizens with information on how to monitor their government's earning and expenditures more effectively. The first in a series of guides published by the Open Society Institute, it is the product of a 2004 meeting of international budget activists and organizations that monitor extractive industry revenues. It describes how best practices for budget work can be applied to the monitoring of extractive industry revenues. The publication's appendix provides a list of online resources as well as a glossary of terms related to budget monitoring and the extractive industry.

Web Access:

http://www.soros.org/initiatives/cep/articles_publications/publications/money_20041117/follow_money.pdf

Guidebook on Strengthening the Representative Capacity of Legislators, National Democratic Institute in conjunction with the United Nations Development Program, 2001

This paper is intended as a practical guide for the design of systems to strengthen the representative capacity of legislators in emerging democracies. It describes the representative capacity of the legislature in terms of the quality and quantity of interactions legislators have with their constituents. The paper discusses different program options that can strengthen the legislature's representative capacity and the constraints that may impact these options. Some of the constraints include: executive resistance to enhancing the legislature's capacity, allegations of political bias, resource limitations, and concerns about sustainability.

Web Access:

http://www.accessdemocracy.org/library/1321_gov_strengthlegis_undp_1020001.pdf

Guide to Resource Revenue Transparency, International Monetary Fund, 2005

This guide applies the IMF's *Code of Good Practices on Fiscal Transparency* to the unique problems facing countries whose economies rely heavily on their natural resources. It highlights resource-specific issues that should be considered in a fiscal transparency assessment. It also summarizes practices that can make the management of resource revenues more transparent. The target audiences are individual nations, World Bank, IMF, or other parties providing technical support to natural resource-rich countries. Among the issues addressed are how to clearly emphasize the link between an open budget process and the overall goal of fiscal stability and long-term sustainability and effectively auditing resource revenue transactions to assure integrity.

Web Access:

<http://www.imf.org/external/pubs/ft/grrt/eng/060705.pdf>

Legal Remedies for the Resource Curse, Open Society Justice Initiative, 2005

Focusing on Africa, this report highlights the advantages and limits of various legal strategies that have been used to combat natural resource corruption, and offers new strategies that have yet to be tested. The report also identifies opportunities for civil society organizations to be involved in monitoring corruption in the extractive industry sector.

Web Access:

http://www.justiceinitiative.org/db/resource2?res_id=102966

Legislative Ethics: A Comparative Analysis, *NDI Legislative Research Series – Paper #4*, National Democratic Institute, 1999

This paper compares ethics regimes governing the conduct of legislative members in 20 countries at various stages of democratic development. The paper describes some of the most common elements of effective ethics regimes, such as codes of conduct, rules on financial disclosure and monitoring mechanisms.

Web Access:

http://www.accessdemocracy.org/library/026_ww_legethics_1_1_27.pdf

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Legislatures and the Budget Process: An International Survey, *NDI Legislative Research Series*, National Democratic Institute, 2003

This paper discusses the role of different legislative bodies in the budget process. In many political systems, the legislature has the opportunity to review, debate, and approve or reject the budget proposed by the Executive. Some legislatures can also amend budgets. Drawing on examples of legislatures in emerging and established democracies, the survey describes the different factors that affect budgetary processes, including committee systems, rules, oversight mechanisms and the amendment process.

Web Access:

http://www.accessdemocracy.org/library/1651_gov_budget_093103.pdf

Strengthening Legislative Capacity in Legislative-Executive Relations, *NDI Legislative Research Series*, National Democratic Institute, 2000

In many democracies, the executive branch overshadows the legislature; this is especially the case in new democracies. The goal of this paper is to assist legislators in asserting legislative authority. It describes ways in which legislatures influence government proposals such as the budget, and more effectively oversee the executive branch. It also discusses some of the tools (such as public committee hearings) that can help legislatures carry out their duties effectively.

Web Access:

http://www.accessdemocracy.org/library/980_gov_legcapacity.pdf

Strengthening Parliamentary Involvement in the Poverty Reduction Strategy Process and the Millennium Development Goals, *Parliaments and Poverty Series*, National Democratic Institute (NDI) and the United Nations Development Program (UNDP), 2004

The Poverty Reduction Strategy Process (PRSP) calls for individual countries to make a poverty diagnosis, formulate and implement a policy to reduce poverty, and monitor the effects of these policies. This three-part series emerged out of pilot projects in Malawi, Niger, and Nigeria, designed to strengthen legislative and civil society participation in the PRSP deliberations.

The handbooks provide legislators with suggestions for getting involved at each stage of the process. The three handbooks in the series are:

- Toolkit #1: Legislative-Executive Communication On Poverty Reduction Initiatives
- Toolkit #2: Parliamentary-Civic Collaborations for Monitoring Poverty Reduction Initiatives
- Toolkit #3: Legislative and Public Outreach on Poverty Issues.

Web Access:

<http://www.accessdemocracy.org/library/>

The Role of Parliament in Curbing Corruption, Edited by Rick Stapenhurst, Niall Johnston, and Ricardo Pelizzo, World Bank Institute, 2006

This book, the result of three World Bank conferences aimed at highlighting the role of parliament in economic growth and development, provides an overview of findings and recommendations on the role parliamentarians can play in curbing corruption. It examines how political processes such as party political funding, election systems and parliamentary codes of conduct can influence anti-corruption efforts. Within the context of parliament, it also discusses ethical and behavioral issues that are associ-

ated with curbing corruption. The book is intended as a tool for donors seeking to ensure that development assistance is effectively used, for client countries seeking to curb corruption and practitioners seeking guidance in how to fight corruption.

Transparent Government, Developing Public Access to Government Information, National Democratic Institute, 2005

This paper addresses the importance of transparency to democratic governance and the development of vibrant civil society organizations. The paper describes precedents set by both the international community and specific nations in this area, and lays out processes for the development and implementation of Freedom of Information laws. A list of Freedom of Information laws from around the world, along with relevant resources, is provided.

Web Access:

http://www.accessdemocracy.org/library/1903_gov_accesstoinfo_060105.pdf

USAID Handbook on Legislative Strengthening, United States Agency for International Development, 2000

This handbook illustrates the importance of the legislative branch and the key functions that it must perform in order to reinforce democratic governance, provide a check on executive power, and make public policies effective. The handbook provides advice on methods for supporting legislatures to help them function more effectively and democratically. It also presents an assessment framework for pinpointing a legislature's weaknesses and areas in which there are opportunities for improvement.

Web Access:

http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnacf632.pdf

Natural Resource Monitoring Initiatives

Kimberley Process Certification Scheme

The Kimberly Process Certification Scheme (KPCS) emerged in 2002, following two years of negotiations between governments, the international diamond industry and NGOs. A voluntary initiative, it requires participating governments to use internal controls to regulate the trade of rough diamonds to ensure that the diamonds entering the market from their country have not contributed to violence and human rights violations. Participants represent major producers, exporters and importers from countries that account for 99.8 percent of the global production of rough diamonds.

As part of the KPCS process, shipments of rough diamonds must be accompanied by a Kimberly Process Certificate. Participating nations are required to block the import or export of shipments from non-participating countries, or those not accompanied by certificates. While KPCS has been criticized for leaving participating nations to develop their own internal controls with varying degrees of effectiveness, annual meetings give participating governments, industries, and civil society groups an opportunity to discuss the effectiveness of different regulatory schemes. KPCS participants share information and implementation strategies in plenary sessions, as well as through a number of committees and working groups designed to ensure that the goal of eliminating the trade of conflict diamonds is met.

Website:

<http://www.kimberleyprocess.com>

IX. APPENDICES

International Council on Mining and Metals

In 2001, the International Council on Mining and Metals (ICMM) was formed with the goal of making the mining, minerals and metals industry recognized as a key contributor to sustainable development worldwide. ICMM is composed of 15 of the world's largest mining and metal companies and 24 national mining and global commodities associations. ICMM provides an opportunity for the industry to share its challenges and responsibilities, and facilitates communication between industry representatives with governments, civil society organizations and other groups on areas of common concern.

Led by a council of chief executive officers from member companies and associations, ICMM is governed by its Sustainable Development Framework. Four elements support the framework: adherence to ten agreed-upon principles of sustainable development, public reporting of performance, independent assurance that members are fulfilling their commitments, and the sharing of good practices. The ten principles include commitments to improve environmental, health and safety performance standards; maintain ethical and sound systems of corporate governance; factoring sustainable development goals into the corporate decision-making process; and contributing to the social, economic and institutional development of local communities.

Website:

<http://www.icmm.com>

Extractive Industries Transparency Initiative

The Extractive Industries Transparency Initiative (EITI) was launched in 2003 with support from the United Kingdom's Department for International Development (DFID) and Prime Minister Tony Blair. EITI's goal is to improve the governance and management of extractive industry revenues through increased transparency, notably in the form of company payments to governments. More than 20 countries have joined EITI, and the initiative has the support of the World Bank, IMF, and other members of the international donor community, as well as multinational corporations, private companies, governments, civil society groups, and investors. The underlying rationale for the international effort rests on the belief that improved governance and management of the revenues earned by governments from the extraction of their country's resources will lead to a reduction in the corruption and misuse of funds that can be used to foster economic growth and reduce poverty.

Participation by country governments and companies is voluntary. The EITI Secretariat provides guidelines to participants, but encourages governments to tailor processes to fit their country. EITI guidelines emphasize inclusive participation by suggesting that country processes include mechanisms for engagement with and input from all interested groups, including civil society organizations. The EITI process is intended to lead to open audits of extractive industry revenues paid to the government, as well as audits of the volume or amount of extracted resources.

Civil society organizations in some participating countries have complained that EITI processes are not inclusive, and lack oversight mechanisms to ensure adherence to the EITI principles. Legislators can play a role in the EITI by passing bills that coordinate with the EITI process – for example, a Nigeria EITI bill that establishes by law the NEITI process; conducting oversight hearings examining results of an audit report, or where possible call government officials to testify on the issue; and conducting constituency outreach activities on matters related to transparency of government revenues from EI and the EITI process.

Website:

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

Publish What You Pay Coalition

The Publish What You Pay Coalition (PWYP) is a coalition of more than 50 countries and over 250 non-governmental organizations (NGOs) that aims to raise awareness about the importance of improving extractive industry transparency. PWYP advocates for the mandatory disclosure of payments from mining or oil companies to host governments. The coalition primarily targets companies and corporations, although its members also believe that government disclosure requirement is an additional requirement to full transparency. PWYP suggests mechanisms to overcome the obstacles to requiring companies to disclose certain types, such as: changes in stock market rules to require companies to regularly report on monies paid to host governments as a condition for participating; revision of accounting standards to require company disclosure of royalties, taxes, signature bonuses, duties, profit shares, and other payments and any significant payments in-kind; additional requirements by export credit agencies that fund extractive industry projects to require disclosure as a condition of their support; and an additional requirement by the World Bank and IMF making disclosure by governments a condition of lending activities.

In coordination with its members, PWYP carries out lobbying efforts and public campaigns aimed at international financial institutions, companies, governments, and international regulatory bodies such as the International Accounting Standards Board. It also conducts civil society capacity building activities to ensure that its efforts continue and expand. Legislators can play a role in the PWYP campaign by passing national legislation obliging companies to make public their payments to governments, by conducting oversight activities, and inviting PWYP to testify as experts, where appropriate. One of the shortfalls of PWYP is that it sometimes lacks support from governments and corporations or companies involved in resource extraction.

PWYP believes that mandatory disclosure is necessary to level the playing field for companies: when disclosure is voluntary, PWYP suggests, companies considering disclosure of payments may put themselves at a competitive disadvantage with those who do not disclose payments, and may also put themselves in jeopardy of breaching contracts with confidentiality clauses. When British Petroleum (BP) announced it would disclose payments made to the government of Angola in 2001, for example, Angola's state-owned oil company, Sonangol, threatened to terminate their concession. In the end, BP limited disclosure to the payment of signature bonuses.

Website:

<http://www.publishwhatyoupay.org>

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ACRONYMS

ACC	Anti-Corruption Commission
AFDL	Alliance of Democratic Forces for the Liberation of Congo
ANC	African National Congress
BDP	Botswana Democratic Party
BNF	Botswana National Front
BEE	Black Economic Empowerment
BBBEE	Broad Based Black Economic Empowerment
CME	South Africa Committee on Minerals and Energy
DADCF	Diamond Area Community Development Fund
DME	South Africa Department of Minerals and Energy
DPR	Nigeria Department of Petroleum Resources
DTCI	Diamond Trading Company International
EITI	Extractive Industries Transparency Initiative
EFCC	Nigeria Economic and Financial Crimes Commission
FDP	Democratic and Patriotic Forces
GEAR	Growth, Employment and Redistribution
GEITI	Ghana Extractive Industries Transparency Initiative
GOPAC	Global Organization of Parliamentarians Against Corruption
GSD	Geological Surveys Division
HIPC	Highly Indebted Poor Country
IDM	Sierra Leone Integrated Diamond Management Program
KPCS	Kimberly Process Certification Scheme
MEND	Movement for the Emancipation of the Niger Delta
MPLA	Popular Movement for the Liberation of Angola
MPRDA	South Africa Minerals and Petroleum Resources Development Act
NABRO	Nigeria National Assembly Budget and Research Office
NAGE	Sierra Leone National Advocacy Coalition on Extractives
NDC	National Democratic Congress
NDDC	Niger Delta Development Commission
NDP	National Development Plan
NEITI	Nigeria Extractive Industries Transparency Initiative
NPP	New Patriotic Party
NSWG	Nigeria National Stakeholders' Working Group
PCT	Congolese Labor Party
PDA	Sierra Leone Peace Diamond Alliance
PPRD	People's Party for Reconstruction and Democracy

IX. APPENDICES

PRSP	Poverty Reduction Strategy Paper
PWYP	Publish What You Pay
RTC	Angola Coalition for Reconciliation, Transparency and Citizenship
RUF	Revolutionary United Front
SAESSCAM	Small-Scale-Mining Technical Assistance and Training Service
SADC-PF	Southern Africa Development Community Parliamentary Forum
SLPP	Sierra Leone People's Party
SNPC	National Petroleum Society
UNITA	National Union for the Total Independence of Angola

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