

## Unearth the Truth: How transparency in the extractive industries can tackle corruption

November 2012

Tearfund calls on the UK Government to continue to use its leadership in the European Council to ensure that the final Accounting and Transparency Directives that require extractive industry companies to report on their payments to governments are effective in combating corruption and promoting development by:

- Including project-by-project reporting by all extractive industry companies
- Defining projects as being linked to single, specific contracts
- Having a low payment threshold so that information about payments is meaningful and usable for local communities
- Not allowing any exemptions that would open the back door to corruption.

### You can show your support by:

- MEPs writing to the rapporteurs from the Legal Affairs Committee asking them to maintain a firm commitment to the parliament's position during the dialogue process.
- MPs writing to BIS Minister Jo Swinson to ask her to continue the UK's leadership in ensuring that the final legislation includes the necessary measures to combat corruption as outlined above.

## The resource curse

About 3.5 billion people live in countries rich in oil, gas and minerals. Revenue from these sectors is often one of the greatest sources of wealth generated within developing countries, but such wealth often provides little benefit to the people living in these countries, especially the poor. Many states with abundant resource wealth perform less well than their counterparts that are resource poor.

A lack of transparency in the payment and use of these revenues is a key barrier to removing this 'resource curse'. In 2010 for example, exports of oil and minerals from Africa were estimated at \$333 billion, nearly 7 times the value of international aid (\$48 billion) to the continent. In Sierra Leone, 63% of the population lives in extreme poverty and 60% of the country's annual budget comes from foreign aid. This is despite it being home to large deposits of diamonds, gold and other precious minerals.

*"We do not know what the government is receiving. We want to know how much is collected, so that we can monitor how it is spent and how much companies are actually fulfilling their obligations." Aminata Kelly-Amin, Network Movement for Justice and Development, Sierra Leone*

Tearfund has been working with our partners and the Publish What You Pay coalition for European legislation that requires EU-listed oil, gas and mining companies to disclose information about payments they make to foreign governments. This will not only benefit communities, but will show the contribution that extractive industry companies are bringing in the communities where they operate.

## What can be done?

- We are at a unique time when the European Union has the opportunity to pass far-reaching legislation, matching recent US laws and paving the way for an international agreement.
- On August 22<sup>nd</sup>, the US SEC adopted rules through Section 1504 of the US Dodd-Frank Wall Street Reform and Consumer Protection Act setting out clear requirements for project-level reporting for all payments above \$100,000 without any exemptions.
- On September 18<sup>th</sup> the European Parliament's Legal Affairs Committee adopted similar proposals in the Accounting and Transparency Directives.
- On October 26<sup>th</sup> a COREPER meeting of the European Council reconsidered the previous Council position on the Directives and started to bring it in line with these other developments.
- As we enter the triologue process in November between the Council, Commission and Parliament, the ball is now firmly in the European Council's court to make sure this legislation is effective.
- The next few months are crucial as the final agreement is projected to be January 2013.

## Expectation from civil society groups in Africa

There is significant expectation about this legislation from civil society groups in developing countries, as Bishop Stephen Munga, member of the EITI Multi-stakeholder Group in Tanzania recently wrote:

*"The information that is produced by extractive companies reporting their payments at project level will enable the communities I work with to know what money is being paid for the resources extracted from their land, and to be able to hold the district governments accountable for their use.*

*In the rural areas, Tanzanian citizens already have experience of monitoring government expenditure on issues such as health and education and we have seen a reduction in funds that have been diverted, and even some stolen funds that have been recovered. This means that more resources are available for vital development projects.*

*I call on European leaders to pass legislation that will support our efforts to empower citizens and not to miss this golden opportunity to work with us to combat corruption."<sup>1</sup>*

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<sup>1</sup> <http://www.trust.org/trustlaw/blogs/anti-corruption-views/european-leaders-must-take-this-golden-opportunity-to-tackle-corruption>

## UK leadership needed

Through Norman Lamb the UK Government has so far used its leadership within the Council to strengthen the proposals, but they still fall short in some key areas. If these shortfalls are not addressed the legislation risks:

- proving information that will not be useful for communities to hold their governments to account
- imposing additional burdens on business by requiring different reporting guidelines between EU and US-listed companies
- letting corruption in by the back door by allowing exemptions.

Minister Jo Swinson, who has recently taken over responsibility at BIS, has shown her support and needs maintain firm leadership and ensure that the final legislation is effective and fit for purpose.

## Specific provisions for the EU proposals to be successful

### a. **Payments attributable to specific projects**

In order for the link to be maintained between a company's operations and the local community, payments need to be attributable to a specific project. This would allow citizens to see what benefits the company is bringing to their local area, and whether there is any discrepancy between company payments made in relation to particular projects, and government accounts.

'Project' should be based on a single contract, licence, lease, concession or other legal agreement which gives rise to a company's tax and revenue liabilities at each level of government. This link between project and contract is clearly stated in the SEC rules (p85-86) and in the Legal Affairs Committee's amendments. It has also been supported by Lord John Browne who recently wrote in the Financial Times saying that, "*crucially, disclosure will only improve accountability if it is done on a project-by-project basis so that observers can track precisely what happens to payments*".

The Current Council proposals do not include project-level reporting and the Commission proposals do not link projects to contracts, which would pave the way for confusion and reporting that isn't comparable across companies and countries.

### b. **Level of disclosure that is meaningful to local communities**

Payment figures published need to be meaningful and useful to local communities. The SEC rules have a payment threshold of \$100,000 above which all payments must be reported and the Legal Affairs Committee recommended €80,000. Proposals for higher levels of materiality such as €500,000 as is currently in the EU Council position, or \$1 million as some companies argue, would mean that many important payments are not recorded. For example, if only payments greater than \$1 million had been reported in Sierra Leone's recent EITI report, over \$4 million or 40% of revenues would have disappeared completely from the report.

### c. **No exemptions**

There have been some calls for exemptions where this type of legislation is "clearly prohibited by the criminal legislation of that country". No evidence has been provided where

such legislation already exists and we would be deeply worried by any clause that could provide a loophole and incentivise unscrupulous countries to enact domestic secrecy laws. The SEC rules do not provide any reporting exemptions (pp. 28-35) and the European Parliament's Legal Affairs Committee made a strong point of rejecting exemptions, which they say would have created loopholes in the law.

## About Tearfund

We are a Christian relief and development agency building a global network of local churches to bring justice, transform lives, and eradicate poverty. Our ten-year vision is to see 50 million people released from material and spiritual poverty through a worldwide network of 100,000 churches.

We work on: Governance & Corruption, Environment & Climate Change, Water & Sanitation, Livelihoods & Food Security, Gender, Healthcare, and HIV & AIDS

Giving aid regardless of race, religion or nationality, we work directly in response to disasters, and in partnership with organisations in: Afghanistan, Angola, Bangladesh, Bolivia, Brazil, Burkina Faso, Burundi, Cambodia, Chad, Colombia, Côte d'Ivoire, DR Congo, Egypt, Ethiopia, Guatemala, Haiti, Honduras, India, Kenya, Kyrgyzstan, Liberia, Malawi, Mali, Mekong, Mozambique, Myanmar, Nepal, Nicaragua, Niger, Nigeria, Pakistan, Peru, Rwanda, Sierra Leone, South Sudan, Sudan, Tajikistan, Tanzania, Uganda, Uzbekistan, Zambia, Zimbabwe.