

Appendix 1

Civil Society Monitoring Toolkit

Civil society monitoring of mining projects can help improve project outcomes and increase government and company accountability. This appendix provides more concrete ideas on how advocates can analyze the legal obligations applicable to a particular mining project and where they can get information on whether the various obligations have been fulfilled.

The appendix is organized according to the following five categories of company obligations: financial, social, environmental, occupational health and safety, and operational. Appendix 2 provides additional background on each category.

The availability of information varies depending on many factors, including the size of the project, the size of the company involved, whether the company is publicly listed, the country in which the mining project is located, and the country in which the company is based.

Throughout this section, we refer to specific examples from Liberia's China Union mineral development agreement. This analysis was made possible by Liberia's EITI commitment, which made the contract public. The country's EITI reconciliation reports provide useful monitoring information on the tax, royalty and bonus payments of the mining companies operating there. Please note, however, that since the operation phase of this mining project has not yet begun, many of the tax payments are zero since there is not yet any profit to be taxed. This appendix builds on prior contract analysis work by Green Advocates Liberia and by Susan Maples through Columbia Law School's Human Rights Institute.

Financial Obligations

A company's financial obligations usually include requirements to pay taxes and royalties to the government. In some cases, companies may also commit to paying an upfront bonus. These financial obligations represent an important source of government revenue in resource-rich countries.

Information on a company's payments can be obtained from the following sources:

- Financial disclosures via company websites or stock exchange disclosures
- Reports and figures published by government ministries, including the finance and mining ministries
- EITI reports and country EITI websites

In seeking to understand whether a company has fulfilled its financial obligations, civil society should ask:

- What taxes and royalties must the company pay?
- How much did the company pay in taxes, and how does their total tax payment break out into the different types of taxes (corporate income tax, withholding tax, VAT, etc.)?
- How much did the company pay in royalties?
- What were the company's mineral production figures?

- What were the company's profits?
- Do the company's tax and royalty payments match their legal obligations, given the information collected on their profit and production figures?
- Did the company commit to paying a bonus? If so, has the bonus been paid?

TABLE A1 | CHINA UNION IN LIBERIA—MONITORING SELECTED FINANCIAL PROVISIONS

	Description of Obligation	Monitoring Information
Bonus	<p>China Union committed to paying a bonus of \$40 million. The bonus was to be paid in cash in two installments: one directly following the contract's effective date and the second 120 days later.</p> <p>Source: MDA, Section 16.6.</p>	<p>EITI: Liberia's EITI reports include tables summarizing government revenues by category, including a category for "Signature fees/signing bonus." The figures are not broken down by company or project. Liberia's second EITI report, which covers the period from July 1, 2008, through June 30, 2009, reports no payments for signature fees and bonuses.</p> <p>Ministry of Finance: Liberia's Ministry of Finance produces reports, which it posts to its website.²⁰¹ One such report noted that China Union's bonus payment had not been received as expected: "During quarter one, a total of US\$23.7 million was projected to have come from . . . China Union [including] a Signature Bonus of US\$20 million . . . in keeping with the concession agreement . . . This payment did not materialize; so there is a growing concern about this revenue stream and the commencement of operations of the company."²⁰²</p> <p>Shortly afterward, another report said China Union had paid \$20 million; the shortfall from the expected \$40 million was "due to the negative impact of the financial crisis."²⁰³</p>
Royalty	<p>China Union's royalty rates are variable, increasing as the value of iron ore increases.</p> <p><i>Rates:</i> The royalty rate ranges from 3.25 percent when the price of iron is less than \$100 per metric ton to 4.5 percent when the price of iron is more than \$150 per metric ton.</p> <p><i>Base:</i> The base for the royalty calculations is the index price, which is defined in the contract.</p> <p>Source: MDA, Section 15.1.</p>	<p>EITI: Liberia's second EITI report lists amounts China Union paid for taxes and fees, other payments and withholdings. It includes a category for royalties. It reports that China Union paid no royalties between July 1, 2008, and June 30, 2009.²⁰⁴</p> <p>In order to monitor whether royalties were paid correctly, we must also know the company's production figures. Royalties are paid based on minerals produced, so a company that has not produced any minerals in a particular time period will not owe royalties. Production figures may be available through a company's financial disclosures if they are listed on a stock exchange, through the company's website, or through the government's mining ministry. In this case, production figures were unavailable. However, because the mine has not yet entered its operational phase, there should be no production.</p>

Table A1, continued on next page

201 Liberia Ministry of Finance, "Fiscal Reports," <http://www.mof.gov.lr/content.php?sub=70&related=22&res=70&third=70>.

202 Liberia Ministry of Finance, *Quarter One Fiscal Outturn: Fiscal Year 2009/10*, 2009, 6-7, <http://www.mof.gov.lr/doc/PUBLISHED%20FISCAL%20OUTTURNS%20FOR%20QUARTER%20ONE-FY200910-FINAL.pdf>.

203 Liberia Ministry of Finance, *Annual Fiscal Outturn: FY2009/10*, 2010, 8, <http://www.mof.gov.lr/doc/FISCAL%20OUTTURN.pdf>.

204 Liberian Extractive Industries Transparency Initiative Secretariat, *Final Report of the Administrators of the Second LEITI Reconciliation*, 2010, Annex 2, <http://www.leiti.org.lr/doc/LEITI2ndReconciliationFinalReport.pdf>.

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	Description of Obligation	Monitoring Information
Profit Tax	<p>China Union owes profit taxes at a rate of 25 percent.</p> <p>Source: MDA, Section 14.3.</p>	<p>EITI: According to Liberia's second EITI report, China Union paid no profit taxes between July 1, 2008, and June 30, 2009.²⁰⁵</p> <p>We must determine what a company's profits were in order to determine how much they should have paid in profit taxes. However, since China Union is a private company and does not disclose financial information through a company website, profit data is unavailable. Because the mine has not yet entered its operational phase, there should be no profits.</p>
Surface Rent	<p>China Union must pay \$100,000 a year in surface rents for the first 10 years of its project. After that period, it must pay \$250,000 a year for the next 15 years.</p> <p>Source: MDA, Section 15.4.</p>	<p>EITI: Liberia's second EITI report includes a category for surface rental fees. China Union paid \$98,842 in surface rents between July 1, 2008, and June 30, 2009.²⁰⁶</p>

Social Obligations

Companies may have a variety of social obligations arising from the country's laws and regulations and/or the company's contract with the government. These obligations can be divided into three categories:

- Local content provisions
- Community consultation requirements
- Infrastructure requirements

Local Content Provisions

Companies often have obligations to hire local workers or contracting companies. These provisions are intended to ensure that more of a country's citizens see an economic benefit from mining.

As an example, China Union's contract in Liberia provided the following local content obligations (MDA, Section 11):

- China Union may not hire non-Liberian workers for unskilled positions.
- China Union must develop a progressive employment schedule that builds up to Liberians holding 70 percent of management positions and 70 percent of the 10 most senior positions within 10 years of the contract's effective date.

When a company has obligations related to local content, activists can try the following sources of information to determine whether those obligations have been fulfilled:

- Labor unions: Where labor unions are active, they are likely to have information and statistics related to mine employment.
- Workers and the local community: Members of a community close to a mine site may work in the mine or may have sought employment there. As a result, they may have information about who works at the mine.

²⁰⁵ Liberian Extractive Industries Transparency Initiative Secretariat, Annex 2.

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- Company reporting: Some mining companies produce corporate social responsibility (CSR) reports, which often include information on labor. If they do not include this information, civil society organizations could determine whether the company has a CSR representative and could contact that person to request information.
- Ministry of labor: The country's labor ministry may collect statistics on mine employment.

In seeking to understand whether the company has fulfilled its local content obligations, civil society should ask:

- What local content commitments did the company make?
- What percentage of the mine's employees are from abroad?
- What percentage of the mine's management positions are filled from abroad?
- What contracting companies is the mine using? Where are those contracting companies based?
- From what companies is the mine sourcing its goods? Where are those companies based?
- Has the company faced any challenges in fulfilling its local content requirements? If so, how is the company working to address those challenges for the future?

Community Consultation Requirements

Companies may be required to consult with local communities about their mining operations. These obligations can arise from treaties, laws, contracts or conditions imposed by financial institutions. Coming out of these consultations, companies may also need to submit plans or reports on the social impacts of their projects.

For example, China Union's contract in Liberia required the company to conduct a social impact assessment and to submit a social action plan. It was required to hold public hearings on both of these documents (MDA, Section 5.4).

To determine whether a company has fulfilled its obligations with respect to community consultation, civil society can:

- Speak with local community members.
- Request copies of any documentation the company was required to submit to the government and/or any documentation the company was required to make publicly available. The company or the mining ministry may be able to provide these documents.

Civil society should ask the following questions:

- Was the company required to conduct consultations with affected communities? And, if so:
 - Did the required consultations take place?
 - Who participated in the consultations? Did the participants adequately represent the affected communities?
 - Did the company make efforts to publicize the consultations?
- Did the company make any specific commitments to the community coming out of these consultations? If so, have those commitments been fulfilled?

Infrastructure Requirements

Companies may be required to build and/or operate infrastructure, such as hospitals, clinics, schools or roads, in the area around their mine operations. They may also be asked to contribute funds specifically to social infrastructure projects.

For example, China Union's contract in Liberia included several social infrastructure obligations. The company was required to:

- Provide \$200,000 annually in educational scholarships. It was also required to provide \$50,000 annually for the government's general revenue account to be earmarked for a mining and geology institute at the University of Liberia (MDA, Section 11.3).

- Contribute \$3.5 million annually to a community development fund, managed by the government (MDA, Section 8.2).
- Renovate and extend portions of a railroad and port facility, and renovate roads in the area of the mine and make them available to third parties (MDA, Sections 6.6 to 6.7).
- Provide clean housing, water and health care to all employees (MDA, Sections 9.2 to 9.5, and 10).

The following sources may provide information on a company's infrastructure obligations and whether they have been fulfilled:

- Government ministries, including the ministries of finance, mining, central planning, labor, health and education: Government reports may detail the status of infrastructure projects. Citizens can also contact ministries to request information about the status of particular projects.
- Company CSR reports: Company reports may include information on social investments, including infrastructure construction projects, contributions to social and community development funds, and operation of social infrastructure.
- Local community members: Community members living near a mining site can observe whether infrastructure projects are progressing and whether the company is providing social services.
- Independent observation of the area: Citizens can visit mining sites to determine the status of construction projects and to observe whether the company is providing social services.

Civil society should ask the following questions:

- Does the company have any obligations to build infrastructure or to provide social services?
- Has the infrastructure been constructed?
- What is the quality of the infrastructure or the services provided?
- Under what conditions will the infrastructure be available for general use, as opposed to being available only for the mining project?
- Which government ministries provided oversight for the construction project or the provision of services? How much oversight did they provide?
- Does the company have any obligations to give money to the government for social infrastructure projects?
- Has the company paid the required money?
- How has the government used the money the company gave?

Environmental Obligations

Company environmental obligations will most often include developing an EIA and/or an EMP. Once these documents are developed, they will lay out the company's environmental plans for the project in more detail. Therefore, civil society will need to determine what project-specific documents the company was required to submit, get access to them, and analyze them to determine the company's obligations with respect to a specific project.

China Union's contract in Liberia included the following environmental obligations:

- China Union had to submit an EIA and an EMP (MDA, Section 5.3).
 - Both must be updated every four years and submitted to the Environmental Protection Agency (MDA, Section 13.4).
 - More detail on the EIA requirement is available in sections 37 through 39 of Liberia's Environmental Protection Act.²⁰⁷

²⁰⁷ Liberia, An Act Creating the Environmental Protection Agency of the Republic of Liberia, 2002, www.moa.gov.lr/doc/epa_act.pdf.

- China Union must provide the government with an annual environmental audit and assessment to determine whether the mine's operations are being conducted in conformity with environmental laws, the contract and the EMP. An independent environmental consultant must conduct the audit (MDA, Section 13.2).

Civil society can go to the following sources for information:

- EIA and EMP: Request copies of these documents from the company and from the government's mining and environmental ministries.
- Civil society and community observation: Civil society and community members can seek to gain access to the mine site to check for potential environmental issues and/or can measure water and soil samples from the surrounding area to check for metals contamination and acidity. Community members can identify and report any unusual changes in the environment.
- Government monitoring: Civil society can ask for information about what monitoring efforts the government has conducted on the mine's environmental performance and, if so, whether any reports are available from the efforts.
- Company reporting: If the company is required to submit environmental audits to the government, as in the China Union example, civil society can request copies of those audits from the company and from the government's environmental and mining ministries. Company CSR reports may contain information on environmental management.
- Third-party monitoring: If external financing institutions—like the World Bank—are involved in a project, they may have conducted some independent environmental monitoring. Civil society can check these institutions' websites for environmental assessments.

In monitoring a company's environmental obligations, civil society should ask:

- Was the company required to submit an EIA and/or an EMP?
- Did the company submit the required documents?
- What commitments did the company make in the EIA and/or EMP?
- Is the company complying with those commitments?
- Do the water and soil around the mine site indicate high levels of pollution from the mine?
- What impacts has the mining project had on the ecosystem?

Occupational Health and Safety Obligations

Occupational health and safety is a serious concern for mining companies. Workers' injuries and illnesses have plagued the industry and its workforce for years. Governments usually require companies to provide protective gear to their workers, to ensure a safe working environment, and to report accident statistics. Historically traditional civil society has not been very active in understanding and monitoring health and safety concerns, perhaps because unions and other worker organizations have been quite active in this area.

China Union's contract in Liberia included the following health and safety requirements:

- China Union must install and use health and safety devices and worker gear and equipment that comply with applicable law and international standards (MDA, Section 9.1).
- China Union must notify the government promptly of any death or serious injury (defined as one resulting in missing more than three days of work) of an employee or contractor that happens as a result of operations (MDA, Section 9.1).

Civil society can go to the following sources for information:

- Local unions and workers: Citizens can contact workers and their union representatives for information on health and safety risks, measures the company has taken to address them, and statistics on accidents.

- Company CSR reports: These often include information on accident statistics and safety measures.
- Government agencies: Government agencies, including the mining and labor ministries, may provide their own reporting on mine accident statistics. Citizens may also contact them for information on the frequency of government inspections.

In monitoring a company's health and safety obligations, civil society should ask:

- Have there been any accidents or injuries at the mining site? What caused the accidents or injuries? Have the causes of accidents been addressed?
- What are the biggest risks to workers' health and safety at the mine site? How are those risks being addressed?
- Have workers been provided with appropriate protective gear?
- How frequently has the government inspected the mine for health and safety concerns?
- Has the company been complying with requirements to report on accidents at the mine site?

Operational and Production Obligations

Governments often impose operational and production requirements to help ensure that mining exploration and production are taking place at the appropriate pace, using appropriate techniques and within an appropriate budget. Company obligations may include submitting work plans and budgets detailing how the exploration or construction phase of a mining project will proceed, meeting minimum expenditure requirements, and relinquishing a portion of their exploration concession each year or before they can request a renewal.

China Union's contract in Liberia included the following operational and production requirements:

- China Union must submit quarterly statistical reports on the amount of iron ore mined, processed and shipped (MDA, Section 6.8).
- In case China Union cannot improve production, the government may convene a third-party study to determine a fair average recovery rate. If China Union fails to achieve this rate, the government may increase its royalty take (MDA, Sections 6.4c and 6.8).
- China Union must submit a feasibility study, which must be completed by an independent expert (MDA, Section 5.2).

Civil society can go to the following sources for information:

- Government disclosures on mining production figures
- Company financial reports
- Company technical reports disclosed through stock exchanges

In monitoring a company's operational and production obligations, civil society should ask:

- Was the company required to submit a work plan or budget? Were the required documents submitted?
- During the exploration phase, has the company conducted the exploration activities it was required to conduct? How much drilling did the company conduct? What were the results of those exploration activities?
- During the exploitation phase, has the company conducted its operations in accordance with its work plan and budget?
- In times of economic downturn, has the company ceased operations? Is the company permitted to cease operations in such conditions?

Appendix 1, along with Appendices 2, 3 and the bibliography, can be found at www.revenuewatch.org/enforcingtherules.



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