EXECUTIVE SUMMARY

In recent history, mining has failed to deliver many of the benefits citizens expect, particularly in poorer nations rich in natural resources and high in hopes. Many of the reasons remain unclear. In some cases, the problem is linked to bad deals with mining companies. But no matter the quality of the deal, other problems arise from failure to effectively monitor and enforce the existing obligations. This report examines the monitoring of mining obligations, characterizes the main gaps, identifies policy options and good practices, and proposes practical ways for both government and civil society to improve monitoring and enforcement.

Monitoring is the process through which government and civil society track compliance. It is the only means of determining if the deals struck with companies are the same deals implemented on the ground. But while mining has boomed over the past decade, monitoring and enforcement have not kept pace.[1] This monitoring gap is especially acute in developing countries. Emerging states with weak regulatory systems—many of which are undergoing major transitions from war, repressive rule or single-party states—face a series of dramatic changes. Many have adopted new mining laws, implemented new fiscal regimes and privatized state enterprises while also entering into billion-dollar deals.

Companies and governments are facing—and increasingly responding to—growing pressures to become more transparent and participatory, while civil society organizations are striving to scrutinize deals and respond to threatened harms. Although the surge in mining deals and the pressure for better implementation have yielded important results, including more publicly available information, capacity-building efforts and scrutiny of individual deals, they have also placed tremendous burdens on government, companies and civil society.

It is impossible to measure the full extent of losses from failure to monitor and enforce mining obligations, but the evidence that does exist speaks for itself. In royalties and taxes alone, billions of dollars are regularly lost to tax evasion or fraud. A parliamentary investigation in the Democratic Republic of Congo (DRC) identified $450 million in lost revenue for 2008.[2] An anticorruption official in India reported $400 million was lost in the iron-rich state of Karnataka during 2009-10.[3] This is just a fraction of the $160 billion per year that Christian Aid estimates is lost in tax revenue to developing states each year.[4] And revenues are only one part of the story. Monitoring is also necessary to prevent potential harms to workers, the environment and the social peace fundamental to a sustainable mining industry.

Problems with official government oversight exist in every country with a substantial mining sector, including the United States, Australia, South Africa and Canada. One of the most striking findings of this report—based on a broad study with field research in Canada, Peru, South Africa, Zambia and the DRC—is that some countries are far worse off than others. While no country has

1 Iron ore production has doubled in less than a decade; copper and aluminum are not far behind. Thomas D. Kelly and Grecia R. Matos, "Historical Statistics for Mineral and Material Commodities in the United States," U.S. Geological Survey, World Production, http://minerals.usgs.gov/ds/2005/140/#data.

2 Commission d'Enquête sur le Secteur Minier, *Rapport*, République Démocratique du Congo, Sénat, 2009.

3 "Ministers 'stole millions in Karnataka mining scam,'" BBC News, July 21, 2011, http://www.bbc.co.uk/news/world-south-asia-14229386.

4 Andrew Hogg et al., *Death and Taxes: The True Toll of Tax Dodging*, Christian Aid, 2008, 2, http://www.christianaid.org.uk/images/deathandtaxes.pdf.

mastered the challenges, the situation in many developing countries is far more urgent. Problems in Canada pale in comparison with the DRC or Zambia. Often, the problem is attributed to staffing or capacity, but there is an underlying problem of incentives. In the developed and developing world, political forces have often favored strong promotional mechanisms and weak oversight. Checks and balances may be written into the rules, but unrewarded in practice.

Civil society organizations have their own constraints. For them, the problem is less one of incentives than one of means and, in certain countries, personal risks. In some contexts, their freedom of speech may be curtailed, their capacity low, and their resourcing insecure. They will never replace government and industry, but they play an essential role as watchdogs.

Despite the challenges, good practices are emerging in a number of countries:

- **Clear rules and good administrative architecture** facilitate monitoring by reducing variables and separating promotion from enforcement.
- **Financial and regulatory independence** have been important to the creation of oversight and enforcement mechanisms in a number of countries.
- Many of the most effective approaches involve **partnerships** in which government agencies, industry and civil society work together to address monitoring needs and challenges.
- When monitoring efforts identify gaps in compliance, **government enforcement and civil society advocacy** mechanisms can work to correct these gaps and improve future compliance.

This report calls on governments, civil society and companies to devote increased and continuing attention to monitoring and enforcement programs. By taking advantage of the information generated by increased transparency and the industry's growing engagement in sustainability, they can help states and their populations get the most from their resources while also preventing the worst harms.