Publish What You Pay
United Kingdom

Civil society use of oil, gas and mining companies' mandatory payments-to-governments reports: case study examples[1]

Nigeria: OPL 245[2]

Royal Dutch Shell and Italian oil company Eni are at present reported as due to face a preliminary court hearing in Italy where prosecutors are seeking their trial for alleged international corruption offences over the purchase of the Nigerian offshore oil block OPL 245. Separate proceedings are being brought against four senior Shell employees, and related charges have reportedly been filed against both companies by Nigerian authorities. This arises from an arrangement concluded between Shell, Eni and the Nigerian government in 2011 whereby US$801 million in company payments for OPL 245 passed into bank accounts controlled by former Minister of Petroleum Dan Etete, who had been convicted of money laundering in France in 2007 and has since been charged in Nigeria with money

[1] As cited in PWYP UK, Submission to UK Government Review of the Reports on Payments to Governments Regulations 2014, 17 November 2017, available from mlitvinoff@pwypuk.org

[2] Source: Global Witness: http://bit.ly/2na0xQX and http://bit.ly/2nH8Ma9

laundering. The oil block had been allocated in 1998 for just US$20 million to a company named Malabu secretly owned by Etete and was subsequently sold to Shell and Eni for US$1.1 billion, most of which flowed to Etete's company, rather than to the Nigerian state, depriving the country of an estimated 80% of its 2015 health budget. Revelations indicate that Shell senior executives may have known the money would go to Etete's company. Prosecutors in the UK have previously alleged that US$523 million of Shell and Eni's payment went to alleged "fronts" for former Nigerian President Goodluck Jonathan. Dutch financial police have raided Shell's headquarters in The Hague.[3]

This example of allegedly corrupt deal making, conducted behind closed doors and without knowledge of the public or investors, came to light as a result of the filing of papers in a UK commercial court by a middleman who had acted for Malabu in negotiations with Eni and was suing for fees he claimed to be owed. Had Shell and Eni been required to publish what they paid in 2011 to Nigerian government bodies on a project-by-project basis, as under the UK Regulations and EU Accounting and Transparency Directives, in civil society's view it is unlikely that they would have made such a deal.[4] Nigerian government officials are also far less likely to have agreed to the deal knowing that the companies' payments for OPL 245 would be published under UK and EU law.

Shell's Nigerian payments

In analysing Royal Dutch Shell's report on its FY 2015 Nigerian payments,[5] PWYP UK noted an anomaly in the data with regard to the valuation of some production entitlements paid in kind to the Nigerian government. When calculated from Shell's volume and value data, the average price per barrel of oil equivalent (boe) for in-kind production entitlements payments for one reported project (SPDC East) was at US$20.89/boe far lower than the average price for other reported projects (US$51.59/boe). PWYP UK wrote to Shell about this. The company replied that its valuation of in-kind payments for the project combined oil with gas, and it provided a figure for the oil valuation. But Shell declined to disaggregate the oil from the gas, or to provide respective volumes, or to price its in-kind gas payments for this or any other project. This made it impossible to check whether Shell's in-kind gas payments were appropriately and fairly valued per barrel of oil equivalent.[6] PWYP UK's finding about the in-kind payment was cited in a published online legal article.[7] The same unexplained outlier in

[3] For Shell's view on the case, see its presentation to socially responsible investors, London, April 2017, http://www.shell.com/investors/news-and-media-releases/investor-presentations/2017-investor-presentations/socially-responsible-investors-briefing-london-24-april-2017.html, especially PDF slides 7-13. Shell states that based on information and evidence available to it, it does not believe there is a basis to prosecute Shell or any current or former employees.

[4] Eni gives its view on the case at https://www.eni.com/en_IT/media/focus-on/nigeria.page. Eni says it is "ungrounded" to assert that, had it been required to publish what it paid in 2001 to the Nigerian government, it is unlikely that it would have made the deal. Eni states that "independent analysis carried out by an US law firms [*sic*] did not reveal evidence of unlawful conduct in relation to the transaction for the acquisition of license OPL 245".

[5] Shell: https://extractives.companieshouse.gov.uk/company/04366849; http://www.shell.com/sustainability/transparency/revenues-for-governments.html

[6] Shell says it complies with the UK's Reports on Payments to Governments Regulations 2014 (amended 2015), cites confidentiality obligations, competitive harm and costs as reasons for not providing more detailed breakdowns, and provides more information at www.shell.com/payments

[7] HK Law, SEC rules for resource extraction issuers could lead to increased FCPA scrutiny, disclosures, September 2016, https://www.hklaw.com/publications/sec-rules-for-resource-extraction-issuers-could-lead-to-increased-fcpa-scrutiny-disclosures-09-08-2016/#_edn13

price per boe appears in Shell's FY 2016 payment report for the same project.

Reports by Total, Glencore and one other company[8]

Global Witness's engagement with Total, Glencore and one other company has helped demonstrate to the companies that their payments are under scrutiny and in the case of Glencore has encouraged better reporting.

<u>Total.</u> In 2015 French oil company Total struck a deal with the Congo Brazzaville government to renew its rights to three lucrative oil licences in the country. Civil society monitors would have expected Total to report a substantial signature bonus for the licence renewal; however, no signature bonus was disclosed in Total's 2015 payment report (published under France's implementation of the Accounting Directive and announced on the NSM).[9] PWYP member Global Witness wrote to Total to ask about the apparently missing payment. The company explained that while the deal had been signed in 2015, by the end of that year it had still not been ratified by the Congo Brazzaville parliament, so no bonus payment had been made in FY 2015. The company subsequently informed Global Witness that there was no further approval of the relevant licences and that it relinquished the licences at the end of 2016.

<u>Glencore.</u> Reporting under the UK Regulations, Glencore disclosed paying zero royalties from a large oil project in Chad in 2015.[10] This appeared questionable because the project is producing substantial volumes of oil, and the contract stipulates a royalty rate of 14.75% to be paid on the value of production. Global Witness wrote to Glencore in November 2016 to ask for an explanation. The company replied in 2017 explaining that the royalties were paid and disclosed but reported as production entitlements, also noting that in response to requests for further information it has opted to disclose royalties separately from its FY 2016 report onwards.

<u>A mining company</u>. A UK-registered and LSE Main Market-traded mining company reported that it had paid in 2015 US$2.094 million in royalties from a mine in an African country.[11] Global Witness calculated that the company should have paid closer to US$3.401 million in royalties and wrote to the company about this. The company explained that it had recorded the balance of US$1.307 million as a liability to be paid in 2016, and therefore to be reported in 2017. The company subsequently confirmed in 2017, consistent with its payments report for FY 2016, that this payment had now been made.

Weatherly's Namibian payments

In analysing UK-registered Weatherly's original report under the Regulations on its FY 2015 payments to the Namibian government, PWYP member NRGI noted that the company had disclosed royalty payments for one project but not for two others that had been in production for part of the reporting period. When NRGI asked the company to confirm that

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[8] The third company in this example has been anonymised at the company's request.

[9] Total (primary public listing in France): http://tools.morningstar.co.uk/tsweu6nqxu/globaldocuments/document/rnsNewsItem.aspx?DocumentId=370395832254923; http://www.total.com/sites/default/files/atoms/files/registration_document_2015.pdf

[10] Glencore: https://extractives.companieshouse.gov.uk/company/ZE8BF193; http://www.glencore.com/assets/sustainability/doc/sd_reports/GLEN-Payments-to-Government-2015.pdf

[11] The company has been anonymised at the company's request.

no in-scope payments had been made for the latter two projects, Weatherly stated that because these projects had ceased operations during the year it had overlooked reporting more than US$400,000 in royalty payments it had made, and it had therefore filed an amended report including this information.[12] There is no suggestion that the company had intended other than to file a complete and accurate report.

Petrofac's Tunisian payments

In analysing Petrofac's original report on its 2015 Tunisian payments, PWYP UK noted insufficient clarity in the company's disclosures regarding the valuation of in-kind royalty payments and the identity of recipient government bodies. The original report gave a composite figure for in-kind and cash royalty payments without stating how much of the total was in kind and how much in cash (although noting that the in-kind payments were valued "with reference to market rates"). This did not allow readers to ascertain the value calculated for 5,000 barrels paid in kind or to compare this with market rates. The company also inadvertently, as it later informed us, omitted to identify the various government entities that received each payment, preventing Tunisian citizens from fully holding the different government entities to account for the receipts. PWYP UK notified Petrofac about these deficiencies, and the company subsequently published a corrected report containing the previously missing information (although not correcting anomalous in-kind payment data for Malaysia).[13] There is no suggestion, again, that the company had intended other than to file a complete and accurate report, and these errors were not repeated in its report on FY 2016.

Questions on the Nigerian government's receipts

ONE has estimated that oil and gas companies operating in Nigeria lost unrealised revenues of at least US$14.8 billion between 2003 and 2016 as a result of conflict and unrest leading to shut-in production. Some estimates place the annual value of oil stolen from Nigeria at between US$3 billion and US$8 billion. In 2012 a former Nigerian government minister estimated that Nigeria had lost more than US$400 billion to oil thieves since the country gained independence.[14] Poor governance has hindered Nigeria's economic development, kept a majority of the population poor while an unaccountable ruling elite became very wealthy, and contributed to lawlessness and criminality. Unrest and militant movements regularly disrupt Nigerian oil and gas production and sabotage pipelines, forcing companies to suspend production and spend large sums on heightened security.[15] As Shell stated in its 2015 Annual Report: "Security issues and crude oil theft in the Niger Delta continued to be significant challenges."[16]

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[12] Weatherly: https://extractives.companieshouse.gov.uk/company/ZEEDF9F9

[13] Petrofac: http://tools.morningstar.co.uk/tsweu6nqxu/globaldocuments/document/rnsNewsItem.aspx?DocumentId=373204741491616; http://otp.investis.com/clients/uk/petrofac1/rns/regulatory-story.aspx?cid=227&newsid=801657

[14] ONE, Letter to US Securities and Exchange Commission Chair Mary Jo White, March 2016, https://www.sec.gov/comments/s7-25-15/s72515-64.pdf, pages 4, 12-17.

[15] Financial Times, Militants "seriously affecting" Nigerian oil production, May 2016, https://www.ft.com/content/4f788405-5efa-3e1c-bb67-dc2bf0e592cc

[16] Shell, Annual Report 2015, http://reports.shell.com/annual-report/2015/servicepages/downloads/files/download2.php?file=entire_shell_ar15.pdf, page 29.

To help bring greater public scrutiny to Shell's payments to the Nigerian government, PWYP UK and PWYP Nigeria summarised in an infographic the company's 2015 payments to Nigerian government entities as disclosed under the Regulations, totalling US$4.95 billion.[17] PWYP Nigeria sent this infographic with covering letters to Nigeria's Department of Petroleum Resources, Federal Inland Revenue Service, Central Bank, Niger Delta Development Commission and National Petroleum Corporation, asking officials to confirm receipt of the disclosed payments. PWYP Nigeria also included a question to government entities about the anomaly in Shell's 2015 valuation of its in-kind production entitlement payments. None of the Nigerian government entities would provide the requested confirmation, despite PWYP Nigeria's follow-up Freedom of Information requests.[18]

Although the Nigerian government refused to disclose the information that civil society requested arising from Shell's 2015 payments report, the government is now more aware that its oil and gas receipts are under civil society scrutiny. By strengthening its watchdog role, civil society can bring about greater government accountability and, longer term, reduce the causes of oil-related conflict in Nigeria.

Mapping payments in Indonesia[19]
PWYP Indonesia, which for some time has used EITI report data to track revenues, map concession areas and monitor subnational payments, analysed 2015 payments to Indonesian government entities reported under the Regulations and EU Directives by UK-registered and/or LSE Main Market-traded Shell, BP, BHP Billiton,[20] Premier Oil, Total Oil and Jardine Matheson, plus disclosures under Norwegian law by Statoil. These seven companies' payments in Indonesia in 2015 totalled more than US$2.38 billion. PWYP Indonesia created an interactive online map of the companies as a public resource for citizens, including operational sites and data disaggregated by payment type, and included the data in their Android "Open Mining" mobile application for wider accessibility. They plan to update these information resources annually.

Payment discrepancies in Uganda
With corruption and mismanagement undermining investment in Uganda's mining sector and threatening people and the environment,[21] concerns have extended to the country's newly developing oil sector, potentially one of the largest in sub-Saharan Africa. Ugandan civil society, including members of PWYP Uganda, have examined 2015 payments disclosed under the Regulations by UK-registered Tullow and (under France's implementation of the Accounting Directive) LSE Main Market-traded Total and compared these with information in Bank of Uganda annual reports for fiscal years 2015 and 2016.[22] Civil society has used this

[17] PWYP infographic, http://bit.ly/2qe9AED
[18] PWYP Nigeria newsletter, March 2017, http://publishwhatyoupay.com.ng/2017/03/31/none-compliance-to-freedom-of-information-impedes-transparency-in-extractive-sector/
[19] PWYP Indonesia: http://tabsoft.co/2ngXUi3; https://play.google.com/store/apps/details?id=com.zan.android.pwyp&hl=en; http://www.publishwhatyoupay.org/pwyp-resources/why-mandatory-disclosures-matter-for-indonesia
[20] BHP Billiton data is from the company's voluntary for FY 2014/15. BHP's first report under the Regulations, for FY 2015/16, was published in September 2016, after PWP Indonesia had completed its initial project.
[21] Global Witness, Uganda: undermined, June 2017, http://bit.ly/2qTtZ36
[22] PWYP Uganda, Digging deep into oil, gas, and mining data, PWYP US Extract-A-Fact blog, February 2017, http://www.extractafact.org/blog/project-level-disclosures-open-up-ugandas-opaque-oil-sector; Tullow:

information in dialogue with government officials to query discrepancies and demand financial accountability. A review of Tullow and Total's 2015 disclosures revealed US$14 million not included in the government reports. Unless these payments were part of a prior transfer into the country's general budget before operationalization of the petroleum fund, the US$14 million could be deemed to be missing. Civil society has asked officials to explain the discrepancy. The need to do this was reinforced in January 2017 when it was revealed that Ugandan President Museveni had approved payment of US$1.65 million to government officials to "reward" them for a successful lawsuit against Heritage Oil.[23]

Publishing and tweeting oil and gas payments in Nigeria

BudgIT is a Nigerian civil society organisation that uses technology to promote citizen engagement and to raise standard of transparency and accountability in government. BudgIT's Fix Our Oil campaign publishes infographics based on UK and other EU countries' mandatory extractive company disclosures that help citizens gain a clearer view of their government's oil and gas revenues. BudgIT uses social media to make its infographics available to wider audiences, including tagging government ministers with its Twitter posts.[24]

Exposing a poor deal in Niger[25]

Oxfam France in partnership with PWYP Niger has published an assessment of the disclosures of French uranium company Areva under the French regulations. The investigation concludes that recent contract renegotiations between the company and the Nigerien government have failed to increase government revenues, despite previous announcements that they would. Analysis of the data published by Areva reveals that the new contracts include a renegotiated uranium price that is below the former price, explaining the decrease in royalty revenues. Civil society's analysis indicates that uranium exported by Areva's operated joint venture subsidiary Somaïr from Niger to France's nuclear power industry may be undervalued by up to €11,500 per tonne compared with other Nigerien uranium exports. Oxfam France and PWYP Niger believe this is largely why Areva did not pay any profit tax in Niger in 2015. Areva has refuted this conclusion, stating that the agreed price "reflects uranium market conditions", but has not provided a consistent explanation for the undervaluation of the uranium exports. Local civil society including PWYP Niger has used this information to raise media and government awareness about the outcome of the contract renegotiations.

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https://extractives.companieshouse.gov.uk/company/03919249; Total: http://www.total.com/sites/default/files/atoms/files/registration_document_2015.pdf

[23] Oil News Kenya, Uganda awarded officials, lawyers $1.65m after winning Heritage Oil tax dispute, January 2015, http://www.oilnewskenya.com/uganda-awarded-officials-lawyers-1-65m-after-winning-heritage-oil-tax-dispute/

[24] BudgIT: http://fixouroil.com/wp-content/uploads/2017/10/shell-payment-latest-8_16pm.pdf; http://fixouroil.com/wp-content/uploads/2017/04/Oil-Gas-Payments.pdf; https://twitter.com/search?src=typd&q=BudgIT

[25] PWYP France, Oxfam France, ONE and Sherpa, Beyond transparency: investigating the new extractive industry disclosures, September 2017, https://www.oxfamfrance.org/sites/default/files/file_attachments/beyondtransparency.pdf; see also Q. Parrinello (Oxfam France/PWYP France), Three years after "win-win" negotiations, Niger still losing out to Areva, June 2017, http://www.publishwhatyoupay.org/three-years-after-win-win-negotiations-niger-still-losing-out-to-areva/, and Why is Niger still losing out to Areva?, September 2017, http://bit.ly/neareva

Dialogue in Tunisia
Extractive company reporting under the Regulations has helped inform and empower Tunisian civil society in addressing corruption though its dialogue with the government. PWYP UK and the PWYP-affiliated Tunisian Coalition for Transparency in Energy and Mines analysed FY 2015 payments to Tunisian government entities reported by BG Group, the country's largest gas producer (acquired by Shell in 2016)[26] and Petrofac.[27] Infographic summaries of payments reported by each company, totalling together more than US$114 million, were produced, and questions were formulated for the Tunisian government relating to revenue receipts, subnational revenue allocations and company social responsibility payments to local authorities. The Tunisian coalition intended when last heard from to use the infographics to inform its dialogue with the government.

Empowering communities in Zimbabwe[28]
PWYP Zimbabwe used payment data disclosed by Anglo American[29] for its Unki platinum mine to empower citizens. Workshops were held with 20 representatives of the Marange and Shurugwi communities to develop their skills in assessing local mining tax revenue alongside local government budget and financial statements and to support their calls for better funding for local economic and social development from the proceeds of mineral extraction. PWYP Zimbabwe has also begun sharing company payment and government revenue data with community organisations in diamond-producing but impoverished eastern Zimbabwe. This has helped make data a tool that communities can use in organising their grassroots advocacy and has enhanced PWYP Zimbabwe's participation in national budget consultations and dialogue with government officials. PWYP Zimbabwe reports that community leaders are keen to further improve their data literacy and aims to support district administrators, local councillors and traditional chiefs in promoting development through sharing knowledge about mineral revenues.

Seeking accountability in Iraq
PWYP UK, the PWYP International Secretariat and the PWYP-affiliated Iraqi Transparency Alliance for Extractive Industries developed an Arabic-language summary of 2015 payments to Iraqi government entities disclosed by Shell and BP under the Regulations, along with contextual information. The Iraqi Alliance planned to use the data to seek greater accountability from their government and the companies, including by cross-checking the data with the country's EITI report on 2015, and in looking into how the oil companies account for operating costs.

[26] BG Group: https://extractives.companieshouse.gov.uk/company/03690065
[27] Petrofac: http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/PFC/12867390.html
[28] PWYP Zimbabwe, http://www.publishwhatyoupay.org/wp-content/uploads/2017/06/PWYP-Data-Extractor-Case-Study_Mukasiri.pdf and How Zimbabweans persuaded diamond companies and government to listen, http://www.publishwhatyoupay.org/pwyp-news/how-zimbabweans-persuaded-diamond-companies-and-government-to-listen/
[29] Anglo American: https://extractives.companieshouse.gov.uk/company/03564138 and http://www.angloamerican.com/~/media/Files/A/Anglo-American-PLC-V2/documents/tax-report-2015/aa-2015-tec-report-21-04-16-final.pdf

Informing citizens in the United States[30]
Like citizens in resource-rich developing countries, citizens of the USA also need to know if they are getting a good deal on their plentiful natural resources. PWYP US analysed 2015 state and federal tax payments made by nine major extractive companies operating in the USA, using companies' mandatory and voluntary financial disclosures, including reports under the UK Regulations from BP, Rio Tinto and Shell. While this research produced more questions than answers regarding the relatively low level of taxes contributed by these companies' US extractive operations, publication of the findings has provided US civil society with the basis for a more informed public debate.

Summarising reports by UK companies[31]
PWYP UK has published an online a summary of FY 2015 reporting by Shell under the Regulations, and an interim overview of FY 2015 reporting by all UK-registered and LSE Main Market-traded companies. These online summaries provide the general public with accessible information about the global footprints of Shell and UK-reporting companies respectively, including in Shell's case an infographic ranking the size of its FY 2015 payments in 24 countries.

Disclosures by Russian state-owned companies[32]
During public debates in the USA ahead of the US Congress's decision to void the bipartisan Cardin-Lugar anti-corruption rule for oil, gas and mining companies (Dodd-Frank Act, Section 1504), PWYP US used reports under the UK Regulations by Russian state-owned Gazprom[33] and Rosneft[34] to disprove inaccurate claims that only US companies were required to disclose payments under global extractives anti-corruption laws. The fact that several Russian companies have now become more transparent about their payments to governments than US oil giants such as Exxon and Chevron has become part of wider public debate.[35]

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[30] PWYP US, Is the United States getting a good deal on its natural resources?, April 2017, http://www.extractafact.org/blog/is-the-united-states-getting-a-good-deal-on-its-natural-resources-a-taxing-question
[31] PWYP UK, Shell reports 2015 payments to governments using open data, June 2016, http://www.publishwhatyoupay.org/shell-reports-2015-payments-to-governments-using-open-data/; PWYP UK, Extractive companies publish worldwide payments under UK law, January 2017, http://www.publishwhatyoupay.org/extractive-companies-publish-worldwide-payments-under-uk-law/
[32] PWYP US, Myth busting: the truth about the Cardin-Lugar anti-corruption provision, February 2017, http://www.pwypusa.org/wp-content/uploads/2017/02/3CRA-Mythbusters-Cardin-Lugar-Provision-2017.pdf
[33] Gazprom: http://tools.morningstar.co.uk/tsweu6nqxu/globaldocuments/document/rnsNewsItem.aspx?DocumentId=373204741508084
[34] Rosneft: http://tools.morningstar.co.uk/tsweu6nqxu/globaldocuments/document/rnsNewsItem.aspx?DocumentId=373204741509820; https://www.rosneft.com/Investors/Reports_and_presentations/Reports_on_payments_to_governments/
[35] Economist, Donald Trump signs a law repealing a disclosure rule for oil companies, February 2017, http://www.economist.com/blogs/democracyinamerica/2017/02/big-signing

Investigating company payments for local development in India[36]
Indian journalist Shreya Shah and online media portal IndiaSpend investigated the way local government in Bhilwara, Rajasthan, used levy payments by mining companies to the District Mineral Foundation intended to assist mining-affected communities with local development projects. Finding a poor record of revenue use to date, Shah and IndiaSpend made strong recommendations for better use of the funds, including public participation, monitoring and spending transparency. Among the mining companies involved and making payments was UK-registered and LSE Main Market-traded Vedanta. The investigative approach and reporting methodology are being shared widely with PWYP coalitions around the world as well worth replicating.

Understanding oil price data[37]
Independent industry analysts OpenOil have used disclosures under the Regulations by BP and Shell, and under Norwegian law by Statoil, to develop a public analysis of oil pricing. This shows that prices spread across a wide range, including significant differences in the concurrent price of oil for projects in the same country. This kind of data and analysis will increasingly enable citizens and civil society to identify patterns and outliers in company payment reports and government oil sale prices, enabling improved public oversight, more informed debate and ultimately better public policymaking.

Insight into Ghana's oil and gas sector[38]
Tullow Oil, which has voluntarily disclosed its payments to governments since 2011, operates Ghana's two main producing oil and gas fields, Jubilee and TEN. NRGI analysed six years of Tullow's reporting payments in Ghana, including disclosures under the Regulations for FYs 2015 and 2016, to publish an account of how developments during a period of domestic sector growth and oil price volatility can affect company tax payments. The analysis shows how production entitlements representing over half the payments have fluctuated depending on oil price and production volumes, while income tax has fluctuated more, generating over US$100 million in some years and zero in others. NRGI's article concludes that the difference came mainly from deductions against taxable income from the Jubilee field.[39] It concludes that Ghana's oil fields can remain profitable and provide a larger share of revenue for the government, and it highlights the common trade-off between increasing short-term tax revenues and attracting further investment.

[36] IndiaSpend, For a dying silicosis patient, a mining fund offers hope, October 2017, http://www.indiaspend.com/cover-story/for-a-dying-silicosis-patient-a-mining-fund-offers-hope-57967, and How not to use a development fund for mineral-rich areas, October 2017, http://www.indiaspend.com/cover-story/how-not-to-use-a-development-fund-for-mineral-rich-areas-40871; also https://www.youtube.com/watch?v=TnwWEunkGrM
[37] OpenOil, With mandatory disclosures, more open, granular oil price data, August 2016, http://openoil.net/2016/08/15/with-mandatory-disclosures-more-open-granular-oil-price-data/
[38] NRGI, Tullow disclosure yields insight into Ghana oil, gas sector, https://resourcegovernance.org/blog/tullow-disclosure-yields-insight-ghana-oil-gas-sector May 2017; Tullow: https://extractives.companieshouse.gov.uk/company/03919249 and http://www.tullowoil.com/Media/docs/default-source/2016-Annual-Report-Accounts/2016-Annual-Report-Accounts.pdf?sfvrsn=18
[39] Tullow's view, however, is that the primary factor was the decline in the oil price.

Informing public debate in Australia
Australia's ABC News published an online article in April 2017 focused on Glencore's payments report under the UK Regulations.[40] The article highlighted that Glencore paid zero royalties in Australia's Northern Territory, where – unusually – royalties apply to profits rather than to the value of production. ABC News used the company's absence of royalty payments as the basis for a discussion about the relative benefits and shortcomings of different royalty regimes. This shows the Regulations' and the Accounting Directive's usefulness in informing public debate about different approaches to extractives revenue management and potential to result in reform.

Creating a "how-to" handbook for extractives data users
Global Witness is working with Resources for Development Consulting, a leading authority on resource project economics, to develop an accessible, high quality handbook (both web-based and PDF format) to promote citizens' use of extractive companies' payment disclosures. Members of PWYP's Data Extractors group from the Philippines, Canada, Zimbabwe, France, the US, Indonesia and the UK have tested the methodologies for analysing project payments developed in the draft handbook, using company disclosures under the EU Accounting and Transparency Directives. The results of the testing will inform the final version of the handbook, which is due for publication in October 2017. The handbook will help equip civil society groups, journalists, independent activists, parliamentarians, academics and others who want to use extractives data for accountability purposes. It will increase the effectiveness of payment transparency regulations in resource-dependent host and in home countries and promote responsible data use by explaining the logic behind company payments. Global Witness promoted the handbook's methodology at PWYP's 2017 Africa Conference[41] and will launch it at a forthcoming international extractives and/or financial transparency event, present it at other suitable events in resource-dependent countries and encourage civil society to incorporate the methodology into its advocacy and capacity-building.

Public interest financial modelling in Indonesia[42]
PWYP Indonesia and analysts/trainers OpenOil are modelling extractive project finances using publicly available data to inform public monitoring and discussion about contract implementation, especially in relation to fiscal regimes, and to evaluate project costs and benefits and estimate future state revenues from the extractive industries. PWYP Indonesia plans to extend modelling to include payment reports under the EU Directives, covering payments in Indonesia by companies such as BHP Billiton, BP, Premier Oil, Rio Tinto, Shell and Total, and to develop a mentoring programme for Southeast Asian civil society, academics, journalists and government officials.

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[40] ABC News, Mining giant Glencore paid "$0" in royalties to Northern Territory government, April 2017, http://www.abc.net.au/news/2017-04-26/mining-giant-glencore-paid-no-royalties-to-nt-government/8472350
[41] http://www.publishwhatyoupay.org/pwyp-news/publish-what-you-pay-africa-meets-for-its-6th-conference/
[42] http://pwyp-indonesia.org/en/programs-profile/project-6-financial-modelling-and-openness-in-the-extractive-industries/; http://pwyp-indonesia.org/en/298777/program-mentoring-on-the-financial-modelling-in-the-extractive-industries-pwyp-indonesia-open-oil/; https://pwyp-indonesia.org/en/325216/financial-modelling-a-new-instrument-for-promoting-accountability-in-extractive-industry/

An online open-source international data repository on oil, gas and mining project payments[43]

NRGI is developing www.ResourceProjects.org as an online platform that collects and searches extractive project information using open data. It aims to harvest data on project-by-project payments to governments based on mandatory disclosure legislation in the EU, Norway, Canada and (once implemented) the US, as well as in EITI reports. ResourceProjects.org then links the data to associated information such as project location and status, relevant contracts, companies and licences from a variety of government and industry sources. The platform aims to make it easier for journalists, civil society organisations, researchers and government officials to search, access and download relevant data originating from these sources.

Making a case in the Philippines

Bantay Kita (PWYP Philippines) analysed payments data published under the French implementation of the Accounting Directive by LafargeHolcim and under the Regulations by LafargeHolcim's UK subsidiary Aggregate Industries,[44] identifying that the Philippines was the group's third largest recipient of government payments in 2015, totalling approx. US$66 million. Bantay Kita, which is represented on the Philippines EITI Multi-Stakeholder Group and publishes a public web portal for extractive industry data and project information, is using LafargeHolcim and Aggregate Industries' disclosures to strengthen its case for the inclusion of payments by non-metallic mining companies in future Philippines EITI reports.

Total's payments in Angola[45]

ONE, Oxfam France and Sherpa (all members of PWYP France) in partnership with independent analysts Le Basic published an analysis of the first disclosures by French oil and gas company Total of its payments to governments in Angola under France's implementation of the Accounting Directive. Because Angola – a highly corruption-prone country – is not an EITI member, Total's payments in the country were published for the first time in 2016 alongside mandatory disclosures by other companies such as BP and Statoil. Analysis of production entitlement ("profit oil") payments made by a consortium of companies including Total (40% stakeholder and operator) on block 17 revealed a major discrepancy between the value of in-kind payments made by the companies (as calculated from Total's proportionate disclosure at 40%) and the production entitlement revenue for the block voluntarily declared by the Angolan authorities, which was US$108 million less. The fact that the company had not disclosed the volume as well as the value of its in-kind payment made it more difficult to identify the reason for the discrepancy; the government did disclose the volume (number of barrels).

[43] http://www.resourceprojects.org/

[44] LafargeHolcim: http://www.lafargeholcim.com/sites/lafargeholcim.com/files/atoms/files/07152016-finance-lafargeholcim_report_on_payments_to_governments.pdf; Aggregate Industries: https://extractives.companieshouse.gov.uk/company/00245717

[45] PWYP France, Oxfam France, ONE and Sherpa, Beyond transparency: investigating the new extractive industry disclosures, September 2017, https://www.oxfamfrance.org/sites/default/files/file_attachments/beyondtransparency.pdf; see also Q. Parrinello (Oxfam France/PWYP France), Three years after "win-win" negotiations, Niger still losing out to Areva, June 2017, http://www.publishwhatyoupay.org/three-years-after-win-win-negotiations-niger-still-losing-out-to-areva/, and Why is Niger still losing out to Areva?, September 2017, http://bit.ly/neareva

This civil society report offers three possible explanations for the gap: (1) differences between Total and the Angolan government in defining and estimating the volume of "profit oil" paid and received; (2) differences between Total's and the government's valuation of the oil per barrel (Total does not provide a value per barrel of oil, unlike the government, which does: US$51.9; from evidence elsewhere it appears that Total and the Angolan government have priced the same oil differently); (3) embezzlement of part of the in-kind "profit oil" payments by Angolan officials.

In response to the civil society report, Total stated that it accounts for production entitlement volumes in accordance with the production sharing contract, and values these volumes on the basis of regulated prices controlled and provided by the Angolan government, and that this "completely excludes any possible manipulation of transfer prices". Total's detailed response to the PWYP France report is published online.[46]

By comparing the company data with Angolan government data, French civil society organisations used Total's mandatory disclosures to perform a similar task of verification to that undertaken in other countries through the EITI, raising important questions similar to those addressed by the EITI reconciliation process. Civil society would still expect Total to disclose in-kind payments by volume as well as by value, in line with the EU Directive.[47]

Gazprom's payments in the UK

Analysing company payment reports on FY 2015 under the Regulations, NRGI established by end-March 2017 that a total of 36 different companies' disclosures included payments to UK Government entities. Among these were mandatory disclosures by Russian state-owned oil company Gazprom, which had declined to disclose payments made to UK Government bodies in 2015 under the 2016 UK EITI process. This data gap in the UK EITI report on 2015 was partly addressed by NRGI providing text and a web link from the UK EITI report to NRGI-compiled data on Gazprom and other companies' reported payments to the UK under the Regulations.[48]

Civil society's reporting guidance for companies reporting in the UK[49]

Based on analysis of company reports on FY 2015, in early 2017 PWYP UK, Global Witness and NRGI prepared and sent to approx. 100 UK-registered and/or LSE Main Market-traded extractive companies detailed guidance for their reports on FY 2016 under the Regulations. The guidance highlights four specific areas where we believe many companies need to improve their disclosures' clarity and comprehensiveness to achieve the greatest possible benefit from their transparency efforts: direct and indirect joint venture payments; project aggregation; naming recipient government entities; and payments in kind.

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[46] https://www.oxfamfrance.org/sites/default/files/file_attachments/right_of_reply_-_total.pdf

[47] Accounting Directive, art. 43.3. France's transposition of the Directive inadvertently omitted the requirement to report where applicable in-kind payments by volume.

[48] UK EITI Report for 2015, March 2015, https://www.gov.uk/government/publications/extractive-industries-transparency-initiative-payments-report-2015, page 76; NRGI data: http://resourcegovernance.org/analysis-tools/tools/company-reports-payments-governments-including-uk-2015

[49] http://www.publishwhatyoupay.org/wp-content/uploads/2017/03/Civil-society-reporting-guidance-for-companies-March-2017-1.pdf

Shell's payments in Gabon

Cases of corruption among political elites in Gabon have been widely documented, and corruption remains an issue in the country despite recent improvements.[50] Before divesting in March 2017, Shell operated five producing onshore oil fields in Gabon, a substantial part of the country's oil production.[51] In its FY 2015 and 2016 payments reports Shell lists only three currently producing Gabonese projects,[52] which indicates that projects have been aggregated and obfuscates which payments were made for which fields.

Total production figures for Shell's Gabonese operations in its 2015 Annual Report are not disaggregated per project and combine oil and natural gas, which have different market values.[53] The data also includes fields where Shell was not the operator and whose payments are thus largely excluded from its FY 2015 payments report. This makes it virtually impossible to assess whether the company's production entitlement payments to the Gabonese government constitute fair value for the oil and gas extracted.[54]

[50] Gabon: https://freedomhouse.org/report/freedom-world/2016/gabon; https://qz.com/395572/a-fight-inside-gabons-kleptocratic-dynasty-reveals-the-complicity-of-french-business/; http://www.transparency.org/news/feature/corruption_perceptions_index_2016#table

[51] http://www.shell.com/media/news-and-media-releases/2017/shell-divests-gabon-onshore-interests.html; Shell's onshore fields in Gabon produced roughly 41,000 barrels of oil equivalent (boe) per day in 2016 (ibid.), out of a country total of about 200,000 boe/day (https://tradingeconomics.com/gabon/crude-oil-production).

[52] Shell: https://extractives.companieshouse.gov.uk/company/04366849; http://www.shell.com/sustainability/transparency/revenues-for-governments.html; http://go.shell.com/2wYbZ95

[53] Shell, Annual Report 2015, page 34.

[54] Shell says it complies with the UK's Reports on Payments to Governments Regulations 2014 (amended 2015), and cites confidentiality obligations, competitive harm and costs as reasons for not providing more detailed breakdowns and provides more information at www.shell.com/payments