

## **International Development Committee inquiry into tackling corruption overseas<sup>1</sup>**

**Written evidence submitted by Publish What You Pay and the Natural Resource Governance Institute, and endorsed by Global Witness and Oxfam GB, March 2016**

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### **Executive summary and recommendations**

1. The UK Government has made a leading contribution to tackling corruption in the world's oil, gas and mining (extractive) industries through voluntary and mandatory payment and revenue disclosure measures. A de facto global extractives transparency standard has been established, but significant corruption risks remain. The UK can and should enhance its anti-corruption policies and practices relating to the extractives sector and contribute to further progress internationally.
2. Payments arising from physical commodity trading of oil, gas and minerals are economically important, usually secret and prone to corruption. Companies engaged in physical commodity trading are subject to limited regulation and few reporting requirements. Action by the UK (the world's second largest oil trading hub) on commodity trading transparency could catalyse similar action by Switzerland (the world's leading commodity trading hub) and potentially other countries, resulting in most global trading in oil, and much of the commodity trade in minerals, becoming more transparent and accountable.
3. Transportation and export payments, social payments, and payments to state security forces for security services are additional areas of corruption risk not currently included in the EU and UK mandatory disclosure regimes for extractive companies.
4. More than 200 extractive companies are listed on the Alternative Investment Market (AIM) and not currently subject to the same anti-corruption transparency provisions as their Main Market-listed peers.
5. The UK's Overseas Territories and Crown Dependencies have not yet applied transparency provisions to oil, gas and mining companies incorporated or publicly listed in their jurisdictions.

### **Recommendations**

6. The UK Government should:
  - Commit to revise its mandatory reporting requirements for oil, gas and mining companies to include payments related to physical oil, gas and mineral commodities

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<sup>1</sup> <http://www.parliament.uk/business/committees/committees-a-z/commons-select/international-development-committee/news-parliament-20151/launch--tor-tackling-corruption-overseas-15-16/>

trading, advocate for EU-level change, and lead an international process to end extractives trading secrecy.

- Commit to revise its mandatory reporting requirements to include payments for transportation and export activities, social payments to governments, and payments to state security forces, and advocate for EU-level change.
- Extend extractive industry payment disclosure requirements to the Alternative Investment Market (AIM).
- Influence the UK Overseas Territories and Crown Dependencies to introduce similar extractives disclosure requirements.

## Introduction

7. Publish What You Pay (PWYP, <http://www.publishwhatyoupay.org>) is a global civil society coalition calling for oil, gas and mining revenues to form the basis for development and to improve the lives of ordinary citizens in resource-rich countries.
8. The Natural Resource Governance Institute (NRGI, <http://www.resourcegovernance.org/>) is a civil society organisation that helps people realise the benefits of their countries' endowments of oil, gas and minerals through technical advice, advocacy, applied research, policy analysis, and capacity development.
9. Global Witness (<https://www.globalwitness.org/>) exposes the hidden links between demand for natural resources, corruption, armed conflict and environmental destruction.
10. Oxfam (<http://www.oxfam.org.uk/>) is a global movement of millions of people who share the belief that, in a world rich in resources, poverty isn't inevitable.
11. We are submitting this evidence because:
  - The UK has made a leading contribution to tackling corruption in the world's oil, gas and mining (extractive) industries through payment and revenue transparency.
  - A de facto global extractives transparency standard has been established, aligned with the Extractive Industries Transparency Initiative (EITI) 2013 and revised 2016 Standard and with mandatory disclosure requirements in the EU Accounting and Transparency Directives and implementing UK regulations, in Canada's Extractive Sector Transparency Measures Act and in Section 1504 of the US Dodd-Frank Act.
  - Significant gaps remain in the global standard, one of which – the lack of transparency relating to commodities trading – represents a particularly large and corruption-prone area.
  - The next two years offer key opportunities for the UK to contribute to further progress in securing a more transparent and accountable global extractives sector.
12. This submission was drafted by Miles Litvinoff, Coordinator, PWYP UK, [mlitvinoff@pwypuk.org](mailto:mlitvinoff@pwypuk.org), tel. 01442 825060 / 07984 720103, and Joseph Williams, Senior Advocacy Officer, NRGI, [jwilliams@resourcegovernance.org](mailto:jwilliams@resourcegovernance.org), tel. 020 7332 6113 / 07775 751170. We are willing to give oral evidence.

## Response to inquiry questions

13. This submission focuses on corruption risks and the need for greater transparency in the world's oil, gas and mining industries. It addresses three clusters of questions in the inquiry's terms of reference:
- Corruption and poor governance can be a key cause of instability. Is the UK Government appropriately prioritising and managing anti-corruption strategies?
  - How important is UK domestic anti-corruption policy and practice to international efforts to curb its effects? Is there a coherent 'One HMG' strategy?
  - What more should the UK Government do on issues such as illicit flows to limit the effects of corruption on developing countries? How might it use its influence to encourage coherent international action?
14. In recent years the UK Government has effectively prioritised and managed anti-corruption strategies in relation to the extractives sector in resource-rich developing states by:
- strongly supporting the EITI;<sup>2</sup>
  - championing mandatory public country-by-country project-level reporting rules for oil, gas and mining companies through the EU Accounting and Transparency Directives;<sup>3</sup>
  - securing strong messaging about extractive industry transparency in the 2013 Lough Erne G8 Leaders' communiqué;<sup>4</sup>
  - quickly implementing the disclosure requirements of the EU Directives with robust domestic legislation, including appropriate penalty regimes, for UK-incorporated and UK-listed extractive companies;<sup>5</sup>
  - committing in its 2013-15 Open Government Partnership National Action Plan to "implement and internationally champion a global standard of financial transparency and accountability in the extractive industries ... in line with the principles in the G8 Open Data Charter";<sup>6</sup>
  - becoming an EITI candidate country and progressing towards full EITI implementation.<sup>7</sup>
15. UK anti-corruption policy and practice have been central to international efforts to curb corruption in the oil, gas and mining industries. The UK's championing of mandatory reporting has been especially important in view of delays to US implementation of Dodd-Frank Section 1504.
16. While the anti-corruption deterrent value of mandatory reporting legislation should not be underestimated, it is premature to assess the effectiveness of the EU Directives and UK

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<sup>2</sup> <https://eiti.org/eiti>

<sup>3</sup> Accounting Directive: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013L0034>; Transparency Directive: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1415872329209&uri=CELEX:32013L0050>

<sup>4</sup> <https://www.gov.uk/government/publications/2013-lough-erne-g8-leaders-communiqué>

<sup>5</sup> BIS regulations for UK-incorporated companies:

<http://www.legislation.gov.uk/ukxi/2014/3209/memorandum/contents>; HMT regulations and FCA rules for UK-listed companies: <http://www.legislation.gov.uk/ukxi/2014/3293/contents/made>, [http://media.fshandbook.info/Legislation/2014/FCA\\_2014\\_63.pdf](http://media.fshandbook.info/Legislation/2014/FCA_2014_63.pdf)

<sup>6</sup> <https://www.gov.uk/government/consultations/open-government-partnership-uk-national-action-plan-2013/open-government-partnership-uk-national-action-plan-2013-to-2015#natural-resource-transparency-ensuring-natural-resources-and-extractive-revenues-are-used-for-public-benefit>

<sup>7</sup> <https://www.gov.uk/guidance/extractive-industries-transparency-initiative>

regulations.<sup>8</sup> Even for the EITI, in existence since 2003, evaluations often acknowledge the need for more time to judge effectiveness. However, there are areas where the UK and other countries could do better, and where UK strategy could be more coherent, in curbing illicit flows of extractives revenues, limiting the effects of corruption in developing countries and encouraging further international action in this sector.

17. Our proposals focus on four areas:

- Commodities trading transparency.
- Payments for transportation and export activities, social payments to governments, and payments to state security forces.
- Extending payment disclosures to the Alternative Investment Market (AIM).
- Influencing the UK Overseas Territories and Crown Dependencies to introduce similar regulation.

### **Commodities trading transparency**

18. Currently subject to limited regulation and few reporting requirements, companies engaged in physical commodity trading of oil, gas and minerals should be required to publicly report on their transactions with government entities.

19. The UK is responsible for 25% of the global commodity trade in oil and one of the world's largest hubs for oil and other commodities trading, along with Switzerland, Singapore and the USA.<sup>9</sup> Companies' payments to governments, including to state-owned enterprises, for the purchase of oil, gas and minerals remain one of the most profitable and opaque areas of the natural resources sector.<sup>10</sup> Major UK- and EU-registered and/or -listed companies that engage in commodity trading include recognised traders such as Glencore and upstream oil companies such as BP, Shell and Total.<sup>11</sup>

20. Payments related to commodity trading are economically important, usually secret and prone to corruption. In most oil producing countries, the state receives a share of production, which is typically then sold by the national oil company. Often the value of these sales represents the country's largest revenue stream. From 2011 to 2013 total sales by the national oil companies of Africa's 10 largest oil producers totalled \$254 billion, equal to 56% of their combined government revenues.<sup>12</sup> In Nigeria, Libya and Angola the majority of *total* government revenues comes from crude oil sales, and many of the trades are made with UK, other EU or Swiss companies.

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<sup>8</sup> The first UK extractive company reports are due by June 2016. Statutory reviews of the UK Reports on Payments to Governments Regulations 2014 and the 2013 EU Accounting Directive are due in 2017 and 2018 respectively.

<sup>9</sup> Berne Declaration, *Commodities: Switzerland's Most Dangerous Business*, 2012, [https://www.ladb.ch/fileadmin/files/documents/Rohstoffe/commodities\\_book\\_berne\\_declaration\\_lowres.pdf](https://www.ladb.ch/fileadmin/files/documents/Rohstoffe/commodities_book_berne_declaration_lowres.pdf), p. 39.

<sup>10</sup> *Financial Times*, "Commodity traders reap \$250 bn harvest", 14 April 2013, <http://www.ft.com/cms/s/0/9f6f541e-a397-11e2-ac00-00144feabdc0.html>

<sup>11</sup> RCS Global, "7 reasons why trading companies disclosing payments to governments makes good business sense", 2015, [http://goxi.org/profiles/blogs/7-reasons-why-trading-companies-disclosing-payments-to?xg\\_source=msg\\_mes\\_network](http://goxi.org/profiles/blogs/7-reasons-why-trading-companies-disclosing-payments-to?xg_source=msg_mes_network)

<sup>12</sup> NRGI, Swissaid and Berne Declaration, *Big Spenders – Swiss Trading Companies, African Oil and the Risks of Opacity*, 2014, [http://www.resourcegovernance.org/sites/default/files/BigSpenders\\_20141014.pdf](http://www.resourcegovernance.org/sites/default/files/BigSpenders_20141014.pdf)

21. Corruption can occur in the sale transactions themselves. The Republic of Congo's state-owned oil company reportedly sold oil to a Geneva-based trading company with links to the Congolese President's son at a favourable price, losing funds that should have entered the treasury.<sup>13</sup> In Nigeria oil sales were worth an estimated \$41 billion in 2013, and early in 2014 central bank governor Lamido Sanusi raised an alarm that \$20 billion in oil sales revenues had gone missing.<sup>14</sup> Corrupt oil sales arranged by the previous Nigerian government lost the country up to \$16 per barrel and have since been cancelled by the Buhari administration.<sup>15</sup>
22. Secrecy in oil sales also lets governments hide how much revenue they receive. The IMF has revealed that Angola's national oil company illegally and secretly spent \$32 billion in oil sale revenues from 2007 to 2010.<sup>16</sup>
23. The UK Financial Conduct Authority has recognised that commodity trading may involve "financial crime risk" and "bribery and corruption risk", including "relationships with high risk customers, most notably with politically exposed persons (PEPs)".<sup>17</sup> In Switzerland – the world's largest commodity trading hub and home to some of the world's largest traders of oil and other commodities such as Vitol, Glencore, Trafigura, Mercuria and Gunvor – the government acknowledges that "the commodities industry is ... associated with ... challenges that must be taken seriously, including ... the problem of governance deficiencies".<sup>18</sup> Civil society has exposed the link between commodities traders and PEPs and the lack of due diligence in the sector.<sup>19</sup> Falling oil prices have led to highly profitable deals for traders with cash-strapped producers.<sup>20</sup>
24. The Swiss government has committed to put a law before parliament by late 2016 aligned with the transparency provisions of the EU Directives and the Swiss Federal Council has

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<sup>13</sup> Berne Declaration, "Philia's refined ventures in Brazzaville – how Swiss traders misappropriate Congolese oil rents", 2014, [https://www.bernedeclaration.ch/fileadmin/files/documents/Rohstoffe/BD-2015-Investigation-Philias\\_s\\_refined\\_ventures.pdf](https://www.bernedeclaration.ch/fileadmin/files/documents/Rohstoffe/BD-2015-Investigation-Philias_s_refined_ventures.pdf); see also re the 2010 contract between Swiss commodity trader Vitol and Nigeria's state oil company, Berne Declaration, *Commodities: Switzerland's Most Dangerous Business*, op. cit., pp. 207-8.

<sup>14</sup> NRG, *Inside NNPC Oil Sales: A Case for Reform in Nigeria*, 2015, <http://www.resourcegovernance.org/publications/inside-nnpc-oil-sales>

<sup>15</sup> Ibid.

<sup>16</sup> IMF, *Angola - Fifth Review under the Stand-By Arrangement*, 2011, <https://www.imf.org/external/pubs/ft/scr/2011/cr11346.pdf>

<sup>17</sup> FCA, *Commodity Markets Update*, 2014, <http://www.fca.org.uk/static/documents/commodity-market-update-1402.pdf>, p. 9.

<sup>18</sup> Swiss Federal Department of Foreign Affairs, *Background Report: Commodities*, 2013, <http://www.news.admin.ch/NSBSubscriber/message/attachments/30136.pdf>, p. 42.

<sup>19</sup> Berne Declaration, *Commodities: Switzerland's Most Dangerous Business*, op. cit.; NRG, "Swiss disclosure proposal would promote global transparency", 2012, [http://www.resourcegovernance.org/news/press\\_releases/swiss-disclosure-proposal-would-promote-global-transparency](http://www.resourcegovernance.org/news/press_releases/swiss-disclosure-proposal-would-promote-global-transparency); Berne Declaration, "A supervisory authority to combat the regulatory lacuna in the commodities sector", 2014, [https://www.bernedeclaration.ch/fileadmin/files/documents/Rohstoffe/14\\_295\\_EVB\\_ROHMA\\_Paper\\_A4\\_EN\\_FINAL\\_LowRes.pdf](https://www.bernedeclaration.ch/fileadmin/files/documents/Rohstoffe/14_295_EVB_ROHMA_Paper_A4_EN_FINAL_LowRes.pdf)

<sup>20</sup> *Financial Times*, "Oil trading houses tweak old playbook in market rout", 5 January 2016, <http://www.ft.com/intl/cms/s/0/3606d1a0-b3c0-11e5-8358-9a82b43f6b2f.html#axzz3zJEotYSO>

committed to make provision in the law to allow it to quickly extend the scope to include commodity trading payments as part of an “internationally agreed process”.<sup>21</sup> Trading transparency reporting requirements in the UK and Switzerland would capture over half the world’s oil, gas and mineral trading.<sup>22</sup>

25. The US Securities and Exchange Commission (SEC) is due in 2016 to release its final rules under Dodd-Frank Section 1504. A strong signal from the UK and others could influence the SEC to include trading-related payments in its final rule, resulting in Chevron, ENI, ExxonMobil and other companies having to report commodity payments to governments alongside UK and Swiss companies mentioned above.<sup>23</sup>
26. The EITI’s Standard has included trading since 2013. In February 2016 the EITI global board approved the 2016 EITI Standard, which emphasises the need for trading-related payments to be disclosed by individual buying company: “Where the sale of the state’s share of production or other revenues collected in-kind is material, the government, including state-owned enterprises, are required to disclose the volumes sold and revenues received. The published data must be disaggregated by individual buying company and to levels commensurate with the reporting of other payments and revenue streams.”<sup>24</sup> Some companies and governments have begun to report. In 2015 Trafigura (the world’s third largest independent oil trading company) published data on \$4.3 billion in payments to the governments of Colombia, Ghana, Nigeria, Norway, Peru and Trinidad & Tobago.<sup>25</sup>
27. The governments of Iraq and Nigeria have begun to publish EITI data on trading transactions, in the case of Iraq comprising \$80 billion in crude sale payments by 42 companies, including BP and Shell.<sup>26</sup> DFID is participating in the EITI multi-stakeholder working group on commodities trading, and a reported 19 more EITI implementing countries are likely to include state oil sales in future EITI reports.<sup>27</sup> Given the EITI’s voluntary nature, however, home country regulation is essential to deliver a more thorough and standardised approach including non-EITI countries and in a more timely manner.
28. The International Monetary Fund has recognised the importance of trading-related payments to governments in its new draft Fiscal Transparency Code, which features a Resource Revenue Management pillar that explicitly includes trading: “governments and resource companies should provide comprehensive, timely, and reliable reports on holdings of natural resource rights, on extraction and *trading activities*, and on collections and

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<sup>21</sup> Swiss Federal Council, “Federal Council determines basis for new company law”, 4 December 2015, <http://www.ejpd.admin.ch/ejpd/en/home/aktuell/news/2015/2015-12-04.html>

<sup>22</sup> NRGi, Berne Declaration, Swissaid and PWYP, “In pursuit of transparent trading”, 2015, [http://www.resourcegovernance.org/sites/default/files/nrgi\\_TradingPaper.pdf](http://www.resourcegovernance.org/sites/default/files/nrgi_TradingPaper.pdf), pp. 6-7.

<sup>23</sup> As demonstrated by NRGi, the statutory language for Dodd-Frank Section 1504 gives the SEC discretion to include trading-related payments in its implementing rule: see NRGi submission to SEC, 16 February 2016, <https://www.sec.gov/comments/s7-25-15/s72515-38.pdf>

<sup>24</sup> EITI 2016 Standard, requirement 4.2, [https://eiti.org/files/english\\_eiti\\_standard\\_0.pdf](https://eiti.org/files/english_eiti_standard_0.pdf)

<sup>25</sup> Trafigura, *2015 Responsibility Report*, <http://www.trafigura.com/responsibility/2015-responsibility-report/>

<sup>26</sup> The Iraq 2013 EITI Report, published in 2015, <https://eiti.org/report/iraq/2013>

<sup>27</sup> RCS Global, “The EITI and commodities trading transparency: where are we headed?”, 2015, <http://www.rcsglobal.com/blog/the-eiti-and-commodities-trading-transparency-where-are-we-headed/>

payments of resource revenue” (emphasis added); it recommends that resource companies publicly report on payments to and from governments relating to trading activities.<sup>28</sup>

29. The Africa Progress Panel, chaired by former UN Secretary-General Kofi Annan, has called for the inclusion of commodity trading within the scope of the EU Directives: “All countries should adopt and enforce the project-by-project disclosure standards of the US Dodd-Frank Act and comparable EU legislation, applying them to all extractive industry companies listed on their stock exchanges. *These standards should also include commodity trading*” (emphasis added).<sup>29</sup>

### **Payments for transportation and export activities, social payments to governments, and payments to state security forces**

30. Transportation and export payments, social payments, and payments to state security forces for security services are potential areas of corruption risk not currently included in the EU and UK mandatory disclosure regimes for extractive companies.

### ***Transportation and export payments***

31. Revenues and in-kind payments that resource-producing states earn from the energy transit trade are at risk of corruption, may contribute to political instability and should be covered by UK and EU transparency legislation.
32. European natural gas supplies are dependent on pipeline transport and geopolitically significant in the case of gas from the former Soviet Union.<sup>30</sup> In Africa major new pipeline networks have been under construction and proposed with large capital investments.<sup>31</sup> Extractives transportation can involve destabilising instances of theft and corruption, such as the oil theft and fraudulent gas deals with international companies that in the past cost Nigeria an estimated \$1 billion a month.<sup>32</sup> The US Dodd-Frank Act Section 1504 recognises the importance of tracking export payments by including export among “significant actions relating to oil, natural gas, or minerals” to which it applies transparency requirements.<sup>33</sup>

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<sup>28</sup> IMF, Draft Fiscal Transparency Principles, IV. Resource Revenue Management, December 2014, section 4.2, <http://www.imf.org/external/np/exr/consult/2014/ftc/pdf/121814.pdf>; section 4.2.2 reads: “ADVANCED PRACTICE: Project-level information is annually published by resource companies on domestic natural resource extraction *and trading activity*, and by domestically domiciled or listed resource companies on their worldwide natural resource extraction *and trading activity, including payments to and from governments*” (emphasis added).

<sup>29</sup> Africa Progress Panel, *Equity in Extractives*, 2013, [http://app-cdn.acwupload.co.uk/wp-content/uploads/2013/08/2013\\_APR\\_Equity\\_in\\_Extractives\\_25062013\\_ENG\\_HR.pdf](http://app-cdn.acwupload.co.uk/wp-content/uploads/2013/08/2013_APR_Equity_in_Extractives_25062013_ENG_HR.pdf), p. 97.

<sup>30</sup> See e.g. Global Witness, “To secure its energy, Europe must end opacity”, *Financial Times*, 15 January 2009, <http://www.ft.com/cms/s/0/83b51a08-e242-11dd-b1dd-0000779fd2ac.html#axzz3dWETx9JI>

<sup>31</sup> Pipelines International, “Pipeline to prosperity: developing pipeline infrastructure in Sub-Saharan Africa”, 2011, [http://pipelinesinternational.com/news/pipeline\\_to\\_prosperity\\_developing\\_pipeline\\_infrastructure\\_in\\_sub-saharan\\_af/061149/](http://pipelinesinternational.com/news/pipeline_to_prosperity_developing_pipeline_infrastructure_in_sub-saharan_af/061149/)

<sup>32</sup> UPI Business News, “Nigeria loses billions in oil, gas theft”, 25 October 2012, [http://www.upi.com/Business\\_News/Energy-Resources/2012/10/25/Nigeria-loses-billions-in-oil-gas-theft/UPI-77851351181960/](http://www.upi.com/Business_News/Energy-Resources/2012/10/25/Nigeria-loses-billions-in-oil-gas-theft/UPI-77851351181960/)

<sup>33</sup> <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>, p. 845.

33. Extension of the UK regulations and EU Directives to cover payments for transportation and export would complement both Dodd-Frank and the EITI Standard: “Where revenues from the transportation of oil, gas and minerals are material, the government and state-owned enterprises (SOEs) are expected to disclose the revenues received ... disaggregated to levels commensurate with the reporting of other payments and revenue streams.”<sup>34</sup>

### **Social payments to governments**

34. Legal or contractual obligations for extractive companies to make social payments to governments are a common feature of resource-rich countries’ fiscal frameworks and a significant source of revenue for government budgets. Such payments should be covered by UK and EU transparency legislation.
35. Forty countries have adopted provisions in their mining laws and policies that require extractive companies to make social payments.<sup>35</sup> A KPMG survey found 10 mining, metals and engineering companies had combined social investments of \$1.2 billion in 2013.<sup>36</sup> In Kazakhstan extractive companies’ social and local infrastructure payments totalled approximately \$2 billion between 1996 and 2009.<sup>37</sup> Chevron currently funds community projects and partnerships in 29 countries and has contributed more than \$1.7 billion in social investments to local communities over the past nine years.<sup>38</sup>
36. Oil companies operating in Angola are required to make social contributions under the 2004 Petroleum Activities Law and under production sharing contracts. A 2008 study found that foreign oil companies’ contractual social payments in Angola amounted to approximately \$200 million per year on average – more than half the total amount of official development assistance the country received in 2008.<sup>39</sup> Terms for the consortium that won the bidding round for Angolan oil blocks 15, 16, and 17 in 2006 included \$200 million in social payments for each block.<sup>40</sup> Social investments are also large and important in Zambia and Equatorial Guinea.<sup>41</sup>

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<sup>34</sup> EITI 2016 Standard, op. cit., requirement 4.4.

<sup>35</sup> K. Dupuy, “Community development in mining: a global analysis of legal requirements”, 2016, summary report for the World Bank Governance Global Practices Group, available on request. The 40 countries are: Afghanistan, Australia, Burkina Faso, Canada, Central African Republic, China, Colombia, Cote d’Ivoire, Democratic Republic of Congo, Ecuador, Equatorial Guinea, Ethiopia, Fiji, Ghana, Greenland, Guinea, India, Indonesia, Jamaica, Kazakhstan, Kenya, Kyrgyzstan, Laos, Mali, Mongolia, Mozambique, Niger, Nigeria, Oman, Papua New Guinea, Peru, Philippines, Sierra Leone, South Africa, South Sudan, Tanzania, Togo, Vietnam, Yemen, and Zimbabwe.

<sup>36</sup> KPMG Global Mining Institute, *Valuing Social Investment in Mining*, 2014,

<https://assets.kpmg.com/content/dam/kpmg/pdf/2014/10/valuing-social-investment-mining-v3.pdf>

<sup>37</sup> PWYP US, comment to US SEC, 25 Feb. 2011, <http://www.sec.gov/comments/s7-42-10/s74210-29.pdf>, p. 25, footnote 104.

<sup>38</sup> Chevron, “Community”, <http://www.chevron.com/corporateresponsibility/community>

<sup>39</sup> I. Amundsen and A. Wiig, *Social Payments in Angola: Channels, Amounts and Impact*, Chr. Michelson Institute, 2008, <http://www.cmi.no/publications/file/3196-social-funds-in-angolachannels.pdf>, p. 12.

<sup>40</sup> *Ibid.*, p. 10.

<sup>41</sup> International Council on Mining and Metals, press information sheet,

<https://www.icmm.com/document/6292>; J. Kraus, “The business of state-building: the impact of corporate social responsibility on state development in Equatorial Guinea”, 2010,

[http://etd.fcla.edu/UF/UFE0042514/kraus\\_j.pdf](http://etd.fcla.edu/UF/UFE0042514/kraus_j.pdf)

37. Extension of the EU Directives and UK regulations to cover social expenditures would complement the EITI Standard: “Where material social expenditures by companies are mandated by law or the contract with the government that governs the extractive investment, implementing countries must disclose and, where possible, reconcile these transactions.”<sup>42</sup>
38. EITI implementing countries that already disclose or reconcile mandatory and/or voluntary social expenditures include Kazakhstan, Kyrgyzstan, Liberia, Mauritania, Mongolia, Mozambique, Peru, Republic of Congo, Togo, Yemen, and Zambia.<sup>43</sup>
39. There remains a severe lack of transparency for social payments. Of the 40 national mining laws that include social payment requirements analysed by the World Bank, only three include transparency provisions relating to social payments (Guinea, Indonesia and Sierra Leone).
40. Experience has shown that social payments are vulnerable to corruption and mismanagement.<sup>44</sup> For example, \$175 million in social contributions from an Angolan oil block operated by BP and partners may have been corruptly diverted, with a further \$175 million due to be paid also at risk of being misappropriated.<sup>45</sup> Similar payments by Statoil in Angola are attracting the attention of the Norwegian parliament and police.<sup>46</sup> In Kazakhstan civil society has reported contractually obligated social payment funds being misused.<sup>47</sup>
41. In Equatorial Guinea, where mandatory social payments are not publicly disclosed despite this being required by law, the government has used social payments as cover under which to approach oil companies about financing projects that appear motivated by the whims of government officials, such as to donate equipment to the government for an international oil and natural gas conference and to finance a kickboxing tournament.<sup>48</sup>
42. Social payments, if allowed to remain opaque, can be misused to channel corrupt payments, special favours and kickbacks, creating a grey zone of illicit payments that may not be easily monitored or policed.

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<sup>42</sup> EITI 2016 Standard, op. cit., requirement 6.1(a).

<sup>43</sup> EITI Guidance Note 17 on Social Expenditures, requirement 4.1€, 2014, [https://eiti.org/files/GN/Guidance note 17 social expenditure EN.pdf](https://eiti.org/files/GN/Guidance%20note%2017%20social%20expenditure%20EN.pdf)

<sup>44</sup> H.G. Broadman and B.H. Searby, comment to US SEC, 25 Jan. 2016, <https://www.sec.gov/comments/s7-25-15/s72515-10.pdf>, pp. 3-4; Harry G. Broadman, “The SEC turns a blind eye to corruption in CSR initiatives”, 29 February 2016, <http://www.forbes.com/sites/harrybroadman/2016/02/29/how-the-secs-implementation-of-dodd-frank-muzzles-transparency-on-corruption-in-csr-initiatives/#7d8ab8881c15>

<sup>45</sup> Global Witness, “BP and partners’ US\$350 million payments in corruption-prone Angola show need for US transparency rule”, August 2014, <https://www.globalwitness.org/archive/bp-and-partners-us350-million-payments-corruption-prone-angola-show-need-us-transparency/>

<sup>46</sup> Reuters, “UPDATE 1-Statoil says briefed Norwegian police on Angola payments”, 19 February 2016, <http://www.reuters.com/article/statoil-angola-idUSL8N15Y2EB>

<sup>47</sup> IIED, *Localising transparency: Exploring EITI’s contribution to sustainable development*, 2014, <http://pubs.iied.org/16555IIED.html>, p. 42.

<sup>48</sup> Kraus, op. cit.

### **Payments to state security forces**

43. Extractive activities often involve the use of state security forces, and companies make payments to the state and related institutions for security services.<sup>49</sup> Company–state security relationships are a notorious area of opacity and corruption risk,<sup>50</sup> and such payments need to be publicly reported.

### **Extending payment disclosures to the Alternative Investment Market (AIM)**

44. More than 200 oil, gas and mining companies raise finance on London’s Alternative Investment Market (AIM).<sup>51</sup> Serious concerns have been raised about the governance of some AIM-listed mining companies.<sup>52</sup> AIM-listed extractive companies should be subject to the same anti-corruption provisions as Main Market-listed companies.
45. AIM requires prospectus-issuing oil, gas and mining companies to disclose in their admission document “any payments aggregating over £10,000 made to any government or regulatory authority or similar body”.<sup>53</sup> But, as an Exchange-regulated rather than an EU-regulated market,<sup>54</sup> AIM is currently not covered by UK and EU disclosure rules.
46. The Government is keen not to over-burden AIM, a market intended for smaller growing companies, with regulation. However, AIM-listed companies would not be overburdened by disclosure requirements equivalent to those in the UK rules implementing the EU Directives, which set a materiality threshold of £86,000 below which extractive companies are not required to report payments to governments.

### **Influencing the UK Overseas Territories and Crown Dependencies to introduce similar regulation**

47. The Government recognises the importance of the Overseas Territories and Crown Dependencies (OTs and CDs) following the UK’s lead on beneficial ownership disclosure as part of the fight against corruption.<sup>55</sup> Similarly, the Government should work to ensure that the OTs and CDs adopt mandatory reporting requirements for their incorporated and publicly listed extractive companies.
48. The Channel Islands Securities Exchange in Guernsey could become a European listings centre that attracts “forum-shopping” by extractive companies seeking to avoid application of the EU Transparency Directive.

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<sup>49</sup> See e.g. “Shell spending millions of dollars on security in Nigeria, leaked data shows”, *Guardian*, 19 August 2012, <http://www.theguardian.com/business/2012/aug/19/shell-spending-security-nigeria-leak>

<sup>50</sup> See e.g. Global Witness, *Paying for Protection: The Freeport mine and the Indonesian security forces*, 2005, <https://www.globalwitness.org/sites/default/files/import/paying%20for%20protection.pdf>

<sup>51</sup> <http://www.londonstockexchange.com/exchange/companies-and-dvisors/aim/for-companies/information-search/aim-company-search-download-all.html>

<sup>52</sup> London Mining Network, *UK-Listed Mining Companies and the Case for Stricter Oversight*, 2011, <http://londonminingnetwork.org/docs/lmn-the-case-for-stricter-oversight.pdf>

<sup>53</sup> AIM Note for Mining, Oil and Gas Companies, 2009, <http://www.londonstockexchange.com/companies-and-advisors/aim/publications/rules-regulations/guidance-note.pdf>, p. 4.

<sup>54</sup> <http://www.londonstockexchange.com/companies-and-advisors/sfm/faqs/faqs.htm>

<sup>55</sup> “UK could legislate to force tax havens to reveal offshore ownership, says Pickles”, *Guardian*, 3 October 2015, <http://www.theguardian.com/business/2015/oct/03/uk-could-legislate-to-force-tax-havens-to-reveal-offshore-ownership>

## **Recommendations**

49. The UK Government should commit to revise its mandatory reporting requirements for oil, gas and mining companies to include payments related to physical oil, gas and mineral commodities trading, advocate for EU-level change, and lead an international process to end trading secrecy that includes other major hubs like Switzerland, the USA and Singapore. The UK could signal its intention to revise its Reports on Payments to Governments Regulations 2014 and to work with EU partners for similar revision of the Accounting Directive to include trading transparency, announce this at the Prime Minister's May 2016 Anti-Corruption Summit and make it an Open Government Partnership National Action Plan 2016-18 commitment.
50. The Government should commit to revise its mandatory reporting requirements for oil, gas and mining companies to include payments for transportation and export activities, social payments to governments, and payments to state security forces, and advocate for EU-level change.
51. The Government should extend oil, gas and mining-related payment disclosure requirements to the Alternative Investment Market (AIM).
52. The Government should influence the UK Overseas Territories and Crown Dependencies to introduce similar regulation.

**ends**