A Guide to Parliamentary Oversight of Mining and Mineral Revenues in Sierra Leone

Strengthening Parliamentary and Civil Society Oversight on Oil, Gas and Mining Resources in Sierra Leone

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This guide provides some basic information for Sierra Leone’s Parliamentarians conducting oversight of mineral resources and the revenues they generate. It provides a set of questions that Members of Parliament might need to ask in order to ensure that Sierra Leone receives maximum benefits in terms of revenue for the minerals extracted and that these revenues are used in ways that will benefit the country and its people.

This guide tends to highlight the expected roles of Members of Parliament in the bid to achieving the goals of maximizing mining revenues and benefits to the country and people. It attempts to bring to light issues such as; what should be considered in setting up a strategic framework for social and economic planning, mining policy and legal framework within the context of the development vision of the country, it clarifies the role of the minerals sector as well as the pivotal role of Parliamentarians in instituting the legal framework to make it work effectively.

The guide also attempts to bring to the notice of Parliamentarians the issues to be concerned with in overseeing the various steps of the minerals ‘value chain’

There are series of steps involved in the minerals ‘value chain’ from extraction of the minerals to turning them into revenues for the development of the country and the improved wellbeing of its citizens. Achieving this ‘value chain’ which seeks to maximize benefit requires that a number of questions need to be asked at each stage of the ‘value chain’. These stages include:

1. **Decision to Extract**– Should mining take place? How much? Where? When?
2. **Bidding Management**– Does the process select the best operator or service provider?
3. **Contracting with Companies**– Are the terms good balances for risks and returns?
4. **Revenue Management**– Is what is owed, received? By whom? Are there any losses?
5. **Budgeting**– Are the plans to spend the revenues focused on development and poverty reduction?
6. **Expenditure Management and Public Service Monitoring**– Is the money actually spent according to plans? Is it benefiting the people?
7. **Compliance of Mining Companies**– Are the Mining Companies adhering to the: (a) Mines and Minerals Act? (b) Environmental Protection Agency Act? (c) Income Tax Act? (d) Labour Laws?
8. **To what extent are they undertaking their corporate social responsibility?**
9. **How are they carrying out their resettlement programmes?**
10. **What are their Human Rights record like?**

With these answered, it’s BINGO!
SECTION A: Understanding what Mining is all about

The role of the Extractive in the Development Strategy

The Legal and Institutional Framework

MPs debate on Mining Contracts/Laws/Policies

MPs debating of Mining Contracts, Mining Laws and Mining Policies makes these issues clear

Contract monitoring and documentation

Ensures transparency in the utilization of resources accrued from extractives mining

Investigative field visits/oversight

Exposes MPs to the mining activities of mining companies and this will helps in their

Parliamentary public hearings

Promotes dialogue between communities and local and national

Mining cannot just be allowed to go on as it is. Before mining begins it must be ensured that everything about it has been effectively audited in the interest of the people and country. Such audits should aim at maximizing benefits to the citizens on a very long term basis. Parliamentarians therefore have a key role to play in such long term socio-economic planning that clarifies the contribution that mining is expected to make to the country and people’s long term development.

Strategically, mining policies, mining laws and mining contracts need proper clarification if this contribution by the mining sector is to be realized. Certain questions then must be asked:

- What is this mining for? Of what benefit is it to the people and country? How will it contribute to the country’s long term socio-economic development? How is mining supposed to contribute towards reducing poverty especially in communities of operation? Are the mining companies adhering to the laws of the country such as: a) the Mines and Minerals Act; the Environmental Protection Agency Act; the Income Tax Act and the Labour Laws? To what extent is the mining company adhering to its corporate social responsibility? How responsible is the company undertaking it resettlement programme? What is the company’s human right record like in relation to its employees?
The answers to these questions once logically looked into, provide logical ‘societal test’ against which all questions pertaining to mining, the mining policy and the mining laws can be judged for effective decision-making. Key to achieving this requires the adoption of a ‘cost-benefit framework for the analysis of the issues that have engendered the questions. Along this process key questions such as outlined below should be asked:

• What are the cost of the decisions about to be taken?
• What are their benefits?
• Do the benefits outweigh the costs?
• Are there alternative decisions that could be more beneficial to the people and country?

In asking these questions Parliamentarians should take into account the true economic cost and benefit analysis into serious consideration. This cost and benefit is what is otherwise referred to as 'opportunity cost', and not the simple monetary cost and the benefits therein accrued as a result of any decisions taken.

Parliamentarians should be thoroughly ingrained in the policies and laws governing the mining sector so as to reflect on their individual and collective actions and decisions relating to mining activities, revenue generation and the utilization in the interest of the people and country. It is important therefore to anchor the legal framework on a clear vision geared towards the appropriate regulation of the mineral extraction exercise and the realization of benefits by the people and country.

An economic cost/ benefit analysis is a GOAL for the People & Country
SECTION B: What to look for when exercising oversight of the Extractives Sector

Social and Economic Planning

Legal Framework

Company compliance with Country Laws and Regulations

Accountability of State officials and Local authorities

Community awareness/Company’s corporate social responsibility

Local authorities/Government strategic development

Is there an environmental protection plan in the best interest of the community and the people? How good is the company’s health and safety mechanisms? Does the company comply effectively with Sierra Leone’s labour and employment laws?

How is the royalty from the extractives used? How beneficial is the royalty to the community and the people? How many mining companies are operating, and what are they doing? What is the relationship between the companies and key stakeholders? What mechanisms are there for raising the awareness of the people?

What exactly is being paid as royalty? What kind of mining is being executed? Are the people aware? Does the company interact with the people? What are the challenges of the company and the community? What are the direct challenges faced by the affected communities?

What is the total number of mining licenses issued out per chiefdom/district? How is the company’s activities being monitored? Is there an alternative plan for land use? Is the development brought about by the mining company in the interest of the people and the community?

THIS IS AN AGENDA THAT REQUIRES THE COOPERATION OF ALL AND SUNDRY FOR ALL TO BENEFIT

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MPS NEED TO BE BETTER INFORMED ON MINING AND USE OF EXTRACTIVES RESOURCES TO BE ABLE TO PERFORM THEIR OVERSIGHT RESPONSIBILITIES

MPS, CIVIL SOCIETY AND MEDIA CAN CONTINUE HAVING INTERACTIVE TRAINING WORKSHOPS

MPS CAN NOW PROBE MINING OPERATIVES DURING INVESTIGATIVE MISSIONS TO MINING COMMUNITIES

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THE ESSENCE OF NACE’S INTERVENTION IN THIS AWARENESS RAISING AROUND THE EITI PROCESS

The National Advocacy Coalition on Extractives (NACE) as the name suggests, is a conglomeration of civil society organizations that is representing the national interest as far as mining of extractives and the beneficial utilization of their resources is concern. NACE cannot all by itself succeed in meeting the overall goal and as such has carved an intervention programme, aimed at improving the oversight role of Members of Parliament who are direct representatives of the people in order to better the monitoring, supervision and regulation of the extractives sector. The overall goal of this intervention is inter alia:

1. Improve governance
2. Improve transparency
3. Ensure an accountable use of extractive resources; for the general good of the Sierra Leone and its people.

Once these goals are achieved in the medium and long terms, government through parliament and its MDAs would have shifted from their traditional ways of doing things in the extractives sector. Those traditional ways of doing things at the Executive, Legislative and Judiciary levels have not in any way benefited Sierra Leone and Sierra Leoneans. With this new inclusive approach engendered by the NACE intervention, the country and its people will realize one major difference:

• An improved quality of governance, transparency and accountability in the mining sector to include Government’s policies on oil and gas (which are new phenomena in the country), as well as in their processes, practices, and behaviours of the extractive companies and more essentially in the use of resources accrued from the extractives sector.

To achieve these, NACE has embarked on a number of activities including: training workshops for Parliamentarians; fostering relationship and alliance building between Parliament, civil society activists and the media and facilitating investigative field trips to mining sites across the country.

PROVIDING TRAININGS AND CAPACITY BUILDING:

These trainings were aimed at Parliamentarians in order to deepen their understandings and galvanize their involvement in the Extractive Industries Transparency Initiative (EITI) process in Sierra Leone. This is in line with the fulfillment of one of the key requirements for the country’s attainment of a Validation Status. This requirement demands a wider stakeholders’ knowledge and understanding of the process which will ultimately enhance their participation in the process.

The trainings and capacity building exercises also took into consideration Parliamentarians’ familiarization of the contents of the Consolidated Mines and Minerals Act to sharpen the Parliamentarians’ analytical skills and abilities for parliamentary debates on mining minerals sector. It was also to enhance their effectiveness during field investigations.

The Parliamentarians were exposed to mining contracts. The trainings brought out to the Parliamentarians the how the contents of mining contracts look like in order to draw from their technicalities. This was aimed at capacitating the Parliamentarians to be able to identify and analyze key areas of concern in mining contracts during ratification.

Oil and Gas extraction are a new phenomena in Sierra Leone. The NACE trainings and capacity building exercises regarding oil and gas were to raise the awareness levels of the Parliamentarians regarding the new extractives and encouraged them to access further information on them with the view to understanding the governance challenges that are inherent in oil and gas extraction.

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When all of these activities are put together, the mining and minerals sector will experience improved governance, transparency, accountability and a responsible use of extractives resources for the public.
BUILDING RELATIONSHIPS AND ALLIANCES: The trainings and capacity building activities of NACE targets every facet of stakeholders with interest in the mining and mineral resources sector. This has been particularly possible with Parliament, Civil Society and the Media, three stakeholders whose collaboration in very critical to achieving the set-out goal for the NACE intervention. The activities therefore were cross-cutting, hinging on and depicting the role of each of the three players so as to establish possible areas of cooperation and collaboration. The training and capacity building exercises indeed exposed those areas of linkages which also cleared the way for the building of a relationship or an alliance between the three forces, as a single force coordinated from within aimed at achieving the grand goal which is to improve governance, ensure transparency, accountability and responsible use of extractives resources. To achieve this, NACE looked at several forms for building this relationship and they include:

- Creating a forum for bringing all the stakeholders/partners through training workshops;
- Involving the partners in the designing of training programmes;
- Bringing the partners together in a forum to discuss areas of collaboration on areas of contracts, legislation and mining laws;
- Organizing joint international travels on extractives-related issues;
- Organizing joint field investigative trips to mining areas and mining companies in exercise of parliament’s oversight responsibility.

A strong relationship between Parliament, civil society and the media enhances trust between each other and will strengthen future multi-stakeholders advocacy that could push for the implementation of laws, policies and regulations relating to the mining sector.

**SOME KEY QUESTIONS TO ASK ON CONTRACTS**

1. What is the duration of the contract? What are the provisions for renewal and termination? In considering these questions the following should be noted:
   - Can the government terminate the contract on grounds of non payment of taxation or fraud?
   - Are ‘Force Majeur’ rules clearly articulated?
   - What law will apply in the case of a dispute? National or foreign, international arbitration or national courts?

2. What are the local content provisions?
   - Does the contract lay down ratios for the employment of nationals and their wages? Does it specify ratios for management positions?
   - Does it cap employment for foreign staff?
   - Does it call for the involvement of national sub-contractors or sourcing from local providers?

3. What revenues will Sierra Leone earn from the contract?
   - What is the royalty rate? On what basis are percentages calculated? (e.g. volumes, tonnage, carat, etc.) Is this measurement based on the reference value at the point of extraction or export? Is this adjusted or adjustable for any cost?
   - Which taxes are applicable (Income tax, VAT, Corporate tax, Tax on profit) Are customs duties exempted for any portion or all of the contract duration?

4. Are there any exemptions from general legislations or regulations on taxation or custom duties-what are the exemptions and what are the rationale?

5. Is the company required to make Corporate Social Responsibility contributions or build infrastructure for local communities? Is the company required to build infrastructures such as roads, houses railways etc as part of the project? What is the status of these infrastructures at the end of the project?

6. What are the provisions on disclosure of information and data on extraction by the company to government, (including parliament), media and civil society as manifestation of transparency and accountability to the government and people?
7. What are the environmental clauses of the contract? Does the contract provide for mine decommissioning, removal, reclaiming and clean up obligations? What standards will be applied to these closure activities? What mechanisms will be used to ensure adequate funding of closure activities? Does the contract provide for reforestation?
8. How do the contract terms compare with international standards?
9. Is the contract inline with the country’s legislation, regulations etc.?

CONSIDER THIS!

A Contract is a set of rights and duties binding two or more parties throughout the duration of the concession. A Contract will normally specify taxation levels, fees, royalties, import and export duties on minerals, derogations and special exemptions from taxation, stabilization of taxes or other financial burdens, environmental and social obligations, clauses on duration and changes to the agreement, rights of assignment, local content provisions, financial terms including lending policies, currency of operations and repatriation of profits, and disclosure provisions among other issues. At times, contracts might cover only some of these issues where certain issues are standardized in the legal framework and could therefore be non-negotiable.

Contract negotiation is typically the prerogative of the government and parliament is not involved in the negotiation stage. Yet, contracting represents a key stage in the value chain since it affects the government’s ability to extract revenues from the project as well as ensure environmental and social sustainability. Given these fiscal, environmental and social implications, Parliament as the direct representative of the people of Sierra Leone, might want to request involvement as an observer in contract negotiations via a specialized Parliamentary Committees such as the Parliamentary Oversight Committee on Mining and Mineral Resources, Parliamentary on Finance and Public Accounts, Parliamentary Committee on Lands and the Environment, Parliamentary Committee on Labour, Social Welfare, Parliamentary Committee on Employment etc whose members would be bound by confidentiality agreements if allowed to observe any contract negotiations.

NOTE THIS!

It is very important to understand government’s take of revenues as a way of understanding the gross revenues that a company is entitled to claim as cost. Terms for cost are usually clearly defined in the contract and legal framework, but may differ for each revenue stream. Sometimes royalties allow for cost of transportation and smelting to be deducted while corporate tax may allow for all exploration and development costs to be deducted. When Parliament is reviewing the revenues collected by the government, they have the opportunity to ask whether the revenues collected by the government, they have the opportunity to ask whether the revenues reflect a proper assessment of her cost recovery.