

# **Mining Revenue Taskforces and mining sector governance in resource-rich developing economies**

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## **Background**

Resource-rich developing countries are heavily dependent upon the quality of governance as the decisions made by those in power have the tendency to enhance the upsides and downsides associated with such resources. Alongside the opportunities for economic growth, employment and government revenue, there are substantial dangers inherent with such sectors. These include but are not limited to Dutch disease, revenue volatility, corruption and conflict. These dangers are commonly categorized as the 'resource curse', surrounding which there is a large and growing literature. It is incontrovertible that natural resource sectors pose governance and administrative challenges and that the quality of governance over the sector will to a large extent determine whether potential offered by natural resources is achieved. A particularly important and challenging aspect of governance concerns the collection and administration of revenues from the sector. One approach to manage this issue in Sierra Leone has revolved around the creation of a Mining Revenue Taskforce comprising representatives from relevant institutions. This paper will describe Sierra Leone's experience before analysing the potential of a Taskforce-style institution in other country contexts.

## **Challenges to governance posed by mining sectors**

The existence of a large mining sector poses many governmental and administrative challenges, which developing states are least able to manage. These include the fiscal regime, revenue volatility, environmental degradation, health and safety, social tensions etc. However, one of the most challenging and the focus of this paper is the 'revenue administration' of the sector. This includes technical but very important aspects of mining sector governance including:

- i) Records of companies operating in the sector
- ii) Revenue reconciliation within government (and between government and private sector)
- iii) Transparency around mineral revenues
- iv) Assessing prices for royalty calculations

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- v) Establishing procedures for mineral rights applications and payments and ensuring those procedures are followed.
- vi) License administration

There are several reasons why the above issues are particularly challenging for developing states to deal with. A major underlying factor is the complexity of the mining sector, which is particularly pertinent when it comes to administration of the fiscal regime. Exacerbating this is the discrepancy in capacity between multinational companies on the one hand and dysfunctional governments on the other. There is also a significant variation in standards of corporate social responsibility with many developing states being vulnerable to short termist 'bottom feeders'<sup>2</sup> with little incentive to demonstrate corporate social responsibility.

The act of establishing appropriate rules and procedures governing the sector requires committed and capable government. It must be committed in the sense that those in positions of authority are making decisions with national welfare rather than personal welfare at heart. However, a well-motivated government by itself is insufficient as developing country governments will typically not have the capacity to effectively administer the mining sector. Ensuring compliance by multinational companies requires significant capacities from within government, both in terms of technically competent personnel and developed systems and processes.

Unfortunately, the significance of such sectors to domestic economies typically leads to substantial political interference in the mineral sector. This also makes mining revenue administration particularly challenging as political intervention can both hamper the creation of appropriate rules governing the sector and allow those rules to be bypassed by those with appropriate connections. The plentiful opportunities for corruption offered by large mining sectors also provides an obstacle to the establishment and application of a comprehensive system of rules and regulations.

Many of these challenges aren't just difficult due to the relevant technical and financial constraints but also due to the 'multi-institutional nature' of the problem. This means that they cut-across the portfolios of different government departments requiring co-operation and communication between such departments for resolution. This is particularly important for revenue administration where both the tax authority and the ministries responsible for finance and mineral resources are all important players. Ensuring 'joined up government' is a struggle for governments in the most developed states and the problem is magnified in developing country contexts. It is here where a Mining Revenue Taskforce can contribute.

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<sup>2</sup> This term refers to junior mining companies, many of which have limited experience and whose strategy often involves selling their asset to a major mining company for a large profit after establishing that the mining site contains valuable deposits.

## The Mining Revenue Taskforce in Sierra Leone

### i) Institutional background of Sierra Leone's mining governance

The institution primarily responsible for governance of Sierra Leone's mining sector was the Ministry of Mines and Mineral Resources (MMMR). Within this ministry, there were several departments, one of which was the Mining Cadastre Office, with responsibility to<sup>3</sup>:

*“open and maintain for the purposes of this Act registers and a cadastral survey map, to be known collectively as the mining cadastre, comprised of-*

*(a) the register of mineral rights;*

*(b) the register of mineral rights applications; and*

*(c) the cadastral survey map of mineral rights and mineral rights applications”.*

From January 2013, a new National Minerals Agency (NMA) was established with responsibility for applying the relevant regulations to the mining sector. The MCO transferred to the NMA, which was formally under the MMMR (which was left with policy making responsibilities). Other institutions included the Ministry of Finance and Economic Development (MoFED) and the National Revenue Authority (NRA). There was also an EITI secretariat which gradually increased in size and scope and worked with a Multi-Stakeholder Group (MSG).

The background to the formation of the Taskforce in Sierra Leone was an IMF request in early 2011 for data on payments by the largest mining companies operating in the sector. Alongside this more immediate issue, there was an on-going project within the MMMR focusing on the Mining Cadastre Administrative System (MCAS). This was being implemented by the Revenue Development Foundation (RDF), a non-profit consultancy focusing on assisting governments with revenue collection, with funding from GIZ. They had earlier implemented Phase 1 of the project which established processes and procedures within the Mining Cadastre Office for the administration of licenses alongside the creation, installation and transfer to the Government of MCAS software.

The Taskforce had a core group of representatives from MoFED, MMMR and the NRA. Over time, membership was extended to the EITI administrator, the National Minerals Agency (after its creation in January 2013). From outside the Government, RDF was involved from the beginning and GIZ also began attending regularly from September 2011. Others were sporadically invited including the Petroleum Directorate and the Ministry of Agriculture, Forestry and Food Security due to a RDF project with Forestry. The Taskforce originally met weekly in the MMMR before this was adjusted to once per fortnight.

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<sup>3</sup> Mines and Minerals Act 2009 – accessible via [www.slminerals.org](http://www.slminerals.org)

## ii) **Activities and timeline of the Taskforce**

The initial objectives of the Taskforce were as followed:

1. Ensure accurate and reconciled mining sector revenue reporting for GoSL from this point forward.
2. Confirm and reconcile mining sector revenue for 2009 and 2010 as soon as possible, including all companies, but with a particular and urgent focus on the top 10 companies.
3. Identify and address issues relating to mining sector revenue.
4. Facilitate and support the MMR-NRA data integration project.

During the early months, the Taskforce was effectively led by a RDF consultant despite a MMMR official being the official chairman (this highlights a long-running challenge of local ownership which is discussed later).

Procedural issues predominated in the early meetings of the Taskforce. A major initial activity concerned the installation of appropriate procedures within the MMMR surrounding the recording of payments by mining sector operators in MCO's cadastre system. This was of vital interest to both MMMR and the NRA and was thus a major component of RDF's project. Establishing good procedural practice is very important in effective mineral revenue administration.

Specific activities in this regard involved the drafting of a memo for the Minister of Mines and Mineral Resources to sign insisting that the payment process in the Mining Cadastre Office was not to be rushed. This aimed to overcome the problem whereby pressure from mining companies and ministry officials for quick confirmation led to poor record keeping. The memo was widely circulated, going to many officials at both MMMR and NRA in order to clearly establish this procedure.

A second procedural issue focused on the poor information sharing between the MMMR and NRA. Despite a NRA officer being stationed in the MMMR (in fact in an office less than 10 metres from the MCO), the MCO didn't always receive evidence of payments made by mining companies. This jeopardized MCAP and threatened MCO's comprehensive recording of information. The Taskforce agreed that the NRA officer at MMMR should be instructed to bring any receipt to the MCO prior to issuing to the taxpayer. This was so the receipt could be scanned into MCAS, thus keeping a permanent electronic record. A senior NRA official attending the Taskforce was allocated this responsibility.

This brings us to the next set of issues occupying the taskforce in its initial weeks and months which involved the MMMR getting access to the revenue codes and tax identification numbers (TINs) which were used by the NRA to denote different revenue streams and taxpayers respectively. This

was necessary for the data integration pilot (DIP) to be a success. The DIP was a project funded by GIZ and implemented by RDF focusing on integrating revenue data between MMMR and NRA. After a successful pilot, a full scale project was later overseen by the Taskforce.

In relation to this, an information sharing agreement between MoFED, MMMR and NRA was drafted and agreed at Taskforce stating that certain select individuals were able to share information at Taskforce without asking for more senior approval. After agreement by the relevant top civil servants, this was implemented, thus allowing much faster and easier data exchange between institutions.

The final big issue consuming taskforce meetings related to the updating of historical data held within MCAS. Although the MCAS system ensured that all revenues should be recorded, MMMR was eager to confirm mining revenues from previous years. This was because MCAS indicated that there were many payments outstanding from pre-MCAS days when there was a less efficient system for license management. It was recognized that the apparent outstanding payments could result from either non-compliance by companies, poor record keeping at MMMR or some combination thereof.

Successive letters had been sent to 'non-compliant' companies by MMMR with limited success. It was recognized by MMMR staff that many companies had left the country after a lack of success but without updating the MCO. Also, many companies had registered as their contact address their temporary address within Freetown (often a hotel or guest house) and were now based in the provinces at unknown addresses. This meant the MCO (and MCAS) did not have a clear idea of who was operating in country and how to contact those operators.

Despite these problems, a further letter, this time from the Minister of Finance, was drafted by the taskforce and sent to a number of non-compliant companies. This letter informed companies that they were not compliant with the Mines and Minerals Act 2009, giving details of the value of revenue which was either unpaid or unrecorded within MCAS. Companies were asked to either provide evidence that such payments had been made or to make such relevant payments. The letter ended by threatening sanctions under MMA 2009, in particular the cancellation of the relevant license (many of which ought to have been cancelled as the company had not been active for years) and/or substantial fines.

After taskforce discussions, it was agreed that a press release should be drafted and issued calling on mining companies to make contact with the MCO with similar wording to the letter sent by MoFED. Drafted by taskforce members and jointly signed by the Minister of Finance and Minister of Mines, the press release was issued in several newspapers, the national radio station and in the Ministry of

Information's weekly press conference. There was a response from some companies including some receipts sent to the MCO which led to updating of the cadastre system.

Alongside the potential non-compliance by companies, another issue threatened both the completeness of historical data within MCAS and on-going revenue reconciliation. This was the issue of payments being made directly to the Ministry of Finance and Economic Development by mining companies, bypassing the procedures established in law. The cause of this was never fully established. It is possible that senior staff within MoFED were requesting companies to make payments in this way (possibly as a result of pressure on them to cover short term deficits).

An example of such payments and their subsequent discussion at Taskforce was the discovery of two US\$2.5 million payments made by one of the country's biggest mining investors, in September 2011. The confirmation of these payments by MoFED representatives on the Taskforce allowed the NRA and MMR to also record it once the relevant documents had been shared. This was crucial to the accuracy and integrity of MCAS. The identification of such payments was and is crucial to the EITI process.

From September 2011, several changes took place. Firstly, the taskforce was re-named the 'Extractive Industries Revenue Taskforce' and invitations were sent to the ministries, departments and agencies responsible for petroleum, forestry and fisheries. Irregular attendance from forestry and petroleum followed. Secondly, the Mining Revenue Integration Project (MRIP) commenced and became a weekly agenda item at the taskforce meetings.

The MRIP followed on from the DIP, which had shown that revenue data between the NRA and MMR could be successfully integrated. The project had resulted in a substantial increase in the amount of revenue (and number of revenue streams) captured by MCAS and thus substantially improving MMR's control of data. However, this process had to be continued which meant institutionalizing the exchange of data between institutions.

Ultimately, it was envisaged that such revenue would be available to the general public. The mechanism for doing this would be the GoSL online repository which was launched in January 2012. Accessible via the MMR website, the repository contains detail of all mining licenses held within Sierra Leone including data on non-tax revenue payments such as license fees paid by companies. Possibly the single biggest achievement of the taskforce, the repository is at the forefront of minerals transparency. The plan is for the repository to be enhanced with tax data during 2013.

RDF, in its proposal for the Mining Revenue Integration Project (August 2011) noted that the data integration pilot had discovered that:

*The majority of mining companies holding industrial mineral rights are not complying with their payment obligations. The NRA has not been previously aware of the extent of the gap, as they have lacked complete information on mining payment requirements. Equally, MMR has not had information from the NRA with which to assess payment compliance. The one-off integration and reconciliation work under this pilot demonstrates the potential to identify compliance gaps for better enforcement. A systematic and regular integration process is required to ensure that compliance can be maintained as all licences progress through their lifecycles.*

In relation to this, GIZ (which was funding RDF's work) joined the Taskforce and discussions began on the creation of joint inspection teams to follow up on outstanding payments identified by the data integration pilot. Despite the letters and the press release, there were still many companies who needed to confirm they had made license payments in line with legislation. A roadmap proposed by GIZ offered an outline of how the joint inspection teams could be formed and a proposed workplan. After approval from the Taskforce, it was agreed that the JITs would comprise representatives from NRA, MMR and MoFED.

Eventually, there were some visits made by the JITs to the Freetown offices of some companies identified as potentially suspect, which led to progress in the form of detailed information being provided by said companies to the MCO. However, the JIT's were not the most successful example of the Taskforce's work. Unfortunately, it proved difficult to get momentum behind it due to a lengthy absence of the then-chairman of the Taskforce which interrupted the regular scheduling of meetings.

Alongside these developments, there were moves underway for the MMR to issue suspension orders to a long list of companies which were found not to be complying with requirements of their license under the 2009 Mines and Minerals Act. The list had been sent to the Minerals Advisory Board, which was formally charged with the power to approve and suspend licenses. A frustrating and lengthy delay in the MAB meeting held up this process, but eventually it was agreed that 70% of the mineral rights holders (specifically companies) were to face suspension or cancellation.

The Taskforce also drafted a joint memo requesting that the Ministry of Finance desist from accepting direct payments from mining companies and request that mining companies make their payments through the appropriate systems. However, ensuring that no such direct payments are made in future is very much a live issue and one that MoFED representatives on the Taskforce are continually looking into.

On two occasions, the Taskforce served as a forum for discussion with external visitors. The first concerned a mission focused on tax administration from the IMF's Fiscal Affairs Department which was providing technical assistance to Sierra Leone on the management of natural resources. The second concerned a visit to MMMR by a delegation from Liberia's Ministry of Mines with the purpose of observing systems established in recent years including MCAS and the Taskforce. On both occasions, the purpose and work of the Taskforce was discussed by the chairman before there were questions from the respective visitors.

From January 2013, the Taskforce was re-constituted after several months' absence (due to the Presidential elections and the departure of the previous Chairman) with a new Chairman, a senior economist from MoFED. With new representatives from GIZ and RDF, the activities and focus changed somewhat.

One key piece of work was the creation of a monthly mining revenue report. This was agreed as desirable by members of the Taskforce as well as some relevant ministers. After a draft template was agreed, MoFED took the lead on completing the template for the month of January 2013. This required amalgamation of data from different parts of the NRA as well as the Bank of Sierra Leone and MMMR. The newly appointed Minister of Finance was briefed on the work of the taskforce and the new monthly report and gave his strong support.

The Taskforce also continues to oversee RDF's work with the new National Minerals Agency, where they are now focused on improving compliance within the mining sector. The irregular reporting from mining companies on their production and exports has also been discussed at Taskforce as both MoFED and MMMR were worried about it. n. EITI is also an agenda item at each meeting.

Finally, it is hoped that the data ascertained via the monthly mining revenue report can be used to estimate the effective tax rate for Sierra Leone's mining sector. This has been strongly pushed by GIZ and it is believed that data will soon be sufficient for an estimate to be made, at least for the largest mining companies.

### **Success of Taskforce in Sierra Leone and its applicability to other countries**

The Taskforce has become an established institution in Sierra Leone and occurs fortnightly under local leadership. It has assisted the Mining Revenue Integration Project, developed the monthly mining revenue report and achieved improved co-ordination between different parts of GoSL. Many other developing countries face similar challenges to those with exist in Sierra Leone and thus could benefit from a similar Taskforce type institution.

The following are considerations which influenced the Taskforce in Sierra Leone and which will affect the possible success in other countries.

## 1. Membership

In Sierra Leone, membership consisted of the ministries responsible for finance and mines as well as the revenue authority and the EITI secretariat from within the government. From outside the government, there was one donor (GIZ) and one consultancy (RDF).

From within government, clearly it is essential that there are representatives from the ministries responsible for finance and mines, the revenue authority and the national EITI secretariat. Another worthy idea, depending on the context, would be for there to be representation from the President's office. The worthiness of non-government involvement (i.e. donors, consultancies etc) is discussed later under 'Co-operation with outside actors and programs'.

In terms of numbers, allowing for a few members attending regularly from each institution on the Taskforce, 10 to 15 would be the ideal. A particular effort should be made to identify the most able members of the institutions although the national bureaucracy can make this difficult. With Sierra Leone, there was no representation from civil society but that is something which may be appropriate in other contexts.

## 2. Leadership

In Sierra Leone, leadership was initially provided by outsiders, firstly by an RDF consultant and secondly by an ODI Fellow based within the Ministry of Finance. Only after 18 months of the operation did a local official take charge on a permanent basis (after said ODI Fellow had left the ministry).

Clearly, the possibility of local leadership depends on the capacity in country. However, even in low capacity settings such as Sierra Leone, there should be some candidates of sufficient quality to do the work. The problem in such contexts is that such candidates are generally extremely busy on many other duties and are already leant on to an abnormal extent.

There is also the issue of where the chairman/leader of the taskforce should come from. In Sierra Leone, the taskforce was led by the Ministry of Finance, which is probably the most sensible institution given its ultimate oversight over revenue issues. However, there are alternatives such as the ministry responsible for mines, the revenue authority or even the President's office. One potential weakness of the taskforce in Sierra Leone was the non-involvement of some influential people at state house.

The ideal combination, and one which was ultimately tried in Sierra Leone, may be the combination of Ministry of Finance leadership with the secretary being from the Ministry responsible for the mineral sector. However, leadership from outside government is one second-best way of initiating the taskforce.

### 3. High-Level Support

Although the members of the taskforce should be senior technical level staff, ascertaining high level support (ministerial and permanent secretary level) is also essential for the success of the taskforce. Challenges encountered in the taskforce's work are much easier to overcome if members know that the relevant senior officials are supporting the work.

An alternate but related approach to this issue concerns getting high level support from donor/international organisations. In Sierra Leone, IMF officials providing technical assistance to the Government on the management of natural resources included positive comments on the taskforce in their reports. This proved helpful to Taskforce members in getting momentum behind their activities.

In most low-income resource rich countries, there will be a collection of outside agencies providing assistance on the management of natural resources, not all of which will necessarily co-ordinate their activities. These provide sources of direct support for the taskforce and also indirect support via their influence over senior government staff.

On a broader level, the taxation of natural resources is being increasingly recognized as an important issue in international development (both the United States and EU have recently passed legislation demanding greater transparency from extractive companies). Multiple global civil society initiatives and organisations have at least some focus on this issue (i.e. African Mining Vision, Natural Resources Charter, Revenue Watch Institute etc). There may be ways of tapping into this.

### 4. Targets and Goals

One effective means of acquiring the above is for the Taskforce to have particular targets and goals which are supported by high level staff. Initially in Sierra Leone, this included oversight of RDF's work alongside more immediate targets such as the identification of the top ten mining companies in terms of government revenue. More recently, it has been agreed that the Taskforce should be the forum for the creation of a monthly mining revenue report (MMRR) which shall report to senior decision makers the revenues from the mining sector on a disaggregated basis. This gives key decision makers a permanent interest in taskforce activities (and indeed the Minister of Finance receives copies of all minutes).

The taskforce will also be the focal point for efforts to estimate an effective tax rate for Sierra Leone's mining sector using the MMRR data as an input. Using the taskforce to ascertain high profile quantitative pieces of information such as disaggregated mining revenue and effective tax rate calculations is a good use of taskforce time and energy and thus assists with getting and keeping the support of top officials.

In many countries, it may be useful to have the Taskforce as the prime EITI-focused institution as it contains many of the representatives necessary to meet the EITI standards. If so, EITI compliance would be a clear and achievable goal which the Taskforce could usefully support.

#### 5. Co-operation with outside actors and programs

In Sierra Leone, the Taskforce operated as an unofficial steering group for RDF's activities. GIZ also used it to discuss other aspects of their resource governance program (only part of which concerned RDF). Due to the different institutions attending the taskforce, it is a sensible forum to act as a steering group for reform efforts (either led by government or donors) focusing on natural resources, most particularly revenue-related reforms.

It also tried to establish a link with the EITI multi stakeholder group by inviting a representative from the EITI secretariat on to the taskforce and including EITI as an agenda item. This worthy idea was undermined in practice by the irregular attendance of the EITI administrator. The ideal relationship between the taskforce and the EITI secretariat will vary depending on the country's EITI status and the calibre of the relevant multi-stakeholder group (MSG). As stated previously, it could even take over some of the role and work of the MSG in certain circumstances as it includes many of the stakeholders which are required for EITI completion

There are other technical assistant programs and providers who could be integrated with the Taskforce. The IMF's Topical Trust Fund for Managing Natural Resource Wealth is funding IMF Fiscal Affairs Department assistance in many resource-rich developing countries. One potential weakness of their approach is the lack of impact and momentum generated by their reports, which can result in slow progress. The Taskforce has been an effective forum for sustaining GIZ and RDF objectives in Sierra Leone and could thus be used by other organisations for similar purposes.

#### 6. Finances

The Taskforce in Sierra Leone had no budget and was forced to make ad hoc requests for funding particular activities (i.e. the publication of the press release in various media outlets

was funded by MoFED and the joint inspection team visits took place without the need for daily subsistence allowance). It could be an option in other countries for the Taskforce to have a standing budget (either government or donor funded). This can be used for very basic purposes such as providing refreshments (which can be very helpful in incentivizing people to attend) and also more significant activities.

## 7. Continuity

Establishing the Taskforce as a regular part of government activity is challenging due to the continuous demands on the most competent and able staff whose leadership and participation are required. It was far from unusual for meetings in Sierra Leone to be cancelled at late notice due to the chairman being called to meetings at short notice with ministers. Although an inevitable frustration, ascertaining high level support for the Taskforce as outlined previously can mitigate this to some extent. This and the effective use of targets and goals as previously described can help avoid a sense of drift which can develop after several unproductive meetings.