



Ghana's EITI - Delivering on the promise?

A review of the First Report on
the Aggregation / Reconciliation
of Mining Benefits in Ghana

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Objectives of the report

ISODEC Ghana have commissioned this report. In doing so they have requested that 'the key issues for verifying what EI companies should be paying in Ghana and not just what they currently pay' be identified.

Organisation of this report

To achieve this objective the following tasks have been undertaken, and are reflected in the commentary in this report:

Section 1

1. The intent of those who called for companies to 'Publish What You Pay' in resource rich countries has been established;
2. The intent of the EITI has been determined;
3. The proposed mechanism for achieving the objective of PWYP and the EITI has been established;

¹ For a full cv see <http://www.taxresearch.org.uk/Documents//RichardMurphycvJuly2006.pdf>
accessed 28-2-07



4. The Ghanaian interpretation of that objective has been noted;
5. The expected outcomes of the EITI are, in consequence, summarised.

Section 2

6. The Report that has been prepared by Boas & Associates for the Ghanaian EITI entitled 'The Aggregation /Reconciliation Of Mining Benefits In Ghana January - June 2004' (the 'Report') has been reviewed to establish the evidence on which comment can be made.

Section 3

7. Weaknesses in the processes used by Boas & Associates are identified and conclusions on its value are offered.

Section 4

8. A 'gap analysis' identifying issues that have not been addressed by either the Boas & Associates report or in the EITI process are highlighted.

Section 5

9. Recommendations are made.

Section 1 - the Intention of the EITI process

1.0 Publish What You Pay (PWYP)²

In December 1999 Global Witness published a report called 'A Crude Awakening'³, an exposé of the apparent complicity of the oil and banking industries in the plundering of state assets during Angola's 40-year civil war. It became clear that the refusal to release financial information by major multinational oil companies aided and abetted the mismanagement and embezzlement of oil revenues by the elite in the country. The report concluded with a public call on the oil companies operating in Angola to "publish what you pay".

However, it was clear that the lack of transparency in the extractive industries was also a significant concern in other resource-rich but poor countries. Therefore, Global Witness along with the other founding members, CAFOD, Open Society Institute, Oxfam GB, Save the Children UK and Transparency International UK, decided to mount a worldwide campaign calling for all natural resource companies to disclose their payments to governments for every country of operation.

² Based on <http://www.publishwhatyoupay.org/english/background.shtml> accessed 28-2-07

³ http://www.globalwitness.org/media_library_detail.php/93/en/a_crude_awakening accessed 28-2-07



The objectives were to:

1. Ensure multinational oil, mining and gas companies revealed basic information about net payments to a state in the developing world;
2. Ensure state-owned enterprises did likewise;
3. Use this information to assist citizens of resource rich but poor countries to call their governments to account over the management of revenues and thereby seek a democratic debate over their use and distribution;
4. Ensure disclosure by oil, gas and mining companies of the following payments:
 - Royalty payments denominated as a percentage value of production;
 - Bonus payments on signing a contract, on the location of commercial mineral deposits or on reaching certain production levels;
 - Corporate income tax, paid on income after permitted deductions for operating, exploration and interest costs and depreciation of assets;
 - Other taxes including withholding tax on dividend payments, excise tax, customs duties, sales/value-added tax and property tax.
5. In all countries it was desired that disclosure of payments information should be:
 - Easy to understand, reliable and comprehensive;
 - Easy to compare with other companies' figures and with government revenues information;
 - Accessible to civil society;
 - Provided in local languages; and
 - Provided in the local currency.
6. Ensure that the process of reconciliation implicit in the foregoing should be overseen by representatives of government, industry, civil society and international financial institutions.

1.1 Underlying assumptions

In designing their approach PWYP noted that:

*Companies can often be perceived to be complicit to corruption and the deterioration of social conditions in the countries where they operate, even though they are providing a valuable source of investment that, when managed transparently and responsibly, should be a source for growth and development that will benefit all citizens of these poor countries.*⁴

This belief is implicit in this quotation from the introduction to 'A Crude Awakening'⁵:

⁴ <http://www.publishwhatyoupay.org/english/background.shtml> accessed 28-2-07

⁵ http://www.globalwitness.org/media_library_detail.php/93/en/a_crude_awakening accessed 28-2-07



There should be full transparency. The oil companies who work in Angola, like BP–Amoco, Elf, Total and Exxon and the diamond traders like de Beers, should be open with the international community and the international financial institutions so that it is clear these revenues are not siphoned off but are invested in the country. I want the oil companies and the governments of Britain, the USA and France to cooperate together, not seek a competitive advantage: full transparency is in our joint interests because it will help to create a more peaceful, stable Angola and a more peaceful, stable Africa too.⁶

The assumptions are clear. As the summary of ‘A Crude Awakening’ put it:

A significant portion of Angola’s oil derived wealth is being subverted for personal gain and to support the aspirations of elite individuals, at the centre of power around the Presidency. The war is generating vast profits for top level generals within the Angolan armed forces (FAA), as well as for international arms dealers, not to mention enormous suffering for the Angolan people. Rather than contributing to Angola’s development, Angola’s oil revenue is directly contributing to further decline. Considerable effort has been made by the government to stifle all opposition and the press has been effectively muzzled. There is no accountability of government.

In effect, international oil companies are paying vast sums (the future development potential of Angola) into a black hole. As one commentator states, “This is like paying gangsters for a particular service. The rulers of Angola participate in ‘legal theft’. Just because the oil revenues are being paid into structures set up by the leaders, which makes them technically legal, does not make them morally defensible”.

Given this scenario, the international oil companies must accept that they are playing with the politics and lives of Angola’s people. In Angola the international oil industry together with lending banks, and certain government export credit insurance departments, have pursued profit and vested interests first. As the main generators of revenue to the government of Angola, the international oil industry and financial world must accept their complicity in the current situation. As such it is imperative that these companies change the way they conduct their affairs, creating new levels of transparency. The international oil industry and the finance companies that have provided oil backed loans, must play this leading role.

⁶ From a speech by FCO Minister Of State, Peter Hain, to The Action For Southern Africa (ACTSA) Annual Conference, School Of Oriental And African Studies, London, 20 November 1999.



It was believed that audit of the payments from the EI companies to the governments who granted them their licences to operate would do three things:

1. Require those companies to account for the liabilities they owed to those governments;
2. Reveal when the declared liabilities were not matched by receipts by the governments in question;
3. Hold the governments in question to account for the way in which they disbursed the sums they had received.

This trifold benefit was what motivated the civil society campaign to call for accountability and transparency within the EI.

1.2 The Extractive Industries Transparency Initiative (EITI)⁷

That call gave rise to the Extractive Industries Transparency Initiative (EITI), which was launched in 2002 and supports improved governance in resource-rich countries through the verification and full publication of company payments and government revenues from oil, gas, and mining. The Initiative works to build multi-stakeholder partnerships in developing countries in order to increase the accountability of governments. The EITI builds upon the call made by PWYP, but was an initiative of the UK government and World Bank that has now received widespread support.

The assumption inherent in the EITI was that:

Good governance is a precondition for converting large revenues from extractive industries into economic growth and poverty reduction. When transparency and accountability are weak, the extractive industries may instead contribute to poverty, corruption, and conflict—the so-called “resource curse.” The EITI is an important step in defeating this “curse.”

The EITI makes the following statements on its web site⁸:

Revenues from the extractive industries should be an important engine for economic growth leading to sustainable development.

Some countries rich in oil, gas and minerals have under-performed relative to other countries without natural wealth. There is a close correlation between the countries rich in natural resources and the countries with high levels of poverty.

Transparency over payments and revenues increases accountability and therefore the likelihood that the revenues generated by the development

⁷ Based on <http://www.eitransparency.org/section/abouteiti> accessed 28-2-07

⁸ <http://www.eitransparency.org/section/abouteiti/faqs#whateiti> accessed 28-2-07



of natural resources are used in an efficient and equitable manner. It can also reduce the risk of diversion or misappropriation of resources.

and:

The lack of accountability and transparency can exacerbate poor governance and lead to corruption, conflict and poverty.

Transparency needs to be linked to efforts to improve financial management and to tackle corruption. Without transparency, donors and International Financial Institutions will be less willing to engage in these countries and companies may be cautious about investing in an opaque (or--worse--corrupt) business environment.

It is for the individual populations of a country to hold their government to account for the use of the resources.

It is clear that the EITI thinks it has adopted the concerns of civil society that gave rise to it.

1.3 The EITI approach

The EITI approach is summarised in the EITI criteria⁹:

1. Regular publication of all material oil, gas and mining payments by companies to governments (“payments”) and all material revenues received by governments from oil, gas and mining companies (“revenues”) to a wide audience in a publicly accessible, comprehensive and comprehensible manner.
2. Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards.
3. Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards and with publication of the administrator’s opinion regarding that reconciliation including discrepancies, should any be identified.
4. This approach is extended to all companies including state-owned enterprises
5. Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate.
6. A public, financially sustainable work plan for all the above is developed by the host government, with assistance from the international financial institutions where required, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints.

⁹ <http://eitransparency.myauiweb15.com/principlesandcriteria.htm> accessed 28-2-07



It is these criteria that the Ghanaian EITI has sought to implement. They do in turn seek to implement the EITI Principles, reproduced as Appendix 1 to this report.

1.4 Ghana and the EITI¹⁰

The objectives of the Ghana EITI are in line with the international EITI guidelines and are to:

1. Carry out an independent audit of Ghana's Extractive Industry.
2. Develop and implement a revenue disclosure, oversight and publication mechanism to ensure that Ghanaians get all the information on their Extractive Industry revenue and public expenditure enabling them hold the government to account.
3. Build Capacity for government Agencies and Civil Society in EITI;
4. Develop and implement a Communications Strategy to fully engage the different Ghanaian publics; particularly Civil Society Organizations and Community Groups to ensure that Ghanaians know that the Extractive Industry resources belong to them.
5. Legislate EITI principles and objectives to ensure their existence in subsequent years beyond the present administration.

1.5 Ghana and the EI

The importance of the mining industry to Ghana is clear. The mining of gold (in particular), manganese and bronze contributes about 33% of total exports, 11% of Government revenue, 5% of GDP and 7% of corporate tax earnings¹¹.

1.6 EITI and ISODEC

As ISODEC notes on its web site:

The objective of Extractive Industries Transparency Initiative is to increase transparency in the receipt and utilization of payments and revenues generated by extractive industries in countries which heavily depend on these resources. ISODEC represents civil society on the national steering

¹⁰ Based on Statement delivered by Ms. Rita Tani Iddi , MP, Hon. Deputy Minister For Lands , Forestry and Mines at the Extractive Industry Transparency Initiative (EITI) Conference, Oslo, Norway, October 16 -17, 2006 available at <http://www.eitioslo.no/Speeches/speech+ghana.htm> accessed 28-2-07

¹¹ ibid



committee and seeks to deepen the concept of transparency and accountability in the extractive industry of this country¹²

1.7 Expected outcomes in Ghana

The practical interpretation of these objectives with regard to the Ghanaian EITI has, according to the Executive Summary of the Report been that the Ghanaian EITI process has been expected to supply these benefits:

1. Verification that payments claimed to have been made by mining companies were actually received;
2. Verification that reported production quantities noted by mining companies were in agreement with other official records;
3. Verification that the revenues received from the mining companies subject to audit were disbursed by the government as required by law.

1.8 The aggregation / reconciliation process.

As noted at the start of this report, its intention is to identify ‘the key issues for verifying what EI companies should be paying in Ghana and not just what they currently pay’. As such, whilst the issues noted in the Report with regard to disbursement of the benefits received by the government of Ghana from the EI might be of interest to others they are not within the scope of this report and as such are not commented upon further here. This report does instead concentrate on issues related to the aggregation and reconciliation process.

It is noted in the Report (2.1) that the main objectives of this process were:

- To reconcile mining companies' submissions of mining benefits payments to those received by government.
- To utilize lessons learnt from the reconciliation/aggregation to enhance transparency in the payments, receipts, disbursements and utilization of these benefits.

To do it is noted in the executive summary that:

- Individual templates of the selected Mining Companies were aggregated and consolidated as a composite Mining Company Template.
- Details of mining benefits received by government agencies were aggregated and consolidated as the Government Template.
- The two templates, the Composite Mining Company Template and the Government Template were reviewed/analysed and reconciled.

¹² From <http://www.isodec.org.gh/About-us.htm> accessed 28-2-07



The following payments were aggregated (3.2):

- Mineral right licence payments i.e. Reconnaissance; Prospecting and Mining leases
- Mineral Royalties
- Property rates
- Dividends
- Corporate taxes
- Ground rents
- Voluntary Contributions

In reality “aggregation” in this context only appears to mean “totalled”. In practice individual company disclosure equivalent to disaggregation in EITI parlance has taken place.

To give perspective to the items in question, the following were the amounts actually received in the period under review (January to June 2004) (copied from the Report):

Table 6

GOVT AGENCY COMPANY/BENEFIT	Government receipts of mining benefits for the period Jan-June 2004						TOTAL
	MIN.COMM Licences	MUN/DIST Property rate	ASMBL G.rent	OASL Mineral	IRS Royalty	IRS Corp.Tax	
Anglogold-Obuasi	0	300,000,000	0	24,606,549,000			24,906,549,000
Anglogold -Iduaprim	0	137,703,038	0	13,950,469,215			14,088,172,253
Anglogold -Bibiani	0	200,000,000	0	10,069,967,723			10,269,967,723
Bogosu Gold Ltd	0	128,817,781	0	9,688,088,761			9,816,906,542
Ghana Bauxite co.	0	30,000,000	0	1,491,905,535			1,521,905,535
Ghana Manganse Co.	0	111,537,753	0	3,649,519,268	2,500,147,065	153,700,000	6,414,904,086
Goldfields -Tarkwa	0	302,529,024	0	29,388,481,212	580,778,351	8,863,000,000	39,134,788,587
Goldfields-Abosso	0	233,737,842	0	16,445,770,780			16,679,508,622
GRAND TOTAL	0	1,444,325,438	0	109,290,751,494	3,080,925,416	9,016,700,000	122,832,702,348

It will be noted that:

- No licence fees or ground rents were received: it is assumed that the Aggregator checked that no licences were issued in the period to confirm that this was correctly stated and as such no further work is required in this area.
- Property rates represented less than 1.2% of all benefits received. It is assumed that in the light of their immateriality no further work in this area is required in this report. None has been noted.
- Just two companies paid dividends. Since it is noted that the Report says (3.2.5) that The Republic of Ghana retains a 10% non-contributing shareholding in every mining lease holder/operation and dividends should be easily verifiable by reference to the financial statements of the Mining Companies which it is noted that the aggregator received no further work is



presumed to be required in this area in this report. NOTE:
RECOMMENDATION - CONFIRMATION NEEDED

Note that other issues arising are noted in Section 2 of this report.

1.9 The Review Process

The Report (3.6) says that the Aggregator (in this case Boas & Associates) should:

- a. Ascertain the appropriateness of revenues received as mineral royalty, dividends and tax on profit.
- b. The aggregator shall also analyze the tax deductions claimed by the companies for the purpose of identifying any improper claims.
- c. *Check the disbursements made from the revenues received and ascertain if they are in conformity with legislation.*
- d. *Scrutinize the payment made to District Assemblies, Traditional Authorities and Stools within the operational areas of mines.*
- e. Ascertain the appropriateness of payments made with regards to mineral royalties; ground rent; dividends; taxation on profits and for mineral rights.
- f. Check if the declarations of quantities of minerals declared are in conformity with the declarations made to the Mineral Commission and refining certificates.
- g. Review financial statements for consistency for both companies and institutions. Specifically, for companies the aggregator shall review company capital investments and operating cost.
- h. Review the capital investments in order to assess the actual amount - of the investment and to determine if the amortization and depreciation declared is correct and does not improperly reduce the amount of taxable profit of the mining companies.
- i. Perform the audit of operating costs in order to assess if the deductions claimed were actually incurred and correspond to legitimate operational expenses as these affect the taxable profit of the companies.
- j. Review feasibility reports of Mining Companies in order to compare the projected production with the actual production.
- k. Reconcile the data so collected to ascertain if there is any disparity between the governments reported template and the aggregated companies reporting template.

The items italicised appear outside the scope of this current report, although within the EITI (as previously noted). The remaining requirements quite specifically require an audit. This is required by the EITI Criteria (noted above).



Section 2 - The Boas & Associates Report

2.1 Work undertaken

Section 4 of the Report details the work done by Boas & Associates. The following is recorded there:

Data collection

The methodology applied for data collection during the First Aggregation Phase was the Design Methodology which basically involved the design and administration of questionnaires accompanied by one-on-one discussion with interviewees for explanations and additional information to clarify issues of concerns. Data collected included technical data on mining operations and details of mineral benefits received by statutory organizations on behalf of Government of Ghana. From Mining Companies, the same data received from statutory institutions were collected.

Mining companies were however requested to add detailed supporting documents for the various mineral benefits paid to the appropriate statutory institutions.

Mining Companies were requested- to complete the templates provided (see Appendices 3A-3H). Composite templates were prepared using the data gathered from mining companies and government agencies which were compared to templates submitted and differences ironed out.

Documents review

Documents reviewed and studied included the following:

- *Annual reports and. financial statements of the selected companies for the periods 2003 and 2004, All these financial statements have been audited by the external Auditors of the companies.*
- *The Mining and Minerals Act, 2006 (ACT 703)*
- *Chamber of Mines, Annual Report 2005*
- *Feasibility Reports of Mining Companies'*

In addition the following is noted as to the basis on which the reliability of the reported payments was determined (4.2.1):

Production/Mineral Royalty payment:



Mineral royalty is a production based tax. The production figures provided by the mining companies had a direct bearing on the payment of royalty. The investigation of production figures provided by the mining companies included the following steps:

- I. Production schedules detailing ore tonnages, recoveries and other parameters were obtained from the mining companies.*
- II. Metallurgical Accounting of gold extraction was carried out for the six gold producing companies, following through at every stage of ore treatment and reduction to bullion production.*
- III. Ore grades of manganese provided were checked for consistency and compliance with international reporting standards.*
- IV. Mode of computation of saleable aluminium component of bauxites determined by the SGS on site was appraised.*
- V. Production figures provided by the mines were then compared with those provided by the Minerals Commission.*
- VI. The production, figures were compared to export detail provided by the Customs and Excise and Preventive Service at the Airport/Seaports. (See Appendices 4A-C) and also from CEPS staff stationed at the mines.*
- VII. Shipment/export details provided by the mines were also compared with that on the refining certificates (in the case of gold exports) taking special note of the serial numbers of the shipments as well as the grades/fineness quoted*
- VIII. Remittances from refineries and other agencies that market minerals on behalf of mining companies were also scrutinized to ascertain the relationship between funds transferred and minerals exported.*
- IX. The returns submitted by the mining companies to the Internal Revenue Service for the payment of mineral royalties were also scrutinized for any inconsistencies that may exist between the company declarations made to the Aggregator and those made to the Internal Revenue Service.*
- X. Figures provided by mines were compared to those stated in the financial statements to assess comparability.*



It should be noted that no reference is made to the basis on which payments other than production mineral / royalty payments were made.

2.2 Reported results of the aggregation / reconciliation process

Section 5.3 notes that the reported payments made by the Mining Companies subject to audit in the period were all received by the Government of Ghana. The reconciliation was absolutely accurate to the last cedis. As such it should be noted that no evidence of corruption was noted in this particular process.

2.3 Reported problems arising from the aggregation / reconciliation process

Section 5.3 of the Report notes the following apparent constraints on the work done during the aggregation / reconciliation process:

- No ground rent was paid by any of the selected mines for the period January 2004 to June 2004.
- There was no record of mineral right licence payment by the selected companies for the period January 2004 to June 2004.
- Voluntary Contribution: Details of these benefits would be stated in subsequent reports, as most of the mining entities could not provide data for the period considered in this report.

No additional commentary is provided on whether the Aggregators are happy with these conclusions to their work.

The following issues are noted to have arisen during the course of their work in section 6.0 of the Report as it relates to the issues covered by this report:

- *Accessing detailed information on production from some of the mining companies proved very difficult. It was extremely difficult in obtaining shipment and detailed royalties computations from Anglo.gold Ashanti (Obuasi mine), Ghana Bauxite Company Ltd and Bogosu Mines Ltd.*
- *Information from the Internal Revenue Service was difficult to obtain and took over three months in some instances. Information on computations of mineral royalty payments for Anglogold Obuasi, Anglogold Bibiani and Ghana Manganese could not be obtained.*
- *Capital allowances and losses that are being carried forward in the files of the companies by the IRS could not be obtained. Efforts would be made to retrieve the information for the subsequent aggregation/reconciliation. According to the IRS, the seemingly lack of cooperation, is due mainly to*



the fact that there is no dedicated desk or department that deals with mining issues.

- *Many Companies and Agencies initially provided figures which were based on accruals instead of actual.*

It should be noted that this does in effect mean that:

1. No reviews took place of the accuracy of the mineral royalty payments for AngloGold Obuasi, AngloGold Bibiani and Ghana Manganese. These companies and mines between them paid 38.3 billion cedis of mining royalties in the period, amounting to 35% of those royalties in all and 31.2% of all revenues received. This is material to the view given by the reconciliation process. This fact is not highlighted in the report.
2. If the noted problems with Ghana Bauxite Company Ltd and Bogosu Mines Ltd are added into these calculations then calculations on more than 49.5 billion cedis of royalty might be in doubt, amounting to 45.3% of total royalty income. Again, this is not quantified in the report.
3. The reasons for non payment of corporation tax by some companies could not be established. This is not explicitly noted in the report.

Point 4 of the bullet-pointed issues noted to arise above is also significant, but will be noted in much more depth in Section 4 of this report.

2.4 Recommendations made by Boas and Associates

Recommendations of two sorts are made in the report:

1. Those concerning the EITI process (6.1)
2. Those relating to transparency (Section 7).

The recommendations made in section 6.1 are all administrative with one exception. They are useful, but they do not seem to strike at the core of the issues noted above. The exception amongst the recommendations is that the EITI be put on a statutory footing. This is strongly endorsed here, although the problems in achieving this in Nigeria should be noted.

Section 7 covers the following issues that are relevant to the scope of this report:

1. Mines are allowed to assess the quality of the ore they produce themselves and this is never independently verified;



2. No set price for gold is established for a day: variations from the 'spot' price occur and could be material. Explanation is not available. It is suggested that the London Metal Exchange price be used;
3. Standard exchange rates are not used which allows manipulation to occur. A standard daily rate should be established;
4. Customs officers do not verify the actual bullion shipped from mines leading to opportunities for abuse. It is recommended that they should do this;
5. Customs officers stay too long at one location leading to familiarity. It is recommended that practice in this area is changed;
6. Not all companies submit all returns required of them. Standardising returns required by various agencies would reduce the chance of this happening and increase pressure on compliance with legal requirements.

In addition the following two favourable comments are made:

7. Capital gains tax was paid by one mine in 2006 but no appreciation of the circumstances giving rise to the liability is, however, shown.
8. All payments of mineral royalties are made by cheque so that an audit trail is easily established. The significance of this point is noted below.

2.5 Boas & Associates conclusions

In what does, presumably, amount to their audit report Boas & Associates summarise their findings as follows:

The presentation of this report completes the first aggregated/reconciled report for the Assignment.

In general payments made by mining companies to statutory bodies/Agencies were well accounted for by the receiving Agencies.

Mineral royalty was recorded as the highest and most significant contribution with relevance to the mining communities.

There was no payment of Ground rent and mineral right licence within the period by any of the selected companies.

Transparency in the disbursements of mining benefits (mineral royalty) to the communities needs to be enhanced.

Guidelines for the utilization of these benefits should be drafted as a matter of urgency

Efforts should be made by the Steering Committee to facilitate the timely provision of data by the Stakeholders, especially the Internal Revenue Service.



The following would be examined in subsequent reports: They are best addressed on annual basis.

- *The classification of mineral royalties in the financial statements of mining Companies.*
- *Issues relating to the payments of royalties at percentages other than the minimum 3%*
- *Corporate tax computations*
- *Grade/ fineness/purity of gold reported by companies.*
- *Dividend tax*
- *Review of capital investments for the assessment of the propriety of depreciation and amortization declared by mining companies.*

Section 3 - Weaknesses in the Boas & Associates Report

3.1 Introduction

It is important to note that all the observations in this section of this report relate to the published Report of Boas & Associates. No access has been had to their work. No request has been made to have such access. There are good reasons for this:

- a. That report was meant to have been prepared in accordance with international auditing standards (section 1.3.2 above). Those standards require that any report be complete and communicate all intended information in itself. As such this approach is methodologically sound;
- b. Given the range of issues the report does address it should be reasonable to assume that all issues of concern have been addressed.

3.2 Opinion

It is our opinion that the Boas & Associates Report contains material weaknesses and does not fulfil the brief given to that firm for its production (see section 1.9 above).

This opinion is supported by the following table which notes the tasks to be undertaken by the Aggregator and the apparent performance of Boas & Associates with regard to that task:

a. Ascertain the appropriateness of revenues received as mineral royalty, dividends and tax on profit.	This task was properly undertaken to the extent that it was proved that all payments made were by cheque and could therefore be tracked from the company templates to the government
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	<p>templates with ease.</p> <p>As is noted in Section 4 of this report, below, this does not prove that the figures received are correct. The Report is deficient because it fails to note this point. The exercise undertaken merely proved that payments recorded as being made to the government by the companies were in fact received by the government. This is useful, but does little more than prove that the cheques were not endorsed in transit for the benefit of another party. That is only limited comfort and is anyway covered by audit objective (k).</p>
<p>b. The aggregator shall also analyze the tax deductions claimed by the companies for the purpose of identifying any improper claims.</p>	<p>It appears that no request for taxation computations has been made for the companies reviewed. (See section 2.1 above). There is no evidence from the commentary supplied that any attempt to undertake this task has been made.</p> <p>The audit appears deficient in this respect.</p>
<p>c. <i>Check the disbursements made from the revenues received and ascertain if they are in conformity with legislation.</i></p>	<p><i>Not covered by this report.</i></p>
<p>d. <i>Scrutinize the payment made to District Assemblies, Traditional Authorities and Stools within the operational areas of mines.</i></p>	<p><i>Not covered by this report.</i></p>
<p>e. Ascertain the appropriateness of payments made with regards to mineral royalties; ground rent; dividends; taxation on profits and for mineral rights.</p>	<p>This task has not been undertaken properly, except (perhaps) with regard to dividends paid. The recorded reasons are:</p> <ul style="list-style-type: none"> • The accuracy of the mineral royalty payments for Anglogold Obuasi, Anglogold Bibiani and Ghana Manganese is in doubt. As noted



	<p>above, these payments were material to the view presented by the audit;</p> <ul style="list-style-type: none">• Information on computations of mineral royalty payments for AngloGold Obuasi, AngloGold Bibiani and Ghana Manganese could not be obtained. As noted above, these payments were material to the view presented by the audit;• Details of capital allowances and losses that are being carried forward in the files of the companies by the IRS could not be obtained. As such the accuracy of taxation payments could not be determined. <p>In addition, the evidence presented does not suggest why no action was taken to determine the following:</p> <ul style="list-style-type: none">• Why royalties were only paid at the 3% rate when it is possible royalties at higher rates might have been due;• Why no licence fees were paid;• Why no ground rents were paid;• Why no voluntary contributions were paid. <p>It is noted in the Report that these issues may be addressed by later reports. This seems inappropriate in a first report and is inconsistent with the approach of any audit, which under International Auditing Standards should be complete in its own right. (See section 2.5 above).</p> <p>It should be noted that no data appears to have been collected to address the last three issues. The audit appears deficient in this respect. (See section 2.1 above).</p> <p>The reported weaknesses found in being able to determine the quality, quantity, price and appropriate exchange rate for</p>
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	<p>mineral sales is not referred to as having an impact on the conclusions reached although they appear relevant and are likely to be material to this objective. This is a weakness in the report presented. (Section 2.4 above).</p> <p>As such it appears that this audit objective failed in that the objective was not fulfilled. This is not explicitly noted anywhere in the Report. This is a major weakness in the Report.</p>
<p>f. Check if the declarations of quantities of minerals declared are in conformity with the declarations made to the Mineral Commission and refining certificates.</p>	<p>This task could not have been completed because:</p> <ul style="list-style-type: none"> • It seems that Information on computations of mineral royalty payments for AngloGold Obuasi, AngloGold Bibiani and Ghana Manganese could not be obtained; • As section 7.1.6 of the Report notes, there were problems with these reports; • As is noted in Section 2.4 above, it is apparent that the details of mined quantities are not subject to scrutiny by Customs officers at the mines and as such cannot be considered to be reliable in themselves. <p>As such it would seem that the audit should have noted that this objective could not be achieved, but does not say that.</p>
<p>g. Review financial statements for consistency for both companies and institutions. Specifically, for companies the aggregator shall review company capital investments and operating cost.</p>	<p>It is noted that this task had not been attempted at this stage (Section 2.5 above) although the relevant information was requested (Section 2.1 above).</p> <p>The audit was deficient in this respect.</p>
<p>h. Review the capital investments in order to assess the actual amount -</p>	<p>It is noted that this task had not been attempted at this stage (Section 2.5</p>



<p>of the investment and to determine if the amortization and depreciation declared is correct and does not improperly reduce the amount of taxable profit of the mining companies.</p>	<p>above) although the relevant information was requested (Section 2.1 above).</p> <p>The audit was deficient in this respect.</p>
<p>i. Perform the audit of operating costs in order to assess if the deductions claimed were actually incurred and correspond to legitimate operational expenses as these affect the taxable profit of the companies.</p>	<p>There is no indication that this task has been attempted in the period.</p> <p>There is no indication that any relevant documents to allow the task to be undertaken had been requested (Section 2.1. above).</p> <p>There is no indication that there is intent to undertake this task on a future occasion (Section 2.5 above).</p> <p>The audit is seriously deficient in this respect.</p>
<p>j. Review feasibility reports of Mining Companies in order to compare the projected production with the actual production.</p>	<p>Evidence to undertake this task appears to have been requested (Section 2.1 above). However, no further mention of the subject then arises. In the absence of comment it is assumed that this task has not been undertaken.</p> <p>There is no indication that there is intent to undertake this task on a future occasion (Section 2.5 above).</p> <p>The audit is seriously deficient in this respect.</p>
<p>k. Reconcile the data so collected to ascertain if there is any disparity between the governments reported template and the aggregated companies reporting template.</p>	<p>This task has been completed, successfully.</p>

It should be noted that of the 11 tasks required to be undertaken nine have been reviewed for the purposes of this report. Of those nine tasks:



1. Only one task (k) noted above has been successfully and unambiguously completed.
2. Four tasks (b, g, h, i) have not been attempted;
3. It appears that a further two tasks (f and j) could not have been completed;
4. Task (a) differs from task (k) in requiring the appropriateness of receipts to be determined. This cannot have been done given the limitations in the scope of the other work undertaken;
5. Task (e) was subject to so many limitations of scope that no reasonable conclusions on the appropriateness of payments made with regards to mineral royalties; ground rent; dividends; taxation on profits and for mineral rights could have been reached, but this is not noted in the report.

In the circumstances we cannot find evidence to support the audit conclusion reached by Boas & Associates. That audit opinion was:

In general payments made by mining companies to statutory bodies/Agencies were well accounted for by the receiving Agencies.

No other concluding comment refers to any of the weaknesses noted above. We believe that inappropriate and given the published brief clearly contrary to the requirements of International Auditing Standards where limitations of scope in the work undertaken must be drawn to the attention of the user of an audit report and their likely impact upon the opinion offered should be quantified.

It so happens that the opinion offered by Boas & Associates is, in itself accurate. It does however only relate to audit objective (k). The failure to address a significant number of audit issues is not referred to in Boas & Associates' conclusions. If it had been the report should have, on the basis of the evidence we have noted on the limitations of scope in the work undertaken in our opinion have read as follows with regard to the issues addressed in this report:

Payments made by the companies subject to audit to the government of Ghana were all received and accounted for by that Government.

The appropriateness of the revenues received as mineral royalty, dividends and tax on profit could not be determined.

The appropriateness of payments made with regards to mineral royalties; ground rent; dividends; taxation on profits and for mineral rights could not be determined.

We could not confirm that the declarations of quantities of minerals sold giving rise to revenues being due to the Government of Ghana are in conformity with the declarations made to the Mineral Commission and refining certificates due to limitations in information available for this purpose.



We did not, contrary to our terms of engagement:

- *Analyze the tax deductions claimed by the companies for the purpose of identifying any improper claims.*
- *Review financial statements for consistency for both companies and institutions. Specifically, for companies the aggregator shall review company capital investments and operating cost.*
- *Review the capital investments in order to assess the actual amount - of the investment and to determine if the amortization and depreciation declared is correct and does not improperly reduce the amount of taxable profit of the mining companies.*
- *Perform the audit of operating costs in order to assess if the deductions claimed were actually incurred and correspond to legitimate operational expenses as these affect the taxable profit of the companies.*
- *Review feasibility reports of Mining Companies in order to compare the projected production with the actual production.*

An audit opinion drafted in this fashion would have provided the user with sufficient information to determine the value of the information they were being given and would have reflected the evidence detailed in the Report.

Section 4 - Gap analysis

4.1 Limitations in scope of the work undertaken

The Boas & Associates Report suffers from serious limitations, particularly in failing to draw together appropriate conclusions from the work undertaken. However, not all blame for this should be laid at their door. The task they were asked to undertake was itself subject to serious limitations. The limitations of the EITI process have, in part, been detailed in a report entitled 'Making it Add Up'¹³ prepared by the author of this paper in February 2005 on behalf of Global Witness and Save the Children UK. The findings of that report were presented by Global Witness to the EITI meeting held during that month. Those that particularly relate to the EITI in Ghana are detailed in sections 1, 5 and 9 of that report. The particular constraints inherent within the EITI which have very obviously constrained the effectiveness of the work undertaken by Boas & Associates and which have in turn limited the success of this initial report from Ghana's EITI are detailed in the following sections.

¹³ Available from <http://www.richard.murphy.dial.pipex.com/Makingitaddup.pdf> accessed 8-3-07



4.2 The accounting environment for the EITI

Ghana has had to develop its own accounting environment for the EITI with relatively limited guidance being provided centrally by the EITI. This has distracted attention from the audit task. As was noted in 'Making it Add Up' the EITI has not set clear standards on:

- Who should report;
- What should be reported;
- How it should be reported;
- Where it should be reported;
- What accounting procedures should be adopted;
- What verification procedures should be applied.

This has clearly impacted upon the work undertaken in Ghana and many of the criticisms noted arise from obvious problems in determining these issues. It remains our view that the EITI should centrally determine these issues to ensure integrity of the EITI process.

4.3 The accounting standards used by the EITI

The EITI has not prescribed a set of accounting standards for the EITI that are required to be consistently applied. The consequence is the uncertainty in the scope of the work that Boas & Associates clearly felt with regard to the work they were asked to undertake. This is inappropriate. As was noted in 'Making it Add Up':

- The EITI is an international initiative. If that if it is to be effective the EITI requires consistent accounting;
- Consistent accounting requires consistent standards to apply in all nation states that adopt the EITI;
- Consistent standards with sufficient room for adaptation to local circumstance are now normal e.g. International Financial Reporting Standards for the private sector and the IMF's ROSC project for the fiscal sector;
- A consistent standard does not allow local negotiation on key issues of what is, in effect, an accounting standard.

Without such standards comparability in the EITI cannot be achieved, either between countries or even, perhaps, between periods. This is apparent in the work of Boas & Associates who clearly needed more guidance than they received in undertaking the task asked of them.



4.4 The timing of recognition of standards recommended by the EITI

The accounting basis for the timing of the recognition of transactions recommended by the EITI does not allow fulfilment of the audit objectives of the Ghanaian EITI. The EITI recommends the use of a cash basis of accounting. For the purposes of the reconciliation purpose this is pragmatic but is constrained by the fact that the EITI recommends:

- Different transaction recognition dates for payments and receipts since their entry on bank statements is unlikely to be simultaneous (RG 14 7.1);
- Reporting on the basis of bank statement cleared dates, which is a basis neither governments or commercial entities use for accounting purposes (RG 14 7.1).

Both recommendations could make the reconciliation process more difficult than is necessary, and we would instead recommend that transaction flows be recognised on:

- a. the date of physical supply in the case of production entitlements;
- b. the date on which the reporting entity initiating the benefit stream records the cash payment.

The latter is, inevitably different from the day of receipt by the government. Managing this difference is part of the reconciliation process and does not require different date recognition by the government which can only compound the problem. If the EITI recommendation was followed the workload of Boas & Associates may have been unnecessarily increased.

4.5 The use of the cash basis by the EITI

Audit objectives (a), (e), (f), (g), (h), (i) and (j) noted above are all indicative of an approach to accounting that entails use of the accruals basis of accounting. The EITI does however suggest that EITI reporting be on a cash basis. Whilst this makes sense for the reconciliation of payments from companies to government (which is audit objective (k), where risk of failure was fairly low and in this case was 100% satisfactorily achieved) the use of the cash basis for any part of the EITI audit where 'revenues' or the 'appropriateness of payments' were subject to review does not make sense. Both terms are inherently related to accounting on an accruals basis.

It should be stressed that almost all commercial accounting is on an accruals basis whilst almost all government accounting, especially in EI host countries will be on a cash basis.



Wikipedia¹⁴ adequately defines cash accounting as:

Cash-basis accounting is a method of bookkeeping that records financial events based on cash flows and cash position. Revenue is recognized when cash is received and expense is recognized when cash is paid. In cash-basis accounting, revenues and expenses are also called cash receipts and cash payments.

Cash-basis accounting does not recognize promises to pay or expectations to receive money or service in the future, such as payables, receivables, and prepaid expenses.

This is simpler for individuals and organizations that do not have significant amounts of these transactions, or when the time lag between the initiation of the transaction and the cash flow is very short.

It defines accruals accounting:

Accrual-basis accounting records financial events based on events that change your net worth (the amount owed to you minus the amount you owe others). Standard practice is to record and recognize revenues in the period in which they incur and to match them with related expenses in a process known as matching or expense matching. Even though cash is not received or paid in a credit transaction, they are recorded because they are consequential in the future income and cash flow of the company.

The effect of the two bases of accounting is quite different. An example might illustrate the difference:

1. Suppose an EI company started to trade during the period subject to the Boas & Associates audit. It Had the following transactions (which are entirely fictional):
 - It owed a licence fee of 100,000 cedis
 - It owed ground rent of 10,000 cedis
 - It made sales of 1 million cedis on which royalty was due at 3% on half and at 6% on half, making a total liability of 45,000 cedis;
 - It declared a dividend of 40,000 cedis of which 10% was due to the government;
 - It owed tax on its profits of 20,000 cedis.

2. It actually paid:
 - None of the licence fee;

¹⁴ http://en.wikipedia.org/wiki/Accrual_basis_accounting accessed 8-3-07



- 5,000 of the ground rent;
 - All the royalty due at 3% but ignored that additional liability due at 6% on half of its production (meaning that 3% of 500,000 cedis of sales value was not paid);
 - Did not pay the dividend until three months after the period end;
 - Did not pay the tax until 6 months after the period end.
3. On a cash basis 35,000 cedis was paid, and received by the government, during the period. This would satisfy audit objective (k) and the EITI reconciliation criteria.
 4. On an accruals basis a total of 179,000 cedis was owed for the period. There is no mechanism within the current international or Ghanaian EITI process to record this fact.

This substantial difference could arise in practice but because the EITI templates are only designed to record cash transactions the fact that the actual payments made in the period do not reflect the liabilities owing for the period is not recorded by the EITI process. This is a massive accounting weakness within the EITI process which meant that the audit failures Boas & Associates clearly suffered were almost inevitable. As they reported (see section 2.3 above):

Many Companies and Agencies initially provided figures which were based on accruals instead of actual.

This was entirely logical. That is how companies keep their records and customarily report. Securing their participation would be much easier on this basis as a result. But it is clear that Boas & Associates then asked, as the EITI requires, for their data on a cash basis. In so doing they rendered it virtually impossible to achieve audit objectives (a), (e), (f), (g), (h), (i) and (j) noted above since these all require data prepared on an accruals accounting basis because revenues are accounted for on that basis, and the 'appropriateness of payments' can only be determined on that basis, etc.,.

Put simply, using the EITI templates, as Boas & Associates clearly sought to do when undertaking their work reduced the value of the work they did. If they had instead used an accruals basis for their work:

1. The reasons for mineral royalties only being paid at 3% might have been found;
2. Reasons for non-payment of licence fees and ground rents might have been determined e.g. the companies might have been 'accruing' these sums as a liability owing in their accounts and so claiming tax relief on them but because no one was asking for them not settling them. There appears to have been some evidence of this practice in the Nigerian EITI;
3. Liabilities to tax might have been disclosed that were not being paid.



Each of these issues is clearly of great significance to the quality of the audit undertaken, and the value of the report issued. The constraint imposed by using the EITI template reduced that value considerably and seriously impaired the scope of the auditors work by reducing the information they requested to undertake their work. This confusion at the heart of the EITI has to be eliminated.

This could be done. Companies subject to EI audit should be required to provide a reconciliation statement as part of their reporting template which reconciles the cash payments made with reporting in their published or unpublished financial statements of:

- a. opening and closing taxation and related liabilities owing to governments;
- b. taxation and other relevant charges recorded in their profit and loss accounts or other reserves statements;
- c. cash flow statements.

These reconciliations should be published as part of EITI reporting. In this way those having liability but who are not paying it would be exposed and the pressure to make due payments would increase. Only if this happens will the early emphasis (apparent in sections 1.1, 1.2 and 1.3 above, for example) on revenues within the EITI be fulfilled. The subsequent focus on payments has been seriously detrimental to achievement of that objective, even if it created a resonant campaigning slogan.

4.6 EITI reporting

The EITI has published no guidance on the form of the reports to be published as a result of the EITI process. Nor is guidance given on the acceptable levels of publicity to be given to EITI reports.

The report published by Boas & Associates is confusing, as is the scope of the opinion they express. Without guidance being given on what was expected of them this was, however, to be expected.

It seems desirable that clear guidance should be published on the required style and content of EITI reports. Similarly, guidance on the degree of publicity required should be given. Limited national variation should be allowed where this is necessary to suit national circumstance or to ensure a true and fair view is provided, but any such variation in practice should always be explained.

Particular emphasis should be placed upon the requirements for audit reporting so that the expectations of the form of report required of an auditor are known.



4.7 International dimension of the EITI

The EITI is focussed upon host country reporting. It is therefore nationally based. Serious limitations in scope arise from this.

The very term ‘host country’ has meaning only because it relates to a multinational business, usually dominated by multinational enterprises. The EITI process is about countering the perception that (section 1.1 above):

companies can often be perceived to be complicit to corruption and the deterioration of social conditions in the countries where they operate.

It is also, of course about the use of those funds but that is beyond the scope of this report. This perception cannot be tackled only at the host country level. The reasons are simply stated:

1. If the host country operating company is part of a multinational group then it is entirely plausible that corrupt payments may be made to persons within the host country from companies located within other territories owned by the group of companies of which the host country operating company is a member;
2. Payments may be made to companies owned by persons resident in the host country for which there is no legitimate purpose but with those companies being located in other territories and being disguised as the suppliers of legitimate services. A tax haven entity would usually be used for this purpose.

If the EITI audit process is to be successful then this possibility, which any accountant could arrange in a matter of minutes must be within the scope of the risk assessment exercise that should form part of the audit process. It is likely that two steps would be required to achieve this:

1. The first risk described could be tackled by asking the host country operating company that is subject to audit to confirm:
 - a. How it is owned and by whom, up to and including its ultimate parent company;
 - b. If any of the companies owning it or which are associated with it have undertaken transactions with it during the period under review, and in that case what they are, what their value might be and confirmation that they are undertaken on an arm’s length basis;
 - c. If any company owning it or associated with it has made a payment relating to its business which is not reflected in its books or records.

The first of these is simply to identify risk; the second to identify the risk of transfer pricing abuse (for a description of which see chapter 4 of ‘Closing the Floodgates published by the Tax Justice Network, written by the author



of this report¹⁵) and the third to at least seek written confirmation that no further transactions requiring investigation have taken place.

2. The second risk should be a particular focus of the reviews covered by audit objective (b) noted in section 1.9 above and which was not attempted during the course of the audit for this period.

Section 5 - Recommendations

Recommendations arising from this review are in two parts. The first relates to Ghana's EITI. The second relates to the EITI as a whole.

5.1 Recommendations for Ghana's EITI

1. The deficiencies in the audit process recorded in section 3 of this report need to be addressed;
2. The reasons for non-receipt of licence fees during the period needs to be explained;
3. The reasons for non-payment of ground rents needs to be explained;
4. The reasons for no company paying royalties at 6% needs to be explained;
5. The reason for most companies not paying tax needs to be explained;
6. The completeness of dividend income needs to be confirmed;
7. Property rates should be subject to audit but appear not to have been;
8. The auditors need to secure access to all company and government data required to complete their audit, and should ensure that they request such information on a timely basis to ensure that this is possible;
9. The recommendations made by Boas & Associates should be adopted;
10. The terms of engagement for future audits need to be confirmed so that the limitations in the scope of the work undertaken apparent on this occasion do not recur;
11. The EITI should be put on a statutory footing;
12. The accounting recommendations made in section 4 of this report (and especially those referred to in sections 4.5, 4.6 and 4.7) should be adopted and be used to enhance the accounting and audit approaches adopted in Ghana's EITI.

5.2 Recommendations for the EITI internationally as a result of this review

1. The recommendations made in section 4 of this report should be adopted by the EITI internationally;
2. The EITI Source Book and Reporting Guidelines should be amended to reflect these recommendations;
3. The EITI should seek international comparability in the work it undertakes;

¹⁵ Available from <http://www.innovativefinance-oslo.no/pop.cfm?FuseAction=Doc&pAction=View&pDocumentId=11607> accessed 8-3-07



4. The EITI should recognise that any EITI audit in a host country will always have an international dimension and should reflect this fact in its work.



Appendix 1

EITI Principles

1. We share a belief that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts.
2. We affirm that management of natural resource wealth for the benefit of a country's citizens is in the domain of sovereign governments to be exercised in the interests of their national development.
3. We recognise that the benefits of resource extraction occur as revenue streams over many years and can be highly price dependent.
4. We recognise that a public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development.
5. We underline the importance of transparency by governments and companies in the extractive industries and the need to enhance public financial management and accountability.
6. We recognise that achievement of greater transparency must be set in the context of respect for contracts and laws.
7. We recognise the enhanced environment for domestic and foreign direct investment that financial transparency may bring.
8. We believe in the principle and practice of accountability by government to all citizens for the stewardship of revenue streams and public expenditure.
9. We are committed to encouraging high standards of transparency and accountability in public life, government operations and in business,
10. We believe that a broadly consistent and workable approach to the disclosure of payments and revenues is required, which is simple to undertake and to use.
11. We believe that payments' disclosure in a given country should involve all extractive industry companies operating in that country.
12. In seeking solutions, we believe that all stakeholders have important and relevant contributions to make - including governments and their agencies, extractive industry companies, service companies, multilateral organisations, financial organisations, investors, and non-governmental organisations.