

## Appendix 3

# Where to Get Information on Mining Company Operations

Citizens interested in monitoring mining projects have several possible avenues to access the necessary information. The information sources discussed below provide different types of information, and some may be more easily accessible than others. For most monitoring efforts, some combination of these sources is likely to be most appropriate.

### Company Reporting

Mining companies, and particularly mining companies that are publicly traded, provide significant amounts of information via several reporting methods. In addition to mandatory reporting through stock exchanges for public companies, many mining companies also provide additional information through industry reporting efforts, project- and country-specific reporting, and annual sustainability reports.

#### Stock Exchange Disclosures from Public Companies

Companies that are listed on public stock exchanges must provide information through public disclosure documents filed with the stock exchanges. These disclosures are intended to provide investors and potential investors with sufficient information to make good investment decisions about the company's shares. However, information disclosed through stock exchanges is available to the general public and therefore can also be used in civil society monitoring efforts.

Each stock exchange has its own reporting requirements, so activists interested in understanding what specific information a particular company must disclose should first identify where that company is listed. This information is typically available on the company's website and can also be found via Revenue Watch's website.<sup>9</sup> Companies are typically required to disclose:

- Reserve and resource estimates
- Production numbers and costs
- Exploration results
- Payments to host governments
- Contract and mining rights information
- Environmental and social obligations
- Material risks

The recent Dodd-Frank Wall Street Reform Act in the United States requires U.S.-listed companies to disclose project-by-project revenue data through their stock exchange disclosures. More information on the disclosures this law requires is provided in Box A7.

Information provided through stock exchange listing requirements is particularly reliable because companies can be sanctioned for providing false or misleading information. The Toronto Stock Exchange delisted Copper Mesa Mining Corp. in 2010 because the company was accused of providing misleading information to investors in its stock exchange disclosure statements. Delisting meant that Copper Mesa could no longer be listed on the exchange. The public nature of the sanction also reduced the chances that the company could raise money from other sources in the future. Since the

---

<sup>9</sup> Revenue Watch Institute, "Oil and Mining Companies on Global Stock Exchanges," <http://data.revenuewatch.org/listings/>.

consequences of providing false information can be severe, companies devote significant resources to ensuring that their stock exchange disclosures are accurate and comply with the exchanges' requirements.

#### BOX A7 | THE DODD-FRANK WALL STREET REFORM ACT

In 2010 the U.S Congress passed the Dodd-Frank Wall Street Reform Act, which included specific disclosure requirements for oil, gas and mining companies listed on U.S. stock exchanges. The Securities and Exchange Commission is required to make rules to fully define the law's provisions. At the time of this writing, those rules are not yet available. However, the law itself explains what the rules will be required to say. Section 1504 of the act instructs the commission to issue rules:

that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government [of the United States] for the purpose of the commercial development of oil, natural gas, or minerals, including—

- (i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals; and
- (ii) the type and total amount of such payments made to each government.

#### Public Disclosures from State-Owned Mining Companies

Where state-owned mining companies are active, they may disclose significant information about their operations, particularly revenue and production figures. For example, Chile's national mining company, CODELCO, provides annual production figures for each of its mines via its website. The disclosures vary by country. The 2010 Revenue Watch Index provides information on whether or not state-owned companies disclose information about their operations for 41 countries.<sup>10</sup>

#### Project- and Country-Specific Reporting

Some mining companies have begun to provide reporting on individual mining projects or operations within a particular country. These efforts typically respond to issues of particular concern to that project or country.

For example, many mining companies operating in Canada have signed impact and benefit agreements (IBAs) with local indigenous communities in order to gain the communities' consent to mine on traditional lands and to address communities' mining-related concerns. In some cases, those agreements have provided for reporting structures whereby the company provides regular reports on particular issues, such as wildlife migrations, water pollution levels and local employment. More information on IBAs is included in Section 3.5 in the body of this report.

The Oyu Tolgoi gold and copper mine in Mongolia—owned by Ivanhoe Mines, the Mongolian government and Rio Tinto—has its own website that provides annual environmental protection plans, along with reports on how they are being implemented.<sup>11</sup> The implementation reports provide photographs and detailed data and charts in accordance with the mine's monitoring plans, detailed in the environmental protection plans. The reports also have information on environmental incidents that occurred during the prior year, and details on payments and fees related to environmental bonds and natural resource use fees.

If reports like these do not contain all of the information necessary for particular types of monitoring, they do at least indicate a desire on the company's part to share useful, detailed information. Civil society can give feedback on such reports and request other types of data when they are not yet made available.

In the oil industry, Shell Petroleum Development Co. of Nigeria Ltd. has begun disclosing information on oil spills in the country. This was a response to campaigns by civil society and nongovernmental organizations criticizing the oil company's environmental performance. According to this information, the majority of oil spills are caused by sabotage or theft.<sup>12</sup> The information, which is published monthly, provides the following detail for each reported spill:

- The date the spill was reported
- The date the spill was investigated
- The incident site
- The terrain where the spill occurred (e.g., swamp, land, water)
- The cause of the spill (sabotage/theft or operational)
- Estimated spill volume

<sup>10</sup> Revenue Watch Institute, *Revenue Watch Index*, 2010, [http://www.revenuewatch.org/rwindex2010/pdf/RevenueWatchIndex\\_2010.pdf](http://www.revenuewatch.org/rwindex2010/pdf/RevenueWatchIndex_2010.pdf).

<sup>11</sup> Oyu Tolgoi, <http://en.ot.mn/home.shtml>.

<sup>12</sup> Shell Petroleum Development Co. of Nigeria, "Oil Spill Data," [http://www.shell.com.ng/home/content/nga/environment\\_society/respecting\\_the\\_environment/oil\\_spills/](http://www.shell.com.ng/home/content/nga/environment_society/respecting_the_environment/oil_spills/).

- Cleanup status
- A copy of the investigation report
- Photos of the spill site<sup>13</sup>

### Sustainability Reporting

Most large, multinational mining companies have begun to produce annual sustainability reports, which are available via the companies' websites. These typically provide information on social and environmental efforts, occupational health and safety data, community relations and human rights. The information and statistics in sustainability reports are typically aggregated for the entire mining company, so it may be difficult to determine the company's performance for a particular country or project. However, the reports are a good starting point for general information on a company's commitments and performance in social, environmental, and worker health and safety issues.

### Industry Reporting

In some countries, industry associations may provide their own reporting and/or may require companies to report on issues of particular concern within that country.

South Africa's Chamber of Mines produces an annual report that includes aggregate information on issues including the environment, health and safety, skills development and legislative changes that have affected the country's mining industry during the previous year. The chamber also produces an annual facts and figures report with aggregate production and sales information for the industry.

Peru's Sociedad Nacional de Minería Petróleo Y Energía produces a monthly statistical bulletin with production data by mineral. It has also produced individual reports explaining mining taxation in Peru and analyzing mining's economic impacts in the country.

The Mining Association of Canada (MAC) requires its members to report annually through its Towards Sustainable Mining (TSM) initiative. TSM began in 2004 as an effort to improve public trust in Canada's mining industry by improving the industry's economic, social and environmental performance. Through consultation with multiple stakeholders (or "communities of interest," as MAC calls them), the association identified the following areas of concern:

- Crisis management
- Energy and greenhouse gas emissions management
- External outreach
- Tailings management
- Biodiversity conservation management
- Safety and health
- Aboriginal and community outreach

Member companies must submit annual reports detailing progress in these areas, and the reports are public. Every three years, a company must have its TSM report externally verified. This helps ensure the accuracy of the company reporting.

This initiative is particularly valuable because the reporting requirements were developed in consultation with MAC's communities of interest, including employees, contractors, indigenous peoples, mining community members, suppliers, customers, environmental organizations, governments, the financial community and shareholders. A participative process of identifying important issue areas helps ensure that the companies are focusing their efforts on what matters most to various stakeholders and that communities are getting information on the subjects most important to them.

Industry associations in some other countries have reportedly considered adopting similar initiatives. Increasing the prevalence of reporting requirements through industry associations may be a useful avenue for advocates to pursue.

## Government Reporting

The extent of government reporting on the mining industry varies widely, with some countries providing extensive revenue, production and environmental data, and other countries revealing very little. The Revenue Watch Index

---

<sup>13</sup> Shell Petroleum Development Co. of Nigeria, "Oil spills in the Niger Delta—Monthly Data," [http://www.shell.com.ng/home/content/nga/environment\\_society/respecting\\_the\\_environment/oil\\_spills/monthly\\_data.html](http://www.shell.com.ng/home/content/nga/environment_society/respecting_the_environment/oil_spills/monthly_data.html).

measures government transparency and identifies which types of information are available from which governments. The index is available via Revenue Watch's website at <http://revenuewatch.org>.

## EITI

EITI, or the Extractive Industries Transparency Initiative, is a global process to improve the transparency of extractive industry payments to governments. In countries that participate in EITI, companies disclose what they have paid to the government, and the government discloses what it has received from companies. An independent administrator then reconciles the information from both sides and produces a report on the results. This independent report is made public and provides a valuable source of information on mining companies' tax and royalty payments.

The initiative does not address the question of what companies should have paid based on the applicable tax rates and the companies' levels of production. Citizens will need to link the data they obtain through EITI to other calculations of company tax commitments to monitor whether companies are fulfilling their tax obligations.

### *Additional Resources*

- EITI, <http://eiti.org>.
- Revenue Watch Institute, "The Extractive Industries Transparency Initiative (EITI)," <http://resources.revenuewatch.org/en/backgrounder/extractive-industries-transparency-initiative-eiti>.
- Revenue Watch Institute, "EITI Reports: Results & Analysis," <http://data.revenuewatch.org/eiti>.

## Freedom of Information Laws

At least 80 countries have adopted or are currently in the process of adopting freedom of information (FOI) laws that establish mechanisms for securing the public's right to access government records.<sup>14</sup> Though there is room for improvement in the drafting, implementation and enforcement of such laws, they are an important and encouraging step toward broader government and institutional transparency.<sup>15</sup>

The right to information is commonly established through constitutional provisions or specific legislation. Most FOI laws focus on the executive branch and administrative bodies, such as ministries and agencies on the national and local levels. Less commonly, the laws also apply to the courts and the legislature.

Although information held by private entities often falls outside the scope of FOI laws, there are some notable exceptions. Most countries have environmental protection laws requiring companies to publish information about potential threats to environmental and public health. In South Africa, the Promotion of Access to Information Act allows individuals and government agencies to demand information from private entities if it is necessary to enforce any other right. Likewise, Denmark's Access to Public Administration Files Act establishes a right of access to information held by natural gas companies and electricity plants.

The language specifying what information is accessible under FOI laws varies from country to country. In practice, however, most laws broadly define the right to include all recorded information, regardless of the method or manner in which it is stored. Though many laws specifically prohibit certain information from being withheld, almost all FOI laws set out categories of information that may be exempted from release.<sup>16</sup> Exemptions commonly include: national security and international relations; law enforcement and public order; information received in confidence; commercial secrets or fair trade; due process rights of parties to judicial proceedings; internal discussions; and personal privacy.<sup>17</sup> In order to be held exempt from FOI disclosure, most laws require a showing that disclosure would harm privacy, internal decision-making or national security.

### Freedom of Information and Monitoring Extractive Projects

FOI laws can help provide access to important information on activities throughout the life cycle of a mining project. Examples of mining-related information that could be obtained through FOI requests include mining permits and

---

<sup>14</sup> Right2INFO.org, "Good Law and Practice," <http://right2info.org/laws>.

<sup>15</sup> Similar to the mining laws and regulations discussed in this report, laws on access to information may also suffer from lack of proper use and enforcement. The World Bank recently published a database on FOI laws by country and is reportedly beginning to research implementation issues related to such laws. World Bank, "Public Accountability Mechanisms," <https://www.agidata.org/pam/ProfileListByAbc.aspx>; FreedomInfo.org, "World Bank Publishes Major Database on FOI Laws," April 6, 2011, <http://www.freedominfo.org/2011/04/world-bank-publishes-major-database-on-foi/>.

<sup>16</sup> For example, the Mexican Federal Transparency and Access to Information Law (2002, art. 14) provides that "[Information related to] the investigation of grave violations of fundamental rights or crimes against humanity cannot be considered restricted [classified]."

<sup>17</sup> Open Society Justice Initiative, *Transparency & Silence: A Survey of Access to Information Laws and Practices in 14 Countries*, 2006, 148, [http://www.soros.org/initiatives/justice/focus/foi/articles\\_publications/publications/transparency\\_20060928](http://www.soros.org/initiatives/justice/focus/foi/articles_publications/publications/transparency_20060928).

concession documents, tax records, environmental assessments, natural resource management plans, official correspondence, employment records, fines levied, health and safety inspection reports, and zoning information.

The following cases highlight the range and impact of information that FOI requests can bring to light.

- *Corruption and Access to Resources*: In Australia, a FOI request following accusations that iron ore company Mineralogy had received unfairly favorable treatment by the development ministry produced documents relating to the relationship between a high-ranking minister and the company's executive.<sup>18</sup>
- *Environmental Management and Protection*: In Slovakia, an environmental group successfully challenged the government's refusal to disclose information on a forest management plan. The group's case resulted in a ruling by the Supreme Court classifying forest management plans as public information.<sup>19</sup>
- *Mine Safety*: In Australia, a FOI request from a local newspaper publicized lapses in miners' safety, and highlighted concerns that mining companies were submitting incomplete or incorrect safety reports to the government. Documents obtained by a newspaper showed workers had crashed trucks when the drivers had what were called "micro-sleeps."<sup>20</sup>
- *Mine Production*: In India, a group used information obtained from the Right to Information Act to expose violations by major mining companies of their permitted maximum production levels.<sup>21</sup>
- *Community Rights*: Property owners in South Africa whose rights were potentially threatened by the construction of a large steel mill were able to gain access to copies of the Minister of Environmental Affairs' records concerning the proposed rezoning and planning permission.<sup>22</sup>

---

<sup>18</sup> "Grylls ordered to release mining papers," Australian Broadcasting Corp. (ABC) Premium News, Jan. 26, 2011, <http://www.abc.net.au/news/stories/2011/01/26/3122239.htm>.

<sup>19</sup> Commonwealth Human Rights Initiative, *Our Rights, Our Information*, 2007, 64, [http://www.humanrightsinitiative.org/publications/rto/our\\_rights\\_our\\_information.pdf](http://www.humanrightsinitiative.org/publications/rto/our_rights_our_information.pdf).

<sup>20</sup> "Tired drivers in mine risk," (Adelaide, Australia) *Sunday Mail*, May 27, 2007, <http://www.couriermail.com.au/news/queensland/tired-drivers-in-mine-risk/story-e6freoof-111113616603>.

<sup>21</sup> "Panel set up to probe mining operations," *The Hindu*, Aug. 26 2010, <http://www.hindu.com/2010/08/26/stories/2010082658820300.htm>.

<sup>22</sup> *Van Huissteen and Others NNO v. Minister of Environmental Affairs and Tourism and Others*, High Court of South Africa 1996 (1) SA 283 (C).