

UNDERMINING THE POOR: MINERAL TAXATION REFORMS IN LATIN AMERICA

POVERTY

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Front cover photo: The La Oroya smelter in Peru, run by American-owned company Doe Run, is the source of dangerous levels of lead and arsenic in the town. Many children in La Oroya have dangerous levels of lead in their blood. Christian Aid partner UNES supported La Oroya's community group to lobby the Peruvian government about the issue.

Christian Aid/Amanda Burney

EXECUTIVE SUMMARY

'If we had a proper equitable fiscal policy we could stop getting into debt and start developing. . . But the rich are mortgaging our nation.'

Francisco Machado, former director, Association of Non-Governmental Organisations of Honduras (ASONOG)

Christian Aid has a vision of an end to poverty – now, not in the future. We believe that taxation is critical for development. The absence of effective taxation in poorer countries is directly responsible for the poverty in which many of their citizens live.

Over the past few decades tax reforms in developing countries have been highly regressive, with corporate taxes being lowered and consumption taxes – which hit the poor hardest – being increased. Latin America is a prime example. Its overall level of tax collection is woefully inadequate and its national tax systems are very regressive.

The trend of lowering corporate taxes has benefited all businesses, including those operating in the extractives sector. Developing countries have been encouraged by the World Bank to lower royalties and taxes charged on minerals as a key part of strategies to attract foreign investors to their countries. The use of tax incentives to attract investors has been increasingly questioned, given that investors make location decisions based on many issues (market access, infrastructure, skilled workforce, political stability), including geological factors that are crucial for mineral companies. Offering overly generous tax incentives has resulted in many developing countries simply sacrificing significant tax revenue to companies who are operating very successfully within their territory for long periods.

Latin America has closely followed World Bank advice and generous tax incentives for foreign investors are common. As a result some countries have extremely poor mineral taxation regimes. This report concentrates on Peru, Guatemala and Honduras, which are among the worst examples in the region. There is a growing realisation that these countries are not getting a fair deal from their mineral tax and royalty contributions. Peru, Guatemala and Honduras have among the lowest level of royalties in the world. Peru did not even charge royalties until 2004, though many companies have refused to comply with the new legislation and are therefore not paying the new royalty. While Peru does charge profit taxes at the standard national

rate, generous allowances mean many companies have declared losses for accounting purposes for long periods.

Both Guatemala and Honduras charge a paltry one per cent royalty. Both countries also offer preferential profit-tax arrangements, with Honduras going so far as to offer a five-year tax holiday. This has led to their share of the wealth from their minerals sector being even lower than that of Peru. The case of Honduras, in particular, is extremely serious. The official data we have analysed shows Honduras does not even get the minimal amount it should be due from a one per cent royalty contribution. In 2007, it is reported that the minerals sector – worth US\$198m that year – contributed only US\$283,000 in royalties, licences and fees together, giving the government an almost unheard of 0.1 per cent share in the sector's turnover. There are also serious questions in Peru, Guatemala and Honduras as to whether any of the revenue owing to the local governments is actually arriving.

This report attempts to quantify the cost of the tax exemptions provided to mining companies. We find that the revenue the Peruvian state has failed to collect for 12 years – because of companies' refusal to pay royalties and the generous profit-reinvestment rules in place – is around US\$849m. In the case of Guatemala, the decision to lower royalties from six per cent to one per cent means Guatemala has forfeited more than US\$28m in three years. In 2006, the fiscal cost of this tax incentive to one mining company exceeded Guatemala's total spending on health infrastructure.

The World Bank's role in both encouraging inappropriate taxation regimes and in investing in mining companies should not be ignored. The World Bank's International Finance Corporation (IFC) holds shares in the Yanacocha and Antamina mines in Peru. Both these companies have used their tax-stability contracts to refuse to pay royalties, costing the Peruvian state US\$226.6m between June 2004 and December 2006. The IFC was also one of the first investors in the Marlin mine in Guatemala. While IFC staff were aware of the rock-bottom one per cent royalty rate and the corporate tax exemptions offered to the company, staff still claimed the tax contribution would be substantial – a claim which is far from the truth, according to our analysis. It seems the World Bank's public commitment in development forums to raising tax revenue will take a back seat in any internal decision-making process related to investment.

This report also tries to quantify for the first time the damage done to individual countries by trade mispricing in minerals. Trade mispricing occurs when companies overprice their imports (inflating costs and lowering profit taxes due) and/or under-price their exports, ensuring a transfer of revenue out of the country. This issue is barely discussed in forums devoted to taxation reform in Latin America – even though it’s now the single biggest issue of concern within international taxation. According to calculations in our trade-mispricing database, it appears that in three years US\$388.6m seems to have been shifted illicitly out of Peru through under-pricing of mineral exports to the US and EU. Peru’s exports to the US and the EU together only account for 26 per cent of total mineral exports. Therefore, if our analysis is correct, the total amount of capital shifted out of the country through under-pricing of mineral exports will be much larger. We find that overall the mining sector is consistently one of the biggest offenders in under-pricing exports. Precious metals topped the list for under-pricing of exports from Peru to the US in 2005 and 2007. Christian Aid’s trade-mispricing database also shows consistent problems with the under-pricing of mineral exports from Brazil, Mexico, Chile and Colombia.

The transparency of mineral taxation is a major problem. While this topic has a much lower profile in Latin America than for example in Africa, it is one that is long overdue for attention. Accessing information about taxes paid by mining companies is extremely difficult. The Peruvian tax authorities have made some data available on request, but there is little automatically made available to the public. In Guatemala and Honduras, very little official data is available and this report uncovers some worrying contradictions. In Guatemala we cannot reconcile the company figures with the tax authority’s data, and in Honduras we have serious questions as to why contributions are such a small percentage of what they should be, according to the royalty legislation.

There is an urgent need for more transparency about tax and royalty payments and how the income from mining is being used. This report argues for the creation of a new international accounting standard. This would compel multinational companies to report publicly on their financial operations, including all their remittances to governments in each country where they operate. The Peruvian, Guatemalan and Honduran governments must also urgently revise and reform their mineral taxation regimes if mining is to start contributing to economic development in the region.

Clearly the global economic environment has changed and many will be asking whether this a good time for developing countries to be reviewing their mineral taxation regimes. No doubt the reply of many citizens in developing

countries would be ‘if not now, when?’. Mineral taxation was lowered in the early 1990s when prices were low for a decade. With the recent commodity-price boom many countries tried to renegotiate these low rates and failed. It is extremely difficult to negotiate equitable mineral taxation regimes in periods of both low and high prices. It seems quite likely there is no right time – companies will always resist higher tax rates. There is certainly a danger that the global economic crisis will make mineral taxation reforms harder, but this will simply mean that developing countries will again be ill-placed to benefit during the next commodity-price boom. Tax-policy reform in Latin America is urgently needed and the treatment of the minerals sector is just one of the many areas that must be looked at.

The following are Christian Aid’s recommendations based on the findings in this report.

Governments should:

- conduct a thorough review of mineral taxation regimes and consider the following changes to achieve a more balanced taxation level: raising of the royalty rate; incorporating windfall taxes or variable profit taxes; abolishing any special corporate tax exemptions for mining companies (such as those in place in Honduras). Ensure equity considerations are central to the taxation-reform debate
- conduct a thorough review of tax incentives provided to the mining sector and abolish overly generous provisions. Ensure all incentives are fully costed and these costs are counted as expenditure in the annual budget
- join the Extractive Industries Transparency Initiative (EITI) and ensure public access to data on the tax and royalty payments from mining companies. Require by law that all mining companies in the country publish the financial information required by the EITI
- push for a new international accounting standard that would force multinational companies to report their profits, expenditures, taxes and fees paid on a country-by-country basis.

International Accounting Standards Board (IASB) should:

- adopt an improved international accounting standard for multinationals that requires them to report on their profits, expenditures, taxes and fees paid on a country-by-country basis.

International Council on Mining and Metals (ICMM) should:

- demonstrate its commitment to tax transparency in the minerals sector by publicly calling for the IASB to adopt a new international accounting standard that requires country-by-country reporting
- undertake new research into the prevalence of tax-stability contracts (their terms, time periods and impacts), and promote dialogue with members around their negative implications for developing countries.

Mining companies should:

- demonstrate a commitment to tax transparency by adopting country-by-country reporting.

Bilateral and multilateral donors should:

- provide financial and technical assistance to Latin American governments to improve their capacity to monitor and audit the accounts of mining companies, and to set and maintain equitable mineral taxation regimes
- review policies related to tax-stability contracts and ensure these are discouraged, unless limited to very short time periods only
- provide financial and technical assistance to countries wishing to renegotiate deals with mining companies.

INTRODUCTION

Christian Aid believes that taxation is critical for development. Tax is the foundation not only of states' ability to provide services and infrastructure to their citizens, but also of the relationship between states and citizens. The tax system is also the key policy tool available to directly influence income inequality – an issue of huge importance in Latin America.

Unfortunately, NGOs and social movements have been absent from the tax-reform debate for too long. Instead, in the last few decades we have seen a highly inappropriate 'donor tax consensus' implemented in developing countries. This has led to reforms such as repeated cuts in corporate tax that have undermined progressive income taxation and a growing reliance on – often highly regressive – consumption taxes (eg VAT). As part of the trade liberalisation agenda, countries have seen their revenue from trade taxes dwindle, even though these taxes have traditionally been very important for low-income countries.

The extractives sector has mirrored these trends, resulting in an unbalanced approach to the taxation of the sector. This has been part of the push for developing countries to focus on attracting foreign investment in preference to any other measure that would promote industrialisation and develop the domestic private sector. Developing countries have been told to emphasise a strong protection of investors' rights (including

signing tax-stability contracts and ensuring the right to international arbitration). They have also been encouraged to provide tax incentives, including lowering royalty rates applied to natural-resource extraction.

This is doubly unfortunate because mineral extraction is an 'enclave' economic activity. Companies create very limited forward or backward linkages into the local or national economy, purchasing a limited amount of goods and services from local firms. Industrial mining is also capital-intensive rather than labour-intensive. These two factors greatly limit the ability of developing countries to use mining investments to develop their private sector and create jobs. The potential tax revenue needs to be seen as the key development contribution of the sector and policies must be designed to reflect this.¹

As a result of the donors' consensus on tax and attracting foreign investment, millions of dollars are flowing out of countries that desperately need these resources to fund their own development. Christian Aid has investigated this issue for several years. In countries as diverse as Zambia and the Philippines, we have found that exemptions offered or special deals done to attract investors have effectively deprived governments of much needed revenue.

A recent report *Breaking the Curse: How Transparent Taxation and Fair Taxes can turn Africa's Mineral Wealth*

'... taxes provide the long-term financial platform for sustainable development. Taxes are the lifeblood of state services.'

Angel Gurría, secretary-general, Organisation for Economic Cooperation and Development (OECD)²

into Development, commissioned and published jointly by Christian Aid, ActionAid International, Third World Network Africa, Tax Justice Network Africa and the Southern Africa Resource Watch, presents detailed findings on levels of mineral taxation in Malawi, Zambia, Tanzania, Sierra Leone, South Africa and the Democratic Republic of Congo.

The issue is no less relevant for Latin America. It is a region with an appallingly poor tax record, extremely low levels of tax collection and regressive tax systems. The region also has a high reliance on revenue from natural resources (with the revenue from extractives being particularly important in Bolivia, Colombia, Panama and Venezuela). Unfortunately there are many Latin American countries with poorly designed tax and royalty regimes. This report highlights some of the worst of these examples from the mining sectors in Peru, Guatemala and Honduras.

The tax-reform debate is particularly relevant given the soaring profits companies made during the commodities boom in recent years. Between 2002 and 2006 the price of copper went up nearly five-fold and other minerals, such as gold and nickel, also saw spectacular increases. Those days are over, at least temporarily, and the international landscape is changing once more. The inability of developing countries to benefit from the dramatic changes of fortune of the primary commodities

market is a huge disappointment. It is even more urgent now that developing countries negotiate a fair share in the wealth of their natural resources, though no doubt the revenues expected will be less in the near-term future. The global economic crisis should not be used as an excuse to counter much-needed reforms and countries need to make sure they will be in a position to share fairly in the profits that the next commodity boom will generate. There is a growing realisation that Latin American countries are not getting a fair deal from tax and royalty contributions, and both national movements and NGO coalitions are increasingly addressing this issue.

Finally, it is important to say that although this report is focused purely on the revenue aspects of mining, Christian Aid recognises the huge social and environmental costs that many communities bear from mining activity. Christian Aid has previously documented problems of this kind in Peru and supports partner organisations addressing the negative impacts of mining directly in local communities in Guatemala, Honduras, Peru and Colombia. While this report will not report on any of these aspects this is not to downgrade their huge importance. In fact, readers should bear in mind that the poor tax and royalty take should be compared directly with the huge social and environmental costs borne by poor communities in Latin America.

TAX IN LATIN AMERICA

Tax collection in the region

The level of tax collection in Latin America is woefully inadequate and compares poorly with other regions. In contrast to the OECD nations, which collected 35 per cent of their GDP in taxes between 1990 and 2006, pure tax revenue in Latin America, as a percentage of GDP, was just 16 per cent.³ In fact Latin America is best compared, in taxation terms, to sub-Saharan Africa, which collected 15.9 per cent of its GDP in tax in 2006.⁴ Though regional trends are positive, Table 1 shows progress is very slow. The 1990-1994 average of 14.69 per cent rose to only 17.39 per cent for the period 2000-2006.

Tax collection in the Dominican Republic, Ecuador, El Salvador, Guatemala, Paraguay and Venezuela is particularly weak, with rates of less than 14 per cent of GDP. Similarly Honduras, Panama and Peru do not fare much better, having collected less than the average 16 per cent in tax.⁵ The three countries we focus on in this study all have very poor tax collection levels – well below Latin America's dismal average. Of the three countries investigated, Guatemala's performance is by far the worst. According to the Guatemalan tax authority (SAT), the country collected only 11.3 per cent of its GDP in tax in 2008.⁶

The extremely low levels of tax collection in Latin America are far below what is needed to provide appropriate levels of social spending and to meet public investment needs to promote the growth of the domestic private sector. Tax systems in Latin America are also regressive.⁷ In the region generally there is a very low level of taxation of income, wealth and property. These are the three forms of taxation considered most progressive because they can be structured so that higher-income people pay a larger share of their income in tax than lower-income people. In Latin America, individual income taxes contribute only four per cent of the overall tax collection (compared to 27 per cent in OECD countries).⁸

In contrast to most developed economies, Latin American tax authorities have a major reliance on indirect consumer taxes, particularly value added taxes (VAT). Between 1990 and 2006, indirect taxes accounted for almost two-thirds of tax revenues in Latin America.⁹ Because poor people have to spend a large share of their income to purchase basic goods, a strategy that relies on taxing consumption without exemptions for basic goods will impose a much heavier burden on the poor than the wealthy.

With such a poor tax structure it is unsurprising that the tax systems in Latin America contribute directly to increasing the concentration of wealth. Given the great potential for tax policy to contribute to greater equality within society, it is a shocking indictment on Latin America's taxation system that inequality is greater after tax than before taxes are paid.¹⁰

Mineral taxation and tax incentives

In Latin America, fees and royalties from natural-resources extraction (classified as non-tax revenue in government revenue tables) average 28 per cent of total government revenues. This figure masks significant country differences. In the case of Bolivia, Colombia and Panama, the taxation of natural-resource extraction brings in more than 40 per cent of government revenue, and in Venezuela that figure reaches 67 per cent. The figures for Guatemala, Honduras and Peru are all well below the regional average.¹¹

Unfortunately some Latin American countries have extremely poor tax and royalty regimes, particularly for their mineral sectors (as opposed to hydrocarbons where taxation is often better designed for the national interest). Peru, Guatemala and Honduras have reformed their mining royalties and tax regimes in a bid to attract foreign investment by lowering royalty rates and/or offering various tax incentives.

These countries are not alone. Most developing countries are strongly encouraged by bilateral and multilateral donors to adjust legislation to attract foreign investors. Strategies normally emphasise a strong protection of investors' rights (including the right to international arbitration), ensuring foreign companies can freely remit profits, abolishing preferential treatment for local businesses, applying a 'light' regulatory approach and providing incentives such as keeping wages low and offering low tax rates. Christian Aid has highlighted in the past how the World Bank has been active in the extractives sector, enthusiastically supporting and pushing for new mining laws that have included a lowering of tax and royalty rates.¹²

‘In practice most non-wage income is untaxed as wealthy individuals plan to avoid tax. . . As a result, almost all income tax is collected from those individuals that cannot avoid taxation, primarily low- and middle-income wage earners. . . The Central America region still taxes at some of the lowest levels in the world.’

Aaron Schneider, academic¹³

Table 1 Tax revenue as a percentage of GDP in Latin America 1990-2006

Country	1990-94	1995-99	2000-06
Argentina	19.82	20.57	23.77
Bolivia	11.61	15.55	17.21
Brazil	26.24	27.12	31.78
Chile	18.36	18.79	19.29
Colombia	11.67	14.97	16.88
Costa Rica	16.82	17.64	19.42
Dominican Republic	9.41	11.29	13.11
Ecuador	9.52	9.68	13.12
El Salvador	11.32	12.34	13.33
Guatemala	8.92	11.54	13.46
Honduras	13.33	13.66	15.29
Mexico	16.38	16.37	19.02
Nicaragua	13.32	16.39	19.10
Panama	14.56	15.83	14.69
Paraguay	10.36	12.69	12.23
Peru	13.69	15.47	14.71
Uruguay	23.05	23.18	23.10
Venezuela	16.03	14.47	13.48
LA average	14.69	15.98	17.39

Source: *Latin America Economic Outlook 2009*, OECD.

MINING ROYALTIES AND TAXES IN LATIN AMERICA

Mineral taxation normally takes the form of royalties and taxes. Royalty payments are a common way for governments to extract wealth from the minerals that they license private companies to extract and sell. A royalty payment is based on the fact that the country owns the natural (and non-renewable) resource and the company is essentially paying the state for it.

While royalties are important to society because of what they represent – the state's share in the ownership of the mineral – they are also important because of how they are collected. It is very rare that royalties will be calculated based on profits, though the Canadian provinces and Chile (since its recent reforms) are both examples of where this happens. In most cases royalties are not profits-based, but levied on the value of production. This means their calculation is relatively straightforward and they do not suffer from the drawbacks of profits taxes where companies can manipulate their internal cost structures to reduce declared profits for a particular operation. Royalties also provide an early revenue stream to governments when production starts, which is important because corporate tax payments are often delayed for years, due to various tax incentives and subsidies in place.

The relative simplicity of royalties is especially relevant where developing countries are faced with monitoring multinational mining companies. For many developing-country tax authorities, it is extremely difficult to cross check and audit the complex accounting structures of multinational companies. One of the principal benefits of a royalty, therefore, is that it is relatively easy to administer. It should be noted that while developing countries may find royalties an attractive and logical option, the industry position is very different. Companies see production-based royalties as 'regressive'¹⁴ and 'blind'¹⁵ in that they take no account of whether a company is profit-making or not and are payable in loss-making years.

On top of royalty payments, mining companies also make a variety of tax payments. Normally this includes all the standard business taxes (such as corporate tax, taxes on imports, VAT, any relevant municipal taxes such as property or land taxes, profit taxes on local dividends and withholding taxes on remitted dividends). In addition, extractives companies may be required to pay variable-profit taxes or special windfall taxes to ensure that countries receive their share of additional revenue when prices and profits are especially high.

Of course, royalties and corporate taxes are not the only way to ensure a government shares in the wealth of its natural resources. A government might become a partner or shareholder in an extractives project, typically through a production-sharing contract (PCS). This normally requires

the government to contribute capital to the development of the project. If capital is not readily available the government may enter into an agreement with a multinational company to 'owe' this money and allow the company to recover it by taking 100 per cent of production in the early years until the debt is paid. These partnerships can have the added advantage of allowing a country to develop national capacity by including commitments to train national staff. This is, in effect, how the Brazilian national energy firm Petrobras developed into a highly competent oil company. This practice is common in the oil and gas industry but is very unusual in the mining sector.

Mineral royalties and taxes in Latin America

It is not easy to generalise about Latin America's approach to taxing its extractives industries. The experience can vary dramatically from one country to the next and the approaches to hydrocarbons taxation can be very different to that of mineral taxation. The majority of countries with mineral sectors apply both royalties and taxes (eg Venezuela, Argentina, Brazil, Bolivia, Colombia, Honduras and Guatemala). Two major exceptions have been Peru and Chile – neither country charged royalties for many years. Because Peru and Chile have significant minerals sectors, these policy choices have come under a lot of scrutiny and there has been quite extensive review and discussion of their mineral-taxation policies during the last five years.¹⁶ For smaller countries – where mining exploration is more recent – such as Honduras and Guatemala, there is a noticeable lack of analysis on this issue.

The transparency of mineral taxation is a much lower-profile topic in Latin America than in Africa, where monitoring of the extractives industries and revenue transparency has become a hugely significant issue for African governments, civil society and donors alike.

Peru

In Peru, the profit tax is the main tax burden for mining companies. They pay the standard corporate tax of 30 per cent. However mining companies have received important benefits due to generous tax incentives provided to the sector: they are able to deduct all costs of exploration and development. In accounting terms this means reducing their taxable income base by deducting capital expenditure on exploration and mine development immediately from their taxable income (whereas most other companies do so over the expected life of their assets). In Peru, accelerated depreciation rules mean companies recuperate their investment in five years via an annual depreciation rate of 20 per cent. This has allowed many mining companies

‘Ultimately, taxation plays a key role in the industry’s ability to operate and maintain a social licence to operate by in part answering the question: do the benefits of having a mining industry outweigh its costs?’

James Otto, academic and World Bank consultant on mineral taxation¹⁷

to declare losses for accounting purposes year after year and therefore avoid paying profit taxes. This is of course a significant form of tax subsidy for them.

This is illustrated by the experience of Minera Antamina, the country’s biggest copper producer. The company started exploring in 1996 and began commercial production in October 2001. However, it did not pay any profit taxes at all until April 2005, due in large part to the accelerated depreciation rules. Without the price boom and its soaring profits, the company itself recognised that it would not have paid profit taxes until at least 2007.¹⁸

In addition, Peru’s profit-reinvestment rules mean that mining companies can reinvest up to 80 per cent of their profits and deduct the amount from their taxable income base. This law was changed in 2000, but some companies have been able to retain their taxation status quo by relying on their tax-stability contracts.¹⁹

Unusually for a corporate tax, 50 per cent of Peru’s mining income tax is channelled directly to local communities in the form of the *canon minero*.²⁰ The intention is that this payment will benefit the population directly affected by the mine. Twenty per cent of the payment goes to the provincial municipality where the natural resource is located, 60 per cent is divided between districts and provinces in the region and the remaining 20 per cent goes to the regional government. However, it is very unclear how these funds actually reach local communities. According to the World Bank evaluation department’s assessment in 2002, little of the extractive industry funds appeared to be reaching local communities and the World Bank Country Assistance Strategy for Peru in 2002 stated that the distribution of mining revenue tax is still unclear and a subject of conflict.²¹ There continues to be a lack of transparency surrounding these tax transfers.

Although the taxation rules themselves are very generous, the most significant legal benefit comes in the form of the contracts that Peru has signed with the mining companies. In total 30 contracts have been signed with 20 different mining companies,²² though only 19 contracts with 12 mining companies are still valid.²³ These contracts were signed as part of the government’s overall drive to promote foreign investment. They provide guarantees to the companies of equal treatment with other national and foreign firms, the right to profit remittance and the right to non-discrimination. In addition they also offer legal stability – including ‘tax-stability’ guarantees. This means the Peruvian government cannot alter taxation arrangements. While the profit-reinvestment rules stipulated that the benefit would cease in September 2000, many mining companies with tax-stability contracts still claim it.

The contracts have a legal status of law and cannot be modified even by the Congress. According to article 62 of Peru’s constitution, the state can establish guarantees in legal contracts, which cannot be modified by the legislature. They can only be modified only by mutual agreement between the state and the company. The contracts are valid for a period of either ten or 15 years, depending on the size of investment.

In addition to the generous tax incentives, Peru is also unusual in that it didn’t charge a royalty on minerals until June 2004. While royalties are much resisted and criticised by industry, they remain a very common part of mineral-taxation regimes.²⁴ Peru’s failure to charge royalties can be considered exceptional and is a policy choice which entails a significant revenue loss for the country.

After public outcry this situation was changed and a royalties law passed. However, the majority of the big mining companies have refused to pay it – using the tax-stability clauses in their contracts as the basis for rejecting the change. Mining companies fought the introduction of a royalty in Peruvian courts, claiming that the new royalties law was discriminatory and represented an attempt to confiscate their assets. The court ruled that mining royalties are not a tax, but serve as compensation to the government for the value of the natural resource, justified by the need for the nation state to receive benefits from its own non-renewable resources before they run out. The court also ruled it was not discriminatory just because other sectors did not have to pay it. The court declared that mining royalties were obligatory and had to be paid.

However, even though this was the final resolution in the Constitutional Court, the largest companies are still not paying but relying on their tax-stability clauses in their contracts to avoid doing so. The Peruvian government has seemed powerless to resolve this problem and enforce its laws because of a lack of clarity between ministries about how to enforce the legal decisions and take action against companies. What is clear is that most companies are not paying.

The government’s most recent attempt to resolve the situation has led to a request that mining companies pay a ‘voluntary contribution’. Agreements for this have been drawn up, though amounts requested are small compared to the extraordinary profits the companies have been making since the price boom. Voluntary contributions will also be suspended if prices drop below the reference price.²⁵

When royalties are paid they are calculated as a percentage of the gross sales value. The rate ranges between one and three per cent. The rate of one per cent is paid by companies whose annual sales value is less than US\$60m; two per cent is paid if annual sales are between US\$60m

and US\$120m; and three per cent is paid on annual sales of more than US\$120m. Under the law royalties are paid to the area directly affected by the mine.

Peru and mining

Mining has rapidly expanded in Peru since the early 1990s. Peru is now one of the leading mineral producers in the world and Latin America's top producer of gold, silver, zinc, lead and tin. Mining accounted for about 61.8 per cent of exports and five per cent of the country's growth rate in 2007.²⁶ The commodities boom has generated huge gains for Peru's mining sector. The value of exports in 2008 was US\$18,657m, with copper, gold and zinc being the most important mineral earners.²⁷

The dramatic increase in mining in Peru has generated extensive social conflicts in mining zones and a marked upsurge in social mobilisations against mining. Many highlight the environmental damage left by large-scale mining operations. The famous La Oroya smelter and its surrounding area was recently identified as one of the ten most contaminated places on earth.²⁸

The powerful Ministry of Energy and Mines is charged with monitoring the environmental performance of companies – a significant conflict of interest given this ministry also promotes foreign investment in the mining sector. The absence of state activity in environmental monitoring and environmental protection for mining zones has become notorious.

Guatemala

Guatemala has traditionally been a country with limited metal-mining activity. The most significant mine in the recent past was a nickel mine in the municipality of El Estor in the department of Izabal. This mine is a source of much controversy and violence, so much so that the experience of the local community in the late 70s and early 80s is documented in Guatemala's Truth Commission (Comisión de Esclarecimiento Histórico) report.²⁹ Other mining started when international gold-mining companies showed an interest as the commodities boom took off.

Originally Guatemala's mineral royalty rate was set at six per cent until the new Mining Law of 1997, brought in during the Arzú administration, when the rate was lowered to one per cent. This was done to attract foreign investors. Although a large number of exploration licences have been granted, the Marlin gold mine – operated by Montana Exploradora and owned by Gold Corp – is the most important mine in

the country, responsible for 95.5 per cent of Guatemala's mineral exports in 2008.³⁰

Companies involved in gold mining

In 2003 the state granted a mining licence to Canadian company Glamis Gold. The company's Guatemalan subsidiary, Montana Exploradora SA, opened the Marlin mine in the department of San Marcos and began mining gold and silver. Since then the company has been bought out by Gold Corp, which is now the owner of the Marlin mine operation and Montana Exploradora. Gold Corp is one of the world's largest gold-mining companies. With its headquarters in Canada, it is one of North America's lowest-cost and fastest-growing senior gold producers. The company's annual reports show an increase of 416 per cent in net earnings between 2005 and 2008.³¹

Royalties are paid on the basis of a sworn declaration by the company, which is produced monthly, stating their production levels. Half the royalty payments go to the central government and half to the municipalities where the mining takes place. Mining companies also pay a *canon de superficie* – a type of exploration fee.

However, the tax situation for the mining industry in Guatemala is far from straightforward. Because they export their products, mining companies are able to take advantage of various tax exemptions under Guatemalan law. As a result Montana Exploradora was able to apply for *maquila* status under Guatemalan legislation, which they did at the end of 2003 (*maquila* is the Latin American term used to describe companies manufacturing for export). Companies often engage in low-skill activities – such as garment production – and are usually offered generous tax incentives to work in a free-trade zone as part of a country's export-promotion programmes. Granting *maquila* status to a mining company is highly unusual, though Guatemala has gradually been extending its classification of what can qualify as a *maquila*. As a result of this classification it meant Montana Exploradora would not have to pay import taxes, VAT or corporate tax.

The company's tax-exempt status was not a secret before the mining operation began – the World Bank report on it in its debate within the IFC, which is an investor in the mine. However, it became public knowledge only in 2006, when the press reported that the company Montana Exploradora was benefiting from *maquila* status. A scandal erupted about how a mining company could be classified as a *maquila* (though this was completely within the letter of Guatemalan law). Many questioned how the government had publicly

sold the mining project, praising its huge contributions to the Guatemalan economy when in fact royalties had been slashed to one per cent and the company was not paying corporate tax, VAT or import taxes.

As a result of the extremely bad press, President Oscar Berger announced he would talk to the company. However, he also made clear he would not cancel their *maquila* status as this would 'send a negative message to investors'.³² Finally the company announced that as a gesture of good will they would pay tax and have been paying corporate taxes since 2006.

Corporate tax in Guatemala is calculated under one of two possible regimes between which companies may choose. One option is to pay 25 per cent of net profit. Deductible costs are limited to 97 per cent of gross sales. If a company chooses this option they will also have to pay the 'solidarity tax' (formerly this was known as the IETAPP – the 'extraordinary and temporary tax to support the peace accords'). This is a small tax – of only one per cent – applied on gross sales or the asset base of the company. The other corporate tax option is much simpler. A rate of five per cent is charged on the gross sales of the company. Generally, companies will make a choice based on their profit margins.

A 2007 study has shown that, for both systems to result in the same tax take for the Treasury, the rate in the second system should be 16 per cent, not five per cent.³³ Any company with high profit levels will pay much less under the five per cent of gross sales regime. The mining company Montana Exploradora chose to pay income tax under this second regime and so it pays five per cent of its gross sales.³⁴

Honduras

In Honduras, mining companies pay a municipal tax that functions as a mineral royalty. It is currently set at one per cent of the monthly sales value. This payment goes directly to the municipality where the mining takes place. This lowering of the royalty rate was done explicitly with the idea to attract foreign investors as part of a package of fiscal reforms brought in during 1998.

The mining sector also gained certain privileges through the 1998 reforms. Mining companies do not pay sales tax on their transactions related to exports, and their equipment and machinery necessary for mining development are free of taxes on imports. Most significantly they pay a reduced rate of corporate tax of ten per cent and effectively benefit from a five-year tax holiday. Companies also benefit from accelerated depreciation rules (the annual rate is 20 per cent) and can deduct all exploration and development costs. They can also carry forward losses for the first four

years. Companies can also sign tax-stability contracts with the Honduran government that prohibit the government from changing their tax regime for either ten or 15 years, depending on their level of investment.

In addition, companies also pay a *canon territorial* – a type of exploration fee. For the first four years of operation they pay (in lempiras) US\$0.25 per hectare per year. This is raised to US\$0.75 per hectare per year in the fifth and sixth year of operation, US\$1.50 in the seventh and eighth year, and US\$3 per hectare per year after that.

The mining industry

In Honduras, the mining industry has grown significantly, encouraged by a new mining law passed just after the devastation of Hurricane Mitch in 1998. Up to the end of the 1990s the country mainly produced lead and zinc, but gold production exceeded the value of zinc exports in 2001. Mineral exports were worth US\$198.26m in 2007, with gold accounting for 44.7 per cent and zinc for 34.2 per cent.³⁵

Currently the two biggest mining operations belong to the companies Gold Corp and Yamana Gold. Through its Honduran subsidiary Entre Mares, Gold Corp operates the San Martin gold mine in the Valle de Siria. It is the largest opencast mine in Honduras and has operated since 2000. It quickly became a commercial success and production peaked in 2002. Gold Corp's operations at the San Martin mine are now coming to an end, and reclamation and closure activities started in 2008.

Canadian firm Yamana Gold operates through its local subsidiary, the company Minerales de Occidente (MINOSA), which bought the San Andres opencast mine from RNC Gold in 2006. This mine is in the municipality of La Unión, department of Copán. Yamana Gold is a relatively new mining company. It started up in 2003 with projects in Brazil and quickly became established as a junior gold producer.

ROYALTIES AND TAXES PAID

Peru

In Peru, the main tax contribution from mining companies is corporate tax payments. Their contributions have become more significant since 2002 (see Table 2) when the commodity-price boom pushed companies' profits up to extraordinary levels. Mining taxes contributed 11.1 per cent of Peru's total tax revenue in 2005, rising to 20.9 per cent in 2006.³⁶ While this is a big rise on the period pre-2002, the mining sector still contributes less than the service and manufacturing sectors.

The rise in taxes paid by mining companies is undoubtedly due to the exceptional increases in international prices and thus company profits and their corporate tax contributions. However, it is also partly explained by one company – Minera Antamina – which finally started paying profit taxes in 2005. Due to its size, its contribution has had a big impact on overall tax collection figures for the sector. The company's share of total profit tax in 2005 was 35.1 per cent (US\$291m) and in 2006 was 36.5 per cent (US\$740m).

It is much more difficult to get information about royalty payments because the information for each company is not published. However, Christian Aid partner CooperAcción was able to request specific data from the Peruvian tax authority (SUNAT), which presented the data in Table 3 regarding royalties paid between June 2004 – when royalties were created – and the end of 2006.³⁷

Table 3 shows very clearly that royalties paid by mining companies in Peru are very small compared to their corporate tax payments. For example, corporate tax payments in 2006 were US\$1,761.2m while royalties are estimated at US\$126.5m.

It is also important to note that the absence of royalties before 2004 is extremely negative. Royalties would have been the main tax revenue for the government from the mining projects established in the 1990s, because in the first years of operation companies were entitled to increased depreciation, thus minimising their taxable profits. As Peru's case demonstrates, it can take some years before any corporate taxes are paid, so royalties are a critical tool to ensure revenue is generated for the host country in the early years of operating a mine.

Guatemala

In Guatemala, the tax authority presents aggregated annual data on royalties paid by the mining and hydrocarbon sectors. This is recorded in SICOIN (the tax authority's online accounting system) that has been in place since 2004. To access this system a password is needed. This has been provided to journalists and interested organisations and means information is publicly available. This openness is part of the long-term efforts to improve the taxation system in Guatemala.

In addition to the information provided by the tax authorities, both Gold Corp and previous owner Glamis Gold present fairly detailed information in their annual reports about the Marlin Mine. Gold Corp also publishes additional 'sustainability' reports as part of its corporate social responsibility (CSR) programme, including data on royalties and tax payments. It is highly unusual for a company to publish information on the taxes paid per mine per country and it should be noted that Gold Corp has not published similar tax and royalty information for its gold mine in Honduras. It is possibly the case that the company is keen to provide information on these payments to counter the opposition to the mine, given the protest and division it has caused in Guatemala.³⁸ Whatever the reasons, this is a good practice and one that other companies should follow. It is a crucial first step towards ensuring transparency and facilitates civil society and media monitoring of the use of tax revenue raised from the extractives sector.

Gold Corp also provides information on payments of tax on land (IUSI), import tax that is paid on some items that aren't exempt and social security payments (both the employer's and employees' share). In addition, information is provided on VAT, though much of this will be refunded as it is attributable to export production. The most important figures of course are those related to its payments of corporate tax and royalties as these are the contributions that:

- are the most significant
- best represent how profits are shared between the country and the company
- have the highest potential for development and poverty reduction.

‘There is no control over how companies’ royalties are calculated and their level of production. The state is not monitoring this.’

Francisco Machado, former director, ASONOG, Honduras³⁹

Table 2 Corporate income taxes paid by mining companies in Peru 1998-2008 (millions of US\$)

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
CIT paid by mining companies	84	40.8	70.4	51.8	85.2	169.4	289.8	657.7	1,761.2	2,781.5	2,304.7

Source: www.sunat.gob.pe – compiled by CooperAcción in its report *Tributación y Distribución de las Sobreganancias Mineras en el Perú*, Working Paper, Mining and Communities Programme, October 2007.

Note: 2008 data supplied directly by CooperAcción.

Table 3 Royalties paid by mining companies in Peru June 2004-2006 (millions of US\$)

	June 2004- 2005	2006	TOTAL	Share of royalties paid (per cent)
Southern Peru Copper Corporation	47.8	61.2	109	51.9
Volcan Compañía Minera SAA	6.3	14.7	21	10
Minsur SA	10	7.2	17.3	8.2
Compañía de Minas Buenaventura SAA	3.2	5	8.1	3.9
Shougang Hierro Perú	2.6	2.3	4.8	2.3
Sociedad Minera El Brocal SAA	0.9	3.2	4.1	2
Compañía Minera Atacocha SA	1.3	1.4	2.7	1.3
Aruntani SAC	1.4	1.7	3.1	1.5
Empresa Administradora Chungar SAC	0.7	1.5	2.2	1.0
Minera Aurífera Retamas SA	1.1	1.1	2.2	1.0
Minera Colquisiri SA	0.8	1.4	2.1	1.0
Compañía Minera Aurífera Santa Rosa SA	0.9	1.1	2	1
Consorcio Minero Horizonte SA	0.8	1.1	1.9	0.9
Compañía Minera Casapalca SA	0.6	1.1	1.6	0.8
Compañía Minera Ares SAC	0.9	0.7	1.6	0.8
Inversiones Mineras del Sur SA	0.7	0.8	1.5	0.7
Pan America Silver SAC	0.3	1	1.3	0.6
Compañía Minera Raura SA	0.5	0.5	1	0.5
Compañía Minera Poderosa SA	0.5	0.4	1	0.5
Sociedad Minera Corona SA	0.4	0.4	0.8	0.4
Other mining companies	1.9	18.9	20.8	9.9
TOTAL	83.5	126.5	210.1	100

Source: www.sunat.gob.pe – compiled by CooperAcción in its report *Tributación y Distribución de las Sobreganancias Mineras en el Perú*, Working Paper, Mining and Communities Programme, October 2007.

Note: Royalties are paid monthly. So royalties on production in December 2006 are not paid until the end of January 2007. In this table royalties are reported according to the production they correspond to, not the date they are paid, so January 2007 payments are recorded under 2006.

Data is available from the company for 2005 (when production started) until 2008. Figures from the tax authorities are available, but only for mining royalties from 2005-2008 and not for corporate taxes. The tax authorities also report payments for the *canon de superficie*. These amounts are likely to come from several companies, not just Montana Exploradora, as there has been a lot of exploration going on in Guatemala.

Surprisingly, the royalties data from the two sources does not match up at all, as Table 4 shows.

If we look first at the company's data we can see that the royalty payment reported by the company for 2005 is low because production only began that year. Also, no corporate tax payments were made because the company had claimed exempt *maquila* status. Royalty payments then increase by a factor of ten in 2006 as production increases and by almost 50 per cent more in 2007 when both production and price increases occurred. Corporate tax payments on profit far exceed contributions from royalty payments. Clearly – as is the case for Peru – where countries have low royalty rates, corporate tax payments are a critical means of ensuring the state gets a fair share from its minerals wealth in periods of high prices.

The data from the tax authorities paints a very different picture. Royalties are minimal – missing completely in 2006 and only 3.4 per cent of what the company reports as paying in 2007. This is difficult to understand as SICOIN is recognised as a reliable accounting system. However, SICOIN depends on the relevant ministries for their information, in this case on the Ministry of Energy and Mines so presumably a problem is arising there.

As there is a lack of transparency from the ministry on what is being received from companies, SICOIN information in this case cannot be considered reliable. The company's royalty figures do appear to be reliable, given that when compared to the company's sales figures and to the country's mineral export value they are just below one per cent of both of these. This discrepancy is a finding that should be of concern to the Guatemalan tax authority.

It is worth remembering that the municipality gets half the royalty. So if the amount reported as paid by the company in 2007 did actually arrive in the municipality, San Miguel Ixtahuacán would have received more than US\$950,000. The municipality's annual budget before mining started was around US\$150,000 so this is a huge increase.⁴⁰ To date there seems to be little (if any) evidence of whether this money was received by the municipality and how it is

being spent. There are no community efforts to monitor the municipality's budget. This is a huge problem, given that the poverty rate in the area is 97 per cent, and it is critical that royalty payments are put to good use.⁴¹

Honduras

In Honduras, there is very little data available from government sources on the value of royalties and tax revenue raised from mining. The tax authorities do not publish information and the only source seems to be buried in the Finance Ministry annual budget reports, which include the detailed income and outgoings each year. Table 5 comprises all the data related to mineral sector income that is presented. (This of course does not include disaggregated data on corporate income tax payments from the sector.) The information is available only from 2001.

It is very difficult to make sense of this information or to obtain any clarifications from the Honduran government regarding mineral sector taxation and how the law is being applied.⁴² The royalty figures are so low – amounting to only a few hundred dollars in 2003 for example – that it is possible that some income is going unreported, possibly because it is being paid directly to municipalities. However, it is also true that until 2006 the royalties were reported specifically as mineral royalties. This changes in 2006 to 'various royalties' so from that date it is likely the mineral figure is overestimated.

Still the royalty figures fall far short of what we would expect if Honduras was receiving one per cent of the value of its export sales. An estimation based on export data shows a massive shortfall in the royalties the country should receive (see Table 6).

Looking at the total amount collected over the seven years, the royalties and fees paid amount to only 10.5 per cent of the figure we might have expected had the one per cent royalty rate been applied on the full value of production – an extremely serious shortfall.

It is much more difficult to discuss the taxes paid by mining companies. Firstly there is no specific data available from the Honduran tax authorities for this sector and there is no published data from companies. We know that mining companies only pay ten per cent of profits in corporate income tax – a special rate for the sector – and are exempt from payments for five years. This is far below the rates both Peru and Guatemala are charging, and so Honduras is likely to be in a much poorer position in terms of its tax take from its mineral exports.

Table 4 Tax and royalty payments in Guatemala 2005-2008 (US\$)

	Corporate tax reported by company	Royalties reported by company	SICOIN data on royalties	SICOIN data on fees
2005	–	130,094	0	621,000
2006	3,399,750	1,298,762	0	604,000
2007	9,524,892	1,902,953	65,334	607,000
2008	12,497,852	2,484,473	142,386	654,000

Source: Gold Corp Annual Monitoring Reports, Marlin Mine 2005, 2006, 2007, 2008.⁴³ Available on Gold Corp website www.goldcorp.com (see under CSR Reports – Sustainability). SICOIN is the government's online accounting system and reports amounts collected in royalties and exploration fees. The exchange rate used to convert SICOIN data is the average annual exchange rate reported by Guatemala's Central Bank.

Table 5 Mineral royalties and other payments made to the Honduran government 2001-2008 (lempiras)

	2001	2002	2003	2004	2005	2006	2007	2008
Patente minas y zonas mineras	962,147.59	2,140,352.96	710.70	30,287.50	28,675.63	0	3,600	3,657.27
Canon territorial	-	-	-	2,990,722.83	2,747,529.84	5,441,872.03	5,482,535.10	5,026,841.07
Royalties	453,638.56	17,671.56	6,310	2,000	5,050.2	146,280.33	22,709.95	2,538.17
Total	1,415,786.15	2,158,024.52	7,020.7	3,023,010.33	2,781,255.67	5,588,152.36	5,508,845	5,033,036.51
Total in US\$	90,413.45	126,284.45	392.27	161,713.73	141,775.72	283,814.4	282,728.73	259,601.06

Source: Budget Reports, Secretaria de Finanzas: www.sefin.gob.hn/portal_prod/index.php?option=com_content&task=view&id=133&Itemid=157

Notes: From 2006 royalties are categorised as 'various' not just 'mineral'.

US\$ totals are calculated using average annual exchange rates for each year.

Table 6 Estimating royalty payments using Honduran export data 2001-2007 (US\$)

	2001	2002	2003	2004	2005	2006	2007	Total
Mineral exports	113.5m	124.2m	115.4m	134.8m	133.1m	220.3m	198.3m	1,039.6m
Royalties due (1% of export value)	1,135,000	1,242,000	1,154,000	1,348,000	1,331,000	2,203,000	1,983,000	10,396,000
Royalties and fees reported as paid	90,413	126,284	392	161,714	141,776	283,814	282,729	1,087,122

Source: Honduran Central Bank for the total value of exports of gold, silver, lead and zinc.

Note: Royalties due are calculated at one per cent of the export value and royalties and fees paid are taken from budget reports as explained above.

COUNTING THE COST OF TAX INCENTIVES

Governments grant a variety of tax exemptions to different sectors. All these incentives carry costs in terms of lost tax revenue. Hopefully they also generate a variety of benefits such as creating new jobs, stimulating other businesses in the local economy and providing greater tax revenue in the future as businesses grow. However, this cannot be taken for granted and a full cost-benefit analysis should be undertaken. Some tax incentives will cost more than others and some will bring less benefit than others. It is vital that developing-country governments take this into account because tax incentives that fail to deliver benefits imply there must be higher tax rates on everyone else to raise the same level of revenue. Ordinary citizens will have to cover this cost and that burden weighs heavily against poor consumers in developing countries. In the end the poor will pay for any inappropriate decisions to grant overly generous tax exemptions and incentives.

It is essential for Latin American countries to start counting the fiscal cost of tax incentives for mining companies. The International Monetary Fund (IMF) advocates that they be documented and presented in the budget as expenditure. This is still far from common practice.

Peru

Christian Aid's partner CooperAcción has estimated both the revenue foregone because of royalties not paid (see Table 7) and the cost of certain tax incentives such as those offered under the profit-reinvestment rules (see Table 8).⁴⁴

As for royalties, there are nine large mining companies that are not paying any royalties in Peru, arguing that they should not have to under their tax-stability contracts. These are:

- Xstrata Tintaya
- Compañía Minera Milpo SA
- Compañía Minera Santa Luisa SA
- Empresa Minera Los Quenuales
- Minera Yanacocha
- Doe Run Perú
- Compañía Minera Antamina SA
- Sociedad Minera Cerro Verde
- Barrick Misquichilca SA.

Three further companies, Southern Peru, Compañía Minera Ares and Compañía Minera Volcan, do not pay royalties on some of their projects. Both Xstrata – which bought the Tintaya mine from BHP Billiton – and Hochschild Mining – which owns Minera Ares – are listed on the London Stock Exchange.

CooperAcción requested calculations from the Peruvian tax authority (SUNAT) of how much the Peruvian state has lost due to non-payment of royalties. SUNAT calculated that a total of US\$357.2m has been lost between June 2004 and the end of 2006. As shown in Table 7, 63 per cent of that is down to just two companies failing to pay – Antamina (US\$130.5m) and Yanacocha (US\$96.1m).

Of course, the non-payment of royalties is only one way in which the Peruvian state is losing out on revenue. The generous tax allowances offered to mining companies also cost money. One example is the revenue foregone due to the 'reinvestment of profit' rules. Between 1994 and 1999, US\$629m was reinvested in mining in Peru. This reduced companies' tax burden by US\$189m in that period (or on average by US\$31m a year). Table 8 presents the revenue foregone between 1994 and 1999 and between 2000 and 2006 according to each company's profit-reinvestment levels. It is worth remembering that this was an officially sanctioned tax subsidy only until the year 2000 when this tax break was abolished, but in fact the lost revenue has increased significantly since then.

As Table 8 shows, the firms that have significantly benefited from this tax break were Cerro Verde, Yanacocha and Southern Peru Limited. Currently four of the biggest mines in the country are using this benefit even though the tax law has since been reformed. These include Yanacocha (the leading gold producer), Cerro Verde (the leading copper producer), Cajamarquilla (a zinc mine) and Volcan (the leading producer of silver, zinc and lead).

The revenue the Peruvian state has failed to collect over 12 years – just because of these two factors (the non-payment of royalties and the profit-reinvestment rules) – is estimated at US\$849m. And these losses are mounting up as companies continue to refuse to pay royalties and to avail themselves of the now defunct tax breaks offered in the past.

Given the size of the mining sector in Peru, these decisions cost the country hundreds of millions of dollars each year. These amounts would be significant in allowing the country to fund important social-policy initiatives as well as productive investments. It is worth noting that Peru allocated a budget of only US\$44m to its programme for rural education in 2007 and US\$25m to its national literacy programme in the same year.⁴⁵ The Peruvian treasury minister has also recently informed NGOs working on the creation of a pension system that although this was close to being approved, the idea is now being shelved due to resource constraints.⁴⁶ In addition, Peruvian NGOs calculate that the government needs US\$220m to expand social-protection programmes to protect the poor from the impacts of the global economic crisis.⁴⁷ There are concerns as to whether this money will be found.

'Tax incentives are meaningless and income tax exemptions in Guatemala for US companies are a mechanism to ensure a direct transfer of funds to the US Treasury.'

Aaron Schneider, academic⁴⁸

Table 7 Amount in royalties not paid by mining companies in Peru (millions of US\$)

Company	June-Dec 2004	2005	2006	TOTAL	Share in %
Compañía Minera Antamina SA	15.8	40.7	74.1	130.5	36.5
Minera Yanacocha SRL	16.8	38.4	40.9	96.1	26.9
Minera Barrick Misquichilca SA	2.4	12.5	25.2	40.2	11.2
Xstrata Tintaya SA	3.3	8.6	17.9	29.8	8.4
Sociedad Minera Cerro Verde SAA	1.8	6.6	13.9	22.3	6.2
Empresa Minera Los Quenuales	1.4	4.5	11.8	17.7	4.9
Compañía Minera Milpo SAA	0.5	1.7	4.7	6.9	1.9
Compañía Minera Santa Luisa SA	0.3	0.6	1.8	2.7	0.8
Doe Run Peru SRL	0.2	0.5	1.4	2.1	0.6
Southern Peru Copper Corporation	1.1	3.2	0.4	4.6	1.3
Volcan Compañía Minera SAA	0.5	1.3	1	2.8	0.8
Compañía Minera Ares SAC	0.4	0.5	0.7	1.6	0.4
TOTAL	44.4	119	193.9	357.2	100

Source: Calculations done by SUNAT and presented by CooperAcción in its report *Tributación y Distribución de las Sobreganancias Mineras en el Perú*, Working Paper, Mining and Communities Programme, October 2007.

Note: Southern Peru Copper, Volcan and Ares are claiming tax stability for only some of their projects.

Table 8 Taxes foregone due to profit-reinvestment rules 1994-2006 (millions of US\$)

Company	Tax revenue foregone 1994-1999	Tax revenue foregone 2000-2006	Total tax revenue foregone 1994-2006
Southern Peru Limited	73.5		73.5
Minera Yanacocha SRL	62	56.9	118.8
Minsur SA	13		13
Compañía Minera Milpo SA	12.7		12.7
Soc. Min. Refinería Zinc Cajamarquilla	9.4	1.8	11.2
Consorcio Minero Horizonte SA	6.5		6.5
Minera Aurífera Retamas SA	3.9		3.9
Compañía Minera Atacocha SA	4.6		4.6
Volcan Compañía Minera SAA	1.6	4.5	6.1
Compañía Minera Condestable SA	1.0		1.0
Compañía Minera Caraveli SA	0.6		0.6
Compañía Minera Cerro Verde SAA		240	240
TOTAL	188.7	303.1	491.8

Source: Ministry of Energy and Mines, Financial statements of companies, compiled by CooperAcción in its report *Tributación y Distribución de las Sobreganancias Mineras en el Perú*, Working Paper, Mining and Communities Programme, October 2007.

Table 9 Revenue foregone from lowering the royalty rate in Guatemala 2006-2008 (US\$)

	2006	2007	2008
Royalty reported by company (1%)	1,298,762	1,902,953	2,484,473
Royalties that would have been collected under the previous 6% rate	7,792,572	11,417,718	14,906,838
Fiscal cost of incentive	6,493,810	9,514,765	12,422,365

Source: Royalty data from Gold Corp Annual Monitoring Reports, 2006, 2007 and 2008.

Guatemala

We can do a very straightforward calculation to ascertain the revenue that the Guatemalan government decided not to collect when it lowered the royalty rate from six to one per cent.

Table 9 shows the cost of lowering the royalty rate for the Marlin mine production between 2006 and 2008. Guatemala has forfeited more than US\$28m over three years. Given the low level of Guatemala's social spending, the annual cost of this fiscal incentive is significant. Within the national health budget for 2006, only US\$6.2m was originally allocated for health infrastructure spending (eg on health centres and hospital infrastructure and equipment).⁴⁹ The budget was then modified and health spending cut, so only 74 per cent of this unimpressive figure was actually spent. In 2006, the fiscal cost of this tax incentive to one mining company exceeded the country's total spending on health infrastructure.

If new companies begin mining operations in Guatemala – as is currently planned – they will also benefit from low royalty rates (and potentially tax exemptions), implying also a rising fiscal cost for the country. In return Guatemala will benefit from only a small number of new jobs (the Marlin mine employed 1,149 workers in 2007) to be set against any environmental damage and pollution caused by the mine operations, possible negative impacts on agriculture and human health, and the increasing likelihood of social unrest in mining areas.

Honduras

Equally there is no question that Honduras has given up important sums of money in lowering its royalty and corporate tax rates on mining companies. For example, if there was a three per cent royalty rate in place, Honduras would have made around US\$5.9m in 2007 from royalties on its mineral exports. This can be compared to the paltry US\$283,000 it is reported to have received in royalties, licences and fees.

This must be seen in the context of Honduras' repeated (and poor) attempts at raising its level of tax collection. In 1994, 1996 and 1998, the country was subject to a series of tax reforms. There were further reforms in 2002 and a supposedly significant overhaul and redirection of the system in 2003 under the Tax Equity Law. This law unified the corporate tax rate at 25 per cent – one of the major changes under this reform. This was predicted to generate 64 million lempiras (US\$3.4m) and was trumpeted as a big success.⁵⁰ However, this amount is insignificant when we consider how much mining companies would contribute if the royalty rate on all minerals were raised (and applied properly). If, in addition, the corporate tax was brought into line with the standard rate and the tax holiday abolished, this could represent a significant income stream for the government.

TAX COMPLIANCE

A key issue for any government managing its extractive industries is to ensure that it actually receives the royalties and taxes that are due. This is of course especially relevant for developing countries that receive low tax revenues and where long-overdue efforts to curtail tax evasion are being stepped up. In order to successfully monitor the minerals sector, a developing country will need accurate records of both production levels and prices (to enable it to assess the royalties due) and also to audit the companies' costs and levels of profits being reported. Production monitoring and financial audit are distinct areas that require different skills and investment.

In particular it is difficult for developing-country tax authorities to challenge abusive practices such as transfer mispricing and false invoicing. With multinationals, a system known as transfer pricing covers the sales between subsidiaries of the same parent company of everything from machinery and equipment to management services, insurance and intellectual property rights. When subsidiaries charge each other a fair market price (the 'arm's-length' price) such transactions are legitimate. However, the way fees and prices are determined has become increasingly opaque and figures can be manipulated to reduce tax. Companies may overprice their imports (inflating costs and lowering profit taxes due) and underprice their exports, ensuring a transfer of revenue out of the country. Such practices can be agreed not only between subsidiaries of multinationals. Unrelated companies can make secret deals with each other for the same reasons and use false invoicing to export goods at low prices from the country where they are produced.

Christian Aid recently published a report that attempts to quantify for the first time the damage done to individual countries by trade mispricing.⁵¹ It analyses EU and US trade data and estimates the amount of capital shifted from non-EU and US countries into the EU and US through bilateral trade mispricing. The report also estimates the resulting tax losses. We estimate that between 2005 and 2007 emerging and developing countries lost US\$1.1 trillion in capital from their countries. If taxes had been levied on this at normal rates it would have raised around US\$365bn in that period. This is, of course, just the tip of the iceberg. There is no publicly available trading data from tax havens – jurisdictions that are favoured by multinational corporations. This data would no doubt reveal a far more serious picture of trade mispricing in trade through tax havens.

With regard to auditing companies to counter transfer mispricing, the challenges are huge. This problem is acknowledged by developing-country governments and this is one of the major reasons for a preference for royalty regimes in the first place. However, transfer mispricing and how to confront the practice is an issue that is barely

discussed in forums devoted to taxation reform in Latin America – even though it's a major area of revenue loss.

The problem with the minerals sector is slowly gaining recognition with limited coverage in recent reports by the Economic Commission for Latin America and the Caribbean (ECLAC)⁵² and the ICMM⁵³ for example. It has also been highlighted as a key problem by the Chilean government in its recent mining reforms. In Chile, mining companies' second-largest reported cost was for consultants and contracting of services. According to the mining council this amounted to 12 per cent of all company costs⁵⁴ and was one area the government highlighted among major weaknesses in terms of auditing and regulation. The reform attempted to specifically address some of these weaknesses.

Estimating the cost of trade mispricing in minerals exported from Peru

Using Christian Aid's new database, which informed the data presented in the report mentioned above, we can present some estimates of the amount of capital being shifted out of Peru through mispricing of minerals traded directly between Peru and the US and the EU. (These figures do not cover minerals traded between countries that are mediated through tax havens.) The database was created by Simon Pak, an international trade pricing expert, president of the Trade Research Institute and associate professor at Penn State University in the US. Christian Aid commissioned him to analyse EU and US trade data and estimate the amount of capital shifted from non-EU countries into the EU and US through bilateral trade mispricing. He analysed bilateral trade in every product between 2005 and 2007 and, using 'price filter analysis', calculated the parameters for the normal price ranges of products traded between countries. He concluded that prices which fell outside that normal range had either been artificially depressed or artificially inflated, or in other words mispriced. Such manipulations may occur for tax purposes or capital flight purposes – either way there is a tax loss for the developing country. In Table 10 we look at only the mispricing that relates to mineral exports from Peru into the US and the EU.

The total for all minerals for Peru over the three years comes to US\$388.6m. This, according to the analysis, is the amount of capital being shifted illicitly out of the country through mineral exports. In fact the mining sector is consistently shown to be one of the biggest offenders. Precious metals topped the list for under-pricing of exports from Peru to the US in 2005 and 2007, and copper is always in the top ten for under-pricing of exports from Peru to the US.

If the total amount of capital said to have been shifted illicitly

‘It is a contradiction to support increased development assistance, yet turn a blind eye to actions by multinationals and others that undermine the tax base of a developing country.’

Trevor Manuel, minister of finance, South Africa⁵⁵

Table 10 The amount of annual capital flow estimated to result from under-pricing of exports of minerals exported from Peru to the US and the EU 2005-2007 (thousands of US\$)

HS Code	Product category	Annual capital flow from mispricing of exports from country to US			Annual capital flow from mispricing of exports from country to EU			Total
		2005	2006	2007	2005	2006	2007	
71	Precious metals	263,743	0	63,665	69	65	24	327,566
74	Copper	2,668	4,371	25,487	2,348	5,703	3,969	44,546
78	Lead	281	884	39	171	391	523	2,289
79	Zinc	0	0	0	296	734	605	1,635
80	Tin	2,949	2,214	2,741	467	1,619	2,631	12,621

Source: Christian Aid’s trade-pricing database, created by Professor Pak through analysis of trade data between 2005 and 2007, and used to inform the report *False Profits: Robbing the Poor to Keep the Rich Tax-Free*, Christian Aid, March 2009.

Notes: All commodity groups are shown according to the Harmonised System (HS) of Commodity Classification, which was drawn up under the auspices of the World Customs Organisation.

The category of precious metals refers to HS code 71 and includes pearls, stones, precious metals, imitation jewellery and coins.

All calculations in the database are based on the assumption that the data analysed was free from reporting error.

There are of course some limitations to the price-filter analysis method. These are described in detail in appendix 2 of Christian Aid’s report *False Profits: Robbing the Poor to Keep the Rich Tax-Free*, March 2009.

out of the country during these three years was subject to corporate income tax (at 30 per cent) we can estimate that the Peruvian Treasury has lost around US\$116.6m over this period. Given between 2005 and 2007 the corporate tax paid by mining companies in Peru was US\$5,200m, this only amounts to 2.2 per cent of the total tax take from minerals. However, it is important to remember that this data only covers Peru’s mineral exports to the US and the EU. In 2007 the US and the EU together only bought 26 per cent of Peruvian mineral exports. China and Switzerland are major buyers and other important importing countries are Japan, Canada, Chile and South Korea – all of which are not included in our analysis.⁵⁶ The scale of the problem of under-pricing of exports is likely to be much larger.

It is also important to note that there are other ways in which companies can engage in transfer mispricing and false invoicing. Mining companies may also be involved in manipulating prices of their imports. We are not able to analyse if this has taken place, as we cannot easily isolate the products that mineral companies import into Peru. Our data also does not cover other types of intra-company trades (for example buying consultancy services). This was identified as an area of abuse by mining companies in Chile. In addition, companies may illicitly shift capital through the structuring of their loans and interest repayments. Whether

there have been losses from these practices, and if so what they are, cannot be determined.

It is fair to say that our research suggests that there is a systematic problem with transfer mispricing and the extractives sector in Peru. Unfortunately Peru is not alone. Christian Aid’s database shows problems with the underpricing of mineral exports in other Latin American countries. The copper sector consistently ranks highly in Chile’s transfer-mispricing tables, coming top in 2007 and sixth in 2006 for exports to the US. Brazil is one of the world’s leading producers of iron and iron exports are consistently high in Brazil’s transfer-mispricing tables, with significant losses also being reported on exports of precious metals. Mexico shows similar results. It has large losses of capital from iron exports, and precious metals are the next biggest offenders in terms of under-pricing exports. There is also a consistent problem with exports of Mexican copper. In Colombia’s case the category of precious metals – which includes exports of gold and emeralds – is also a consistent offender.

There is an urgent need to focus on improving skills to audit and regulate this practice. Losses can be significant and the underpricing of mineral exports – particularly precious metals and copper – is apparently a common practice. This is going mostly unnoticed by host-country governments.

EVALUATING LATIN AMERICA'S SHARE IN ITS MINERAL WEALTH

A comparison between Guatemala and Peru

One way to evaluate a country's share in the wealth of their natural resources is if we calculate the overall government revenue from mining as a percentage of the total value of mineral production or as a percentage of a company's profit. The first is the easier comparison to make as it is rarely possible to gather reliable profit data.

In the case of Peru, Table 11 shows how the government's share has risen since 1998.

If we average over the whole period, Peru's share in the sales of its minerals between 1998 and 2008 is 9.4 per cent.

In Guatemala's case, given the availability of data on the Marlin mine, we can provide an even more detailed analysis of the country's share in the wealth by analysing its share in the company's profits as well. To do this, we need to

Table 11 Comparing profit taxes paid with the value of Peru's mineral exports (millions of US\$)

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Average 1998-2001	Average 2002-2008	Average 1998-2008
Profit tax	84	41	70	52	85	169	290	658	1,761	2,782	2,305	61.75	1,150	754
Export value	2,747	3,008	3,220	3,205	3,809	4,690	7,124	9,760	14,716	17,755	18,657	3,045	10,930	8,063
%	3	1.4	2.2	1.6	2.2	3.6	4.1	6.7	11.9	15.7	12.4	2	10.5	9.4

Source: Profit tax is from www.sunat.gob.pe – compiled by CooperAcción. Export values are taken from Peru's Central Bank.

Note: If in the case of 2006 we include the royalties figure (US\$126.5m) alongside tax payments, we would find that Peru's share increases marginally to 12.8 per cent.

Table 12 Summary of Marlin mine operations in Guatemala 2005-2008

	Total production (ounces)		Total sales (US\$ millions)	Average gold price per ounce (US\$)	Average silver price per ounce (US\$)	Total production costs per ounce (US\$)	Earnings (US\$ millions)
	Gold	Silver					
2005	23,858	154,649	11.7	-	-	196	2.6
2006	161,000	1,598,400	109.9	602	-	209	36.4
2007	227,200	2,837,300	203.7	707	14.23	144	72.8
2008	241,400	3,212,600	258.1	870	14.64	191	100

Source: Glamis Gold Annual Report 2005, Gold Corp Annual Reports 2006, 2007 and 2008.

Table 13 Comparing Guatemala and the company's share 2005-2007

Years	Corporate tax (US\$)	Royalties (US\$)	Total GT share (US\$)	GT share as % of sales	GT share as % of profit	Royalty as % of profit	Corporate tax as % of profit
2005	0	130,094	130,094	1.1	5	5	0
2006	3,399,750	1,298,762	4,698,512	4.3	12.9	3.6	9.3
2007	9,524,892	1,902,953	11,427,845	5.6	15.7	2.6	13.1
2008	12,497,852	2,484,473	14,982,325	5.8	15	2.5	12.5

Sources: Table 4 and Table 12.

'Diamonds are Botswana's major natural resource... By some estimates Botswana's government takes about 75 per cent of diamond-mining profits through taxes, royalties and dividends.'

IMF Guide on Resource Revenue Transparency, June 2005

look in more detail at Gold Corp's operations in Guatemala that have been extremely profitable. As Table 12 shows, production has increased steadily since operations began in 2005 and gold prices in 2008 were also around 45 per cent higher than 2006 levels. Also important to note is that the Marlin mine has extremely low operating costs. The total production costs for Marlin were US\$144 per ounce in 2007 and US\$191 per ounce in 2008, compared with the company average total production cost for 2008 of US\$305. Marlin is one of Gold Corp's highest-grade and lowest-cost producers.

Using this data and the royalties and tax data presented in Table 4, we can calculate Guatemala's share as a percentage of sales and as a percentage of profit, as shown in Table 13.

In 2006 the country increased its share of the wealth mainly because the corporate tax exemption was waived. It is worth noting that if the tax exemptions had not been waived because of public pressure (not government initiative) then Guatemala would only have received its paltry US\$1.9m in royalties on production in 2007, instead of the actual total of US\$11.4m. As this analysis shows, Guatemala's share in the company's earnings increased threefold between 2006 and 2008, thanks to the company paying profit taxes. However, Guatemala's share in the sector's turnover is small – being only 5.8 per cent in its best year. This demonstrates that Guatemala lags somewhat behind Peru (see Table 11). Presumably this is because its corporate tax rules offer the generous option of opting for a five per cent gross sales income tax which does significantly lower the tax burden.

Honduras

In Honduras, it is hardly worth comparing the government figures for the income received from the sector – in terms of royalties and licence fees – with the value of mineral exports. They are consistently negligible (eg around 0.1 per cent in 2007). If we had the corporate tax figures the share would no doubt be higher, but given the tax holiday and reduced rate it is without a doubt that the government's share in the sector's turnover is far behind even Guatemala's and thus woefully inadequate.

Comparing Latin American countries to the rest of the world

It is important to compare the situation in Latin America to other countries. An IMF survey of mineral taxation in developing countries found that the royalty rate varied between two and 30 per cent, with most rates between five and ten per cent.⁵⁷ Guatemala and Honduras – with a one

Mining reforms in Chile

The issue of a country's share in its mineral wealth is also one that has caused huge debate in Chile. For a long time Chile has had one of the lowest rates of mining taxation in the world. This could be considered exceptional because Chile was already an extremely attractive location for investors due to its huge copper reserves, politically stable environment and generally better infrastructure than many Latin American countries.

Chile's low taxation levels are best illustrated by the extremely low tax contributions of private firms when compared to Chile's national copper company, Codelco. Between 1990 and 2001, Codelco transferred US\$10.6bn to the Chilean Treasury, while private companies paid only US\$1.6bn – even though private companies' production levels were 25 per cent higher than Codelco's.⁵⁸

In 2002 a scandal erupted when the mining company Disputada de las Condes (a company owned by Exxon) was sold and it was revealed that for 22 years it had been declaring losses and therefore had not paid any tax in Chile at all.⁵⁹ It did this by exporting the profits from its Chilean operation as interest payments on loans to a subsidiary based in Bermuda. The Chilean operation had, on paper, borrowed so much money from the Exxon subsidiary in Bermuda that it was technically bankrupt. Despite that, the company was sold for US\$1.3bn, indicating that there must have been profit to be made.⁶⁰

A national debate ensued about mineral taxation issues. While the government was initially extremely concerned about tax rules and problems of transfer-pricing practices, the public debate also focused on the fact that there was no royalty regime in Chile. The creation of a royalty became a key part of the mineral taxation reforms and Chile now charges a profits-based royalty.

per cent royalty rate – and Peru – with a range of one-three per cent – all fall clearly below the average royalties being collected in developing countries.

We can also compare Latin American legislation to African legislation for this sector.

Table 14 presents existing mineral taxation regimes in Africa according to legislation that is formally in place. (However, it is too often the case that companies in Africa will negotiate individual mining deals with governments and benefit from lower royalty and tax rates as a result.) Peru,

Table 14 Mineral taxation rates in Africa

	Corporate tax	Royalties
Angola	35%	5% precious stones, 3% metallic minerals
Burkina Faso	35%	7% precious stones, 4% base metals, 3% industrial/precious metals
Democratic Republic of Congo	30%	2% non-ferrous metals, 2.5% precious metals, 4% precious stones
Ghana	25%	3-6%
Malawi	30%	10% unprocessed minerals, 5% others
Mali	0% for first five years, 35%	6% gross sales revenue less refinery costs
Mozambique	32%	10-12% diamonds, 3-8% other minerals
Namibia	37.5% non-diamond companies 55% diamond companies	10% precious stones, 5% other minerals
Sierra Leone	30%, 37.5% (rutile)	5% precious stones, 4% precious minerals, 3.5% rutile, 3% industrial minerals, 3% artisanal miners
South Africa	28%	3.7% diamonds, 2.1% gold (profits-based royalties to be introduced in 2009)
Tanzania	30%	3% gold
Zambia	30%	3% copper
Zimbabwe	35%	None

Source: *Breaking the Curse: How Transparent Taxation and Fair Taxes can turn Africa's Mineral Wealth into Development*, SARW, TWN Africa, Tax Justice Network for Africa, ActionAid and Christian Aid, March 2009.

Guatemala and Honduras have royalties and tax legislation that is more favourable to companies than the majority of African nations. Honduras' corporate tax rules are also highly unusual and only comparable to Mali's offer of a five-year tax holiday.

A straight comparison of tax rates has many limitations. A full assessment would look at the tax base and the full variety of taxes and rates in place. These modelling techniques (such as that designed by the Colorado School of Mines) and their results are well surveyed by ECLAC in its series of papers on natural-resource extraction. These studies investigate the effective tax rates and internal rates of return for companies operating under different mineral taxation regimes, taking into account – as far as possible – the full range of taxes and incentives in place. They then attempt to make recommendations for the optimal mineral taxation system. ECLAC finds that Latin American countries offer low effective tax rates and some of the best internal rates of returns for mining companies.⁶¹ For example Chile, Argentina and Peru give rates of return in the top four for gold. Chile and Argentina were the top three for copper, with Peru ninth in the world. Latin America's mineral taxation structures were therefore classed as 'highly internationally competitive'.

Sierra Leone: how legislation can be side stepped⁶²

Though African legislation might on the face of it be better than that in some countries in Latin America, that legislation is often side stepped. For example in Sierra Leone, one of the poorest countries in the world, the Sierra Rutile Agreement Act of 2002 sets royalty rates at 3.5 per cent of total sales and income tax at 3.5 per cent of turnover or 37.5 per cent of profits, whichever is higher. However, in July 2003 the government signed a memorandum of understanding with Sierra Rutile, which overturned some of the provisions in the act.

It reduced the royalty rate to a miniscule 0.5 per cent until 2014, reduced the turnover tax to 0.5 per cent until 2014 and scrapped entirely the payment of corporate tax on profits until 2014. According to senior tax officials, the government was in desperate circumstances and wanted to attract further investments at all costs. Internal government and other estimates put the country's losses because of this agreement at between US\$5.6m and US\$8m a year.

THE ROLE OF THE WORLD BANK

Christian Aid has documented the pressure from the World Bank on developing countries to lower royalty and tax rates for mining companies. The report *Breaking the Curse: How Transparent Taxation and Fair Taxes can turn Africa's Mineral Wealth into Development* describes what happened in Ghana, Zambia, Tanzania and Sierra Leone.⁶³ The World Bank promoted similar policies across Latin America. In 1996 in the Bank's Mining Strategy for Latin America and the Caribbean, it makes clear that a stable and equitable tax regime is one which gives investor's assurances that taxes will not change and which imposes profit-based taxation with no or minimum royalties.⁶⁴ In the 1990s the World Bank actively helped governments to formulate such policies – with loans and technical assistance – in Argentina, Bolivia, Ecuador, Mexico and Peru.

In **Peru**, one of the government's central economic development strategies has been the promotion of foreign investment, particularly in the mining and hydrocarbons sector. In the 1990s Peru undertook a series of structural reforms under the auspices of programmes with the World Bank and the IMF. Reforms included a raft of new legislation to ensure a 'favourable climate' for investors and an open bidding process for extractive industry concessions.⁶⁵ Tax-stability contracts are heavily promoted by the World Bank as a way to attract foreign investment. They have had a very negative impact on the ability of the Peruvian government to improve its tax system and receive an increased share of the wealth from its natural resources.

Reforms in **Guatemala** and **Honduras** came later but essentially were part of a similar attempt to attract foreign investment under World Bank tutelage. In Honduras, a new mining law brought in sweeping changes in 1998. The law went relatively unnoticed despite the fact that it was designed in conjunction with mining companies and included reforms that would have a huge impact on the country. Reforms included: allowing exploration and exploitation throughout the whole country, with no restrictions for ecological reserves or to protect water sources; the right of way on to private land without permission and the ability to request forced expropriations; the use of water without charge; and a very limited time period for communities to object to exploration concessions.⁶⁶ These changes were all designed to make Honduras as attractive a location as possible for foreign investors.

In **Peru**, through the IFC, the World Bank has co-financed several mining projects – Antamina, Yanacocha, Minera Regina and Buenaventura. For example, the IFC holds a five per cent share in the huge Yanacocha gold mine (in which the major US gold-producing company, Newmont, owns majority shares). Yanacocha is one of the most active defenders of its tax-stability contracts, refusing to pay

royalties and continuing to use tax breaks that have long been removed from Peruvian law. In fact, as our partner CooperAcción's research has uncovered, Yanacocha's and Antamina's refusal to pay royalties has cost the Peruvian state US\$96.1m and US\$130.5m respectively between June 2004 and 2006. Similarly Yanacocha's reliance on the now defunct tax breaks around profit reinvestment has cost the Peruvian state US\$56.9m since 2000. This non-payment of tax (totalling US\$283.5m since 2000) has raised the companies' profits unduly.

In **Guatemala**, the World Bank is similarly directly involved in mining. It was one of the first investors in Glamis Gold's operation in the Marlin mine. Through the IFC the World Bank provided US\$45m to finance the project.

The World Bank's evaluation of Guatemala's tax and royalty regime should be of particular concern. In a meeting of the IFC's board of directors, the IFC concluded the mine was an excellent project with a clear and positive development impact. There was also a long discussion about taxes and royalties.⁶⁷ A number of speakers questioned the 'adequacy of the revenue arrangement'. IFC staff assured the directors that they had looked very closely at the benefits for the government, as well as for the company. Their response to the concern was that 'the government itself had decided to lower royalties from six per cent to one per cent to attract much needed investment' and they explained that 'royalty payments in the range of one to three per cent were considered normal'. This is far from correct – as mentioned above. Mineral royalty rates for developing countries most often fall between five per cent and ten per cent. One per cent should *not* be considered a 'normal' mineral royalty rate at all. IFC staff also recognised that companies entering Guatemala were granted a tax-exempt status until 2008.

This means the World Bank was fully aware of the rock-bottom one per cent royalty rate and the corporate tax exemptions offered to the company, and should have been able to calculate their impact. Instead IFC staff claimed on documentation submitted to their directors that the mine's 'taxes and royalties would equal seven per cent of the government's annual tax revenue'. This is a claim that is far from the truth. In 2007 royalties and taxes from the Marlin mine amounted to US\$11.4m. The Guatemalan tax authorities (SAT) report the country's total tax revenue in 2006 as 31,543m quetzales (US\$4,107m).⁶⁸ So the mine actually contributed 0.3 per cent of total government revenue! This is a huge discrepancy on the seven per cent figure being quoted by staff for the benefit of the board – a figure which could have easily been checked at the time using production and price estimates. It seems the World Bank is all too ready to invest in private-sector projects while ignoring the real impacts of poor taxation policies and

‘Despite the importance that the IFC places on the role of foreign investment in Peru and its potential to improve the quality of life of our citizens, the conditions for such improvements to occur have still not been created.’

César Gamboa, president, Derecho, Ambiente y Recursos Naturales (DAR), Peru⁶⁹

whether the government is getting an adequate share of sales revenue and profits.

Another key issue for the World Bank (and equally the IMF) is transparency of revenues from the extractives sector. This is a topic that is much more high profile in Africa. For example, the IMF prioritises revenue transparency in 14 out of 21 sub-Saharan African countries, but in only one out of 17 countries in the combined regions of the Middle East/North Africa and Latin America/Caribbean – this despite its Guide on Resource Revenue Transparency, which provides detailed recommendations on revenue transparency.⁷⁰ In addition, while the IMF has documented technical assistance on extractives industry transparency to 57 per cent of sub-Saharan African countries, there is no record of similar assistance to the Latin America region. This is critical as there is no less need in Latin America for transparency in the collection and use of revenues from extractives industries.

The World Bank approach is similar. Since the highly critical Extractive Industries Review, the World Bank has committed to require revenue transparency as a condition for all World Bank Group extractives industries’ investments and to support strongly the EITI. The World Bank’s IFC has incorporated transparency commitments into its policy directly. However, public disclosure of contracts is required only for ‘significant projects’ – that is projects which are expected to account for ten per cent or more of government revenue. No IFC project has qualified under the IFC’s ‘significance’ threshold, not even Peru’s liquid natural gas (LNG) project (using natural gas from Camisea that is expected to transform Peru’s economy and turn Peru into a net energy exporter).⁷¹

The Extractive Industries Transparency Initiative

The EITI was initiated by the UK government in 2002 after campaigns by civil society organisations. Governments elect to become EITI candidate countries and then have to agree to report publicly on all the revenues they receive from the extractive industry. Companies have to volunteer to submit reports to government for public dissemination. The reports must detail all the payments made to government and related institutions, as well as profits and expenditure in each financial year. An aggregator is then tasked to compare the figures, point out differences and explain them. No African or Latin American country has been validated as EITI-compliant yet. There are a number of African candidate countries (eg Nigeria, Sierra Leone and the Democratic Republic of Congo) and only one Latin American candidate – Peru. In general EITI is seen as having been more successful in its impact on practices in the oil and gas sector than in the mining sector.⁷²

In Peru, the World Bank is more active than the IMF in promoting extractives industry transparency. Since 2005 Peru has been an EITI candidate country. The World Bank is currently supporting the implementation of the EITI in Peru through a US\$300,000 grant.⁷³ World Bank loans to Peru (in 2006 and 2008) involve developing capacity to ensure correct use of natural-resource revenue, but there are no specific performance benchmarks on the public disclosure of revenue and contracts.

FIGHTING FOR REFORM

In Peru, Guatemala and Honduras, NGOs are actively fighting for reforms to the mining industry. Community action and NGO advocacy has most often focused on issues related to company-community conflicts. These include conflicts around the establishment of the mine, prior community consent, territorial disputes about land, and the environmental impacts of mining on human health, agriculture and livelihoods of poor communities.

As mining has developed – and in the case of Peru become a major growth sector in the country – civil society has come to question more and more the real economic contribution that mining is making to national development and poverty reduction. Civil society in Latin America is now asking questions about the share of the wealth countries (and particularly local communities) receive from the mining industry and whether the industry creates enough good jobs, pays enough taxes and stimulates enough local economic activity to outweigh the negative environmental, health and social impacts.

Peru

In Peru, one of the major actors calling for reform is the National Confederation of Communities Affected by Mining (CONACAMI). Peru also has several specialist NGOs working on mining issues as well as many human rights organisations that have begun to monitor this sector more closely (including Christian Aid partner organisations). Peruvian NGOs are fighting for a fundamental rewriting of mining legislation including the tax policies applied to the sector. There has been a growing realisation that Peru is not getting its fair share of the benefits and growing frustration with the government's handling of relations with mining companies.

Peruvian NGOs have made advances in their advocacy: the adoption of the royalties law is testament to those who have raised this issue continually in the press and with government ministers. However, as explained above, companies have largely been able to resist paying the new royalty and there has not been sufficient public and governmental pressure to change their behaviour. When the commodity price boom was at its height, calls increased for the application of a new windfall tax. This became a central issue in the run up to the elections of 2006.

Since his election, President Garcia has taken a different route to the one promised in his manifesto. The mining companies resisted the idea of a windfall tax. Instead they proposed making a 'voluntary contribution' with the understanding that these funds would be used to improve living conditions of the communities living in mining zones and directly affected by mining operations. This proposal

was accepted by Garcia's government. Payments are voluntary, extraordinary and temporary (the agreement runs out in five years). Not only did the government accept this proposal, it also allowed the companies to design how it would be applied in practice. It was agreed that the voluntary contribution would be suspended if the price fell below a certain level. A private consulting firm was hired to provide an analysis of mineral pricing trends and suggest the reference prices at which point the voluntary contributions would be suspended. As Christian Aid's partner CooperAcción has pointed out in relation to this whole affair 'this effectively amounts to the privatisation of public policy making'.⁷⁴

Since 2006 these agreements have been in place and voluntary contributions have been paid. Calculations are based on annual average prices. If the annual average price is above the reference price then companies pay an additional 3.75 per cent of their net profit (after having paid profit taxes) as their voluntary contribution. Payments in 2009 relate to prices in the 2008 period. It is estimated the state receives in the region of US\$157m each year.⁷⁵

Not every company is paying voluntary contributions. According to the Ministry of Energy and Mines, 27 companies have signed an agreement with the state to pay a voluntary contribution, four are pending and 14 have not signed. As the voluntary contribution is suspended if the market price of the minerals falls below the reference price in the contract, it is quite likely that in the near future voluntary contributions will be suspended.

The legislation on voluntary contributions was effectively designed by the companies to ensure they would contribute small amounts. The estimated annual amount is less than the debt the companies owe the state in terms of royalties not paid. There remains a lot to be done to ensure Peru's share in its mineral wealth improves.

Peruvian civil society is following closely the Peruvian governments and companies' commitments to the EITI. Peru's inclusion in this initiative dates from 2005 when the government applied to become a member. However, progress is painfully slow – a fact that Peruvian NGOs have recently highlighted in their advocacy with government.⁷⁶ Only 13 mining companies and four oil and gas companies have signed up to participate (that is only 55 per cent of mining companies and 12 per cent of companies in the oil and gas sector). In addition, more than three years has passed and the 'national conciliation study' – which would provide detailed information of companies' tax contributions and the state's tax receipts – has yet to be finished and published. Peruvian NGOs point particularly to the resistance of companies to take part and share information, and to the fact that many companies have agreed to

‘The company should comply with its social responsibilities. It is a fallacy to say that they don’t have any money. Metals have fetched a very high price in recent years. We are fighting not just for ourselves but for the children being born. . . with high levels of lead in their blood.’

Rosa Amaro, community activist, La Oroya, Peru⁷⁷

participate only if the financial information published is aggregated and not company by company.

Guatemala

The Marlin mine has become a huge source of controversy and has provoked a national debate on the merits of the mining industry. Guatemalan civil society organisations (including Christian Aid partner Madre Selva) have led opposition to the mine, highlighting the risks to health and to the environment caused by large mining operations.

Debates in Guatemala have become heated and protests and confrontations have resulted within the municipalities where the Marlin mine is located. Crucially, there are doubts about the existence of a legitimate, prior consultation process in which the communities were fully informed and able to vote on whether to allow the mine to operate. In an attempt to resolve the problems, a High Level Mining Commission was created in February 2005 to revise the industry’s laws and regulation. A range of actors were involved including civil society organisations and the Catholic Church. While the commission did propose a series of

The Zambian experience⁷⁸

In 1992, international copper prices averaged around US\$2,280 a tonne and Zambian copper mines produced around 400,000 tonnes of copper. Revenue received from copper-mining taxes and other remittances was US\$200m. In 2004, copper prices averaged US\$2,868 a tonne and after some rehabilitation of the sector the country again produced 400,000 tonnes of copper. However, this time around, it received only around US\$8m in tax and other revenue from the copper-mining industry. The government privatised its copper industry in 1997. This was under pressure from the World Bank and the IMF, which had included copper-industry privatisation as a condition of loans and debt relief since 1993.⁷⁹

Zambian civil society organisations with the support of Christian Aid published details of secret government contracts with mining companies in January 2007, detailing the revenue the government was receiving due to overly generous royalty and tax arrangements.⁸⁰ Thanks largely to a public and civil society outcry in Zambia, the

government passed an amendment to the Income Tax Bill in April 2008. According to the amendments, mining companies will need to pay a royalty rate of three per cent (instead of the reduced rate of 0.6 per cent that many had negotiated) and a corporate tax rate of 30 per cent (rather than the 25 per cent many had negotiated). In addition, companies have to pay an additional 25 per cent windfall tax when international prices move beyond a stipulated trigger price (US\$5,512 per tonne). Variable-profit taxes have also been created, though windfall and variable-profits taxes will not apply at the same time. These are to override the tax exemptions in the mining-development agreements signed with companies. The government also reduced capital allowances for mining companies from 100 per cent to 25 per cent a year.

The government has also brought in changes to guard against transfer mispricing. The legal framework sets out clear ‘arm’s-length’ principles to guide calculation of the value of mineral sales from which

royalties are computed. The Income Tax Act of April 2008 stipulates that royalties are to be calculated based on the average monthly case price on the London Metal Exchange, Metal Bulletin or any other metals exchange as agreed with the government.

In April 2008, the Finance Ministry expected the government to collect an additional US\$415m in the 2008/09 financial year as a result of the new tax regime. On this basis the government had planned for increases in infrastructure investment such as electricity and roads, funded from Zambian rather than donor resources. As a result of the crash in copper prices since the peak of July 2008, however, the government will not collect the full income it projected for this financial year.

Some Zambian mining companies – notably Canadian First Quantum – have threatened legal action against the government for breach of their 25-year tax-stability agreements. Many others pushed for the windfall tax rate to be reduced to 12.5 per cent and

the variable-profit tax of 15 per cent to be abolished. In March 2009, the Zambian minister of finance proposed that the Zambian parliament should abolish the windfall taxes and reintroduce 100 per cent capital allowances. He has done so under mounting pressure from copper-mining companies who are closing down production and laying off workers. The IMF has urged Zambia not to cut taxes, despite the pressure. Despite this outcry from the IMF, donors and Zambian citizens, the government did abolish the windfall tax and reintroduce 100 per cent capital allowances in April 2009.

Although average copper prices have fallen (to around US\$3,000 per tonne), they are still higher than the prices assumed in the business-feasibility studies of companies buying the mines in the early 2000s before the boom. Given that mines do not pay windfall taxes when prices are low, the April 2009 tax changes will mean that Zambia again fails to benefit when copper prices rise in due course.

reforms (including raising the royalty rate) that have been presented, none of these have yet been implemented by government despite its many rhetorical commitments to the urgent need for reform.

The Marlin mine is the largest mine in operation in the country, but there is also concern about the increasing number of mineral-exploration licences being granted. Most of the sites with mining potential are situated in areas that are heavily populated by indigenous communities. Many of these communities – already marginalised and lacking basic support by the state – are fearful of the social and environmental impacts mining could have. There is little faith in the existing requirement for full and proper public consultations on mining projects and so there is likely to be a lot more confrontation linked to this industry in the future.

Honduras

Growing civil society resistance to mining has led to a broad-based national coalition called the Civic Alliance for Mining Law Reform (Alianza Cívica por la Reforma a la Ley de Minería),⁸¹ comprising representatives from NGOs, environmental groups, community organisations and the Church. The main goal of the alliance has been to design and pass a new mining law that can replace the 1998 legislation and that would offer much improved protection to the local environment and communities, in terms of information, proper consultations and protection of property rights. It also proposes raising the tax contributions of mining companies. The coalition's advocacy quickly made it a prominent movement in the country and a new law was proposed in 2004. Negotiations were then launched between civil society, the mining industry and the government, and a compromise text was proposed.

However, the progress of the Mining Law Reform Bill has not been straightforward and the process has stalled. In January 2006, the new Zelaya administration took office but so far it has taken no steps to ensure the reforms are passed into law. This has been a huge blow to the civil society movement and the lack of progress on the reform of the mining law continues to be the source of much controversy. There have been two national protests – one in July 2006 and the second in July 2007. At the second protest the police shot into the crowds, there were 50 arrests and 17 people injured – three with gunshot injuries.⁸² Campaigns in the press against activists who are calling for reform of the industry are increasing and there are growing tensions around the issue in the country.

The new law that was drafted by the Civic Alliance in Honduras in 2004 included a proposal to raise significantly the royalties from mining companies. The Civic Alliance

proposed two new payments (the *impuesto municipal* and the *impuesto a la producción minera*). Both of these are called taxes but effectively operate like royalties, being calculated on the basis of the value of production and paid each month. The two payments proposed are:

- a three per cent municipal tax (of which two per cent is paid to the municipality directly affected by the concession and one per cent is paid into a fund to be shared between municipalities affected by mining)
- a ten per cent mining production tax paid to the Honduran tax authorities.

These would effectively bring the royalty rate up to 13 per cent. This is important for Honduras, particularly because mining companies receive very favourable treatment in terms of corporate income tax.

At present it is very difficult for civil society in Latin America to address the question of royalty and tax rates. There is a huge lack of transparency about mineral taxation revenue and very little published data (if any) in many Latin American countries.

The receptiveness of governments to tax reform is also a key stumbling block. A comparison to Africa is relevant. Civil society organisations actively fighting for mineral-taxation reform in Africa – while still struggling to achieve real successes – have established a high profile for this issue in the public domain. Mineral-taxation reform is also now given much more attention (and support) by the IMF, World Bank and the UN (the United Nations Conference on Trade and Development, the United Nations Development Programme, and the United Nations Economic Commission for Africa) and several key donors (including DFID). A number of African governments – some of them newly elected – have started reviewing their mining-tax regimes.

Zambia is the best example, with the review having taken place and tax reforms enacted during 2008. However, in Tanzania and Sierra Leone there are also high-level reviews going on. In Tanzania, President Kikwete announced in November 2007 the formation of a committee to investigate the nature of mining laws and contracts. Following this review the president tasked a commission, headed by Judge Mark Bomani, to review the contracts signed with six large mining companies. The Bomani Commission recommended far-reaching reforms including an increase in the gold royalty from three to five per cent and that no more special tax exemptions be granted to mining companies. While this effort has been high profile, the recommendations have yet to be implemented and mining companies in Tanzania have strongly resisted the reforms.

Another example is Sierra Leone, where in 2008 the president established a task force to review individual mining contracts with companies mining rutile, diamonds and bauxite. Again reforms are pending.

In Latin America, there is certainly a dire need for reform and a groundswell of civil society organisations calling for it. However there seems to be much less attention paid to this issue by international stakeholders such as the IMF, World Bank, Inter-American Development Bank (IADB) and bilateral donors. This lack of attention is unfortunate, given Latin America's growing shift towards natural-resource extraction (as opposed to economic-development strategies targeted at developing manufacturing and industrial capacity) and also its severely under-performing and inequitable national tax systems.

WAYS FORWARD

Reforming mineral taxation regimes

Taxation policy is an issue of national development. Careful analysis by government of its tax policy is needed in order to balance the need for investment and the best deal for the Treasury. Governments must look carefully at the type of tax instruments being used (eg royalties and/or profits-based taxes), the tax and royalty rates, and the taxable income base from which profit taxes will be calculated. There are many choices to be made.

While it is essential that governments ensure a fair sharing of wealth from the sector between the country and company, there is a growing recognition that this balance has been lost in many developing countries. This is not only a civil society or government perspective. It also seems that more recently it is being accepted by the mining industry as well. The ICMM – the main industry body – describes the 1990s as the decade that brought us low taxation, a focus on tax competition and attracting investors at all costs. It sees this process of bidding for scarce foreign direct investment (FDI) as having – in some cases – ‘reduced government shares of revenues to excessively low levels’ and it argues in its recent report that ‘the optimal level of taxes does not equate to the minimum level’.⁸³ Christian Aid is in strong agreement and has recently highlighted the need to rebalance mineral taxation more fairly in the interests of poor countries such as Tanzania, Sierra Leone and the Democratic Republic of Congo. There is no less an urgent need in Peru, Guatemala and Honduras.

Royalties

The issue of ‘optimal mineral taxation’ is complex. There is still a lot of controversy around the existence of production-based royalties and their ‘regressive’ nature. Christian Aid’s position on royalties is very clear. While without the investment and exploration there would be no resources to value and so for all practical purposes this source of wealth for the nation would be non-existent, this does not mean that the state is not entitled to a direct share in its non-renewable assets. The perception of equity is key. It is inappropriate not to charge royalties. Taxation rules must be made visibly equitable – something that is long overdue in Latin America where national taxation systems are highly inequitable by design.

To rely on mining companies paying the standard corporate tax alone – as Peru has done – does not differentiate the mining sector at all from other businesses. This means multinational mining companies are subject to exactly the same tax rate as any medium-sized domestic firm (while at the same time receiving preferential tax incentives). It is not a surprise that Peruvians feel the country has effectively given away their mineral assets. As a result of this and the

questions around the channelling of funds to local areas, the perception of the population has grown extremely negative and conflicts around mining continue to increase.

In addition, the ease of application of a royalty system is key for developing countries. While this is recognised by many industry commentators, it is still too often ignored when they continually argue against royalties in favour of profits-based taxes. Until tax authorities are in a position to confront problems such as transfer mispricing, royalties are essential. This report documents the estimated scale of transfer mispricing in the minerals sector in Peru. It is substantial. Under-pricing of mineral exports is also a major problem for Colombia, Chile, Brazil and Mexico. In these countries, mineral exports are consistently appearing as some of the highest-ranking categories where transfer-mispricing abuse has been detected.

Tax authorities need special skills to deal with this problem. They also need access to country-by-country financial reports from the multinational companies operating in their country to ensure they can fully understand the companies’ financial position – in relation to subsidiaries owned by the same multinationals in other jurisdictions – and identify the areas in which harmful transfer mispricing is likely to be occurring. In addition, a truly multilateral global agreement on automatic sharing of tax information is critical to ensure developing countries have access to the information they need. Until these are in place and countries are ready to rely solely on profits-based systems – and we are far away from that point – the royalty system must remain in place.

The debate about whether royalties should be charged at all has generally served to obscure a second debate about what rate is appropriate, but this issue should not be ignored. Latin American countries are charging very low royalties in comparison to many developing countries. It is certainly arguable that rates between one and three per cent are simply not good enough for developing countries.

Profit taxes

Profit taxes and tax incentives also need reviewing. Governments should look very carefully at subsidies and allowances offered to mining companies. If these are a big departure from the normal system and overly generous, then this means a review is likely to be appropriate. Of course companies should be allowed to have tax relief on the costs they incur. The questions are how much of the expenditure can be legitimately deducted and over what timescale, and whether the existing rules mean companies will not pay corporate taxes for many years. A review seems particularly urgent in the case of Honduras, where the reduced corporate income tax rate and tax holiday is particularly inappropriate. In addition, Guatemala’s decision

‘The route to sustainability for any economy is the ability to raise taxes from its economic activity and to spend those resources on its social infrastructure. This is why tax transparency and zero-tolerance on tax evasion are important for all countries.’

Stephen Timms, MP⁸⁴

to allow mining companies to apply for *maquila* status and gain complete corporate tax exemption must be reversed. Its current corporate tax system offers a choice between

two tax regimes and also allows companies that should be paying profit taxes to opt for a more favourable low-tax option, which is an unnecessary and costly tax incentive.

Renegotiating tax rates in Bolivia

Bolivia's oil and gas industry is the most dynamic sector of the Bolivian economy and receives by far the most foreign investment. However, the story of the oil and gas industry is not a straightforward one and Bolivia has struggled to benefit from its vast underground wealth. The country privatised its oil and gas industry as part of its structural-adjustment reforms, upon which its aid and debt relief were conditioned.

The royalties and taxes regime for the oil and gas sector was revised on privatisation by the Sanchez de Lozada government. The most important element of the new regime was the classification of reserves as either ‘existing’ or ‘new’. Reserves classified as ‘new’ were subject to much lower taxes than ‘existing’ reserves. By 2002, 97 per cent of Bolivian oil and gas exploration was deemed to be ‘new reserves’ and so royalties for the vast majority of companies had been lowered from 50 per cent to only 18 per cent.⁸⁵ A standard corporate income tax of 25 per cent was also payable and Bolivia created a special supplementary tax called the Surtax for the oil and gas industry. This was to be applied to extraordinary profit levels and was intended to compensate the Treasury for losing 32 per cent of its royalty payments under the classification of new reserves.

There was great national concern over the lowering of the royalty rate. However oil and gas companies and the Bolivian Chamber of Hydrocarbons continually pointed out that while a royalty of 18 per cent might seem low, in reality companies paid a wide variety of other taxes and that the total tax burden was in effect high. Christian Aid research with our partner Centre for Labour and Agricultural Development (CEDLA) in 2006 found that this was very clearly not the case.⁸⁶ The corporate-tax contribution from oil and gas companies was minimal and the Surtax had not been paid by a single company post privatisation. In fact, tax payments were extremely low and royalties represented the major economic contribution of oil and gas companies.

Royalty payments were also a key area for concern as the royalties the government was receiving as a percentage of the sector's turnover were actually decreasing. Over time the government was capturing relatively less and less revenue from the sector (37 per cent of the turnover in 1999 reducing to 27 per cent in 2004) – a clearly negative trend. This reduction in benefits, and the ever-decreasing share in the wealth generated, was occurring in the context of a huge increase in investment, production, exports and prices. In fact,

the national oil and gas company YPFB was a bigger contributor to the Treasury pre-privatisation than the companies were post-privatisation, even though their combined production was so much greater than YPFB's.

It is not a surprise that Bolivians became extremely sceptical of the benefits they were receiving from their oil and gas sector. Popular discontent led to a series of mobilisations and protests over the energy question – the so-called ‘gas wars’. Major protests led to two presidential resignations in October 2003 and June 2005. Both presidents had continued to resist calls for a major reform of the industry. As a result of the pressure, the Bolivian Congress passed a law in May 2005 that provided – among other things – for a new royalties and tax structure on oil and gas extraction, increasing the state's share of the revenue.

The main fiscal reform, in 2005, was the abolition of the differentiation between existing and new reserves. All reserves became subject to the 18 per cent royalty rate. The law then introduced a new tax (the impuesto directo en los hidrocarburos – IDH), which stands at 32 per cent. This is a direct tax on the value of all oil and gas production. It essentially operates like a royalty payment but is formulated

as a tax, because the Bolivian government, under its contracts with foreign investors, is prevented from changing the royalty payments due. This means the initial payment due on the value of production is now 50 per cent. Since coming to power in January 2006, President Evo Morales has further revised the fiscal regime for the oil and gas sector and forced a renegotiation of contracts with the industry, revising the terms under which foreign companies operate.

The reforms to the sector since 2005 have generated a huge increase in revenue for the Bolivian government (from an income of around US\$173m in 2002 to an estimated US\$1.57bn in 2007). The Morales government has brought in three major initiatives aimed at helping the poorest and most vulnerable in Bolivia – a universal state pension for everyone over 60, a universal grant for primary schoolchildren, and nationwide school breakfasts for all primary schoolchildren that guarantees them at least one meal a day. The government has also recently announced a new maternal health programme. None of these programmes would have been possible without the reforms to oil and gas taxation.

Of course, mining companies undertake projects that carry significant risks and some tax relief and concessions are appropriate. But concessions should be used selectively and carefully, given the loss of tax revenue they imply. The IMF believes that concessions such as VAT refunds, import-tax exemptions, corporate-tax reductions etc should be counted as budget expenditures. This would have the advantage of ensuring that governments calculate the overall cost of the subsidies offered to industry. In addition, governments could then evaluate and compare more easily the costs and benefits of their private-sector-development strategies.

Windfall taxes are another area for consideration. ICMM argues for 'progressive' taxation – ie a system that is mainly profits-based. It includes windfall taxes as a good example, in that they only kick in when a set price has been reached. Of course windfall taxes are an option to ensure countries benefit more in times of extraordinary price booms. However, they are often heavily resisted by companies, as has been the case in both Peru and Zambia.

Finding the 'optimal level of taxation' for the minerals sector that reflects the risks and costs to companies and also provides a fair share to the host country can be a complex issue that requires detailed analysis and probably continual adjustments. However, it is by no means an impossible task. Governments cannot think only about how to attract investors and give the most preferable tax rate possible. To neglect the issue of equity and public perception is to make a serious policy mistake. The escalating mining conflicts in Peru, Guatemala and Honduras are prime examples of the damage that can be done.

While companies cannot be held responsible for the poor taxation regimes they operate under, they do have a role to play in developing equitable tax systems. Companies must be willing to share fairly with governments the revenues from mining activity. They can't refuse to do this at the same time as expecting tax subsidies to compensate them for financial and technical risks.

Governments also need to recognise that taxation is a pretty blunt tool when used to attract foreign investment. International tax competition is extremely harmful and will lead to a 'race to the bottom'. Investors are concerned about many things – political stability, security, infrastructure, and the quality of the local work force. For the minerals sector, geological issues that determine the quality and content of the minerals are crucial.⁸⁷ Tax rates may be one factor, but they are far away from being the deciding one.

Companies know from experience that unfair taxation can lead to social conflict. Conflict is likely to lead to calls for change and an unstable environment for business.

This in turn can compromise the long-term commercial interests of a company in the country. From this enlightened perspective it is obvious that such an investment model, which does not bring a fair share of benefits to all those in a developing country, is also not in the long-term interest of the companies. Reform is therefore beneficial to both over the long term.

Tax-stability contracts and renegotiations

The problem in reality for many developing countries is that they have already struck the wrong balance and reform is now an uphill task. The question is what is to happen to countries that got it wrong the first time round? As is commonly argued, companies prefer predictable and stable tax regimes, hence the argument that signing tax-stability contracts will improve a country's investment climate. But not everyone agrees that tax-stability contracts are a good thing. Richard Murphy, director of the Tax Research Project in the UK, describes them as unequivocally negative: 'I universally think that anything that binds a future democratically elected government to a contractual taxation arrangement has to be wrong. You can't manage an economy without having the right to alter a tax rate and taxation policy in general'.⁸⁸

Tax-stability contracts have tied governments into poor deals, often for many years. Stability clauses of 15 or even 30 years are common, but these go beyond the reasonable risk planning cycle of any business. They are inappropriate and unnecessary and put too much power into the hands of companies, disenfranchising governments who need to use taxation policy as a legitimate part of their economic-development strategy.

The ICMM expresses the view that the bargaining power has shifted and that governments have now gained the upper hand.⁸⁹ Certainly many would see this statement as much too optimistic given reforms – where they have taken place – have been arduous processes, strongly contested by industry lobbies as well as in the courts. Civil society groups in Guatemala and Honduras have been fighting for reforms and high-level commissions have been established. Several years on they are no closer to an actual reform of mineral taxation regimes. In Peru, reforms have been strongly resisted, and although a royalty payment was introduced the majority of companies refuse to pay it. Discussions about windfall taxes were also short lived.

The ICMM seems to think that companies prefer balanced taxation regimes rather than minimal tax rates. This implies that companies should be open to renegotiating tax-stability contracts with governments if the taxation rules are too heavily weighted in their favour. We would welcome evidence that this is actually occurring. In Latin America,

we see little evidence that mining companies are willing to accept taxation reforms and give up their tax preferences once these are in place.

Although clearly difficult to achieve, tax-stability contracts can be cancelled and taxation policy renegotiated. In the case of Liberia, a contract had been signed with Mittal Steel. After Global Witness investigated and publicised the poor terms of the deal,⁹⁰ the Liberian government cancelled the contract and renegotiated. When it signed a second contract it charged a US\$50m signing-on fee, which Mittal had to pay before beginning exploration.⁹¹ Clearly renegotiation is possible. Developing countries need both competence and confidence, and the support of the international community is key. Developing countries need sound advice to renegotiate and to sign contracts that more fairly protect their interests. High-quality assistance in this area has so far been lacking.

Clearly the global economic environment has changed and many will be asking whether this is a good time for developing countries to be reviewing their mineral taxation regimes. No doubt the reply of many citizens in developing countries would be 'if not now, when?'. Mineral taxation was lowered in the early 1990s when prices were low for a decade. With the recent commodity-price boom, many countries failed to benefit and failed to negotiate reforms successfully. So when is the right time? It is a well-known fact that demand for metals is cyclical and that mineral prices are volatile. Mineral exploration and production is a long-term undertaking and mining companies will often use funding reserves to smooth out the periods when prices are low, just as governments can create these capital funds from their royalties and tax payments. There is a danger that the global economic crisis will act as a barrier to mineral taxation reforms, but this will just mean that developing countries will again be ill-placed to benefit during the next commodity-price boom. Tax-policy reform in Latin America is urgently needed and the treatment of the minerals sector is just one of the many areas that must be looked at.

Tax transparency

There is a serious lack of data available on the royalties and taxes paid by mining companies in Latin America. There is little tax transparency in the region and minimal interest in or commitment to the EITI, despite the general acceptance of the importance of revenue transparency in the extractives sector by the World Bank, IMF, donors and companies (for example as is expressed by the ICMM, which argues strongly in favour of increasing transparency of the taxation of mineral extraction).⁹²

While there are few, if any routes, to finding data at the country level, it is also very difficult to get such information directly from mining multinationals. They are required to publish their financial data in annual reports, based on International Financial Reporting Standards set by the IASB or under US requirements. International Financial Reporting Standards do not require multinational companies to report data on their profits, expenditure and taxes on a country-by-country basis. Instead their reports reflect their aggregate financial position across all their operations. It is therefore very difficult to obtain local information on companies' financial contributions.

This situation may hopefully soon be changed. There is a great deal of consensus on the benefits of tax transparency in the extractives sector and a growing consensus around the benefits of country-by-country reporting by multinationals. The European Parliament has requested that the European Commission supports 'the development of an appropriate accounting standard requiring country-by-country reporting by extractive companies'.⁹³ In addition, the IASB will be publishing a discussion paper in 2009 on the issue of country-by-country reporting for companies operating in extractive industries. It may recommend a new financial reporting standard.

A range of benefits would flow from country-by-country reporting by all multinational companies. Citizens would be able to access data on the sums of money paid by companies to governments. They would then be better able to hold their own governments accountable for their development spending. In addition, investors would also benefit from a better analysis of companies' activities and exposure to risk. For developing-country governments the biggest benefit would be in being able to pinpoint the areas in which transfer mispricing is most likely to be occurring. Tax authorities are ill-placed to monitor transfer pricing and do not have the resources to – for example – engage in the detailed auditing of arm's-length pricing in all intra-company trades. Country-by-country reporting by companies would give governments a solid informational resource from which to start to tackle this problem.

Given the huge benefits that would flow from such a reform, Christian Aid – along with the Tax Justice Network and ActionAid – will continue to call for a new International Financial Reporting Standard that would ensure country-by-country reporting by all multinationals.⁹⁴

New mining operations in Latin America and the Caribbean

This debate is of vital importance to some smaller nations in the Latin America and Caribbean region – such as the Dominican Republic – given mining is once again back on their development agenda.

The **Dominican Republic (DR)** has one of the largest undeveloped gold assets in the world at its Pueblo Viejo site located in the central part of the country, 100 kilometres north-west of Santo Domingo. Gold Corp and Barrick have formed a joint venture to develop these gold reserves. The mining operations will be managed by Barrick Gold Corporation and Gold Corp holds a 40 per cent stake. In February 2008 the companies submitted a feasibility study for the mining project to the government and construction was well underway by the end of 2008. The companies expect gold production to start in 2011. Pueblo Viejo has an estimated 8.1 million ounces of gold reserves and is expected to yield approximately 400,000 ounces of annual gold production for the first five years.⁹⁵ Pueblo Viejo will be the largest FDI project in the Dominican Republic.

Total operating costs for this project are estimated at between US\$275 and US\$300 per ounce for the first five years.⁹⁶ Gold Corp's average total cash cost in 2008 was US\$305 per ounce, making it the lowest-cost producer of all the senior gold-mining companies. The estimated costs for the DR are below this average and this – alongside the huge size of the gold reserves – make it an extremely attractive proposition for the mining companies.

Bearing this in mind, the DR should be in a position to strike a good deal in terms of tax and royalties. And it certainly needs it. The DR has one of the poorest tax-collection records in Latin America and the Caribbean, bringing in only 13.11 per cent of its GDP in tax between 2000 and 2006.⁹⁷ However, it is by no means certain that it will avoid the mistakes made by some Latin American countries in the 1990s. There is limited information available on the details of the tax and royalty regime. Newspapers report that the DR will receive a five per cent share in the value of production (five per cent royalty), but there is little said about the corporate tax and any tax exemptions that might be in place.

In **El Salvador** it was recently announced that the Canadian mining company Pacific Rim will take the Salvadoran government to international arbitration for alleged losses caused by the government's inaction, due to delays in granting production permits.⁹⁸ Pacific Rim has been waiting for four years for final permits to operate the first large-scale gold mine in El Salvador for 70 years. The company has reportedly invested US\$77m in exploration after receiving initial permits in 2005.⁹⁹ The government's inaction is due mainly to the massive public reaction against the mine. A powerful environmental movement has repeatedly raised concerns about water contamination and the proposed mine's environmental impacts, and also about the other proposed mining projects that might take off if El Salvador decides to pursue the development of a minerals sector.

Perhaps El Salvador is exhibiting so much caution as its population is conscious of the litany of government errors made elsewhere in the region. No doubt they are wary because of environmental concerns, but in addition there is simply a huge shortage of success stories as to how a developing country can manage its mineral wealth in a way that contributes usefully towards national development goals.

RECOMMENDATIONS

‘There is a growing recognition that country-by-country reporting brings additional transparency, particularly in relation to how multinationals are operating in emerging and developing countries.’

Dave Hartnett, permanent secretary, Revenue and Customs, UK¹⁰⁰

The Peruvian, Guatemalan and Honduran governments must urgently revise and reform their mineral taxation regimes if mining is to start contributing to economic development in the region. There is also an urgent need for more transparency about tax and royalty payments and how the income from mining is being used. While there is a real danger the falling mineral prices and global economic crisis will make reform difficult, governments must ensure that suitable legislation is in place to benefit from the next period when commodity prices will rise.

The following are Christian Aid’s recommendations based on the findings in this report.

Governments should:

- conduct a thorough review of mineral taxation regimes and consider the following changes to achieve a more balanced taxation level: raising of the royalty rate; incorporating windfall taxes or variable profit taxes; abolishing any special corporate tax exemptions for mining companies (such as those in place in Honduras). Ensure equity considerations are central to the taxation-reform debate
- conduct a thorough review of tax incentives provided to the mining sector and abolish overly generous provisions. Ensure all incentives are fully costed and these costs are counted as expenditure in the annual budget
- join the EITI and ensure public access to data on the tax and royalty payments from mining companies. Require by law that all mining companies in the country publish the financial information required by the EITI
- push for a new international accounting standard that would force multinational companies to report their profits, expenditures, taxes and fees paid on a country-by-country basis.

International Accounting Standards Board should:

- adopt an improved international accounting standard for multinationals that requires them to report on their profits, expenditures, taxes and fees paid on a country-by-country basis.

International Council on Mining and Metals should:

- demonstrate its commitment to tax transparency in the minerals sector by publicly calling for the IASB to adopt a new international accounting standard that requires country-by-country reporting
- undertake new research into the prevalence of tax-stability contracts (their terms, time periods and impacts), and promote dialogue with members around their negative implications for developing countries.

Mining companies should:

- demonstrate a commitment to tax transparency by adopting country-by-country reporting.

Bilateral and multilateral donors should:

- provide financial and technical assistance to Latin American governments to improve their capacity to monitor and audit the accounts of mining companies and to set and maintain equitable mineral taxation regimes
- review policies related to tax-stability contracts and ensure these are discouraged unless limited to very short time periods only
- provide financial and technical assistance to countries wishing to renegotiate deals with mining companies.

ENDNOTES

1 For more on this see *Transnational Corporations, Extractive Industries and Development*, UNCTAD World Investment Report, 2007.

2 See www.oecd.org/document/35/0,3343,en_2649_37413_417650_91_1_1_1_1,00.html

3 *Latin American Economic Outlook 2009*, OECD.

4 This calculation is done with data on the tax collection of 17 sub-Saharan African countries – Angola, Botswana, Central African Republic, Chad, Democratic Republic of Congo, Equatorial Guinea, Ethiopia, Ghana, Kenya, Malawi, Mozambique, Nigeria, Senegal, Sudan, Tanzania, Uganda, Zambia. For data see John Marshall, *One Size Fits All: IMF Tax Policy in sub-Saharan Africa*, Christian Aid occasional paper no.2, April 2009.

5 It should be noted that OECD figures are higher than those reported by national tax authorities. This is because of the definitions used because the OECD includes social security contributions when national tax authorities don't.

6 See <http://portal.sat.gob.gt/sitio/>

7 A tax is regressive if it represents a smaller share of income for higher-income individuals than lower-income ones.

8 *Latin American Economic Outlook 2009*, OECD.

9 Ibid.

10 Manuel Agosin, Alberto Barreix, Juan Carlos Gomez Sabiani and Roberto Machado, *Tax Reform for Human Development*, ECLAC Review 87, December 2005.

11 *Latin American Economic Outlook 2009*, OECD.

12 *A Rich Seam: Who Benefits from Rising Commodity Prices?*, Christian Aid, January 2007.

13 Aaron Schneider, *Socio-economic Change and Fiscal Challenges in Central America: Globalization, Democratization and the Politics of Reform*, paper prepared on behalf of the Inter-American Development Bank, 2007.

14 *Minerals Taxation Regimes: a Review of Issues and Challenges in their Design and Application*, ICMM and Commonwealth Secretariat, February 2009.

15 *Las Industrias Extractivas y la Aplicación de Regalías a los Productos Mineros*, ECLAC, Serie Recursos Naturales e Infraestructura no. 98, October 2005.

16 Ibid.

17 James Otto, commenting on the report *Minerals Taxation Regimes: A Review of Issues and Challenges in their Design and Application*, ICMM and Commonwealth Secretariat, February 2009.

18 www.antamina.com/noticias/noticias_46.html

19 Companies with investment programmes approved at that date could continue to use this benefit until 2003. But in practice some companies with tax-stability agreements are still using this benefit.

20 Between 1994 and 2002 the *canon minero* was 20 per cent of the profit tax. In 2003 this was raised to 50 per cent.

21 *Assessment of IMF and World Bank Group Extractive Industries Transparency Implementation*, Global Witness and the Bank Information Centre, October 2008.

22 These are the 'contratos de garantía y medidas de promoción a la inversión'.

23 *Tributación y Distribución de las Sobreganancias Mineras en el Perú*, CooperAcción Working Paper, Mining and Communities Programme, October 2007. Some of the contracts are no longer valid as the time period is up (eg Doe Run's contract for La Oroya). Others are no longer legally valid as mines have been sold and the buyers have not undertaken the correct legal transfer of rights under the contract; some have not met the investment requirements under the contract rendering it void.

24 J Otto, C Andrews, F Cawood et al, *Mining Royalties: A Global Study of their Impact on Investors, Government and Civil Society*, The World Bank, 2006.

25 The reference prices are as follows: copper US\$179 per lb; tin US\$9,231 per tonne; iron US\$33.56 per tonne; gold US\$537 per ounce; silver US\$7.69 per ounce; lead US\$46.72 per lb; zinc US\$77.9 per lb. The reference prices are revised each year on the basis of the producer price index of the US.

26 See Peru's Central Bank at www.bcrp.gob.pe

27 Ibid.

28 See <http://news.bbc.co.uk/2/hi/americas/7057749.stm>

29 For a copy of the report see <http://shr.aaas.org/guatemala/ceh/report/spanish/toc.html>

30 This is worked out using Gold Corp's sales data for the Marlin mine in 2008 and Guatemala's data on mineral export value in 2008.

31 Gold Corp's annual report declares earnings of US\$1,475m in 2008 and US\$286m in 2005.

32 'Que hay detrás de las exenciones a Montana?', *Inforpress*, 28 April 2006.

33 S Diaz de Serralde and C Garcimartín, *Tributación en Guatemala: Imposición Sobre la Renta*, IDB, 2007.

34 Explanation provided by the Central American Fiscal Research Institution (ICEFI) – the fiscal research institute in Guatemala. The information on Montana's choice of income tax regime is available from declarations made in an interview by Rosa María de Frade, member of Congress on Emisoras Unidas.

35 See Honduran Central Bank figures at www.bch.hn and www.ine-hn.org/economicas/comex/indexcomex.html

36 *Tributación y Distribución de las Sobreganancias Mineras en el Perú*, CooperAcción Working Paper, Mining and Communities Programme, October 2007.

37 They estimated the reference base by deducting 12 per cent from the export value, assuming that 12 per cent would be sufficient to represent costs not associated with production (which according to Peru's law can be excluded from the base figure for royalty calculation).

38 In addition, the company has a board outside its mine that lists how much it has paid in royalties. They also issue a cheque to the municipal authorities in San Miguel Ixtahuacán every month, which is broadcast on the television.

39 Comments made by Francisco Machado, the then director of ASONOG (the Association of NGOs in Honduras) in an interview on 19 March 2007.

40 *Minería de Metales y Derechos Humanos en Guatemala: La Mina Marlin en San Marcos*, Peace Brigades International, May 2006.

41 Ibid.

42 Questions were submitted by the ICEFI; however replies were not forthcoming.

43 Gold Corp has also made payments to the municipality of Sipicapa in 2007 and 2008. This was a voluntary contribution as Sipicapa does not receive royalties as no mining actually takes place in its territory. This amount is not included in our analysis as it is entirely voluntary and we are interested in evaluating the efficacy of Guatemala's laws and Guatemala's government in providing the country with an appropriate share in the wealth of its natural resources.

44 For more detail see *Tributación y Distribución de las Sobreganancias Mineras en el Perú*, CooperAcción Working Paper, Mining and Communities Programme, October 2007.

45 *2008 Presupuesto y Financiamiento de la Educación Peruana*, Instituto de Pedagogía Popular, Informe no. 66, October 2007.

46 Communication with Help the Aged Peru office, March 2009.

- 47** See the report of the Mesa de Concertación Para la Lucha Contra la Pobreza from the conference entitled *The Impact of the Crisis on Peruvian Children*, which was held in Lima on the 24 February 2009.
- 48** Comment made in telephone interview 23 February 2007.
- 49** See *Observatorio del Gasto Social: Derechos Economicos, Sociales y Culturales – un Reto para la Paz*, Congcoop and CIIDH, 4th report, January–December 2006, for health budget analysis and breakdowns.
- 50** Leonardo Gasparini and Miriam Montenegro, *Evaluation of the Distributional Impact of the Honduran Tax Reform*, World Bank PSIA of the Honduran Tax Equity Law, April 2004.
- 51** *False Profits: Robbing the Poor to Keep the Rich Tax-Free*, Christian Aid, March 2009.
- 52** *Las Industrias Extractivas y la Aplicación de Regalías a los Productos Mineros*, ECLAC, Serie Recursos Naturales e infraestructura no. 98, October 2005.
- 53** *Minerals Taxation Regimes: a Review of Issues and Challenges in their Design and Application*, ICMM and Commonwealth Secretariat, February 2009.
- 54** Data from the Consejo Minero, presented in 'El debate tributario en la minería chilena', PowerPoint presentation, Dirección de Presupuestos, Ministerio de Hacienda.
- 55** Address at the 4th Meeting of the Forum on Tax Administration, Cape Town, South Africa, 10 January 2008. See www.info.gov.za/speeches/2008/08011013151001.htm
- 56** See www.aduanet.gob.pe/aduanas/informae/bm2007_12.htm and www.mincetur.gob.pe/newweb/Default.aspx?tabid=793 for trade data.
- 57** Thomas Baunsgaard, *A Primer on Mineral Taxation*, IMF Working Paper, WP/01/129, 2001.
- 58** Rodrigo Pizarro, 'La Consagración del royalty en Chile', *Perspectivas*, May 2004.
- 59** Ibid.
- 60** *A Rich Seam: Who Benefits from Rising Commodity Prices?*, Christian Aid, January 2007.
- 61** *Las Industrias Extractivas y la Aplicación de Regalías a los Productos Mineros*, ECLAC, Serie Recursos Naturales e infraestructura no. 98, October 2005 and *Mining in Latin America in the late 1990s*, ECLAC Natural Resources and Infrastructure Division, August 2001.
- 62** *Breaking the Curse: How Transparent Taxation and Fair Taxes can turn Africa's Mineral Wealth into Development*, SARW, TWN Africa, Tax Justice Network for Africa, ActionAid and Christian Aid, March 2009.
- 63** Ibid.
- 64** *A Mining Strategy for Latin America and the Caribbean*, World Bank Technical Paper no. 345, Industry and Mining Division, 1996.
- 65** These include the Ley de Fomento a la Inversión Extranjera (1991) and the Ley de Promoción de Inversiones en el Sector Minero (1991).
- 66** *Unearth Justice: Counting the Cost of Gold*, CAFOD, 2006.
- 67** Information about the IFC board's discussion was leaked and posted on the website of the Social Justice Committee (a Montreal-based human rights organisation) in 2007. Unfortunately this information is no longer posted on this website.
- 68** See <http://portal.sat.gob.gt/sitio/>
- 69** César Gamboa, president of Peruvian NGO DAR, in 'Camisea and the World Bank: A Lost Opportunity to Make Things Better,' Comment 1 April 2008 at www.brettonwoodsproject.org/art.shtml?x=561075
- 70** *Assessment of IMF and World Bank Group Extractive Industries Transparency Implementation*, Global Witness and the Bank Information Centre, October 2008.
- 71** Ibid.
- 72** *Minerals Taxation Regimes: a Review of Issues and Challenges in their Design and Application*, ICMM and Commonwealth Secretariat, February 2009.
- 73** *Assessment of IMF and World Bank Group Extractive Industries Transparency Implementation*, Global Witness and the Bank Information Centre, October 2008.
- 74** Interview with José de Echave, director, CooperAcción, 29 April 2009.
- 75** *Tributación y Distribución de las Sobreganancias Mineras en el Perú*, CooperAcción Working Paper, Mining and Communities Programme, October 2007.
- 76** Letter sent by Peruvian NGOs to David Camac, vice minister of energy and president of the national commission for the EITI in Peru, 10 February 2009.
- 77** Interviewed in La Oroya by Dylan Howitt on a Christian Aid filming trip to Peru in May 2009.
- 78** *Breaking the Curse: How Transparent Taxation and Fair Taxes can turn Africa's Mineral Wealth into Development*, SARW, TWN Africa, Tax Justice Network for Africa, ActionAid and Christian Aid, March 2009.
- 79** *A Rich Seam: Who Benefits from Rising Commodity Prices?*, Christian Aid, January 2007.
- 80** Ibid.
- 81** *Unearth Justice: Counting the Cost of Gold*, CAFOD, 2006.
- 82** Interview with Francisco Machado, the then director of ASONOG, London, 26 October 2007.
- 83** *Minerals Taxation Regimes: a Review of Issues and Challenges in their Design and Application*, ICMM and Commonwealth Secretariat, February 2009, p23.
- 84** Excerpt from the opening statement by Stephen Timms, MP, financial secretary to the Treasury, G20 policy roundtable with Christian Aid and ActionAid, 30 April 2009.
- 85** YPFB monthly report, December 2002.
- 86** *The Benefits of Foreign Investment: is Foreign Investment in Bolivia's Oil and Gas Sector Delivering?* Christian Aid, November 2006.
- 87** In zinc, for example, the most important factor in investment decisions is the metal content of the ore. Australian deposits are the most promising followed by those in Peru, where Antamina is an important zinc mine.
- 88** Telephone interview, 11 June 2009.
- 89** *Minerals Taxation Regimes: a Review of Issues and Challenges in their Design and Application*, ICMM and Commonwealth Secretariat, February 2009, p26.
- 90** www.globalwitness.org/media_library_detail.php/459/en/mittal_steels_us900_million_deal_in_liberia_is_in
- 91** Telephone interview with Richard Murphy, director, Tax Research UK, 11 June 2009.
- 92** *Minerals Taxation Regimes: a Review of Issues and Challenges in their Design and Application*, ICMM and Commonwealth Secretariat, February 2009, p13.
- 93** *Country by Country Reporting in the Extractive Industries*, Revenue Watch Institute and IASB extractive activities research project team, briefing paper from roundtable event, London, 15 September 2008.
- 94** In addition the coalition Publish What you Pay are calling for country-by-country reporting standards for extractives industries.
- 95** Gold Corp Annual Report, 2008.
- 96** Ibid.
- 97** *Latin American Economic Outlook 2009*, OECD.
- 98** Blake Schmidt, 'Pacific Rim mining suing El Salvador', *The Miami Herald*, 27 April 2009.
- 99** Ibid.
- 100** Quoted in Vanessa Houlder, 'Revenue fuels aid agency's row with big four', *Financial Times*, 2 June, 2009.

ACRONYMS

ASONOG	Association of Non-Governmental Organisations of Honduras
CONACAMI	Confederación Nacional de Comunidades Afectadas por la Minería
CSR	corporate social responsibility
DAR	Derecho, Ambiente y Recursos Naturales
DFID	Department for International Development
DR	Dominican Republic
ECLAC	Economic Commission for Latin America and the Caribbean
EITI	Extractive Industries Transparency Initiative
FDI	foreign direct investment
GDP	gross domestic product
IADB	Inter-American Development Bank
ICEFI	Central American Institute for Fiscal Studies
IASB	International Accounting Standards Board
ICMM	International Council on Mining and Metals
IDH	impuesto directo en los hidrocarburos
IETAPP	impuesto extraordinario y temporal en apoyo a los acuerdos de paz
IFC	International Finance Corporation
IMF	International Monetary Fund
IUSI	impuesto único sobre inmuebles
LNG	liquid natural gas
MINOSA	Minerales de Occidente
NGO	non-governmental organisation
OECD	Organisation for Economic Cooperation and Development
PCS	production-sharing contract
SAT	Superintendencia de Administración Tributaria
SICOIN	sistema de contabilidad integrada
SUNAT	Superintendencia Nacional de Administración Tributaria
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNECA	United Nations Economic Commission for Africa
VAT	value added tax

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