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## **A NEAR MISS? LESSONS LEARNT FROM THE ALLOCATION OF MINING LICENCES IN THE GOLA FOREST RESERVE IN SIERRA LEONE.<sup>a</sup>**

### **1. INTRODUCTION**

Between 2005 and 2007 two mining licences were issued for diamond and iron ore prospecting in the Gola Forest Reserve in south-eastern Sierra Leone. The licences were granted even though the area was a proposed national park. It is likely that the allocation of the licences contravened Sierra Leonean law. There was minimal consultation with residents and the whole process was characterised by a worrying lack of transparency.

The Gola Forest is one of the world's most biodiversity-rich ecosystems. If mining were to have taken place, it would have been devastating for the environment. Furthermore, there were no guarantees that the residents of the area would gain sufficient economic benefits once mining began. Luckily, intervention from the President and the subsequent launch of the Transboundary Peace Park in May 2009 meant that to date, nothing has happened as a result of the licences and the immediate threat to Gola has been averted. However, the fact that the licences were allocated in the first place points to broad deficiencies in natural resource governance in Sierra Leone which must be addressed if the country is to develop sustainably and improve the lives of its citizens.

Natural resources were key to funding the civil war in Sierra Leone between 1991 and 2002. This conflict saw many thousands killed or maimed by the rebel group, the Revolutionary United Front (RUF), whose signature terror tactics included chopping off limbs and recruiting child soldiers. During the war, the RUF fought for control of alluvial diamond fields in eastern Sierra Leone, and smuggled the diamonds through Liberia, Guinea and Côte d'Ivoire.<sup>1</sup> The fighting became oriented around control of the diamond fields. It is estimated that towards the end of the conflict, the RUF was earning between US\$25 and US\$125 million annually from diamonds.<sup>2</sup>

It is this history that makes it so important that future natural resource governance is done well in Sierra Leone. Following the war, the government and donors made efforts to reform the natural resources sector. Despite these efforts, it is still characterised by weak governance, a lack of transparency, and irregularities in the allocation of licences. What happened in the Gola Forest Reserve provides a useful case study to highlight the continued failings and the need for reform.

The current political circumstances in the country favour reform and represent an opportunity that must not be missed. A new Mines and Minerals Act was signed by the President on 30 December 2009 and the Government is currently reviewing mining agreements, including contracts and licences

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<sup>a</sup> Global Witness visited Sierra Leone in November 2009 and interviewed a range of stakeholders including donors, government officials, non-governmental organisations, journalists, town leaders, elders and community members in the Gola region and Freetown. These interviews form the basis of this case study. This case study aims to provoke a debate on the problems that led to the allocation of these licences and ensure that lessons are learnt for the future.

and other mineral rights.<sup>b</sup> Donor countries have been providing support to the government to reform mining, forestry and agricultural sectors.<sup>c</sup>

If the Government of Sierra Leone, with the support of donors, does address the issues outlined in this paper it would increase the likelihood of investment by reputable companies, thereby boosting economic development. It would also increase the country's prospects for long-term stability. Conversely, if unresolved, these deficiencies have the potential to eat into development opportunities for the country and could undermine democracy and the rule of law.

## **2. WHAT WENT WRONG? The (mis)allocation of mining concessions in the Gola Forest Reserve**

The Gola Forest is approximately 750 square kilometres. It is the largest area of lowland rainforest left in Sierra Leone and is one of the world's most biodiversity-rich ecosystems.<sup>3</sup> It is part of the remaining 30% of the Upper Guinea Forest that used to reach across West Africa, from Togo in the east, to Guinea in the west. The Gola Forest Reserves were originally designated between 1926 and 1930 with extensions added between 1956 and 1963.<sup>d</sup> Today, the Gola Forest Reserve is divided into four forest blocks and encompasses seven chiefdoms. It is managed by the Gola Forest Programme, a government-civil society partnership.<sup>e</sup>

Despite Gola's environmental importance, and the efforts of the Gola Forest Programme to make it a national park, two mining licences were allocated between 2005 and 2007 for diamond and iron ore prospecting. The most contentious and potentially most damaging licence was the exclusive prospecting licence (EPL) for iron ore in the Bagla Hills area of Gola granted in 2005 to SL Minerals. The second licence was granted in 2007 to Target Resources, who were awarded an EPL that overlapped with the Gola North Forest Reserve.

A third EPL for the Gola Reserve was applied for in 2006 by Sierra Diamonds (now Stellar Diamonds). The company had obtained a regional licence two years before, which encompassed parts of Gola. A number of sources told Global Witness (in 2009) that Stellar Diamonds was awarded the EPL. However when Global Witness wrote to the company it responded by saying that the EPL had been blocked by the Director of Forestry and never awarded.<sup>4</sup>

Due to a lack of transparency and coordination within the government, the Gola Forest Programme was not initially aware of the issuing of licences in Gola, despite being mandated to manage the reserve.

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b These reforms are partly due to conditions set by the World Bank and IMF in December 2006 under the Heavily Indebted Poor Countries (HIPC) Initiative.

c For example, the UK DFID has provided two million pounds over two years to support the management of and institutional capacity in the Ministry of Mineral Resources, and DFID-funded consultants helped the Government to finalise the new Minerals Act, draft new regulations and implement a project on civil service reform in the ministry. In December 2008, USAID began funding a two year project to improve policy making in the mining, forestry and agriculture sectors.

d Governor's order number nine of 1926 set up the Gola Forest East as a forest reserve. Gola Forest North extended the reserve in 1930 through order number five. Between 1926 and 1930 Gola Forest West was also designated. In 1956, the Gola Forest was extended by two forestry ordinances (extensions one and two). Between 1956 and 1963 further extensions were added to Gola North. On 15 April 1977, the Siaka Stevens Government signed a joint venture with Sierra Leone Timber Industry and Plantation Company Limited to log the Gola Forest East and Gola Forest West Forest Reserves. The concession was for a period of twenty five years but Global Witness was told it ceased in 1979.

Gola Forest Programme, Government of Sierra Leone, 'Gola Forest Reserves: the proposed Gola Forest National Park, Management Plan 2007-2012', page 1.

e In Kailahun District it includes Malelma chiefdom and Nomo chiefdom. In Kenema District it includes Gaura chiefdom, Tunkia chiefdom and Koya chiefdom. In Pujehun district it includes Makpele chiefdom and Barrie chiefdom.

## **WHO'S WHO? Key players in the Gola Forest saga**

### **The Gola Forest Programme**

The Gola Forest Programme has been operational since the early 1990s. The Programme is a partnership between the Conservation Society of Sierra Leone, Royal Society for the Protection of Birds (RSPB) and the Forestry Department of the Sierra Leone Government. The dominant player is the RSPB. The reserve was briefly closed during the war and re-launched in November 2006. The Gola Forest Programme has rehabilitated the Gola reserve, established management structures and also negotiated with different parts of the Government and other relevant powerful political players to try to ensure its survival. Since its inception, the Gola Forest Programme has been working to make the reserve into a national park. To ensure local support in 2003, the Gola Forest Programme undertook a two and a half year consultation, including meetings with local communities.<sup>5</sup> In 2007, agreements were signed with communities that granted them material and financial benefits and allowed them the right to participate in the day to day management of the forest.<sup>6</sup> This seems to have had mixed results. While some community members are involved in the management of the forest, the wider community does not always feel involved or empowered.

### **SL Minerals Limited**

SL Minerals Limited was incorporated in January 2004 in the United Kingdom, with 100% of its shares owned by Njahili Resources. In September 2005, the company was issued an EPL for iron ore mining in the Bagla Hills of Gola East Reserve.<sup>7</sup> In 2009, Njahili Resources Plc was placed into liquidation as part of a restructuring of the company. Following the restructuring process, CIC Mining Resources Limited acquired SL Minerals. This change in ownership was completed on 1 October 2009. The Bagla Hills EPL is currently held by SL Minerals Plc, which in turn is 100% owned by IMG Group Limited (Hong Kong). IMG Group Limited (Hong Kong) is a 100% owned subsidiary of CIC Mining Resources Limited.<sup>8</sup>

In May 2009, CIC Mining Resources announced a US\$110 million investment in the Bagla Hills project by Benxi Steel Group, a private Chinese iron ore mining company and major shareholder in CIC, and acknowledged that environmental approvals would be required before the start of any on-site development.<sup>9</sup> CIC Mining Resources Ltd provided Global Witness with a memorandum which stated that CIC would not progress to mining and processing in Bagla Hills until the local chiefdoms agreed and the Government of Sierra Leone and interest groups officially engaged CIC to develop the area. They promised revenue from production would be used to protect the Gola Reserve, a comprehensive environmental study would be done in advance, and that production in the Gola Forest Reserve would be minimal with all processing and accommodation for company staff situated outside of the Reserves boundaries.<sup>10</sup>

In May 2009, Global Witness was told by the Director of Geological Surveys that the SL Minerals licence had been revoked due to a default of payment and that the company had gone into liquidation.<sup>11</sup> This was confirmed to Global Witness by the Director of Mines.<sup>12</sup> Global Witness went to the Mining Cadastre Office which was established following the signing of the new Mines and Minerals Act to get a copy of the company's licence on 23 February 2010. The office said that they were unable to confirm whether this licence was still valid, stating that the licence was no longer on their database and that the licence documents had been taken out the office by the Director of Mines. However, CIC Mining Resources Ltd told Global Witness that the licence in the Bagla Hills was still valid.<sup>13</sup>

### **Target Resources**

Target Resources Plc was incorporated in September 2005 in the United Kingdom and operates in Sierra Leone through Milestone Trading Ltd and Milestone's Sierra Leone subsidiaries.<sup>f</sup> In December

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<sup>f</sup> Other Sierra Leone subsidiaries are: Haliburton Overseas Limited, Nimikoro Mining Company Limited, Sandoh Development Corporation Ltd and Nimiya Development Company Limited.

2007 the company was granted an EPL for two years, covering 254km<sup>2</sup>, some of which overlaps with the Gola North Forest Reserve.<sup>14</sup> However, Target Resources announced on 11 March 2009 that it had decided to “suspend diamond mining activities in Sierra Leone until further notice”, due to a fall in price of diamonds on the world markets.<sup>15</sup> Global Witness wrote to the Milestone Trading Ltd and Target Resources Plc Ltd on 12 February 2010. Milestone Trading, the parent company responded on 15 February 2010 and stated that no work of any kind was ever carried out under the licence, which has now lapsed: “nothing was been done by the Group in the Gola Forest at any time, nor is anything planned.”<sup>16</sup>

### **Stellar Diamonds/ Sierra Diamonds Limited**

Sierra Diamonds Ltd (now Stellar Diamonds, a subsidiary of Canadian-listed Mano River Resources, now African Aura Mining Inc) was granted a regional exclusive prospecting licence (REPL) in 2004 for prospecting diamonds across a large area of eastern Sierra Leone which included the Gola Forest Reserve. Sierra Diamonds initially went into the REPL (which expired in 2006), as a joint venture with BHP Billiton. In 2006 it narrowed its interest and applied to the Ministry of Mines for an EPL in the Gola North Reserve.

Global Witness wrote to the company on 12 February 2010 and received a response in which the company stated that its application for an EPL was rejected. The company stated that they engaged with several stakeholders including the Ministry of Mines, Ministry of Environment, DFID, Bird Life International and the Gola Forest Programme in an effort to conduct further sampling in the proposed Gola licence area. The discussions culminated in a letter from the Director of Forests to the Director of Mines that effectively blocked any licence being awarded. The company confirmed that they were never awarded an exclusive prospecting licence for mining licence over the Gola Reserve apart from the REPL in 2004.<sup>17</sup>

The ownership structures governing Sierra Diamonds have changed and since 2007 the company has operated under the name Stellar Diamonds. Stellar Diamonds Ltd is a company which became a subsidiary of Mano River Resources in 2007 and took over all its diamond mining projects, including Sierra Diamonds. In October 2009 Stellar Diamonds announced a merger with West African Diamonds Plc. This transaction was completed on 19 February 2010.

The allocation of mining licences in the Gola Forest Reserve caused a deep division within local communities. There have been allegations of companies attempting to buy people off.<sup>18</sup> Four prominent members of local civil society told Global Witness that the mining companies had given incentives to local chiefs to support mining<sup>19</sup> and a member of the conservation lobby told Global Witness that he was offered US\$30,000 to advocate for mining.<sup>20</sup> Global Witness has been unable to independently verify these allegations but believes that that any credible allegations should be independently investigated and if proven, the penalties should be serious and include the cancellation of contracts.

Global Witness wrote to the mining companies involved to ask about the allegations of corruption.<sup>21</sup> Stellar Diamonds Ltd responded on 19 February 2010 and stated that Stellar has always operated to the very highest international standards and that “any exploration programme initiated was done with the full knowledge and approval of many stakeholders, including the Government and local chiefdoms and communities.”<sup>22</sup> CIC Mining Resources Ltd responded, but did not answer any questions concerning allegations of corruption. Milestone Trading Ltd, the parent company of Target Resources responded, stating that “no fee or other payment was paid in respect of that license apart from official fees and rent.”<sup>23</sup> The company went on to say that it “has no interest in disrupting the work of the Gola Forest Programme and nothing which it has done or intends in the future to do, has had, or will have, any adverse impact on the forest amenity in question or the local community.”<sup>24</sup>

Allocation of these licences also created tensions between the Ministry of Agriculture, Forestry and Food Security and the Ministry of Mineral Resources. President Ernest Bai Koroma sided with the former, which wants to keep the forest intact. He and his predecessor President Ahmad Tejan Kabbah have both pledged to protect the Gola Forest Reserve. The conflict between the two ministries came to a head at the Climate Change Seminar on the Royal Navy Icebreaker HMS Endurance on 8 September 2008 when the Minister of Agriculture and the Minister of Mineral Resources clashed publicly over Gola.<sup>25</sup>

In the end, the President's support for the Agriculture Minister paid off and in May the following year the Transboundary Peace Park was established. The park is 2,000 square kilometres and unites the Gola Forest Reserve in Sierra Leone with the Lofa and Foya Forest Reserves in Liberia. At the project launch, which was also attended by Liberian President Ellen Johnson Sirleaf, President Ernest Bai Koroma stated his determination to protect Gola, to make it into a national park and to prevent mining.<sup>26</sup> Given the high profile launch and involvement of the Liberian Government and heads of state, it would appear to be almost impossible for the mining licences to be executed right now. However in the medium to long term the protection of Gola is less certain.

#### **PERCEPTIONS VS REALITY: Is the Gola reserve benefitting the population?**

In 2009 Global Witness found that while there was generally strong support for the Gola Forest Programme, some communities felt that they were not benefitting sufficiently from the project.<sup>27</sup> Of the seven chiefdoms in the Gola area, parts of Tunkia chiefdom appeared to be the most divided. When Global Witness met with the Tunkia Chief, he said that he and the chiefdom were in favour of mining because of the economic advantages that it would bring. He talked about a dire need for employment in the area and said that despite the Gola Forest Programme's employment of some members of the community there would be more employment opportunities provided by the mining companies. However, at the launch of the Transboundary project – which Global Witness attended – the Chief appeared to change his position, making a public statement supporting the initiative.

Poverty in the area means that the possibility of employment opportunities from mining companies is obviously attractive. Many people interviewed by Global Witness expressed a desire for more long-term employment opportunities and training.<sup>28</sup> However, there is a clear lack of access to information and therefore knowledge about the benefits and costs of mining.<sup>29</sup> For example, few people in the Gola area appear to be aware that diamond and rutile mining companies operating in Kono and near Bonthe have not brought communities the kind of employment and revenue that was expected. There are many problems in the mining sector in Sierra Leone and historically it has not created the revenue or employment opportunities that it could have.

Although there have been attempts by the Gola Forest Programme to inform local people about the problems associated with mining elsewhere in Sierra Leone, it is clear that these have not been completely successful. There is perhaps an unrealistic expectation on the part of local communities about the benefits that the Gola Forest Programme should provide them. While there is an obligation on the part of the Programme to provide benefits to local communities to compensate for the lack of access to the forest, it cannot be expected to act in the same way as a government department or a bilateral donor.<sup>30</sup> Overall, it seems that Programme probably needs to get better at communicating in order to maintain the long term support of local communities.

### 3. HOW DID IT HAPPEN? Problems with natural resource governance revealed by Gola case

To ensure that access to the country's natural resources is in the best interests of its citizens, public institutions which regulate, manage and oversee the natural resources sectors must have clear and distinct roles that are clearly defined in law. They must have sufficient funds, expertise and regulatory power to fulfil their mandates and be managed and audited in a transparent fashion. There must be openness and full public disclosure through the allocation of rights, combined with continuous oversight from independent third parties.

This is not the case in Sierra Leone. Global Witness has identified four fundamental problems in the natural resources sector in Sierra Leone that allowed mining concessions to be allocated in the Gola Forest Reserve. These are:

- A) Ambiguous and out of date laws governing the natural resources sector, which are also poorly implemented
- B) A lack of transparency within natural resources ministries
- C) A lack of coordination between the natural resources ministries
- D) A lack of capacity within the natural resource ministries

If the government were to address these problems, it could maximise the revenue from its existing projects, improve the investment climate and attract reputable companies. This would then spur much needed economic growth. The President of Sierra Leone signed the new Mines and Minerals Act in December 2009. Overall, this law appears to represent an improvement on the 1994 Mines and Mineral Decree, although Sierra Leonean NGOs have voiced concerns about some aspects of the content.<sup>9</sup>

#### A) Ambiguous and out of date laws governing the natural resources sector and their poor implementation

Between and even within natural resource ministries there have been differing interpretations of the laws governing natural resources and of the decision-making powers of government institutions. For example, the Director of Geological Surveys told Global Witness that the Mines and Minerals Decree (in force until the end of December 2009) allowed the Ministry of Mineral Resources to issue a licence anywhere.<sup>31</sup> However, the Minister of Agriculture told Global Witness that issuing mining licences in the Gola Forest Reserve was illegal because there was already a natural resources concession agreement in place (that of the Gola Forest Programme).<sup>32</sup>

The current law governing the use of and the ministerial responsibility for Gola appears to be the 1988 Forestry Act. According to section 3(a) and (b) of the Forestry Act, the Chief Conservator, under the direction of the Minister responsible for forestry (the Minister of Agriculture, Forestry and Food Security), is responsible for the efficient management and rational utilisation of the country's forest resources and the preservation of the forest environment and the environmental role of forest land.<sup>33</sup>

According to section 28 (1) of the Forestry Act, no prospecting, exploration or mining may be carried out in national or community forest. Section 9 of the Forestry Act also states that in a national or community forest no one can "cut, burn, uproot, destroy...clear any land, remove any timber... take any earth, clay, sand, gravel or stone except pursuant to a concession agreement or licence confirmed usage right or other authority under this act".<sup>34</sup> Furthermore, section 21 of the 1994 Mines and Mineral Decree, which was in force when the licences were allocated states that where an act is prohibited in another law, nothing in the Mines Decree will be interpreted as authorising that action.

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<sup>9</sup> This briefing does not provide a comprehensive analysis of the new Mines and Mineral Act and comments only with those provisions that concern the specific issues addressed here.

Accordingly it can be surmised that the mining licences in the Gola Forest Reserve were not allocated in accordance with the mining and forestry laws of Sierra Leone in place when the licences were issued. However, as one natural resource consultant told Global Witness “who wins the fight over Gola will not depend on the law, but who has the biggest influence.”<sup>35</sup>

A 2008 strategic environmental and social assessment of the mining sector by the World Bank stated that the laws and regulations relating to mining and land tenure were outdated and did not meet the needs of a modern mining industry.<sup>36</sup> The World Bank report listed three main weaknesses with policies that address environmental and social issues. The first was that the legal and regulatory framework for mining lacks specificity, which leaves the opportunity for interpretation. The second was that the laws governing the mining sector at the time when the licences were granted stem from a number of statutes and relate to various ministries, which in turn leads to problems of inconsistency and poorly defined responsibilities. Finally, implementation of laws and regulations was consistently weak or non-existent.<sup>37</sup> Aside from addressing these three deficiencies, the World Bank also argued that there was a need for complementary reforms in land tenure and of the civil service.<sup>38</sup>

Similar problems are also found in the legislation governing the protection of Sierra Leone’s biodiversity. During interviews with donor-funded consultants working on natural resource projects, Global Witness was told that the current forestry policy had not yet been passed by Parliament but was being implemented by the Government and that the lands policy had been passed but was not yet being implemented.<sup>39</sup>

The new Mines and Minerals Act, addresses some of these problems. Provision 32(1)(a) precludes the holder of mineral rights from mining in areas set apart for a public purpose other than mining except with the written consent of the responsible ministry. It is unclear, however, whether the Minister of Mineral Resources has the authority to waive this preclusion or whether a waiver must be received from the minister with the jurisdiction over the area. There is also a very general provision (section 131(1) in the act stating that the Minister shall take into account the need to conserve the natural resources on the land in the area covered by the licence. The act is not, however, explicit in stating that mining licences cannot be awarded in protected areas. In the Act there are restrictions on the allocation of exploration licences (73 (1)), and reconnaissance (59 (2)) licences in, “areas closed to exploration and mining.” However the Act does not define what constitutes such an area. This could be interpreted as a restriction on exploration and mining in areas such as the Gola Forest. The Act also includes a provision (31) which was also in the previous mining law, stating that where an activity is regulated or prohibited by another act, nothing in the act authorises the person to do it.

Despite improvements that are brought by the new Mines and Minerals Act, problems in the sector are likely to continue. The Government has yet to develop a long term strategy that has been prepared in an open and consultative way, or complete the review of legislation governing forestry, bio-diversity and the environment. The long term strategy should include section on mineral development which outlines the Government’s plans and timeline to exploit Sierra Leone’s natural resources. The Government should also map where the natural resources are, identify competing land uses, and assess the value of the different sorts of exploitation for Sierra Leone. Until these laws and regulations are looked at in a holistic manner and a comprehensive long term strategy is developed it is likely that there will continue to be conflict between some pieces of legislation, confusion between ministries, and the country will not get the maximum benefits from its natural resources.

## B) A lack of transparency within the natural resources ministries

Another reason why mining concessions were able to be allocated in the Gola Forest Reserve is due to the lack of transparency within the ministries. The lack of transparency in the operations of the Ministry of Mineral Resources meant that the licences were issued to Sierra Diamonds in 2004 (REPL) and SL Minerals in 2005, yet the Gola Forest Programme only became aware of them in 2006. Global Witness was told by a number of sources that they suspected that people were paid off at the Ministry of Mineral Resources and in local communities. However, we were unable to find any proof supporting these allegations. Global Witness wrote to the mining companies with licences on 12 February 2010 to ask about these allegations of corruption. Stellar Diamonds Ltd responded on 19 February 2010 and stated that Stellar has always operated to the very highest international standards.<sup>40</sup> CIC Mining Resources Ltd responded, but did not answer any questions relating to the allegations of corruption. Milestone Trading, the parent company of Target Resources responded on 15 February 2010 and stated that “no fee or other payment was paid in respect of that licence apart from the official fees and rent.”<sup>41</sup>

The lack of transparency within the Ministry of Mineral Resources means that there is confusion about which companies have licences. The Director of Geological Surveys, Permanent Secretary and Director of Mines all told us that the licences for SL Minerals had been cancelled.<sup>42</sup> On 23 February 2010 Global Witness went to the Mining Cadastre Office which was established following the signing of the new Mines and Minerals Act to request a copy of the company’s licence. The office said that they were unable to confirm whether this licence was still valid, stating that the licence was no longer on their database and that the licence documents had been taken out the office by the Director of Mines. However, CIC Mining Resources Ltd told Global Witness that their licence in the Bagla Hills was still valid. On Global Witness’ research mission to Sierra Leone, we were told by numerous sources that Stellar Diamonds had been allocated a licence in the Gola Forest Reserve. However when Global Witness wrote to the company it said it was never awarded an exclusive prospecting licence for in the Gola Forest Reserve.<sup>43</sup>

The lack of up to date information in the public domain must be addressed in the reform of the mining sector. Part VI of the new Minerals Act says that the Director of Mines must establish and maintain a Mining Cadastre Office which is open to the public. This would include a register of mineral rights, all mineral right applications, a cadastral survey map of these rights and applications, and all non-confidential reports and agreements. This is a positive step forward and should go some way towards redressing the lack of transparency which meant that on past visits Global Witness has had a lot of difficulty obtaining copies of contracts, mining licences, details of companies operating in Sierra Leone and even copies of current laws governing the natural resources sector.

However, the Act fails to define ‘non-confidential reports and agreements’, creating a loophole through which natural resource contracts and environmental impact assessments could remain inaccessible to Sierra Leonean citizens. Global Witness visited the Mining Cadastre Office on 23 February 2010 and was told that contracts would remain confidential and would not be made available at the office. Global Witness believes that all contracts should be in the public domain. The lack of transparency of contracts and environmental impact assessments means that it is difficult for local civil society to monitor companies’ operations and Government decision making, or for affected local communities to know companies’ contractual obligations to them. The problem of lack of transparency goes beyond the natural resources sector, and affects many parts of the Government.

The new Act also includes a provision (section 159) to provide transparency in the extractive sector, which would enshrine in law some of the requirements of the Extractive Industries Transparency Initiative (EITI).<sup>h</sup> This would require the Minister of Mineral Resources to establish a mechanism for

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<sup>h</sup> The EITI is a global association of governments, the private sector and civil society groups that works for the public disclosure of revenue payments to governments by oil, gas and mining companies.



publishing revenues received in the mining sector. This is positive and would help the public to hold the government and companies to account.

To ensure that citizens of countries rich in natural resources are able to benefit from them in a fair and sustainable way Global Witness supports laws governing the oil, gas or mining sectors with a strong emphasis in favour of openness and against confidentiality and secrecy. The allocation of all licences and contracts should be conducted in a fair, open and transparent way. Current valid licences should be published by the Ministry of Mineral Resources and it should be easy for anyone to find out whether a company has a licence or not. Any negotiations between the company and the government should follow a strict and published timetable which should be laid out in the law. Oversight of the oil, gas or mining sectors by independent civil society groups should be promoted to ensure that the resources are used in the best interests of the country.

### C) A lack of coordination between the natural resources ministries

Another key issue that helped to create the conditions in which the mining licences were allocated in the Gola Forest Reserve, was the lack of coordination between natural resources ministries.<sup>i</sup>

The Minerals Advisory Board exists in part as a mechanism to facilitate coordination between the ministries when licences are allocated.<sup>44</sup> However, the fact that at least two mining licences were granted in the Gola Forest Reserve in apparent defiance of the law and the wishes of at least one of the ministries concerned, suggests that the coordination mechanism is not working. One possible explanation for what happened is that the licences were not brought before the board. Another is that the power of the Minister of Mineral Resources meant that they were pushed through regardless of other ministry's opposition. Global Witness was unable to confirm how these licences came to be allocated. Whatever the reason, it is clear that the Minerals Advisory Board failed as a mechanism for coordination in this case.

Under the new Mines and Minerals Act, the ministry responsible for overseeing the environment has the right to place one representative on the Ministry of Mineral Resources' Mineral Advisory Board (section 11(2)(g)). However, the Board contains no representative from the Ministry of Agriculture, Forestry and Food Security. Moreover, the Board is not responsible for advising the Minister of Mineral Resources on matters relating to forestry. There is a provision in the Act (section 14(2)) that allows an advisor to be co-opted for a particular meeting. In theory, this means that someone from the forestry department could be brought to a Board meeting to advise on possible overlaps of proposed mining licences and protected areas. However, such attendance would occur on an ad hoc basis only. As such, there is a strong risk that there will continue to be a lack of coordination between the Ministry of Mineral Resources and the Ministry of Agriculture, Forestry and Food Security.

One fundamental weakness in the operations of the Ministry of Mineral Resources that has not been addressed by the new Act is the discretionary power of the Minister of Mineral Resources. The Act failed to strengthen the oversight functions of the Minerals Advisory Board by giving it more power to challenge decisions of the Minister.

### D) Lack of capacity within the natural resources ministries

The final problem is a lack of capacity among civil servants at the natural resource ministries (and many other ministries as well). This relates to both a lack of funding but also to a lack of sufficiently

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<sup>i</sup> Global Witness interviewed a consultant in May 2009 working on the USAID policy reform process who told Global Witness that there was a lack of communication between the ministries and that too many decisions are personality driven. Global Witness interview with consultant for a USAID funded project, Freetown, Sierra Leone, 21 May 2009.

trained staff. It is the result of a decade of war, and before that the corrosive impact of corrupt one party civilian rule under Siaka Stevens. While this issue of capacity of the staff of the Ministry of Mineral Resources and within the forestry department did not cause mining concessions to be allocated in the Gola Forest Reserve, it helped create the environment in which it could happen. Staff with greater capacity would have been more likely to have flagged the irregular allocation of the mining concessions and taken steps to address the problem.

A recent World Bank study found that despite the importance of the Ministry of Mineral Resources to the economy of Sierra Leone, its capacity was grossly inadequate, financial support available did not meet its operational requirements, salaries were extremely low, and the environment section was not staffed.<sup>45</sup>

One significant consequence of the lack of funding for the natural resources ministries is that their ability to monitor the operations of companies and individual operators is poor. This means that they cannot ensure that companies and individuals active in the natural resources sectors operate in accordance with the law or that companies fulfil their contractual obligations to the state and to affected communities which can be the cause of tension and conflict.

#### **The case for conservation and the promises of REDD**

From local, national and international perspectives, there are good reasons for protecting the Gola Forest. Currently, deforestation is one of the main causes of environmental degradation in Sierra Leone and today only 5% of the land is forested compared to 75% a hundred years ago.<sup>46</sup> In the 2003 Biodiversity Strategic Action Plan, the Government acknowledged the important role that biodiversity plays in sustainable development and poverty alleviation.<sup>47</sup> Protecting Gola is important from a regional perspective, because it is part of the remaining Upper Guinean forest and is one of the world's most biodiversity rich ecosystems.

At a local level, the Gola Forest Reserve has the potential to generate revenue through encouraging ecotourism. This would supplement the benefits currently provided to local residents through the Gola Forest Programme, such as the rehabilitation of buildings and roads, and sponsorship for students.

International action to combat climate change also offers opportunities for Sierra Leone. An agreement currently being negotiated in the UNFCCC, on reducing emissions from deforestation and forest degradation (or REDD), may result in developing countries being paid for reducing deforestation. While there are certain risks that must be avoided through rigorous monitoring and good governance, REDD could offer an excellent opportunity for countries like Sierra Leone.

Another opportunity lies with carbon offsets. A 2008 study reported that the government could generate between €62.7 million and €101.9 million over a period of twenty years through the commercialisation of carbon credit in the Gola Forest Reserve.<sup>48</sup>

Short term political expediency may mean that quick revenue generating activities such as mining are more appealing. However in the longer term, the government should consider the potential gains to be made from environmental protection.

#### 4. CONCLUSION

The challenge of ensuring sustainable and equitable natural resource management which does not harm the environment will continue as long as Sierra Leone is poor. With GDP per capita of US\$679 in 2007,<sup>49</sup> the country is ranked 180 out of 182 in the UN Human Development Index,<sup>50</sup> and around 70% of the population lives below the poverty line.<sup>51</sup> There are very few economic opportunities for the vast majority of Sierra Leoneans. As such, the prospect of mining companies providing revenue for the government and jobs for the citizens is understandably appealing.

In 2003 mining accounted for about 20% of GDP and 65% of foreign exchange.<sup>j</sup> The sector has the potential to bring huge benefits Sierra Leone and its people. If managed equitably and as part of wider reforms, natural resources could make an important contribution to poverty reduction and accelerate economic growth in Sierra Leone.

But rather than seeing management of Gola as a choice between economic development through mining or conservation, the government must assess the economic, social, short and long term implications of the pursuit of protection or of mining. Furthermore, before any mineral rights are assigned, there must be long term strategy for managing the natural resource base. This strategy should be prepared in an open and consultative way and should maximise the benefits over the longer term, rather than emphasising one-off payments to the government by companies. It should apply the highest standards on social, environmental and human rights protections and identify regions where extraction should not take place.

This Gola case study highlights wider governance issues in the natural resources sector in Sierra Leone which have potentially far-reaching consequences. Sierra Leone is not perceived by more reputable and well established companies as a stable environment in which to invest. Instead companies who are more willing to take risks, and take advantage of possible legal loopholes are attracted to operating in Sierra Leone. Governance problems weaken the Government's position when negotiating natural resources deals and heighten the risk of corruption. At best, the natural resources sector in Sierra Leone is presently failing to generate the optimum amount of revenue, while at worst it has the potential to undermine peacebuilding efforts. The legal reform process may offer a path to meaningful reform, but its success will depend on the willingness of the government to implement the necessary changes to the law and on adequate support from donors and other stakeholders.

While the impetus for reform must come from within the Sierra Leonean Government itself, international donors must help to increase the capacity of civil service - especially natural resource ministries. They should also help to harmonise and redraft out of date natural resources legislation, while at the same time insisting that the government addresses corruption issues.

Ultimately, problems in the natural resource sector will only be fully overcome with broader political change in Sierra Leone. As we have seen in the case study outlined in this paper, Gola is currently protected as a result of the political will of the President and cross-border project with Liberia, rather than as a result of strict application of the law. For reforms to be successful, there must be no opposition from those who are benefiting from the status quo, the reforms must be seen as legitimate and there must be buy-in by the political elite, the government, donors, local and international civil society, and the citizens of Sierra Leone.

With respect to the Gola Forest Reserve, it is clear that the area will always be under threat as long as Sierra Leone has so few economic opportunities. The current political climate, and relationship

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<sup>j</sup> Source: Mining Journal Special Publication, "Sierra Leone Back in Business", London, July 2006, page 5. European Community, "Sierra Leone – European Community Country Strategy Paper and National Indicative Programme", 2003-2007, Sierra Leone Government, "Sierra Leone Vision 2025: Sweet Salone", August 2003

with the Liberian Government is protecting the Gola Forest Reserve for now, but this could easily change in the future. Making the Gola Forest into a national park would make the pursuit of mining more difficult, but not impossible. The conflict between mining and conservation in the Gola Forest Reserve is not unique and until the underlying issues, outlined in this paper, are addressed, a similar situation could easily arise again.

Global Witness has developed a set of principles that we believe should be followed in the allocation of mining and oil contracts to ensure that citizens of countries rich in natural resources are able to benefit from them in a fair and sustainable way. Key features include: clear rules and effective institutions, and openness and full public disclosure throughout the allocation of rights, combined with continuous oversight by independent third parties. These proposals are outlined in the recommendations which follow.

## **Recommendations**

### **The Government of Sierra Leone should**

1. Ensure that there is a clear, transparent and effective process for the awarding of mineral concessions and licences.
2. Fulfil its commitment to make the Gola Forest Reserve a national park.
3. Ensure that laws and regulations are up to date and in line with international standards.
4. Publish, in a timely manner, all contracts, environmental impact assessments and licences relating to natural resources.
5. Maintain an up to date list of all contracts and licences relating to natural resources that is publicly accessible.
6. Improve coordination between the natural resources ministries.
7. Provide sufficient funding for natural resources ministries' operating costs.
8. Promptly investigate allegations of corruption within the natural resource ministries and take appropriate legal action where there is evidence of wrongdoing.
9. Support the natural resource legislative reform process,
10. Develop a long-term strategy, prepared in an open and consultative way, for managing Sierra Leone's natural resource base. The aims of this strategy should include:
  - a. gaining the fullest possible information on Sierra Leone's resource base;
  - b. maximising the benefits to Sierra Leone and its citizens over the longer term, rather than emphasising one-off payments to the government by companies;
  - c. applying the highest standards on social, environmental and human rights protections and identifying regions where extraction should not take place.
11. Ensure that laws and public institutions to regulate, manage and oversee the natural resources sector are in place before companies are granted access to the resources.
12. Ensure that public institutions that regulate, manage and oversee the extractive sector:
  - a. have distinct roles that are clearly defined in law;
  - b. have sufficient funds, expertise and regulatory power to fulfil their mandates;
  - c. are managed and audited in a transparent fashion.
13. Ensure that laws governing these public institutions prevent conflicts of interest and forbid corruption.
14. Ensure that Sierra Leone's long-term strategy, laws, institutions and policies on the extractives sector are crafted through open debate and discussed and approved by Sierra Leone's legislature. All the resulting documentation should be easily available to the public in an accessible form.
15. Ensure that laws governing the oil, gas or mining sectors have a strong bias in favour of openness and against confidentiality and secrecy.
16. Establish continuous oversight by an independent public agency of the awarding of rights and the implementation of contracts by companies. This agency needs sufficient authority, resources and expertise to carry out this task. It should make regular and timely public reports.

17. Independent civil society groups should be actively involved in the oversight of the oil, gas or mining sectors, for example by working with public oversight agencies, or through their role in the multistakeholder groups of the EITI.
18. Credible allegations of corruption should automatically lead to independent investigation. Proven corruption should bring serious penalties for any companies, company employees and government officials who are implicated, including the cancellation of contracts.
19. All contracts and other agreements governing oil, gas and mining rights should explicitly forbid corrupt acts as defined in national and international law.

#### **The Gola Forest Programme should**

1. Focus community development projects on revenue and employment generating activities.
2. Improve consultation with local communities.
3. Improve the provision of information to local communities about the activities of the Gola Forest Programme.

#### **Sierra Leone's international donors, including multilaterals agencies should**

1. Focus reform programmes on building the capacity of the civil service.
2. Provide funding for the Government's fight against corruption.
3. Encourage transparency in contractual agreements between companies and the Government.
4. Support the Government of Sierra Leone in its implementation of the recommendations proposed in this case study.
5. Support EITI in Sierra Leone.

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<sup>1</sup> Global Witness, "Sierra Leone and Conflict Diamonds", July 2006, page 2.

<sup>2</sup> Partnership Africa Canada, "The Heart of the Matter", January 2000, page.6, [www.pacweb.org](http://www.pacweb.org).

<sup>3</sup> Gola Forest Programme: The Royal Society for the Protection of Birds, Birdlife International, The Conservation Society for Sierra Leone, National Commission for Environment and Forestry, "Protecting the Gola Forest: A new approach to conservation in Sierra Leone."

<http://darwin.defra.gov.uk/documents/13031/2913/13031%20FR%20Ann%2015b%20Gola%20brochure%20CBD%20COP7.pdf>.

<sup>4</sup> Stellar Diamonds Ltd letter to Global Witness on 19 February 2010.

<sup>5</sup> Global Witness interview with DD Siaffa, The Conservation Society for Sierra Leone, Freetown, Sierra Leone, 8 May 2009. Global Witness interview with Augustine Sannoh, Movement for the Restoration of Democracy, 13 May 2009. Global Witness interview with Edward Kai, Amnesty International and Albert Falah, Kenema, Sierra Leone, 13 May 2009.

<sup>6</sup> Global Witness interview with Augustine Sannoh, Movement for the Restoration of Democracy, Kenema, Sierra Leone, 13 May 2009. Global Witness interview with Thomas Dixon Kallon Divisional Forest Officer, Kenema, Sierra Leone, 13 May 2009.

<sup>7</sup> 2005/0010/EPL.

<sup>8</sup> This information was taken from a documented called "Bagla Hills Iron Ore Sierra Leone Project Summary and Workplan." October 2009, page 4. CIC Mining Resources Limited, "Press release - CIC acquires equity interest in Bagla Hills iron ore project in Sierra Leone, West Africa," 12 January 2009, [http://www.cnq.ca/Storage/1192/106929\\_PRESS\\_RELEASE\\_Bagla\\_Hills\\_\(2\).pdf](http://www.cnq.ca/Storage/1192/106929_PRESS_RELEASE_Bagla_Hills_(2).pdf).

<sup>9</sup> CIC Mining Resources Limited, "Press release - Chinese steel group agrees to complete exploration & fund mine and process facility by way of US\$110 m facility," 3 May 2009.

[http://www.cnq.ca/Storage/1207/108464\\_PRESS\\_RELEASE\\_Bagla\\_Hills\\_Benxi\\_Plant.pdf](http://www.cnq.ca/Storage/1207/108464_PRESS_RELEASE_Bagla_Hills_Benxi_Plant.pdf).

<sup>10</sup> Global Witness wrote to CIC Mining Resources Ltd, SL Minerals and CIC China Iron Ore Group Ltd on the 12 February 2010. This information was taken from a documented called "Bagla Hills Iron Ore Sierra Leone Project Summary and Workplan." October 2009, page 1.

<sup>11</sup> Global Witness interview with Director of Geological Survey Mohamed B Mansaray, Freetown, Sierra Leone, 20 May 2009.

<sup>12</sup> Global Witness interview with the Director of Mines, Usman Kamara, 25 May 2009

<sup>13</sup> Global Witness wrote to CIC Mining Resources Ltd, SL Minerals and CIC China Iron Ore Group Ltd on the 12 February 2010. They replied on 15 February 2010.

<sup>14</sup> Target Resources plc, "Grant of new Exclusive Prospecting Licences," 14 January 2008. [http://www.target-resources.co.uk/reports\\_pres/archive\\_2008/announce\\_140108.pdf](http://www.target-resources.co.uk/reports_pres/archive_2008/announce_140108.pdf).

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- <sup>15</sup> Target Resources plc, "Operations Update," 11 March 2009.  
[http://www.targetresources.co.uk/reports\\_pres/archive\\_2009/ann\\_110309.pdf](http://www.targetresources.co.uk/reports_pres/archive_2009/ann_110309.pdf).
- <sup>16</sup> Letter from Milestone Trading to Global Witness on the 15 February 2010 on the Gola Forest Reserve, Sierra Leone.
- <sup>17</sup> Stellar Diamonds Ltd letter to Global Witness on 19 February 2010.
- <sup>18</sup> Global Witness Interview with NGO coalition in Freetown, Sierra Leone, 9 May 2009, and Gola Forest Programme staff, Kenema, Sierra Leone, 12 May 2009.
- <sup>19</sup> Global Witness interview with numerous NGO representatives, Freetown and Kenema, Sierra Leone, 8, 13 May 2009.
- <sup>20</sup> Global Witness interview with leading member of the conservation movement in Sierra Leone, Freetown, Sierra Leone, 8 May 2009.
- <sup>21</sup> Global Witness letters to Milestone Trading, CIC Mining Resources Limited, and Stellar Diamonds Ltd, sent on 12 February 2010.
- <sup>22</sup> Stellar Diamonds Ltd letter to Global Witness on 19 February 2010.
- <sup>23</sup> Letter from Milestone Trading to Global Witness on 15 February 2010 on the Gola Forest Reserve, Sierra Leone.
- <sup>24</sup> Letter from Milestone Trading to Global Witness on 15 February 2010 on the Gola Forest Reserve, Sierra Leone.
- <sup>25</sup> Global Witness interview with donor, 8 May 2009 and NGO member, Freetown, Sierra Leone, 8 May 2009.
- <sup>26</sup> President Ernest Bai Koroma at the launch of the Transboundary Project 15 May 2009, at which Global Witness was present.
- <sup>27</sup> Global Witness interview with NGO representatives, Freetown and Kenema Sierra Leone, 12, 13 May 2009.
- <sup>28</sup> Global Witness interview with Paramount Chief and Town Chief in Kenema district, Sierra Leone, 15 May 2009.
- <sup>29</sup> Global Witness interview with NGO representatives in Kenema, Sierra Leone, 13 May 2009.
- <sup>30</sup> Global Witness interview with NGO representatives and coalition, Kenema, Sierra Leone, 13 May 2009.
- <sup>31</sup> Global Witness interview with the Director of Geological Survey Mohamed B Mansaray, Freetown, Sierra Leone, 20 May 2009.
- <sup>32</sup> Global Witness interview with the Minister of Agriculture, Sam Sesay, Freetown, Sierra Leone, 21 May 2009.
- <sup>33</sup> Section 3(a) and (b) of the Forestry Act of 1988.
- <sup>34</sup> Paraphrases section 9 of the 1988 Forestry Act.
- <sup>35</sup> Global Witness interview with natural resource consultant for the USAID funded project, Freetown, Sierra Leone, 21 May 2009.
- <sup>36</sup> World Bank, "Sierra Leone Mining Sector Reform: A Strategic and Environmental and Social Assessment," Report No 44655-SL, 10 July 2008, page ix.
- <sup>37</sup> World Bank, "Sierra Leone Mining Sector Reform: A Strategic and Environmental and Social Assessment," Report No 44655-SL, 10 July 2008, page xi.
- <sup>38</sup> World Bank, "Sierra Leone Mining Sector Reform: A Strategic and Environmental and Social Assessment," Report No 44655-SL, 10 July 2008, page xvii.
- <sup>39</sup> Global Witness interview with natural resource consultants for the USAID funded project, Freetown, Sierra Leone, 21 May 2009.
- <sup>40</sup> Stellar Diamonds Ltd letter to Global Witness on 19 February 2010.
- <sup>41</sup> Letter from Milestone Trading to Global Witness on 15 February 2010 on the Gola Forest Reserve, Sierra Leone.
- <sup>42</sup> Global Witness interview with the Permanent Secretary of Mines, Freetown, Director of Geological Survey Mohamed B Mansaray, Sierra Leone, 21 and 20 May 2009 and Global Witness interview with the Director of Mines, Usman Boie Kamara, Freetown, Sierra Leone, 25 May 2009.
- <sup>43</sup> Stellar Diamonds Ltd letter to Global Witness on 19 February 2010.
- <sup>44</sup> Global Witness interview with International consultants, Freetown, Sierra Leone, 19 May 2009.
- <sup>45</sup> World Bank, "Sierra Leone Mining Sector Reform: A Strategic and Environmental and Social Assessment," Report No 44655-SL, 10 July 2008, page ix.
- <sup>46</sup> Government of Sierra Leone, UNDP, "Biodiversity National Report, Strategy and Action Plan", 2003, page vi.
- <sup>47</sup> Government of Sierra Leone, UNDP, "Foreword Solomon E. Berewa Vice President Of The Republic Of Sierra Leone, in Biodiversity Strategic Action Plan - Sierra Leone", 2003.
- <sup>48</sup> EcoSecurities (May 2008) "An Assessment of the Carbon Offset Potential of the Gola Forest Conservation Project" page 46.
- <sup>49</sup> UNDP Human Development Report 2009, page 174.
- <sup>50</sup> UNDP Human Development Report 2009, page 150.
- <sup>51</sup> World Bank "Sierra Leone at a glance", figures from 2007.