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Division of Responsibilities

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- 1.0 - 2.0 - 2.1 - 3.0 - 3.3 - 3.5 - 3.5.1 - 3.5.2 - 4.0 - 4.2 - 4.2.4 - 4.3 - 5.0 - 5.4 - 5.5 - 5.6 - 6.0 - 6.3 - 7.0 - 7.1.4 - 7.2.4 - 7.3.3 - 7.4.4 - 8.0 - 8.4 - 9.0 - 9.1 - 9.2 - Appendixes 1-14.

Abstract

Sierra Leone struck off-shore oil in 2009 and have a strikingly bad history of managing extractive sectors. This thesis will address issues of institutional capacities: Institutional capacities will be defined as; capacities in terms of negotiating, strength of the legislative framework, fiscal regime and design features surrounding and included in the oil contracts, capacities in terms of monitoring international oil company activity, willingness to ensure transparency in the whole process and an attempt to analyse decisions made regarding how to spend, or save, expected revenues. The main findings are that, while the legislative framework is more or less sound, political will to change past mistakes is lacking.

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List of Abbreviations

AA	Appropriation Act
AJME	Association of Journalists on Mining and Extractives
APC	All People's Congress
BAN	Budget Advocacy Network
CCM	Cooperative Contract Mining initiative
EITI	Extractive Industries Transparency Initiative
FA	the Finance Act
FDI	Foreign Direct Investments
FOB	Free On Board
CPI	Corruption Perceptions Index
CSM	Civil Society Movement
CSO	Central Selling Organization
DAC	Development Assistance Committee
DICOR	Diamond Corporation
GDO	Government Diamond Office
GDP	Gross Domestic Product
GoSL	Government of Sierra Leone
HDI	Human Development Index
IMF	International Monetary Fund
IOC	International Oil Company
ITA	the Income Tax Act
Le	Leones (currency of Sierra Leone)
MMA	the Mines and Minerals Act
MMR	Ministry of Mines and Mineral Resources
MoFED	Ministry of Finance and Economic Development
MSSC	Market Specific Social Capital
NACE	National Advocacy Coalition on Extractives
NDMC	National Diamond Mining Corporation
NGO	Non-Governmental Organisation
NIE	New Institutional Economy

NMJD	Network Movement on Justice and Development
NRA	National Revenue Authority of Sierra Leone
OECD	Organisation for Economic Co-operation and Development
PA	the Petroleum (Exploration and Production) Act
PEPA	the Petroleum Exploration and Production Act
PRRT	Petroleum Resources Rent Tax
PRU	Petroleum Resource Unit
PSA	Production-Sharing Agreement
RUF	Revolutionary United Front
SL	Sierra Leone
SPU	Strategic Policy Unit
UN	United Nations
UNDP	United Nations Development Programme
UNSC	United Nations Security Council

1.0 Presentation

Sierra Leone (SL) struck oil in 2009 and the Government of Sierra Leone (GoSL) is currently allocating offshore blocks and collecting license fees (Interview 8, 2012). All signs are indicating that the emerging oil sector will be fully commercialized within a few years.

Historically governments of SL have been strikingly bad at managing natural resources in extractive sectors. From the early 1970's till the outburst of the civil war in 1991, which SL is perhaps most known for, governmental management of extractives (diamonds in particular) was kept on a very centralized level. This fostered a high degree of rent-seeking behaviour which eventually led to institutional deterioration. From 1991 to 2002 management of diamonds was a key factor in the civil war; Sierra Leonean diamonds became conflict resources by financing various rebellious fractions. The war made SL an unfortunate prime example of the ominous sounding phenomenon 'The Resource Curse', where management of a so-called unearned income led to deterioration in regime, social and economic conditions as well as conflict level. When the civil war ended in SL in 2002 the West African country had a multitude of extractive minerals, which could potentially set it on the right financial path. Ten years later SL has again become notorious for striking mining agreements far from viable to the local economy. Besides the well-known deposits of diamonds in the eastern districts of the country, the extractive sectors have at their disposal gold, iron ore, rutile, titanium and bauxite. But the shifting governments of SL have been strikingly bad at not only negotiating contracts but also at collecting taxes. Large multinational mining companies are given tax breaks, contradictory to those tax regulations agreed upon in the Mines and Minerals Act of 2009 (MMA). Some foreign extractive companies state that these terms are the primary reason for their investments in the country (Economist.com). Further the ceding of revenue intended for local development is considered to be doubtful at best (Interview 3, 2012). Despite this very bad record of managing extractive issues things are improving, at least concerning mines and mineral related issues (i.e. interview 1 & 5, 2012).

Keeping this bad record of extractive management in mind, we find it very important to analyse the current state of GoSL when having to manage the emerging oil sector. Therefore this thesis will address issues of institutional capacities: Institutional capacities will be defined as; capacities in terms of negotiating, strength of the legislative framework, fiscal regime and design features surrounding and included in the oil contracts, capacities in terms of monitoring

international oil company (IOC) activity, willingness to ensure transparency in the whole process and an attempt to analyse decisions made regarding how to spend, or save, expected revenues.

The above definition of institutional capacities is offered to us by theory (see section 3.0); however it is also important to keep the historical context in mind. This is why we add 'institutional set-up' to the definition, in order to determine the degree of centralization in the decision-making process of the emerging oil sector. As described, centralization of political power in other extractive sectors was a key factor in the multitude of deteriorations SL experienced from the early 1970'es to the end of the civil war. This makes it naturally important to investigate this issue.

Another factor underlining the importance of our intended analysis is that the combined mining sectors of SL, which are vital to the country's economy, in 2007, generated annual state revenues of 10.5 million dollars translating to 0.6 pct. of the total GDP (Economist.com). This number might be immense but it is much lower than conservative estimates made on the forthcoming revenues from the oil sector. Local Civil Society Movement (CSM), Association of Journalists on Mining and Extractives (AJME), estimate that tax revenues deriving from the future oil sector will be approximately 100 million dollars annually. AJME has arrived at this estimate by conducting field studies in neighbouring countries, who also have struck oil recently (Interview 9, 2012). GoSL has made no similar estimates, or estimates at all as to possible oil revenue income.

So, earlier experiences with extractives in SL give cause for worrying but also optimism; the question is whether the hard learned experiences will help the government of SL avoid familiar pitfalls. Therefore, the aim of this thesis will be to analyse current political institutions, legislation and initiatives towards negotiating contracts and collecting and managing revenues.

2.0 Research Question

How can the institutional capacities of the Sierra Leonean State, with regards to the emerging oil sector, best be described? And how does the institutional set-up compare to earlier centralistic set-ups surrounding the country's older extractive sectors in general and the diamond sector in particular?

2.1 Working questions

We are going to pursue the answering of the above research question by first answering the below listed working questions. Each question are closely related to a linear time-dimension, meaning the first question will address the issue of capacities in terms of negotiating with an IOC, which ought to be the first phase when managing an oil sector – and the last question addresses the issue of how the revenues should be spend, hence the last phase of governmental management of the sector. The analysis will be structured in coherence with these working questions:

1. What characterizes the Sierra Leonean governmental capacities in terms of negotiating contracts and which initiatives are taken in order to establish or improve such capacities?
2. What characterizes the legislative framework including fiscal regimes surrounding the sector – and which design features are included in the contracts?
3. Which initiatives are taken to ensure transparency in the whole process ranging from the making of contracts, legislative framework and generated income?
4. Which decisions, if any, have been made on how to spend or save the forthcoming revenues and which measures have been taken to ensure public awareness and inclusion on these issues?

The fifth and final working question differs a bit from the above; the above phases, which we have translated into questions, are offered to us from theory. The last question will follow a more empirical path: As explained we wish to analyse and compare earlier institutional set-ups in Sierra Leone to the set-up currently surrounding the emerging oil sector.

5. How does the current institutional setup surrounding management of the oil sector compare to earlier Sierra Leonean experiences with management of extractives in general and diamonds in particular, in terms of centralization?

The analysis will be structured in two parts in accordance with the above presentation of working questions – and thereby also follow the natural bipartition of the overall research question.

3.0 Methodological Considerations

In the following we are going to present our methodological concerns. This serves a dual-purpose; to make the reader better equipped for judging our research and to make ourselves better aware of implied strengths and weaknesses of choices made.

Carrying out this thesis we have chosen to conduct field studies in Sierra Leone (SL); here we have interviewed a broad selection of key stake holders ranging from Civil Society Movements (CSMs), Governmental bodies and a single consultancy agency working closely with the Government of Sierra Leone (GoSL). In doing this we have adapted a deductive approach using theory-guided and semi-structured interview guides, individually adapted to each respondent¹. The deductive approach simply means that our interview-guides have been made, drawing from hypotheses and ideas inferred from theory (Bryman 2004, p. 538).

Having semi-structured interviews as one's primary applied methodological tool obviously means that we are working qualitatively. This is coherent with the overall purpose of this thesis which is not to achieve a quantitative and universal understanding of the relationship between governments and oil companies. On the contrary our overall aim is trying to understand how GoSL is equipped for managing an emerging oil sector and how SL utilizes previous experiences with extractive companies.

3.1 Structural Build-up of the Thesis

Below is an illustration of our thesis. As shown the analysis will be divided into two parts; one major part which is deductively guided by theory and one smaller part where we follow an empirical and historical path in order to compare previous and current institutional set-ups. In the major part the interview guides and subsequently the analysis were structured with reference to 5 theoretical phases that Paul Collier (2007) has created, and which are very useful when wanting to structure other theoretical inputs surrounding the phenomena 'The Resource Curse'. In the latter and smaller part the interview guides and subsequently the analysis were structured in accordance with issues raised in the historical context section 'Lessons Learned' (section 5.0).

¹ Relevance of questions should match the respondent's position and given knowledge

Introduction

Research Question

Part 1: How can the institutional capacities of the Sierra Leonean State, with regards to the emerging oil sector, best be described?

Part 2: And how does the institutional set-up compare to earlier centralistic set-ups surrounding the country's older extractive sectors in general and the diamond sector in particular?

Theoretical Framework

Ontological approach: **New Institutional Economics**

Interview-structuring: **Resource Curse Theory thematically adapted to Collier's (2007) 5 phases**

Empirical Data

'Lessons Learned'

'Current Situation'

Interview-results: Interview-guides were structured mainly in coherence to Resource Curse Theory and partly to the sub-section 'Lessons Learned'

Analysis Part 1

Thematically the analysis will be structured accordingly to the 5 phases. The interview notes (and knowledge from subsection 'Current situation') will be analyzed and compared to theory within these 5 phases.

Analysis Part 2

The track followed here will be themes raised in sub-section 'Lessons Learned' which have guided some of the interview questions.

Conclusion

3.2 Applied Method – Semi-structured Interviews

When conducting qualitative research interviews, the overall aim for the interviewer is to gather qualitative descriptions of the respondent's self-obtained world-perceptions for later interpretation (Kvale 1997, 129). Using semi-structured interview-guides to achieve this, means that one must have a series of themes and questions that ought to be covered during the interview, while maintaining manoeuvrability to pursue deviant stories (Ibid. p. 129, 133). The latter is important as it will provide us with knowledge not given to us by theory or own thought, the former is important to keep the research thematically stringent. It is a balance act between thematic knowledge contributions and dynamic.

This balance act can be fairly difficult and it all depends on designing the right questions. The right question should, as mentioned, contribute thematically to the production of knowledge but also possess room for impulsiveness in order to stimulate the interview-interaction (Ibid. p. 134). Keeping a stringent thematic approach is especially important in our case, as we will later structure the analysis accordingly (Ibid.)

Analysis Part 1: Will be structured according to five theoretical phases raised by Collier (2007). This means that we have translated theoretical issues and concerns raised under each phase to one overall working-question, and deepened this question by formulating various relating questions outlining the interview-guides. Finally the analysis will be structured and answers categorized in accordance to these five phases; this seems only natural as the phases also make out a linear time-dimension ranging from negotiating contracts to spending the revenues. We have also used other theoretical inputs on 'Resource Curse Theory' besides Collier, but have structured these according to his five phases. These phases are:

- Negotiating Contracts
- Design of Contracts
- Transparency in Revenues
- Aggregate Savings
- Public Investments

We have translated the two last phases into one single working question and therefore this will also only outline one independent sub-section in the analysis, so part one of the analysis consists of four working questions.

Under each of these phases Collier and others, mainly Humprey, Stiglitz & Sachs (eds. 2007)² have pointed out possible issues to be aware of. We have designed our questions accordingly.

Analysis Part 2: Will be structured according to the empirical based section 5.0. Meaning the overall working question and various questions outlining the interview-guides were formulated with reference to issues we found problematic in the historical context section: We have identified one major problem with previous dealings with extractives in SL, which have helped us design the last working question. The issue is

- Centralization in the decision-making process.

The analytical method is hereby connected with categorizing answers, which is why we already during the interviews continuously sought to clarify the meaning of any given answer in relation to these phases.

Moreover, also having room for impulsiveness of course complicates the above described process. However in the actual process this was not a problem we encountered. According to Kvale (1997) ensuring dynamic in a research-interview is often a matter of using none-academic phrases and an easily accessible language. Nevertheless this was no problem for us, as the stakeholders we interviewed are to be considered as knowledgeable in their respective fields.

Finally there is the consideration of making your respondents feel secure enough to actually wanting to share knowledge. A research interview is a special form of interaction; it is neither an anonymous questionnaire nor an emotional therapeutic interview. Therefore it is our task to create the most optimal situation, where the respondent feels free to reply in the exact way he or she wishes to, all the while keeping ethical questions on anonymity in mind (Ibid. p. 130). In the following we are going to present our respondents and later explain how we balanced the above considerations during the actual process.

3.3 Respondents

In our case a good research design will aim at avoiding having to examine only some of the constituent elements. Instead we will aim at building up a picture of the situation by taking into

² 'Escaping the Resource Curse'

account information gained from various levels (de Vaus 2001, p. 221). Instead of viewing the emerging oil sector and its challenges as a holistic unity, we instead aim at gaining knowledge from a wide range of embedded units / respondents (Ibid. p. 220). We have achieved this however with some exceptions. We have achieved a fairly good balance of interviews with CSMs and governmental bodies respectively, which additionally is also a good departure for being source critical. However we have not been able to obtain replies from all respondents desired:

- Local branch of the World Bank (WB) and the International Monetary Fund (IMF); would not talk to us as we were merely students, and their time was therefore better spent elsewhere.
- Oil exploring company³: Somewhat same reasoning as above plus they estimated not to gain anything from the interview.
- National Revenue Authority of Sierra Leone (NRA): This was supposed to be a key respondent in our gathering of knowledge, as they will be charged with the responsibilities of collecting revenues and income taxes, as soon as the exploration phase is over⁴. We would have like to question them on issues such as capacity of staff etc. They would not meet physically for the interview but promised us an e-mail interview; however they are still to respond regardless of countless attempts at making them do so. We have sought to compensate by asking their governmental colleagues, how they view the capacities of NRA.

The table below contains a list of our respondents. Designations have been changed if these were to easily identifiable, as we have promised all of our respondents full anonymity⁵. Besides the already mentioned types of respondents we were lucky enough to interview an international consultancy agency working with the Ministry of Mines and Mineral Resources (MMR). This consultancy agency wished to remain totally anonymous, so not even the agency's name should be mentioned.

³ Company requested to be anonymous.

⁴ Currently The Petroleum Directorate collects the license-fees.

⁵ Supervisor and examiner will, as the only two, receive a complete list of respondents with correct designations.

Table 3.1 List of Respondents

Civil Society Movements	Designation of Respondent
Budget Advocacy Network (BAN)	Coordinator
Association of Journalists on Mining and Extractives (AJME)	High ranking staff-member
National Advocacy Coalition on Extractives (NACE)	Coordinator
Network Movement for Justice and Development (NMJD)	Staff-member
Governmental Bodies	Designation of Respondent
Ministry of Mines & Mineral Resources (MMR)	High ranking official
Cadastra Office / MMR	Staff-member
Ministry of Finance and Economic Development (MoFED)	Economist
The Petroleum Directorate	High Ranking official
National Revenue Authority (still awaiting e-mail correspondence)	High ranking official
Consultancy Agencies	Designation of Respondent
Anonymous Consultancy Agency /MMR	Senior Manager

3.4 Actual process

In the following we are going to present consideration and obstacles encountered during the actual process of conducting interviews.

3.4.1 Choice of Respondents

Primarily we chose to target national stake-holders when searching for respondents. We did so for several reasons. One being that a fair share of our theoretical framework emphasizes the importance of involving and cooperating with the national civil society. Choosing to interview local CSMs therefore seemed natural, as these must both represent local civil competences and possess knowledge on local conditions. The choice of interviewing governmental bodies within SL is even more natural, as it is primarily their capacities we are trying to investigate.

In the actual process, we started our search for respondents at the Freetown branch of the development NGO IBIS. IBIS is a Danish NGO, whose local branch in SL works on extractives and tax measurements. One of us already possessed a network within this NGO due to former

employment, and it was therefore natural to tap into their external network, which contained stake-holders at various levels. From IBIS we started a snowball-effect, meaning that we contacted the possible respondents from their network, talked to them, set up an interview and asked them if they could think of anyone else we needed to talk to. In this process IBIS was indispensable, as it was nearly impossible to gain access to these stake-holders before arriving in SL, due to insufficient mail correspondence and bad technological infrastructure in general.

3.4.2 Designing Interview-Guides – Balancing Dynamic Interaction and Thematic Knowledge Contribution

We designed our interview-guides so regardless of how the interview went, we would end up covering the most essential themes from ‘The Resource Curse Theory’. In advance we had categorized and structured this theory in accordance to the five phases described by Paul Collier (2007). We adapted the interview-guides so they fitted the respondent we were going to talk to. Sometimes we changed questions and sometimes we just changed the structure of the questions, so that we started by covering the themes the given respondent was most likely to possess knowledge about. All interview-guides can be found in the appendixes (1-10).

An example could be this; almost all theoretical input categorized under the first phase ‘Negotiating Contracts’ emphasizes the issue of asymmetrical knowledge. Therefore we designed questions like:

- Does the Government generally seek to employ experts in extractive negotiations? If so, who are these experts?
- To your knowledge, how does the Government plan to address issues of asymmetrical knowledge?

Adapted to different respondents; the first question was aimed at Governmental bodies, specifically The Petroleum Directorate. The latter was aimed at external actors.

Another example could be this; theoretical inputs categorized under phase four and five ‘Aggregate Savings’ and ‘Public investments’ discuss rights and wrongs when it comes to spending and / or saving revenues. This led us to designing questions similar to:

- To your knowledge, have there been any talks of how to spend the revenue accrued from oil?

Although most of our questions were theory-guided, we also choose to follow an empirical founded path, namely the one of centralization in the decision-making process. While writing section 5.0 we had identified this as a major contextual Sierra Leonean problem, when previously handling extractives. This led to ask questions similar to:

- Who is involved in decision-making process regarding plot-distribution, contract negotiating etc.?

All of the above examples only clarify how we managed to ensure that our respondents thematically contributed to our knowledge. It does not, however, show that we also took precautions ensuring that our respondents could provide us with new and important knowledge. The first thing we did was to make the respondents feel secure by first giving them an introduction-letter explaining who we were, the purpose of the interview, contact details and a promise for them to remain anonymous. Enclosed was also a letter from our supervising professor ensuring the same. Both letters can be found in the appendix 11. We then started the interview asking whether or not we could record it and explained that we could always turn off the dictaphone if they wanted us to. This was a tool we often had to use, if permission was given to record the interview. Additionally we started each interview with open questions, similar to:

- What do you see as the main challenges when negotiating contracts and securing revenues from the extractive companies?

This approach actually gave some results we otherwise would not have encountered. As an example we learned that there has been absolutely no knowledge sharing between the officials experienced in dealing with mineral extractive companies and the officials dealing with the new oil exploring companies.

Sometimes the interviews would go down a wrong path, meaning that they took a turn best described as useless to us. This was where we benefitted from being two interviewers as one could engage himself in the actual interaction, the other could take notes and categorize, meanwhile maintaining the overview necessary for politely interrupting and getting the interview back on the right path.

3.4.3 Use of Theory

By now it should be clear that we use ‘Resource Curse Theory’ both for structuring interview-guides, categorizing answers and thereby structuring Part One of the analysis. However we also use ‘New Institutional Economics’ (NIE) in our theoretical framework. NIE we apply as our ontological framework. Ontology refers to our understanding of reality⁶. We have chosen to operate within the field of NIE as this approach, in contrary to a Neoclassical approach, for instance recognizes that a market is not a natural given thing, but a socially created phenomena created by social actors. NIE operates with the concept of ‘market specific social capital’. This concept takes into account individuals and their networks, as they simultaneously act within and construct markets. Market specific social capital therefore becomes a concept that can be analytically operationalized, and a concept of real market value to a firm or institution. Additionally we will use the framework of NIE in the analysis, wherever it serves the purpose of deepening our knowledge; NIE contributes with a lot of applicable theory when it comes to dealing with the concept of asymmetrical knowledge.

3.4.4 Processing Interview-Data

Research interviews should be audio-recorded and transcribed whenever possible (Bryman 2004, p. 329). The interviewer is as much interested in how things are being said, as what respondents are saying. This is why one should audio-record whenever possible, as it makes it easier to focus on body-language, attitude etc. if not having to take notes (Ibid, p. 330). We have recorded interviews whenever we received permission to. Unfortunately, due to a limited time-frame, we have chosen only to fully transcribe one interview just to exemplify one of our interviews as they typically went. Compensating we have transcribed all notes, after going through them together as

⁶ A more thorough definition would be: The study of being, addressing the question of what is there; what are the essentials features of an object (Ravenhill 2011, p. 486)

note-taker and interviewer, comparing and correcting them according to audio-recording where possible. In the appendixes there are; one fully transcribed interview (13), all transcribed notes (1-10) and digital recordings of all recorded interviews.

3.5 Source Criticism

Applying a source critical approach to one's data is of course important in any research project, but when working qualitatively it is essential (Bryman 2004, p. 544). Working source critically is not as much an actual discipline as it is a skill or craftsmanship, one has to practice and acquire constantly. In the following we will present some of the issues relating to source criticism that we were aware of while conducting the actual field studies and / or will be aware of throughout the thesis.

3.5.1 The Relationship between Civil Society Movements and Governmental Bodies

When encountering conflicting statements one always has to consider the interests involved by the stakeholders who are being questioned. One major part of our theoretical framework deals with the issues of transparency in general and the inclusion of civil society in particular; therefore this was one of the issues we raised continuously throughout our interviews. When doing so we nearly always encountered two conflicting statements; the governmental bodies coherently and consistently claimed that they worked in a very transparent manner and always aimed at publishing as much data as possible. Additionally the Petroleum Directorate claimed that the lack of cooperation between civil society and GoSL, which was undeniable, was due to a lack of interest from the CSMs towards cooperation (Interview 8, 2012). Contrary the CSMs coherently claimed that they were often formally listened to by GoSL but never really taken seriously. Additionally they claimed that everything, especially surrounding the emerging oil sector, was sworn in secrecy (i.e. Interview 7, 9 & 10).

Due to our preparations we already knew that cooperation between the two parts was nearly none-existing; a source critical approach might help us determine why that is. First we need to establish the interests of the CSMs. According to Collier (2008) most NGOs in the field of development, 'like things the way they are' as any improvements would decrease their *raison d'être* (Collier 2008, p. 4); this reasoning could possibly explain why the CSMs say as they do. This is because most of the CSMs we interviewed worked with the overall aim of increasing

transparency within SL's extractive industries and more inclusion of the civil society by GoSL. This means that they have an interest in keeping things the way they are and simultaneously blaming GoSL, making a statement we met at the Petroleum Directorate possible: 'The lack of cooperation is the CSMs own fault as they have never asked the Government anything. Additionally they make their own research which is very questionable and does nothing good for public revenue expectations. CSMs make the public believe that we are the new United Arab Emirates, which we are clearly not' (Interview 8, 2012)

The official at the Petroleum Directorate was specifically referring to a report done by the AJME⁷. We have read this specific report and agree that the quality of the research conducted is somewhat questionable. However on the question of cooperation and transparency we tend to agree with the CSMs. The governmental bodies of course have an interest in making it seem as if they are not to blame for the lack of cooperation, especially towards us, the interviewers, as the interaction between interviewer and respondent is never an equal equation: There will always be a clear defined power-asymmetry, as it is us that defines the situation and topics to be addressed (Kvale 1997, p. 137). In this case the addressed issue of cooperation is one where the governmental bodies probably are aware of the strong academic advocacy towards inclusion and cooperation. This means that they have no interest in bringing up a potential lack of will towards cooperating with CSMs.

The reasons why we think the lack of will in cooperating mainly derives from the governmental bodies are; i) the CSMs all coherently claim so ii) we ourselves know how difficult it is to gain access to data on contracts, income taxes, revenues collected etc. even on areas where GoSL claims to have published these kinds of data, it is almost impossible to locate, which brings us to the next point: Lastly we tend to believe that GoSL does have a major problem concerning transparency. They have not managed to become a fully compliant member of the Extractive Industries Transparency Initiative (EITI)⁸. Although they themselves claim that this is solely due to administrative procedures of the EITI, the anonymous consultancy agency working with GoSL on exactly this issue claims otherwise; that the fault is GoSL's own. Additionally on transparency, the emerging oil sector does in fact seem to be sworn in secrecy: The Petroleum

⁷Sierra Leone's Oil Potential and Related Governance Issues, Association of Journalists on Mining and Extractives, AJME, 2001.

⁸ The EITI is an initiative announced by former British Prime Minister Tony Blair, seeking to enhance transparency in revenues. Includes 12 compliant countries and 23 candidate countries, Sierra Leone belonging to the latter category.

Directorate which manages everything from negotiating to licensing and monitoring seemed to be so well hidden that none of CSMs or governmental colleagues knew exactly to whom it responded or even where it was located⁹. This well hidden governmental body additionally expressed wishes of further centralization, as they wished to also collect the tax revenues when relevant, thereby easing the NRA from this task (Interview 8, 2012).

3.5.2 Preparations Are Essential When Wishing to Ensure Source Criticism

All of the interviews we conducted in SL contributed with useful knowledge we would otherwise not have gained access to. The idea of applying semi-structured interview guides worked as intended, as we sometimes discovered new themes and issues not given to us in advance by theory or our own knowledge. However to make sure the interviews were somewhat stringent in contributing thematically to our search for useful knowledge, we made sure to gain as much knowledge before departure as possible; this is why section 5.0 and major parts of the section 6.0 were written before we left for SL¹⁰. But these preparations also served a source critical purpose, as it made us capable of interpreting statements contextually as we received them.

Another effort to ensure source critical capabilities was scheduling interviews, so we more or less started by interviewing the CSMs (external actors) and ended the field studies by interviewing the governmental bodies (internal actors). We did so because we are trying to investigate the capacity of the governmental bodies and therefore needed as much contextual knowledge about them, before actually interviewing them. We additionally planned it so the Petroleum Directorate would be our last interview, as this was naturally the most important interview for us. This meant that we did not only know how the CSMs saw the directorate, we also possessed useful knowledge from internal actors, e.g. about the fiscal regimes surrounding the contracting possibilities¹¹.

⁹ It is based directly under the Presidency and only the Director in General and the President is authorized to decide on bidding rounds etc.

¹⁰ The latter was only partly done before departure as we needed some legislative documents that could only be obtained in physical form in Sierra Leone

¹¹ From the interview conducted at The Ministry of Finance & Economic Development

4.0 Extractive Economic Theory

Following chapter will review the relevant economic theories surrounding extractive industries and resource rich countries. This theoretical review will, in Section 7.0, be linked with the current situation of Sierra Leone (SL), in an attempt to get an idea of the challenges facing the country, as well as the advantages to be gained through the extractives sectors in general and the oil sector in particular. The chapter will focus on the areas of Resource Curse and New Institutional Economics (NIE). Resource Curse will dive into contributing factors such as capacities regarding negotiation of contracts and procurement of revenues. The two theories together will, to a large extent, offer explanations to the fact that resource rich countries, in general, experience less economic growth than their resource poor counterparts. NIE, besides serving as our ontological framework, stresses the importance of institutional equilibrium, while allowing us to delve further into the roles of the state, market and firms.

4.1 New Institutional Economics

Following review of NIE sets a coherent framework for analysing and understanding situations like the one SL is currently facing. NIE will be a part of our theoretical, as well as our ontological, point of departure.

It is important to acknowledge that within NIE, institutions are not physical entities like a government body, civil society movement (CSM) or court of law, but rather the formal and informal rules, laws and norms surrounding economic activity. These rules, laws and norms can arise through a legislative process usually requiring enforcement by a third party acting in accordance with said rules or laws, or through an informal process by a group of people acting out of self-interest and enforcing their rules themselves.

Enforcement in and of itself, however, is not a given; whether it is the enforcement of a set of rules or laws, or of contractual commitments, enforcement can present significant transaction costs. Within the frames of NIE, one could argue that having contract laws would ensure the institutional framework of enforcing said commitments and laws. Lately, however, attention has been paid to the efficiency of these laws, and it is noticeable that even economies with well-functioning contract laws face challenges in terms of time and reliance in these laws. Furthermore, laws introduced into a community has to be rooted in that community, or at least be

somewhat familiar in it, and be structured in such a way as to give the population incentives to use and demand of the laws, otherwise they will not be effective (Hadfield 2005, p. 175-7).

When talking about contractual commitments these can have a number of reasons, which can basically be categorised in; i) those not directly related to intentional breaks of commitment, such as lack of information, lack of resources to meet one's commitments, disagreements as to the commitment and so on, and ii) commitments are misaligned with one party's incentives, meaning that the commitments does not align with one party's best interests (Ibid. p. 178).

However, organisations and their interactions with and within these norms and rules are not left completely out of the picture, as especially rules need something or someone to enforce them (Furubotn & Richter 2008, p. 7-8). NIE defines organisations as institutions consisting of the people operating within them, meaning that organisations can be anything from bureaucratic entities such as government bodies to local community councils or the like (Ibid. p. 10). If it is difficult to enforce rules, the institutional surroundings will be classified as weak (Nielsen 2005, p. 106-7). As Furubotn & Richter (2008) states: "*an institution will be defined as a set of formal and informal rules, including their enforcement arrangements [...]The purpose of an institution is, of course, to steer individual behavior in a particular direction*" (p. 7).

It is recognised that organisations are made up of individuals and as such, cannot be considered to behave or act as one unified entity. The actions of an organisation, however, can be explained through "*the individual members whose actions give rise to the phenomena being studied*" (Ibid.). This opens a wide discussion of corruption as bribes often clash with the interest of the organisation, or the general public if the organisation is part of the public administration, thus raising serious questions as to the institutional framework surrounding the transaction.

NIE becomes further interesting when looking at how it treats the idea of rational choice. The theory agrees, to some extent, with the neo-classical idea but discards the notion of a fully rational choice. Instead it talks about bounded rationality, meaning that a choice will be made before full information has been obtained: Full information is next to impossible to obtain and NIE therefore refers to a satisfactory solution, as opposed to an optimal solution. Solutions and decisions will be based not on knowledge, but on assumptions (Nielsen 2005, p. 104-5). The distinction is made by Furubotn & Richter (2008) where it is observed that an individual will

make a rational decision to the extent possible. The related costs of obtaining full rationality is simply too high and “*while people can be seen as intendenly rational, they are not ‘hyperrational’*” (p. 4).

In extension to the above, the theory of NIE also takes into account the asymmetry of knowledge that is coherently vital to the theoretical framework of the ‘Resource Curse’. It is assumed that the actors of a transaction will behave opportunistically when possessing more information than their counterpart (Nielsen 2005, p. 104).

When performing a transaction, NIE takes into account that there are costs connected with said transaction¹². Before, during and after a transaction, costs surrounding information gathering, negotiation and decision-making, control and sanctioning as well as surrounding the establishment of societal institutions will arise (Ibid. p. 106). Put differently, a government in the process of negotiating a resource extraction contract will incur more costs than the salary of the negotiators. The value of the resource is a piece of information that will put the negotiator in a better bargaining position, and therefore the gathering of this information becomes a cost. Bringing us to the actual negotiation, this can be a small or big cost depending on how long it takes and of course on the outcome. After the negotiation or transaction, is complete the government will need to make sure that whatever agreement has been reached will actually be followed. This means making sure that capacities are in place for monitoring the agreement. In the case that it is not followed, the government will have to impose sanctions. All of these are costs for the government, but costs that will not necessarily show in the agreements or even be considered when negotiating.

The three major components in NIE are state, market and firms, all falling under the definition of organisations, meaning that they are made up of people acting within institutions.

4.1.1 The Market

According to a NIE framework, classic microeconomic textbooks only deal with the determination of market prices, but the discussion of the market itself is almost none-existing (Furubotn & Richter 2008, p. 313). Only during the last thirty years or so, issues such as

¹² Opposed to other economic theories where transactions are considered to be cost-free.

information constraints and other transaction costs have been added to the agenda of market imperfections, meaning that finding and organizing a solution to market imperfections is now advisable (Ibid).

The framework of NIE views the market as a constructed social arrangement to facilitate repeated transactions amongst a plurality of actors, as opposed to classical theory where the market exists to ensure occasional exchange between individuals, but as a structure uninfluenced by the latter (Ibid. p. 314). In the constructed market the market actors are also the market creators (Ibid. p. 315). The individuals that use and organize the market interact within a structure of incomplete information and bounded rationality; their actions are coordinated by a series of contracts, implicitly or explicitly agreed upon, based on written or unwritten contracts rather than superior instructions (Ibid. p. 314-16). The common goal of the actors is to lower transaction costs and in this sense it can even be helpful that actors know each other and their respective contacts, as it can possibly result in positive externalities if these networks commonly agree to lower transaction costs¹³. The social networks come to, not only maintaining customer relations, but also legitimise order or govern the structure that controls the transactions. This is why the actors' inter-social relations and governance structure make up their 'market specific social capital' (MSSC). MSSC determines the costs of setting up, maintaining and changing an organization (i.e. the market), and is therefore of real economic value to the actors. This comes with a possible array of negative externalities as investments in one's MSSC tend to lock market actors into a status quo and may promote posterior opportunistic behaviour in its various forms. This happens both in bilateral as well as multilateral networks (Ibid. p. 316). Imagine one actor investing in its social capital by hiring a contract-negotiator formerly employed by the dominant counterpart. This would strengthen the already existing situation between the two, thereby interlocking the market situation and further may promote nepotistic behaviour due to already existing preferences and networks. Another example could be a multinational cooperation using its affiliated companies to strengthen demand and thereby heighten or maintaining prize level on its primary product.

¹³ This is opposite to the classical perception of the market first framed by Adam Smith; that meeting and trading between individuals ought not to be facilitated (Furubotn & Richter 2008, p. 314)

4.1.2 The Firm

NIE also challenges the neoclassical perception of the enterprise model: The neoclassical perception has been challenged from many different perspectives the last couple of decades, and although no consensus exists when describing the (new) enterprise model (or firm) all of these draw from agreements raised by NIE. All criticism seem to agree that the neoclassical perception is too lax in describing the firm and seems to neglect mainly two factors; i) a time dimension and ii) organizational structure including the role of information as a transaction cost (Ibid. p. 361ff.). The orthodox neoclassical perception of the capitalist managed enterprise is very one-dimensional: Its sole objective is profiting and its sole problem is profit maximization (Ibid. p. 361). This draws from a simple equation where transaction costs are zero and decisions are made by unbounded rational individuals. The equation is also static in the sense that everything happens at once, meaning no time elapses from entering to fulfilling a contract. Contractual constraints therefore become irrelevant, technical constraints still matter but these are fully known by the owner-entrepreneur (Ibid. p. 362). According to NIE this model is disappointing in many ways; Furubotn & Richter (2008) rhetorically raise the question; how much scope exists for entrepreneurship if transactions are costless, there exist unbounded rationality and each decision maker is able to get all desired and necessary knowledge? (p. 363). Hence the role of information has to be re-assessed.

Institutional settings are, as mentioned, also neglected and needs to be re-assessed. Valid and comprehensive studies have coherently managed to show that institutional structure is vital for the understanding of a firm, as it affects both the incentives offered to input suppliers (flow of productive services to the firm) as well as the productive output of the firm, hence organizational and institutional structure is a variable of explanatory power (Ibid. p. 364).

Combining the factors of time and transaction costs the neoclassical perception becomes further problematic. Within this, production is not seen as continuous and questions of finance and investments are therefore avoided, as the entrepreneur can always rent a piece of capital equipment for the on-going market price (Ibid.). The neoclassical perception does not recognize the existence of uncertainty and the entrepreneur's corresponding need to foresee economic conditions. This is however recognized within the NIE framework and therefore the firm's decision-making process becomes a subject for analysis (Ibid. p. 365). Realising that institutional structure cannot be ignored, one could easily imagine hired managers of dispersed-ownership

cooperation to pursue other goals than profits, misrepresent accounts to stockholders and trade of potential profits for none-pecuniary and other benefits they can appropriate at the expense of the stockholders (ibid.). One also has to realise that social relations matter, whether these are external 'formal' contracts between its owners and the owners of the firm's resources, or internal 'informal' agreements between the firm's various actors (Ibid. p. 367).

4.1.3 The State

For the state "*a major common goal in a private ownership economy is to supply a certain level of public goods and to raise enough taxes for this purpose*" (Ibid. p. 296). Unlike the market and the firm, the goal is not to optimise profits for the individuals within the organisation. However as we have touched upon earlier, it is assumed that said individuals will act out of self-interest, so the challenge becomes aligning self-interest of the individuals of the state with that of its constituents. Constituents, being the citizens of a territory, theoretically possess supreme authority over said territory. Therefore the state becomes intermediaries for the constituents and should, theoretically, act in the best interest of the latter. But as mentioned earlier, the asymmetric knowledge puts the constituents at a disadvantage and the general limited knowledge of any individual of the state further gives rise to credibility issues (Ibid. p. 477).

Although the state is set apart from the market and the firm in the perspectives of trade and profit, the state's interaction with its constituents can be classified as trade. In exchange for revenue the state offers protection and justice in turn cementing its own position. Constituents who are unhappy with the state face the choices of either emigrating or overturning the current state administrators, both of which are connected with certain transaction costs (Ibid. p. 473). In the case of developing countries, the services provided by the state can be expanded to cover development and heightened living standards in exchange for higher tax rates.

4.2 The Resource Curse

The rather ominous sounding phenomenon, the Resource Curse, stems from the fact that many developing countries rich in minerals have a worse financial history than developing countries without minerals and in fact "*researchers have found that, as a group, resource-rich developing*

countries have performed worse, economically, than resource-poor developing countries over the past 30 years” (Lange & Wright 2002, p. 6)¹⁴.

Paul Collier (2007) describes five phases vital for extractive economies and potential causes of the Resource Curse. The five phases, which are listed below, will also serve as our main focal points of analysing SL’s current situation in section 7.0.

- Negotiating the resource extraction contract
- Design features of the of the contract
- Transparency in revenues
- The aggregate savings decision
- The public investment decision

All five phases deal with the political decision-making process regarding contracts and the issues with revenue procured from extractives. The following will cover these five points theoretically with the purpose of developing theoretical concepts to relate to SL in aforementioned analysis.

Before delving into these points, however, we need to explain Collier’s concepts of mistakes and misaligned incentives. Both deal with the political decision-making process and while the former represents an unintentional harmful decision that is “*to an extent self-correcting through learning*” (Collier 2007, p. 1), the latter represents an intentional decision, made knowingly that it is against the best interest of the public. Or put more simply; the government does not know any better or it does know any better but chooses to ignore it. In short these terms and how a government chooses to act on them decide whether or not resource rich countries will fall victim to the Resource Curse. Our point of departure will not focus on the government of SL’s motives behind its decisions but rather what institutions are in place to circumvent the pitfalls described below.

¹⁴ If looking at economic growth and share of labor force employed in the primary sector, numbers for 105 countries between 1965 and 1990 show a correlation between the two. The bigger the share of labor force employed in the primary sector, the lower the economic growth (Thirlwall 2006, p. 73). In fact, it seems that resource-rich countries are performing negatively when it comes to export performance, foreign investment and education, while performing ‘positively’ in the areas of external debt, corruption and income inequality (Ibid., p. 74).

4.2.1 Negotiating the Resource Extraction Contract

When a country discovers natural resources it encounters the “*financial, commercial and political challenge of transforming locked underground assets into a usable liquid asset – cash*” (Radon 2007, p. 90). The first challenge is to negotiate a profitable extraction contract with an extraction company. More often than not, developing countries are at a disadvantage when negotiating these contracts. Even though governments, in most cases, are the sole right owners of natural resources¹⁵, they rarely possess the same knowledge of oil or mining fields, the level of experience in contract negotiation or even the financial resources as international extraction companies (Collier 2007, p. 5 & Radon 2007, p. 90). This means that while the government, theoretically, has total control over who gets awarded extraction rights, it is rarely clear to said government how much these rights are actually worth (Collier 2007, p. 5). And to further complicate matters, extraction companies “*Accustomed to dealing with authoritarian regimes or in countries plagued by civil strife [...] often bring a self-protective, uncompromising, and feisty attitude toward negotiation*” (Radon 2007, p. 90) compounded by the fact that extraction is a risky enterprise to undertake with risks of hitting dry holes and ever-changing market conditions to name a few (Ibid. p. 92). This also means that oil-producing nations should have the upper hand in times of energy shortage, although this does not seem to be the general case (Ibid. p. 97) Skilled negotiators also seem to cause some problems for resource rich nations. Private companies on account of their generally better financial situation, can outbid development countries in regard to salaries and work environment, meaning that the best negotiators will opt out of public sector employment. Outside expertise is rarely welcome as negotiation “*is often not viewed as a real skill, but rather something that anyone can do [...] too often there is a refusal or reluctance to engage the necessary expertise, let alone pay for it*” (Radon 2007 p. 92-4). Furthermore, as shown in table 4.1, a disproportional amount of effort is put into the technical and commercial issues when negotiating contracts, leaving other important factors relatively unattended.

¹⁵ Or perhaps more fittingly, the by proxy owners, as the ownership befalls the citizens of the respective country.

Table 4.1 What Are the Key Issues During Negotiations?	
Technical	<u>Conflict Zone</u> Company feels in control. It recruits people qualified in this zone. 90-95% of effort is spent here
Commercial	
Environmental	Factors that are relatively ignored during negotiations
Social	
Economic	
Political	
Source: Radon 2007, p. 91	

The situations described above can be classified as a mistake, as the government acts on lacking information rather than putting themselves before their constituents. But contract negotiation can also be harmed by misaligned incentives where the government, or the government officials, will try to enrich themselves at the expense of their citizens. Research actually suggests that a correlation exists between natural resources and poorly developed democracies. However, there is some disagreement as to whether oil and lacking democracy is only correlating, or if there in fact is some kind of causation at work. As Ross (2001) explains it: *“If oil is truly at fault, this insight could help explain – and perhaps, predict – the political problems of oil exporters around the world, such as Nigeria, Indonesia, Venezuela, and the oil-rich states of Central Asia. If other minerals have similar properties, this effect might help account for the absence or weakness of democracy in dozens of additional states in sub-Saharan Africa”* (Ross 2001, p. 325).

Of course less developed democracies are less inclined to act in their constituents best interest, and even if the above mentioned is only a sign of correlation, it still points to misaligned incentives as contributing factors perhaps causing as much damage to contract negotiation as lacking information. However, this situation might change as *“Local communities that, until recently, were on no ones’ checklist of factors to take into consideration now often demand their part of the spoils in the form of jobs and compensation payments”* (Radon 2007, p. 91).

Besides issues of negotiations and how much to invest in these, governments of oil-producing nations need to settle on a certain kind of contractual type. Generally speaking four types exist.

Table 4.2 Four kinds of contracts.			
Types	Government involvement	Company involvement	Risks/Gains
License Agreement	Drafts and publicises terms and opens bidding rounds.	All activities concerning exploration and development of oil fields.	Government receives signing bonuses, royalties and income tax. Oil company incurs all operational risks.
Production-Sharing Agreement (PSA)	Drafts and publicises terms and opens bidding rounds. Collaborates with oil company. Negotiation not necessarily rooted in existing legislation.	All activities concerning exploration and development of oil field.	Government receives bigger part of profit, but no signing bonuses or future taxes. Oil company incurs all operational risks.
Joint Venture	Partnership with oil company. No existing formula for	Partnership with government. No existing formula for	As all gains and risks are subject to negotiation, governments are likely to incur

	division of involvement.	division of involvement.	higher risks, with possibility of higher gains.
Service Agreement	Outsourcing of specific work tasks. Oil exploration likely conducted by national oil company.	Contracted by governments to carry out specific work tasks.	Companies less likely to accept this type of contract, as gains are small. Governments gain proceeds from oil exploration and development, but incur all risks as well.
Authors' own creation. Source: Radon 2007, p. 99-102			

License agreements and Production-Sharing Agreements (PSA) are by far the safest contract types for governments of oil-producing nations, although they also present challenges in terms of revenue and how to monitor oil companies' earnings. Furthermore, serious consideration has to be given to operational costs incurred by oil companies and whether these should be deducted before calculating royalties, income tax, etc. It is however, safe to say that license agreements, while holding the risk that no one bids on oil contracts, will secure governments income in the form of signing bonuses even if potential oil fields should turn out to be commercially unviable. PSAs demand a lot of the government negotiators as governments involvement is not decided before negotiations start, and demands for a higher share of the profit are not easily met without shared risks (Radon 2007, p. 99-101).

Joint ventures besides the characteristics listed in table 4.2, have the advantage of possible transfer of technology and knowledge, but certainly come with higher risks and uncertain possibilities of higher financial gains (Ibid.).

Lastly, while service agreements also holds promise of higher financial gain for the oil-producing nation, said nation also incur all operational risks and this type of agreement will

hardly find traction with the major international oil companies (IOCs), as incentives are small (Ibid, p. 102).

4.2.2 Design Features of the Contract

Once an agreement has been reached between government and IOC, the contract needs to be designed. The major issues in this regard have to do with duration of contracts and tax regimes (Collier 2007, p. 6). Negotiation of contract features is made up of negotiables and non-negotiables. Some issues should follow domestic legislation and should therefore be non-negotiable. Health, safety and environment should be embedded in domestic law, and if not, they should follow international best practices. Negotiables consist mainly of financial issues such as determination of royalties, tax rates or license fees (Radon 2007, p. 102). Contracts do not always follow tax regimes agreed upon in the host country, and governments face the threat of companies leaving their country, should the tax regime be too strict. Consequently, tax regimes in most developing countries are lax.¹⁶ Low tax rates can also be explained by the fact that, as governments have the power to change terms and conditions, IOCs face certain risks when entering into agreements with governments. In effect this means that a lower initial tax rate might make up for the potential risk of government raising the rate later on. This risk can, to some extent, be assessed by a government's past performance regarding contracts and agreements with extractive companies. The problem is most commonly seen when a company enters into a contract with a favourable tax regime, only to strike lucky and have the government renege on their terms (Collier 2007, p. 6).

The volatility of oil contracts and the governments backing them often prompts IOCs to have stability clauses inserted into the agreements. These clauses usually last for the duration of the contracts and ensures the companies will be compensated in case of sudden changes in the fiscal regime governing the contract¹⁷. Stability clauses are a safeguard against states with weak rule-of-law and loosely defined finance acts, but "*a contract should be flexible enough to foresee the development of [a strong rule-of-law] system, but, in any event, a contract should not hinder a legal system's development through a stability clause or other cast-in-stone provisions*" (Radon 2007, p. 103).

¹⁶ Even though favorable fiscal terms are a good way of attracting investors, Radon (2007) advises that these terms should only cover an initial face of the contract (p. 95).

¹⁷ More often than not rendering changes in the contract moot.

Profit taxes, also known as windfall profit taxes, have some potential in circumventing lax tax regimes in contracts. A mere income tax will not suffice in securing a nation a larger income should oil prices rise. When the price of oil rises, so does the profit for the oil company while their cost stays the same. Moreover, even though it is the oil company who develops the extraction of the oil, it still belongs to the nation¹⁸. This means that an income tax does not cover the sale of the nation's property, only the profits the companies make. Royalties cover the transfer of resources from state to company, but are set at a firm rate and do not follow price or profit levels¹⁹. Signing bonuses that especially appear in license agreements pave the way for a government to ensure a minimum of compensation. If nothing else, to pay for the negotiation process, should the project turn out to be unprofitable. These are usually fixed and not dependent on the value of the resource itself (Radon 2007, p. 103-104). But what income tax, royalties and signing bonuses all have in common, is that the oil-producing nation risks missing out on huge profit margins in times of energy crisis and soaring oil prices. Windfall profit taxes means that when prices rise, so does the tax rate for the oil company, meaning a significant bump in revenue for the state, while still allowing the oil company a large share of the profits. The real challenge of windfall profit taxes lies with the governments, who have to monitor the companies and make sure the latter's reporting of production levels is correct or that they do not decrease production if this serves their best interests financially.

A few other design features are important to consider when negotiating contracts. Where local legislation is less than strong it can be advisable to adopt another country's legislation on relevant issues, although this might feel threatening to the host country's sovereignty. However, legislature is important as it gives government negotiators an important tool in emphasising their positions on certain issues, as well as gives them a firmer grasp of dealing on behalf of the people of the nation (Ibid. p. 109-110). Regardless of legislation, termination provisions are a must in extraction contracts. Radon (2007) puts it like this: "*A termination provision that does not provide for the possibility of the loss of all exploration and development rights is a contract with no teeth [...] the lack of an effective and encompassing termination provision denies a*

¹⁸ With some exceptions, most notably the United States of America

¹⁹ This of course means, that while royalties can be profitable for oil companies in times with higher oil prices, they can be directly unprofitable when oil prices are low (Radon 2007, p. 104).

government a valuable tool in policing and ensuring compliance of the oil contract” (Ibid. p. 111).

Moreover, when compensation to government is decided by oil prices, one need to be aware of how these are calculated. Trading between affiliated companies can artificially deflate prices. Prices, or the compensation derived from them, should be decided based on market prices for the region (Ibid. p. 107). Issues of affiliated companies should be taken into consideration when dealing with provisions for non-compliance or unlawful activity. Oil companies working through tax havens are able to divert responsibility to their subsidiaries located in tax havens, an issue that should be clearly addressed in any extraction contract (Ibid. p. 111).

When determining fiscal systems to govern contracts, two fiscal families are dominant. The concessionary, also known as the royalty/tax system, includes the company taking control of the entire process from exploration to marketing. The government in turn makes money off of royalties, taxes and signing bonuses. The second fiscal family is the contractual based system, which is usually comprised of PSAs and service agreements, and *“the distinguishing characteristic of each family of contract is where, when and if ownership of the hydrocarbons transfers to the international oil company”* (Johnston 2007, p. 56). This in turn means, that while revenue may not differ substantially between the two systems, risks certainly do. Royalty/tax systems ensure a minimum of revenue for states through signing bonuses and the biggest risk for the state is not getting additional revenues as oil plots can turn out not to be commercially viable. There is no mentionable cost for the state, and what cost there is might be covered by the signing bonus. If the state becomes an active partner in exploration, development and extraction costs might not be recovered. Table 4.3 shows, in more detail the degree of government involvement, status of transfer of the oil and so on.

	Table 4.3 – Comparison of Fiscal Systems		
	Royalty/Tax Systems	Production-Sharing Contracts	Service Agreements
Global Frequency (% of systems)	44%	48%	8%
Type of Projects	All types: exploration, development, EOR	All types: exploration, development, EOR	All types but often non-exploration
Ownership of facilities	IOC	Government NOC	Government NOC
Facilities title transfer	No transfer	“When landed” or upon commissioning	“When landed” or upon commissioning
IOC ownership of hydrocarbons (lifting entitlement)	Gross production less royalty oil	Cost oil + profit oil	None
Hydrocarbon title transfer	At the wellhead	Delivery point, fiscalization point or export point	None
Financial obligation	Contractor 100%	Contractor 100%	Contractor 100%
Government participation	Yes but not common	Yes, common	Yes, very common
Cost recovery limit	No	Usually	Sometimes
Government control	Low typically	High	High
IOC lifting entitlement	Typically around 90%	Usually 50-60%	None (By definition)

IOC control	High	Low to moderate	Low
Source: Johnston 2007, p. 67 (Frequency numbers from 2001)			

The major difference between service agreements and royalty/tax systems and PSAs is that with the latter, IOCs has no entitlement to oil and is solely contracted to perform a specific task. They do, however, get to sell oil to recover cost. The fees they receive from governments are often taxable (Ibid, p. 62).

How an IOC calculates costs and whether or not to make provisions for cost recovery limits can give cause for some consideration when negotiating contracts, especially in cases where larger blocks are being negotiated for. In this case IOCs might want to include their costs in unsuccessful explorations in the costs for successful oil wells. While sometimes acting as a deterrent for IOCs, ring fencing can ensure governments a bigger take preventing that IOCs gather costs from different exploration sites. Ring fencing simply means that once a discovery has been made, costs and deductions can only be determined from that one discovery, i.e. exploration costs elsewhere cannot be connected with cost recovery in the area of discovery (Ibid., p. 82).

4.2.3 Transparency in Revenues

Transparency is, of course, an issue throughout the whole process of dealing with extractives and in the initial phase of negotiating contracts it can strengthen the government negotiator if he knows the public has had a say in the government's official position. Generally, transparency can diminish future public outrage if contracts turn out to be unfavourable financially (Radon 2007, p. 97-8).

Once contracts have been negotiated and IOCs have begun their operations transparency in revenues becomes relevant. Government officials involved in the extractives sector often handle rather large amounts of money and it is far from unusual that revenues disappear from the budgets. This problem becomes further serious when taking into account the level of transparency in many developing countries and "*Most revenue-receiving governments have little capacity to scrutinize whether payments by companies are fully compliant with tax regimes*" (Collier 2007, p. 8). Especially where governments rely on self-reporting from companies, transparency becomes blurry if the public has no tools to scrutinise payments to governments

versus amounts received by government, further complicated if the aforementioned reporting stands alone without scrutiny. As a result hereof it is often advisable for states to engage accounting services instead of relying on self-reporting by IOCs. This could potentially increase revenues and overcome issues of trading between affiliate companies with the same ownership (Radon 2007, p. 107).

Further, transparency can be reached by cautiously estimating oil incomes and publicising these, while of course still taking costs, shifting oil prices, etc. into account (Sachs 2007, p. 190).

4.2.4 The Aggregate Savings Decision

Assuming that contracts are entered and revenues start flowing three questions arise: i) how much revenue to save, ii) how much to spend and iii) how to spend it. The question of how much to save becomes complicated when taking most developing countries' volatile political situation into account. A decision to save revenues for times of higher commodity costs may seem reasonable, but with the uncertainty of political decision-makers' future, it may be tempting to spend savings on short term, highly visible projects. This increases likelihood of re-election, while preventing future decision-makers from spending savings for other projects than originally intended. Besides, savings for harder times are difficult to secure as future politicians have sole decision-making powers over revenues and funds, allowing immediate spending of savings earmarked for future projects (Collier 2007, p. 8). But immediate spending has its downsides as well: *"If public investment projects are scaled up too quickly, inefficiencies are bound to multiply because of limited absorptive capacity in the domestic economy"* (Sachs 2007, p. 176). Moreover, revenues from extractives have the inherent quality of being finite. Diamond deposits, oil pockets, gold mines and so on will eventually run dry, thereby depriving the local economy of that particular income generation (Collier 2007, p. 9).

Sachs (2007) argues that oil income should be spend on long term investments benefiting future generations rather than be directly distributed to the population as an attempt to strengthen consumption (p. 176-8). Moreover, the accrued funds should be part of a development strategy, preferably modelled after the Millennium Development Goals and with a timeframe of approximately a decade. This strategy should also *"take into account the time paths of oil production and depletion, so that the time paths of investment and consumption will be smoothed over time"* (Sachs 2007, p. 180).

Two other options exist for the use of oil income. The first option is to accumulate income in a fund, which works better for high-income countries. In developing countries it seems more prudent to invest in human capital and physical assets rather than trying to live on earnings through a fund (Ibid., p. 189). Setting up a fund can potentially also worsen the issue of transparency; “*Whether modelled after Norway’s State petroleum Fund or the very different Alaska Permanent fund, such funds are viewed as an important fiscal tool that can aid in planning. However, these funds as they have been constituted to date, have major drawbacks. Because they are generally not transparent [...] to legislatures, the press or nongovernmental organizations*” (Karl 2007, p. 272). Introducing a fund that constitutes a type of parallel budget without control is therefore not a good idea in any country where lack of transparency already exists. Additionally it would be politically difficult to explain an acute poor population the need to tax them while saving oil money (ibid.)

The second option is for oil producing nations to loan money internationally with their oil as collateral. This has the potential risk of countries spending more than 100 pct. of their oil earnings while leaving them hopelessly indebted (Sachs 2007, p. 181).

4.2.5 The Public Investment Decision

Once a decision has been made as to how much revenue to save, the question becomes how to spend the rest. Discovery of oil should, in principle, offer oil-producing nations the opportunity to finance higher levels of public and private consumption, higher levels of investment from the oil income itself and loans made possible by oil income and to generate resources to finance “*core public goods, including infrastructure*” (Sachs 2007, p. 174-5). Public investments should be spend on the rule of law, environmental protection, infectious disease control and basic infrastructure networks as well as basic health care, basic education, social insurance for unemployment and disability, safe drinking water and sanitation, adequate basic nutrition and safe shelter. These are the so-called public goods and merit goods, which should ensure “*enhanced political and social stability*” (Ibid., p. 175). As they are nonrival or nonexcludable, the private sector cannot be expected to invest in these goods (Ibid.).

Public investments seem desirable, but face some challenges, especially in resource rich, low-income countries. These challenges revolve around honesty and efficiency. Structures put in

place to facilitate the selection process of projects are often poorly regulated, and corruption seems to be pervading the process. Without processes like auctions or such, the investments have problems living up to standards surrounding cost/benefit and general quality of outputs, and even though “*The evaluation of public investment projects is standard in developed countries*”, when implemented in developing countries it runs the risk of being “*a process that is readily gamed. Because returns are inevitably hypothetical, it is invariably feasible to manipulate estimates to suit political demands*” (Collier 2007, p. 11).

Sachs (2007) argues that most public investments should be geared towards a hospitable environment for private sector investments: “*public investment spending should be seen as a complement rather than a substitute for private investment spending*” (p. 176). Areas such as agriculture, mining, manufacturing and non-state services such as insurance and pensions should be financed through private sector investments, while public investments should go to the public goods mentioned above (Ibid.). The advantage of this approach lies in the realisation that oil is a finite resource and once depleted a strong private sector should, in theory, be able to compensate (Ibid. p. 177). Especially in the poorest countries where basic needs like food, water, electricity and telecoms have yet to be met, investments in these areas will not only benefit the population in question, but will also ensure the infrastructure needed for private-sector-led economic growth (Ibid, p. 178).

4.3 Summarizing table of theories

Theory	Core Concepts	Purpose of including
New Institutional Economics	<ul style="list-style-type: none"> • Bounded rationality (no possible for any stake-holder to obtain complete information before making a decision) • Cultural norms and networks as well as institutional laws and rules constitute the framework in which stake-holders act. • While acting within this framework, stake-holders affect it as well. • Market Specific Social Capital is the value of individuals' networks within an income generating activity. 	Provides us with an ontological framework and a theoretical context for analyzing broader concepts such as bounded rationality in situations regarding negotiations and considerations on revenue spending.
Resource Curse Theory (Phases defined by Paul Collier, elaborated with Stiglitz, Sachs and Humphreys (Eds 2007))	<p>From the fact that resource rich developing countries underperform economically, socially and institutionally compared to their resource poor counterparts:</p> <ul style="list-style-type: none"> • Asymmetrical knowledge in contract negotiations. • Unfavourable fiscal terms and low capacity of monitoring within governments. • Distribution of information and knowledge from IOC to government to civil society and vice versa, ensuring public awareness. • Realizing development stage and prioritizing public investments accordingly. 	Here theoretical inputs will be used to structure overall working questions, then interview-guides and subsequently act structuring in the analysis.

5.0 Lessons Learned

In the following chapter we will try to establish a referential framework for comparing then and now of the Sierra Leonean institutional capacities having to do with administration of natural resources. The administration of Sierra Leone's (SL) diamond industry has, throughout history, proved to be unsuccessful, contributing to deterioration of regime, economy, social conditions and conflict level. As we wish to discuss if the current institutional capacity of SL can enable an avoidance of previous mistakes we need to understand the mistakes of the previous administrations. In coherence with contextual theory primary attention will be given to governmental ministries and other administrative bodies directly linked to the diamond industry.

5.1 Administration of the Mining Industry

Hopes for the new state of SL were flourishing after the country gained independence in 1961 (World Bank 2005, p. 4). However hopes of building a rigid democratic state vanished already in the early 1970's. Shaka Probyn Stevens, third prime minister (1967–1971) and first president of SL (1971–1985), quickly turned the country into a one-party state, creating a monopoly of power for himself and his allies. Throughout Stevens' governmental era he and his administration used the country's wealth of natural resources, especially diamonds, to maintain this position; making SL an unfortunate prime example of the resource curse. Not only did the central mining industry in Kono District serve as a measure to maintain and worsen an already corrupt regime, it also helped escalate conflict level, eventually being a key factor in the civil war from 1991 to 2002. Now once again SL faces challenges of the resource curse, as the country struck oil in 2009. This is why we now take a closer look at what went wrong from the 1970's onward.

5.2 Maintaining Power – Rule through Subcontractors

In 1961 SL faced initial annual growth rates of four pct. and beyond. This was however followed by acute deterioration of economic and social conditions from the 1970's (World Bank 2005, p. 4). This is partly explained by the country's inability to create an environment suitable for attracting foreign investors. Especially the mining sector proved ineffective in its attempts to raise foreign exchange and fiscal revenues from diamond activities, in turn impeding the development of the sector (Ibid.). However as we will attempt to show in the following,

attracting foreign investors and developing the sector might have been counteracting towards the real goal of the 1970's administration, namely maintaining power.

Distribution of diamonds, especially dealer and plot licenses were a central part of the political life in the 1970's SL: Unruly elites caused Stevens a lot of concerns. Oppositional political networks sprang around popular dissatisfaction and were financed by wealth from illicit diamond dealing (Reno 2009, p. 104). In order to face this crisis of rule and rebuild a stable political domination, Stevens had to launch a strategy which gave him absolute control over Kono's resources. Concerns were that due to the revenue crisis, state institutions or even movements from within the state-party All People's Congress (APC) would eventually pose as a threat to Stevens' leadership (Ibid.).

These concerns lead Stevens to launch the Cooperative Contract Mining initiative (CCM) in December 1973. The initiative would allow private mining operations within the National Diamond Mining Corporation (NDMC) lease area (Ibid. p. 105). The political act was received differently. The locals of Kono saw it as a long awaited acceptance of private mining activities and therefore hoped it was a de facto invitation to include their small-scale informal mining activities in the formal economy. Further they hoped, due to nationalist rhetoric, that favoritism of Lebanese dealers in the issuance of mining and dealing licenses would come to a halt. Other foreign investors and creditors, however, received the message of CCM as a response to the decline of foreign investment in NDMC lease area. But neither the locals of Kono nor the foreign investors had it right: Instead the new way of issuing licenses mainly created one group of beneficiaries; political allies of Stevens. The first two sub-groups of beneficiaries were the Kono chiefs already holding NDMC sinecures and government officials from outside of Kono. The former already occupied positions within the NDMC and therefore had no difficulty in using, but not paying for or reinvesting in, state-owned heavy machinery. Plot assignments came to follow merely political criteria; and in 1974 and 75 the list of beneficiaries expanded, as new areas of NDMC became subjects for privatization schemes. This time both the Vice President and the Minister of Mines were licensed as plot holders (Ibid. p. 106-7). It appeared Freetown administration continued a political line of distributing state-property in return for loyalty, now expanding to the mining sector. Through personal interference via the Ministry of Mines, Stevens could exercise direct personal control over the award of economic favors. Besides blurring the lines between state and private activities by licensing state officials (allies), the new

measures also had an immediate and radical effect on the output of the formal mining economy: Production shifted away from the NDMC (the source of more than 50 pct. of state revenues for the past three decades) as output fell from 856 thousands carats in 1973 to merely 168 thousands in 1985 (Ibid.). This of course meant lesser means for overall developing goals, as SL's wealth now flowed through private elitist hands. Stevens' fear of local Konos harassing his political allies, additionally lead the administration to conduct suppressing behavior via paramilitary efforts and political violence. Combined with the ultra-selective and exclusivity of plot distribution, hopes dashed for a wider distribution of the benefits of Kono's resources. It was undeniable that political means meant more to the administration than long-term development issues, as the CCM eroded the role of the state enterprises and created a so-called private diamond economy organized around the ruler's strategy of political control (Ibid. p. 107).

5.2.1 Maintaining Power – Export

Additionally to the so-called privatization via the CCM, the Stevens administration also ended Dutch based diamond company DeBeers monopoly on overseas marketing of Sierra Leonean diamonds in March 1974 (Reno 2009, p. 108). DeBeers, an international and leading diamond group active in both extracting for and selling diamonds and currently present in countries such as Namibia, Botswana, South Africa and Canada (debeersgroup.com)²⁰, had previously in 1956 established the Diamond Corporation (DICOR) managing all private diamond sales from SL through its Central Selling Organization (CSO). DeBeers had remained interested in SL in order to regulate world supply and therefore, through DICOR, they offered high prices. At first glance the remaining interest of DeBeers was very beneficiary to the Stevens administration; due to DeBeers demand for diamonds they were able to strike a very good deal: DICOR should pay the government a levy of 7.5 pct. on every private purchase and were obliged to buy every stone offered. Not only was this a beneficial economic agreement it also helped the administration with its new overall goal of maintaining power. DeBeers absorbed some of the costs of turning independent mining activities into formal channels. This gave Freetown higher revenues from formal channels while still being able to tolerate smuggling from its own licensed officials and favoured dealers (Ibid. p. 109). The former monopoly of DeBeers had given Freetown capacity

²⁰ DeBeers was by 2009 the far most leading diamond group worldwide, almost solely controlling world market price (Smillie et al. 2000, p. 2)

for producing and selling diamonds, but it left little manoeuvre to distribute, and this was exactly what Freetown needed in order to gain more control. Later in 1974, five individuals were given licenses to export 20 pct. of SL's diamonds. These five exporters had to go through the newly created Government Diamond Office (GDO) when wishing to export. GDO valued privately marketed diamonds and collected the official levy (Ibid p. 110). Stevens was personally a board member of the GDO and tactically used this new administrative body to gain more personal control over foreign exchange and diamond sales. He created an interdependent relationship between himself and the newly export-licensed dealers, who had formerly operated in the informal market and therefore already possessed valuable business networks in the Middle East and Europe. They could obtain foreign capital for purchases in SL but relied on Stevens' favor if wanting to protect their access to diamonds.

Besides creating a system with blurred boundaries between state and private sector where almost every client depended on Stevens' personal favor, Stevens also benefitted from the fact that the five new major exporters were foreigners e.g. the former militia leader of Amal²¹ in Lebanon Nabih Berri²². Stevens did so because he found a political security in being able to downplay his political network's extension into Kono (Lebanese or Afro-Lebanese were commonly viewed as outsiders), thereby appearing less corrupt. In prolonging the establishing of the GDO, Stevens also succeeded in monopolizing diamond extraction, and thereby controlled the whole value-chain from digging to exporting, making all actors reliant on his personal will. Dilemmas of political challenge and declining revenues were replaced by a competitive struggle for his favor (Ibid. p. 111). However political challenges were fewer than before, since the Lebanese dealers did not have any political network within SL and thereby posed no domestic threat to Stevens. Further having gained full control over Kono's resources, Stevens saw no reason to strengthen state institutions, as this could create political challenge from within his own government.

All of the above combined weakened bureaucratic state capacity in what most people understood as development, and limited greater popular access to Kono's resources.

In short, all economic opportunity within Kono area now depended on Steven's goodwill. Favored chiefs and dealers were depriving a considerable number of local residents any form of

²¹ Shiite militant movement formed in 1975. National movement fighting in the civil war, primarily against Sunni organizations and Palestinian PLO, predominantly a pro-Syrian movement. Currently it is a disarmed political movement occupying 14 seats in the Lebanese parliament. (DenStoreDanske.dk)

²² Current chairman of the Lebanese parliament.

economic opportunity. This tendency becomes visible when looking at the concentration of licenses given to operate within Kono. The Ministry of Mines led by Stevens himself was in charge of the licensing and by 1979, although still approximately the same official number of operators, 46 pct. of the licensed operators shared the same address (the five biggest operators were not even listed). Additionally the fee to get registered rose continuously from Le 1000 in 1974 to Le 5000 in 1990. This increase of red tape made the remaining African operators in Kono reliant on foreign dealers to sponsor them (Ibid. p. 112).

Foreign operators, especially Lebanese, became dominant of Kono operations. They did so partly because Stevens could both license them through the Ministry of Mines and provide them with export accessibility through the GDO which he also personally controlled, partly because Stevens via Lebanon were given greater access to foreign exchange. But the foreign domination of Kono did not only have adverse effects on the African operators; it also had some political consequence for the Steven's administration: The foreign operators were well aware of the nature of the selective political system in SL, causing them to setup foreign bank accounts should they fall into disfavour (Ibid. p. 114-15). Thereby Stevens had to accept a substantial amount of capital leaving the country.

Stevens sought to stay in power and by his efforts to do so he managed to weaken both the overall economy and capacity of state institutions: "*Steven's rational pursuit of political control and regime survival did not cause him to strengthen bureaucratic indicative of a "strong state", even though diamond wealth and a potentially dynamic entrepreneur class made this option possible in a purely fiscal context*" (Reno 2009, p. 127).

But the deterioration of SL did not stop at the economy; as popular dissatisfaction continued to grow, noticeable riots within Kono began to appear in the mid 1980'es. In both 1984 and 1985 riots arose causing severe damage to politicians and state property. In 1989 major riots occurred, but they were ignored in Freetown. One leading newspaper, edited partly by the current speaker of parliament, lied about the incident and told that it was Gambian traders coming to take away Sierra Leonean resources (Ibid. p. 124-26).

However Freetown's paramilitary forces were able to control the somewhat spontaneous outbursts of violence and riots. The diamond industry however, came to play a highly significant role in the flare-up of civil war in 1991, six years after the resignation of Shaka Stevens.

5.3 Impact on the Civil War

“[...] diamonds - small pieces of carbon with no great intrinsic value - have been the cause of widespread death, destruction and misery for almost a decade in the small West African country of SL. Through the 1990s, SL’s rebel war became a tragedy of major humanitarian, political and historic proportions, but the story goes back further - almost 60 years, to the discovery of the diamonds. The diamonds are, to use the title of Graham Greene’s classic 1948 novel about diamond smuggling in SL, *The Heart of the Matter*”. (Smillie et al 2000, p. 2)

In 1985 Stevens resigned from office and left power to former army Chief, Joseph Momoh (Ibid. p. 3). Popular pressure on Freetown did not vanish however, causing Momoh to relax press restrictions and re-introduce multiparty democracy in 1990. However, domestic tensions were already so high that the outburst of civil war could not be avoided: In 1991 former army Corporal Foday Sankoh led the Revolutionary United Front’s (RUF) attacks on SL, from Liberian border. This was the beginning of an 11 yearlong conflict. In 1992 and 1993 the conflict escalated; first, president Momoh had to flee the country, leaving the National Provincial Ruling Council and army Captain Valentine in power. After this the state military forces began striking back at RUF. RUF suffered some significant losses, causing the fraction to rethink and rebuild. This led to an attack on Kono diamond areas in 1994. From here on RUF financed their fight against Freetown with diamond wealth (Ibid. p. 4-5), making Sierra Leonean diamonds Conflict Resources. Conflict Resources are defined as natural resources whose control, exploitation etc. contribute to, or benefit from armed conflict (Collier & Bannon 2003, p. 216).

In 1999 RUF launched a final and quite successful attack on Freetown, killing cabinet members, journalists and a significant number of civil servants: 6000 civilians were killed and 2000 children were reported missing. After the attack, peace negotiations were conducted, resulting in Sankoh and several other RUF leaders getting cabinet positions. The attack also made the United Nation’s Security Council (UNSC) deploy 6000 peace keeping forces within Freetown (Smillie 2000, p. 5). In the following years conflict level decreased and the war officially ended in January 2002. By May 2002 elections, assisted by the UNSC resolution 1389, were held: Sierra Leone People’s Party was victorious and Ahmed Tejan Kabbah was chosen as president.

The rebellion led by RUF was characterized by brutality and often aimed at civilians. The conflict claimed more than 75 thousand lives and made more than half a million civilians refugees. Additionally the war, which were fuelled by diamonds, placed SL at the very bottom of the UNDP Human Development Index (HDI) for nearly a decade (Ibid. p. 6-7)

5.4 Recent Experiences from the Mining Industry

Despite institutional improvements and more transparency in government (see section 5.5), several factors still points towards the fact that generated incomes from the important mining industry are not transferred into development in broader terms. SL currently ranks as a disappointing number 158 on HDI (UNDP.org). Additionally, 70 pct. of the population currently lives below 1.25 dollars a day (Ibid.)

If the country's natural resources are to benefit the Sierra Leonean population socially and economically, changes are obviously still needed. One could be tempted to think that it is still the issue of corruption that prevents progress; and surely this is part of an explanation keeping in mind that SL currently rank as number 134 on the Corruption Perceptions Index (CPI) (CPI.org). However according to DanWatch and its respective partner NGOs²³ corruption and lack of transparency is only part of a three-legged explanation; ii) tax planning / avoidance by foreign investors and iii) lucrative contracts, not in coherence with national legislation, offered in order to attract foreign investors (Dieckmann 2011, p. 3).

These are assumedly the three main reasons why revenues collected from the government are limited when compared to the importance of the industry (Ibid.): Currently the industry makes up for 60 pct. of SL's exports, which translates to approximately nine pct. of total GDP. In comparison collected revenues from the industry only makes up for approximately one pct. of the total GDP and are only equivalent to eight pct. of total government revenues collected overall (Ibid. p. 3,6,8).

²³ IBIS (Danish Development Organization), Association of Journalists on Mining and Extractives & Network Movement for Justice and Development

Table 5.1

Mining Exports 2010		Government Revenue from Mining 2010	
Mineral exports	199,5 million US dollars	Total mines revenue ²⁴	23,6 million US dollars
- Percentage of exports	60	- Percentage of domestic revenue	7,9
- Percentage of GDP	8,88	- Percentage of GDP	1,1

Source: Dickmann 2011.

The mining companies are often attracted by very beneficial contracts, usually negotiated individually and in secrecy with Government of Sierra Leone (GoSL) (Ibid. p. 12). These contracts all seems to neglect and put a side already existing national legislation. The report referred to by DanWatch compares contracts from the five major mining companies operating in SL with a legislative framework consisting of: Mines and Minerals Act, the Income Tax Act – and the Goods and Services Tax Act by SL. The conclusion of these comparisons is that the companies are very reluctant in sharing their profits with GoSL, which is not all surprising. The surprising element is that the government willingly seems to put binding legislation aside in order to please their foreign investors: According to the Income Tax Act of Sierra Leone the corporate income tax rate for mining companies in Sierra Leone is 37.5 pct. However London Mining only recently had their tax rate revised from six to 25 pct. (Ibid. p.5). Sierra Rutile which is the biggest mineral exporter (and only pays about two pct. income-tax of its exports) is another example of this; because if chargeable income of a company is below seven pct. of turnover the mining company should pay a minimum of 3.5 pct. of turnover. However Sierra Rutile has negotiated that they should only pay 0.5 pct. Another of the five biggest companies is totally exempt from this law (Ibid. p. 7-8).

²⁴ Excluding PAYE –taxes from salaries to employees.

Additionally to the problems relating to corporate income tax is the issue of collecting royalties. Royalties are the percentages charged of each stone according to world market value (Ibid. p. 8 & Mines and Minerals Act, 2009, Part XVII, section 2²⁵). These royalties only make up for 13 pct. of total revenues collected from the industry, which by estimate should be much higher: The problem seems to be that SL simply does not possess the capacities to efficiently monitor the mining activities (Ibid. p. 7-8).

If wanting to ensure a larger share of profits from the mining industry, DanWatch recommends GoSL several things: First it should ensure full transparency by joining the Extractive Industries Transparency Initiative (EITI). Second it should build and strengthen institutional capacities within mining economics, engineering areas, collection and reallocation of revenues, monitoring, and finally ensure sustainable fiscal policies (Ibid. p. 4). Lastly the report acknowledges that this is not only a domestic problem within SL, but a problem that probably requires international regulation: Profits are not being taxed in SL since all of the mining companies seem to use tax strategies which includes moving profits to safe-havens (Ibid. p. 17)²⁶.

5.5 Current Opportunities and Challenges.

How vulnerable a state is when facing significant natural resource findings often depends on the initial institutional capacities. In resource curse terminology deviant cases like Norway, Australia and even Botswana should underline this (Gbenda 2011, p. 15 & Leith 2005). This is why there is reason to believe that there exists much hope for SL when having to manage the recent oil findings. Much has changed since the civil war ended. The last deployed international peacekeeping forces withdrew from the country in 2005 and in 2007 the latest democratic election was held. UN reported that the election was held in a transparent and satisfactory manner (IBIS.dk). In fact the retiring Government withdrew from power without complaints, a quite rare scenario in a post-conflict state. Current president Ernest Bai Koroma and his party APC came to power. Despite of these positive changes SL, according to the World Bank, still suffers from weak institutional quality and faces many, both opportunities and challenges regarding the current and forthcoming management of a new oil sector (Gbenda 2011, p. 13).

²⁵ For complete list of percentages charged.

²⁶ Source-critically the DanWatch report does not distinguish between legal and illegal tax planning but do however use the commonly agreed definition of a safe-haven outlined by the OECD.

There is no doubt that the anticipated revenues outline a significant opportunity to finance development. The extent of this opportunity of course depends on various factors; like oil prices and capital costs – but also domestic capabilities (Ibid. p. 12). Proper management of the revenues could relieve pressure in key sectors like infrastructure and healthcare and even minimize the donor reliance. SL's economy is almost solely based on foreign aid and mineral export (ibis.dk). Currently the lack of electricity is a major impediment to development; ironically most electricity is fuelled by imported petroleum. If wishing to collect and transfer revenues into development SL face the well-known pitfall of corruption. Historically oil revenues increase incentives for rent-seeking behaviour. Therefore prominent concerns amongst stakeholders are that SL once again becomes a victim of the resource curse due to the possible deterioration of institutional quality, once again resulting in low growth rates etc. (Ibid. p. 20). Therefore issues like the establishment of a fair and transparent licensing mechanism and fiscal policies to avoid deindustrialization becomes central. The task of establishing this might prove very difficult since SL has much weaker institutions than other countries with recent oil findings and rank very low on almost all government indicators, like effectiveness and public sector management. Additionally according to the World Bank the parliament and the anti-corruption commission severely lack both financial and human resources. This is why one could fear that revenues would once again not be put to use on developmental issues.

Wishing to transfer revenues into development, GoSL firstly has to collect them. As we have seen from the mining industry GoSL tends to offer foreign investors very lucrative contracts in order to attract them. This means that the GoSL is not collecting revenues from the industry equivalent to the relative size of the industry. One could fear this could also happen within the oil sector. Therefore it is necessary to ask whether offering such lucrative contracts is a necessity. GoSL seems to think it is necessary to offer a low level of corporate income tax; the Minister of Finance expresses it like this: *“Foreign private investment capital has different destinations – alternative destinations. If they are not happy with you, they go away. I don't want that to happen”* (Dieckmann 2011, p. 12). However the opposition and internationally conducted research by both the IMF and the OECD suggest otherwise. OECD states that: *“It is [...] clear that a low tax burden cannot compensate for generally weak or unattractive FDI environments. Tax is but one element and cannot compensate for poor infrastructure, limited access to markets, or other weak investment conditions”* (Ibid.).

The IMF stresses the need for consistency: *“The cost-effectiveness of providing tax incentives to promote investment is generally questionable. The best strategy for sustained investment promotion is to provide a stable and transparent legal and regulatory framework and to put in place a tax system in line with international norms”* (Ibid.)

Lastly concerns of possible destructive populism are also raised; as awareness of oil revenues rises within the population, demands for public expenditure will rise accordingly. Politicians therefore might be tempted to act unsustainably on a long-term basis (Ibid.).

5.6 Summing Up

Summing up SL’s former handling of especially the diamond industry left the country in a situation where the maintaining of power outweighed long term economic and democratic measurements, eventually creating a failed state. The country now faces some of the same challenges as then, although this time institutionally somewhat better equipped. This time the challenges seems to be i) getting the foreign investors to pay royalties and income taxes in accordance with existing law, ii) making licensing mechanism transparent thereby reducing rent-seeking behavior; corruption is still, according to domestic commentators, the biggest economic and political challenge facing SL (ibis.dk).

As we have seen in the above historical review, ensuring transparency and legality in payments is much dependent on the political decision-making process and its structural setup. The political decision-making process, during the Stevens-era was characterized by a high level of centralization. Centralization can be defined as the concentration of Government authority at the national level (Heywood 2002, p. 420). Previously the central administration controlled everything from licensing to export via the Ministry of Mines and the GDO. This centralistic structure both led to and was a mean for increasing rent-seeking behavior. This is why we also choose to pursue this path in the thesis at hand.

6.0 Current Situation

Following chapter will review the current situation of Sierra Leone (SL) in terms of legislation governing the petroleum area, covering the two petroleum acts of 2001 and 2011, finance acts etc., plot allocation and civil society actors.

6.1 Legislation

Legislation surrounding the Sierra Leonean oil sector is primarily covered throughout the Petroleum Exploration and Production Act of 2001 (PEPA) and the Petroleum (Exploration and Production) Act of 2011 (PA). But besides these two acts the Finance Act of 2011 (FA) covers tax and fiscal regimes more extensively while the Appropriation Act of 2012 (AA) gives a general picture of allocation of funds from the Consolidated Fund.

6.1.1 The Petroleum Resources Unit/Petroleum Directorate

The Petroleum Resources Unit (PRU) was established under the PEPA of 2001. Under the PA of 2011 the PRU became the Petroleum Directorate, and although no major changes were made in the make-up of the Petroleum Directorate, it was heavily elaborated on. The unit is under the Office of the President and acts on behalf of the state in all matters regarding negotiation of oil agreements, while the 2011 PA diverts the responsibility to an, as of yet, unnamed minister²⁷ while the Petroleum Directorate will function as the main advisory and monitoring body on matters regarding oil (PA 2011, p. 9-10). Furthermore, the Directorate is responsible for the overall supervision of oil agreements, auditing of contractors and supervision of contractor behaviour. The Director-General, head of the Directorate, is *"appointed by the President subject to the approval of Parliament"* and, besides general management tasks, is charged with producing an annual report *"on the activities of the Directorate for the approval of the Minister who shall lay it before Parliament"* (PA 2011, pp. 6-7). While the act makes provision for hiring additional senior management as warranted, it effectively prevents sanctions against unintentional mismanagement: *"No action shall lie against the Director-General or other staff of the Directorate in respect of anything done or omitted to be done in good faith in the performance of any function under this Act"* (PA 2011, p. 14). The 2011 act allows for the

²⁷ Until a ministry has been established and a minister appointed, the act will be overseen by a person appointed by the president, in this case the Director-General of the Petroleum Directorate.

Directorate to make use of experts, consultants and professionals as it sees fit and is to a certain degree autonomous although still under the future petroleum ministry (Ibid. p. 13-14).

Reconnaissance permit holders, or exploration permit holders, are required to provide the Directorate with all data obtained during exploration, but interpretation of such data is the responsibility of the Directorate (Ibid. p. 21).

6.1.2 Petroleum Rights

As per the PEPA of 2011, all rights to petroleum found on SL territory belong to the people of SL and is to be managed by the state on their behalf. This also means that petroleum found on privately owned land falls to the state who is also sole right bearers when exploring, producing and so on, unless an agreement has been made with a contractor, meaning that private persons are not allowed to engage in petroleum activity on their land, unless an agreement has been negotiated with GoSL. However, the Act does make provisions for compensation to be paid to anyone *”who suffers any loss or damage as a result of the petroleum operation”*.

Applications for petroleum agreements are to be submitted to the Director-General and contain, among others; *”evidence of technical and financial capabilities”* (PA 2011, p. 16).

All major decision-making goes through THE Director-General’s office. Block division and definition is solely the responsibility of the Director-General, and the PEPA makes no demands regarding the assistance of inside or outside experts. Especially in light of above mentioned provision for the de facto *”get-out-of-jail-free card”* provided for staff incompetence (PEPA 2001, p. 9-12). The case of environment is an exception though. Here the Director-General *”shall consult the Director of Environment on all petroleum matters relating to the environment”* (PEPA 2001, p. 13). The 2011 PA does address some of these worries. As mentioned below in section 6.1.5 transparency has been prioritised, potentially ensuring a higher degree of accountability. Furthermore, the provision for a ministry and a minister of petroleum will be given responsibility of the petroleum rights, with the Petroleum Directorate acting as an advisory body as mentioned above in section 6.1.1.

6.1.3 Reporting and Monitoring

While the PEPA of 2001 does require somewhat extensive reporting from the contractors, no provisions are made in terms of monitoring this reporting, except for the fact that the PRU is to *“appoint auditors and other inspectors to inspect, test or audit, as appropriate, the works, equipment, operations and financial books of accounts, records and registers relating to petroleum operations carried out by contractors or subcontractors under this Act”* (PEPA 2001, p. 8).

However, the contractor is responsible for deciding whether a discovery merits appraisal and subsequently conducting the appraisal, and it is not stated whether or not GoSL will be in any way involved with such an appraisal. Furthermore, in case a discovery proves commercially viable, the contractor is obliged to submit long-term production programmes, which are to be aligned with petroleum agreements, not the existing legislation (PEPA 2001, p. 13-14).

This is elaborated on in the 2011 PA. Here it is specified that a licensee shall keep records of quantity of petroleum extracted, crude oil and natural gas etc. The records are to be stored at an address in SL, known to the future minister (PA 2011, p. 74). Furthermore, licensees are required to submit annual reports on their utilisation of local goods and services (Ibid, p. 58). The act makes provisions for monitoring allowing the minister to *“authorise any qualified public officer to enter any facility where petroleum is being produced or stored and inspect or take samples for testing of any petroleum products found in that facility and the cost of the test shall be borne by the licensee”* (Ibid, p. 48). While the 2011 PA is more elaborate on the reporting duties of licensees and allows for more monitoring rights by GoSL, it is still the responsibility of the IOC/licensee to determine commercialisation, and no provisions are made for financial monitoring or the reporting of income and costs, hinting at this being an area covered individually in each contract negotiation. However, questions of doubt will be decided by the act if possible: *“This Act shall take precedence over all existing enactments relating to petroleum operations in Sierra Leone and where there is a conflict between the provisions of this Act and any other enactment or any other agreement made under this Act, the provisions of this Act shall prevail”* (Ibid, p. 87).

6.1.4 Petroleum Agreements

According to PEPA, agreements between GoSL and contractors are valid for 30 years. However, if no oil has been found within the first seven years the agreement can be terminated. Although the legislation opens up for varieties in this time-frame the seven-year exploration period and 30-year total period is stated as the maximum (PEPA 2001, p. 14). The time-frame set out in the 2011 PA is exactly the same (PA 2011, p. 31-2).

A somewhat vague paragraph provides for changes in an agreement should conditions change: *"A petroleum agreement shall provide for a review of its terms at any time any significant change occurs in the circumstances prevailing at the time of entry into the agreement or at the last review of the agreement, if any"* (PEPA 2001, p. 14). Theoretically speaking, this paragraph is an important tool for the government in connection with windfall taxes, changing perceptions of environmental friendly production and so on. The Act makes no specifications as to what constitutes a *significant change*. The same section, although worded differently, shows up in the 2011 PA. It is still rather vague, but is, if not supported by, then strengthened by the following section: *"The Minister may instruct the licensee to take all necessary and practicable steps to recover the petroleum in accordance with this Act, or as the case may be to increase the rate at which the petroleum is being recovered to a rate not exceeding such capacity as may be specified"* (PA 2011, p. 46). The section is supported by subsection (a) of section 60 stating that a licensee shall *"ensure maximum recovery of petroleum in each individual or several combined petroleum accumulations"* (Ibid, p. 44). These paragraphs make sure, that international oil companies (IOC) can't reduce production, which can be desirable if provisions for windfall taxes have been made in the agreements. What this practically means, is that if oil prices rise sharply, GoSL has the legal basis to change the agreements accordingly and demand of the IOC that they produce at capacity.

Interestingly, only one section covers income tax in the 2001 PEPA, and seems redundant: *"A contractor shall pay income tax in accordance with the laws of Sierra Leone unless otherwise provided in the petroleum agreement"* (PEPA 2001, p. 15). It is desirable that a contractor pays income tax in the country he is operating within, but the wording in this paragraph means that the rate of this income tax within an oil agreement might be totally detached from existing national

legislation. The same goes for royalties, which are to be paid *“unless otherwise provided in the petroleum agreement”* (PEPA 2001, p. 15) and annual rental charges set by the Director-General or the agreement itself (PEPA 2001, p.15). As no tax rates, royalty amounts or rental charges are explicitly determined in the Act, there are no guidelines for negotiators and no provision for determining appropriate rates. Furthermore, it is specified later on that regulations on royalty rates are at the discretion of the Director-General as are the general terms and conditions of agreements (PEPA 2001, p. 22).

The 2011 PA somewhat makes up for this by referring to the Income Tax Act of 2000. Without limitation, the taxes, fees and customs duties are to follow existing legislation, meaning that individual tax regimes in each contract are limited (PA 2011, p. 64-5).

6.1.5 Transparency

Section 46 is the only section of the 2001 PEPA dealing with transparency. It simply states that a *“contractor or sub-contractor shall keep all data acquired and any existing data released to it by the State confidential and shall not disclose such data to a third party without the permission of the Director-General, unless otherwise provided in the petroleum agreement”* (PEPA 2001, p. 16). Publishing of revenues, incomes, tax rates, royalty amounts, etc. is not touched upon in the act. This is, however, corrected to some extent in the 2011 PA. While still suffering some lack of definitions and clarifications, the act makes provisions for the establishment of *“a central database of persons involved in petroleum operations”* (PA 2011, p. 11). Furthermore, the Petroleum Directorate is charged with not only managing petroleum data, but also providing *“periodic updates and publication of the status of petroleum operations”* (Ibid.). While it is not specified who these updates and publications are to be provided to, the act continues to state that the Directorate shall *“prepare an annual report on the status of petroleum activities in Sierra Leone, for submission to the Minister for further submission to the parliament and publication in the Gazette and in such other manners as the Minister may determine”* (Ibid, p. 12)²⁸. Further publications are required of the results of tenders *“including the content of winning and losing bids”* (PA 2011, p. 24) and a competitive bidding process is required to be transparent and fair as should each *“petroleum licence, and any accompanying agreement between the State and the*

²⁸ The *Minister* being referred to is the minister of a future Petroleum Ministry. No such thing has been established at the time of writing. The *Gazette* refers to the Sierra Leone Gazette, published by the Sierra Leonean Government and is only available from the Government Bookshop in Freetown.

licensee providing details on the licence conditions attached to the licence [...] be published in its entirety in the Gazette and in such other manner as may be prescribed” (Ibid, p. 29).

Regarding the Director-General of the Petroleum Directorate, provisions are made forcing him or her to divulge stakes or interests in petroleum enterprises if these are active or “*may become involved in the petroleum industry in Sierra Leone*” (Ibid, p. 14).

Furthermore, registrations of persons who have been deemed qualified to apply for petroleum rights are accessible to everyone upon payment of a non-defined prescribed fee.

6.1.6 Fiscal Provisions

The FA of 2011 allows persons to import machinery or other inputs for *any* business purpose duty free for a self-elected period of five years. These sections, however, do not include petroleum products intended for construction (FA 2011, p. 9, 13). The act does not define petroleum products further. Oil marketing companies selling petroleum in, but not from, SL are required to not only pay excise duties levied on the petroleum, but also provide a bond equivalent to the value of the excise duty when bringing in the petroleum (Ibid, p. 6).

Investors in SL enjoy tax deductions on research and development as well as on training of local staff and social projects, such as schools or medical facilities, provided these are accessible to the general public (Ibid, p. 10).

The rules regarding expatriate staff somewhat limit companies in their use of non-Sierra Leone staff. However, they are not particularly specific, only stating that “*The owner of a business or an establishment may employ limited competent expatriate staff having skills and expertise not available in Sierra Leone*” (Ibid, p. 11) and expatriate staff are required to pay the same income tax rate as Sierra Leonean staff members. Companies, however, can enjoy tax deductions if an expense, whatever it may be, can be argued to promote exports and the supply of goods overseas (Ibid).

The issue of tax breaks are not lost in the FA of 2011: “*Income derived from any undertaking under the Public-Private Partnership Infrastructure Projects in excess of twenty million dollars shall enjoy a corporate tax relief for fifteen years*” (Ibid, p. 12).

6.1.7 The Consolidated Fund

SL's Consolidated Fund consists of income received by GoSL. The income, in turn, consists of tax revenues, mining revenues, licenses etc. (GoSL 2010, p. 7). Figure 6.1 below shows the ten areas who received the largest amounts from the fund in 2012 of a total of Le 2,150,077,790,000.

Figure 6.1: Top ten expenditure posts from the Consolidated Fund 2012		
Source: AA 2012		
Authors' own creation		
No.	Post	Amount
1	Salaries & Wages ²⁹ :	Le 798.306.000.000
2	Development Activities – Other Roads	Le 112.594.000.000
3	Development Activities – Others	Le 92.074.000.000
4	National Electoral Commission	Le 80.406.000.000
5	Development Activities – Electrification of District and Provincial Headquarter Towns	Le 60.703.000.000
6	Ministry of Defence	Le 57.020.000.000
7	Grants to Tertiary Institutions	Le 52.038.000.000
8	Development Activities – Rehabilitation of City and District Headquarter Towns Streets	Le 44.849.000.000
9	Road Maintenance Fund	Le 44.307.000.000
10	Domestic Suppliers' Arrears	Le 40.037.000.000

6.2 Stakeholders

In the following we will present relevant stake-holders who all, in one way or the other, have something to do with the emerging oil sector. The stakeholders might be directly involved in oil activities or indirectly possess a great deal of knowledge on relating issues. We have limited this presentation to only involve stakeholders we have interviewed³⁰. We could additionally have

²⁹ "The amount provided for Salaries and Wages is the provision for the Financial Year 2012 for all Ministries, Departments and Agencies including Government's contribution to Social Security as Employer to the Social Security Scheme" (AA 2012, p. 6)

³⁰ And the National Revenue Authority who we intended to interview

presented the local branch of the World Bank and the IMF, but as described, these were reluctant to talk with us, which made it difficult to generate knowledge of their operating mandates. Moreover we got the impression that the IMF and World Bank only had been involved to a limited extent (i.e. Interview 8, 2012). Lastly we could also have presented the oil companies currently holding exploration plots in detail, but these were also reluctant to talk with us and it has proved to be very difficult to obtain knowledge on the companies' structural set-ups etc. from written sources.

6.2.1 Anonymous International Consultancy Agency

The consultancy agency we interviewed works in close collaboration with the Sierra Leonean Ministry of Mineral Resources (MMR) and has a long-standing relation to Sierra Leone. Some of the agency's main tasks in SL have been to assist in the crucial process of developing the Mines and Mineral Act (MMA) of 2009 and setting up a broad based technocratic service-body which ought to manage the mineral sectors, thereby leaving the MMR to handle politics and legislative frame working. Besides its tasks in SL the agency is also present in other developing countries where the staff offers advice to governments on commercial economic issues (Interview 1, 2012).

6.2.2 Budget Advocacy Network

This civil society movement consists of seven organizations all working on budgetary issues with a pro-poor approach, meaning they aim to create awareness and ensure that all citizens benefit from taxations, revenues etc. Concretely,0 Budget Advocacy Network (BAN) works with; budget analysis, revision of the national budget, taxation, oil, mining and other public financial issues. When completing these tasks BAN works in close collaboration with Transparency International and IBIS³¹. When it comes to the emerging oil sector, BAN advises and educates other civil society movements, mainly on taxation issues, before they are heard by the parliament and governmental administrative bodies (Interview 2, 2012) for instance they support the National Advocacy Coalition on Extractives (NACE) (see 3.2.7).

³¹ IBIS is an International development organization with a local branch in Freetown, Sierra Leone.

6.2.3 Cadastra Office

Cadastra Office is an administrative office within MMR. The office operates under the mandate of the MMA of 2009 and is in charge of an internal IT based system, created to ensure accountability, transparency and the easing of access to information. Concretely the office is in charge of everything surrounding licensing; managing applications, validating applications, renewing licences etc. Additionally the office tracks down payments from companies and collect non-tax revenues, both measured by land-size which makes monitoring less of an issue to the office. Cadastra office reports on a monthly and quarterly basis to MMR. When it comes to the emerging oil the office handles or assists on no relevant tasks and possesses very limited knowledge on the governmental bodies that do (Interview 3, 2012).

6.2.4 National Revenue Authority

The National Revenue Authority (NRA) is pretty much equivalent to any revenue authority in any country. NRA collects and account for all duties, revenues and penalties in accordance with existing legislative framework in SL. NRA's mandate is increasingly important to SL as the country depend more and more on domestic revenues: In 2000 SL had a 65 pct. dependency on donors compared to 40 pct. in 2012 (NRA.sl). NRA nevertheless does not collect rent-revenues from the exploring oil companies, as this task currently lies under the Petroleum Directorate. It is however decided within the legislation that they will collect revenues when the sector becomes commercialized, but there also exists a political wish from the Petroleum Directorate to ease the NRA of this task (Interview 8, 2012).

6.2.5 Ministry of Mineral Resources

The Ministry's key tasks can be narrowed down to two core areas; legal and regulatory reform and review of mining agreements. On the first area the ministry is reviewing proposals from the Law Reform Commission for reforming legislative framework for the various mineral sectors, which amongst others consists of taxation and fee collection systems. The second core area, review of mining agreements, basically consists of reviewing all existing industrial mining agreements and leases, ensuring the country benefits the most from the exploitation of its mineral resources (slminerals.org). Further, the ministry works on institutional reform issues trying to professionalize the management of the extractive sectors; within this line there has been

established a taskforce between the Ministry of Finance and Economic Development, NRA and MMR that discusses challenges regarding revenue tracking and collection and further currently works on setting up a broad based technocratic service-body consisting of economists, geologists, lawyers etc. (see also section 6.2.1) (Interview 5, 2012). The ministry as a whole has only been involved on oil relating issues to a very limited extent

6.2.6 Ministry of Finance and Economic Development

The Ministry of Finance and Economic Development (MoFED) manages tasks equivalent to any other ministry of finance, however the sub-office relevant to us and, which we therefore interviewed, is the Revenue and Tax Division. This division or office cooperates with the NRA, reviewing policies and previous tax legislations to ensure these are in line with the current situation. The division is not directly involved in oil related issues, but has assisted the Petroleum Directorate in the formation of fiscal regimes for petroleum which ought to be used in the contract negotiations (Interview 6, 2012).

6.2.7 National Advocacy Coalition on Extractives

This civil society movement is an umbrella organization for other like-minded civil society movements working on extractive issues. The coalition for instance consists of Network Movement for Justice and Development (see section 6.2.10) and ActionAid Sierra Leone. The National Advocacy Coalition on Extractives (NACE) overall aims at monitoring and ensuring an effective administration of the funds from extractive sectors. NACE, in particular, does advocacy work ensuring public awareness and works in collaboration with the government in conducting assessment papers and capacity builds members of parliament. NACE have had the chance of capacity building members of parliament on oil related issues. (nacesl.org & Interview 7, 2012).

6.2.8 Petroleum Directorate

The Directorate, formerly known as the Petroleum Resources Unit is based under the state-house and answers primarily to its Director-General and the President of Sierra Leone. The Directorate is charged with the responsibility of representing the state in oil negotiations and further regulates all upstream activity from the emerging oil sector. Currently the directorate collects basic licence fees (Interview 8, 2012) a task that normally lies with the NRA (NRA.sl).

6.2.9 Association of Journalists on Mining and Extractives

The Association of Journalists on Mining and Extractives (AJME) uses a broad range of media opportunities to ensure public awareness on extractive-related issues; ranging from printed articles and electronic newsletters to radio. AJME further works closely with the other civil society movements presented in this sub-section. The overall aim of AJME is to ensure that SL avoids familiar pitfalls of rent-seeking behaviour and that revenues are spent on useful necessary assets for the public. In trying to achieve this AJME has for instance conducted field studies in neighbouring country Ghana, which has recently commercialised their own oil sector. The field work has provided AJME with analytical tools to estimate possible revenue outcome in SL if current legislation is obeyed. AJME feels their advocacy work has been successful, as they were a major part of the movement advocating that MMR should begin reviewing all existing mining agreements (Interview 9, 2012)

6.2.10 Network Movement for Justice and Development

This civil society movement is a member of the NACE coalition (see section 6.2.7). The Network Movement for Justice and Development (NMJD) works with advocacy with a pro-poor approach on economy and justice related issues. With regards to mining and extractives they work to ensure transparency, lobbies on mining agreements and focuses on land rights. NMJD has not been focusing much on oil issues, but has, however, together with many other civil society movements, raised concerns about the drawing up of the 2011 PA and made suggestions on how to spend future revenue; especially they have drawn attention to the speedy procedure in which it was passed in parliament (Interview, 2012).

6.3 Current Plot Allocation

Table 6.2 List of Companies Currently Holding Exploration Plots

Young Energy Prize (Luxemburg)
European Hydrocarbons (UK)
Prontinal (UK)
Oranto (Nigeria)
Anadarko (USA)
Repsol (Spain)
Woodside (Australia)
Tullow (UK)

(Source: Gbenda, 2011)

There are relatively many companies holding exploration plots and amongst them there are some major actors with great seniority. The companies might have been given favourable conditions for exploring, but we, however, interpret this major interest from the IOCs as a significant sign that the emerging sector will become commercially viable in the near future.

7.0 Analysis Part 1 – Capacities from Negotiating to Usage of Revenues

In the following we are going to draw from our entire referential framework in order to answer the first four working questions. These working questions are theory-guided and follow a linear time-dimension ranging from negotiating extractive contracts to usage of revenues. Summing up the working questions are:

- I) What characterizes the Sierra Leonean governmental capacities in terms of negotiating contracts and which initiatives are taken in order to establish or improve such capacities?
- II) What characterizes the legislative framework including fiscal regimes surrounding the sector – and which design features are included in the contracts?
- III) Which initiatives are taken to ensure transparency in the whole process ranging from the making of contracts, legislative framework and generated income?
- IV) Which decisions, if any, have been made on how to spend or save the forthcoming revenues and which measures have been taken to ensure public awareness and inclusion on these issues?

7.1 Capacities for Negotiating

Drawing ontologically from the framework of NIE we acknowledge any actors in a given transaction will act opportunistically when possessing more information than their counterpart. In order to enter a negotiable situation relatively more favourable than one's counterpart, one must try to lower one's knowledge boundaries.

For Sierra Leone (SL) the challenge is to negotiate some profitable contracts with international oil companies (IOC). This can however prove to be an enormously difficult task as most developing countries enter such negotiations inferior to their counterparts. This is not only pointed out by every theoretical input categorized under phase one 'Negotiating Contracts', it is also recognized in SL, by nearly all stakeholders within the civil society and public administration (i.e. Interview 5, 7, 8 & 9, 2012) that the asymmetrical level of knowledge between the IOC's and government of Sierra Leone (GoSL) is the main challenge for SL when having to negotiate with IOCs.

The asymmetrical knowledge level occurs as it is rarely clear to governments of developing countries how much the rights they are negotiating, is actually worth. Chosen theory offers us this explanation: Even though governments and their subjects, in most cases, are the sole right owners of natural resources, they do not possess the same knowledge, experience and finance as the extractive companies and the latter can therefore enter the negotiations with relatively better assumptions.

For SL we see a four-legged solution on how to lower their knowledge boundaries and thereby enter negotiations relatively better than otherwise.

- i) Setting up a strong and rigid legislative framework build on technocratic assumptions.

Such a framework could, if obeyed, decrease negotiable issues thereby also decreasing issues where the IO's will have a relative advantage.

- ii) Drawing from already existing governmental knowledge on how to negotiate extractive contracts
- iii) Upgrading personnel via investment in education
- iv) Hiring of outside expertise to handle the negotiations

The last three solutions are to be seen as given, as they will all help accumulate more knowledge making it easier to build better assumptions for entering a negotiable situation.

7.1.2 Legislative Framework

The oil sector has not yet passed the exploration phase. This means that GoSL has yet only been negotiating license agreements. As we know from the theory section this means that they will be receiving negotiated signing bonuses, royalties and income taxes. As we will see in section 7.2, GoSL has actually managed to set up a legislative framework that, if followed, will provide them with the opportunity of earning money even if the sector proves to be economically unviable. The license fees agreements are, however, not publically accessible (Interview 5, 8 & 10. 2012) and we can therefore not check whether or not the legislation is followed. Additionally, the legislation leaves a lot of issues open for negotiation, issues such as environmental agreements,

working conditions and local content money. This is why it becomes important to see whether or not precedent exists in SL when having to obey extractive related legislation and whether or not The Petroleum (Exploration and Production) Act (PA) of 2011 is built on real technocratic knowledge. If not it has the potential of being more beneficiary towards the IOCs than GoSL, when having to negotiate.

Starting with the issue of whether or not precedent exists when having to follow extractive related legislation; we know from section 5 that this has unfortunately rarely been the case: Dieckmann (2011) was given the opportunity to see and compare mining contracts to existing law. The contracts had often been negotiated individually and in total secrecy with the GoSL, exactly as one could fear the oil license agreements are as they are not publicly accessible. According to respondents oil negotiations are also sworn in secrecy (i.e. Interview 1, 7 & 9, 2012). The mining agreements revised in 2011 all seemed to put aside already existing national legislation. For an example the Income Tax Act of 2000 states that mining companies ought to pay 37.5 pct. in income tax, but only recently has London Mining revised their paid income tax from 6 to 25 pct. Additionally the biggest mineral exporter, Sierra Rutile, only pays approximately 2 pct. in income taxes. According to the consultancy agency interviewed, within the Ministry of Mines and Mineral Resources (MMR) there seems to exist an awareness of previous mistakes, as they are currently revising and renewing old mining agreements. Respondent of MMR explains the renewals by stating that after the Civil War, SL simply wanted to signal to the outside world that they were ready to do business and therefore gave companies very lucrative contracts ignoring existing law, but that this acute need has now changed (Interview 5, 2012). However, same respondent emphasized the renewing of the contract with London Mining as the clearest success, but without mentioning the fact that despite of revising the contract it still puts aside existing law (Ibid.). Maybe this is why the civil society almost coherently claims that GoSL almost never follows legislation and that rent seeking and to far going clauses are an ever-present issue in SL (Interview2 & 10, 2012). A reason why legislation is rarely obeyed could be the weakness of procedure pointed out by Budget Advocacy Network (BAN): It is apparently standard amongst members of parliament that if both sides agree one can simply overturn existing law in specific cases (Interview 2, 2012).

Turning to The PA 2011, and whether or not this is built on technocratic knowledge; BAN actually presents some rather ambivalent points of view. Due to the speedy procedure of passing the act through parliament several civil society movements (CSM), including BAN, states that no-one really knew what it contained and that it was very questionable whether or not it was built on technocratic knowledge. On the other hand BAN stresses development of legal frameworks to be one of GoSL's main strengths. If the latter is true then there should be no concerns on the statement made by our respondent at the Ministry of Finance and Economic Development (MoFED); 'Legislation should be basis for negotiating' (Interview 6, 2012). The only problem is that there exists no precedent for following the legislation. Which combined with the fact that the oil contracts will not be published (Interview 5, 2012), the petroleum act does not address issues on how to prevent rent-seeking behaviour (Interview 2 & 10) and the standard procedure in parliament for overturning existing law in specific cases – gives real reason for concerns. This is because these factors combined make a legislative framework, no matter how strong and rigid, almost irrelevant which would deprive GoSL the opportunity of decreasing negotiable issues, thereby still facing the aspect of asymmetrical knowledge on various levels.

7.1.3 Hiring Outside Expertise, Upgrading Own Personnel and Drawing from Existing Knowledge

These issues will be elaborated and analysed extensively during the answering of working question five (see section 8.0). This is because such initiatives both possess the potential of lowering GoSL's knowledge boundaries in a negotiable situation and decreases the degree of centralization as more stakeholders will become involved. However, without revealing too much we can easily conclude that GoSL has done insufficient on all three parameters. Below we will give a few examples, before moving on.

With regards to upgrading own personnel, the very small entity of The Petroleum Directorate claims to be building a critical mass of expertise. Concretely, the directorate emphasizes that they have sent two officials to the U.K. in order to do a masters-degree in oil and petroleum management, and further stresses that when these come back they will be 'comparable or even better than the negotiators of the IOCs' (Interview 8, 2012). This is of course very questionable

or even untrue, as studying two years will not create the same level of knowledge and experience as accumulated within the IOCs. Additionally it seemed to be a common concern that GoSL saw upgrading as an expense rather than an investment and were reluctant to educate own personnel unless others like the IMF or World bank were paying for it (i.e. Interview 9, 2012)

Also, there were not hired any outside expertise to assist in the negotiations, which was confirmed by the Directorate itself (Interview 8, 2012). Additionally, the Directorate when fulfilling its mandate and negotiating on the behalf the state is not drawing from expertise of their governmental colleagues with experience on extractive issues. This is very surprising when looking at the degree of accumulated knowledge and co-operation on the mining related administration. MMR has for an example set up a technocratic task-force consisting of legislatures, geologists and economists that meets on a weekly basis to discuss challenges ahead (Interview 1, 2012). The Petroleum Directorate has not at all been drawing from any governmental internal knowledge.

Again, these issues will be elaborated and analysed extensively in section 8.0 to 8.4

7.1.4 Conclusion

A strong and rigid legislative framework built on real technocratic knowledge possess the opportunity to decrease the number of negotiable issues thereby eliminating the issue of asymmetrical knowledge on various levels. As we will see in the answering of the forthcoming working question such a framework might already be in place. The only problem is that there do not exist precedent for following such legislation in SL and parliamentary procedure actually enables overthrowing existing legislation in any specific cases. Additionally, the oil contracts will not become publicly accessible which is a huge problem, as no one will be able to see if enclosed clauses ignores or overthrows binding legislation.

When it comes to lowering ones knowledge boundaries in a negotiable situation by upgrading or hiring, GoSL has with regards to oil acted insufficiently to say the least, but this is something we will come back to in section 8.0.

7.2 Design Features of the Contracts

Lacking skills of negotiators can, to some extent, be compensated for by a strong legislation. Issues covered by legislation become non-negotiable, and are thereby independent of competencies of government negotiators. Theoretically, if a tax rate is set at a certain percentage, IOCs would have a difficult time negotiating a more favourable tax rate. Following chapter will analyse Sierra Leone's possibilities regarding contract design, such as fiscal regimes, working conditions, environment and so forth. Further, it will analyse GoSL's potential in terms of income possibilities as well as capacities necessary for monitoring IOC compliance with contract design features.

7.2.1 Negotiables and Non-Negotiables

Sierra Leone's first act covering the emerging oil sector was The Petroleum Exploration and Production Act (PEPA) of 2001. The act was very short, covering only 23 pages and left close to everything regarding contract design features up for negotiation (Interview 8, 2012). Even income tax was a negotiable issue, in spite the fact that a rather comprehensive act, The Income Tax Act (ITA), had been enacted the previous year of 2000. In 2011 new legislation was ratified and The Petroleum (Exploration and Production) Act (PA) became the governing document in the area of oil and petroleum. The 2011 PA is much more comprehensive in dealing with contract design features, and especially the financial area is covered to an extent not previously seen in Sierra Leonean oil legislation or in the country's other extractives legislation for that matter. Tax rates are no longer negotiable, but the rates set out in the ITA, while royalties and signing bonuses are mentioned, however, without specific amounts or percentages attached to their mentioning. Furthermore, the PA addresses the always present issue of previous agreements not in compliance with new legislation: Section 148 establishes that the PA "*shall take precedence over all existing enactments relating to petroleum operations in Sierra Leone and where there is a conflict between the provisions of this Act and any other enactment or any agreement made under this Act, the provisions of this Act shall prevail*" (PA 2011, p. 87). This has the effect of, theoretically, ruling out issues of non-compliant contracts, an issue currently being addressed in the mining sector (Interview 1 & Interview 3, 2012). At the moment, the Strategic Policy Unit within GoSL is renegotiating mining contracts to make them coherent with current legislation in the area (Interview 3, 2012). These renegotiations are completely voluntary

from the mining companies' side, i.e. they can refuse if they want to. With a provision like section 148 of the PA, any contract found to conflict with prevailing legislation is to be changed. However the IOC involved may feel about it.

Budget Advocacy Network (BAN), an NGO who, according to themselves, assist GoSL in macro-economic issues, acknowledges the development of a legal framework, but raises concerns, based on previous experiences in the mining sector, of whether or not GoSL will actually follow the legislation. Furthermore, they criticise the lack of input given to civil society (Interview 2, 2012).

Where the fiscal provisions of the acts covering the oil sector are specific, issues surrounding areas such as working conditions, environment and local content money are not. Interestingly, this is the exact opposite of the recommendations we have outlined in section 4.1.2 where royalties, tax rates and licence fees³² should be negotiables and health, safety and environment should be non-negotiables embedded in local legislation (Radon 2007, p. 102). While the act tries to encourage the use of local labour and demands the governmental authorities on environment be heard, no specifics are mentioned, meaning that these areas are the sole responsibility of government negotiators. This resonates somewhat with the civil society, who claims to have heard nothing regarding contract features in the public debate (Interview 2 & Interview 10, 2012). The same concerns are raised in connection with the fiscal regimes used in the PA as a public debate issue. While BAN explains that some parliamentarians have launched campaigns focused on tax exemptions, Network Movement for Justice and Development (NMJD) and the Association of Journalists on Mining and Extractives (AJME) both claim that taxation has not been a public debate issue (Interview 2, 9 & 10). This is not to say that the fiscal policies surrounding the oil sector cannot be sound without input from civil society, however, legislation rooted in public debate will undoubtedly be easier to enforce and stand firm on in negotiations, as well as it will stand up better to public scrutiny. One mitigating circumstance, especially when considering the degree to which the process of legislating this area seems to be centralised (see section 8.0), is that while the Ministry of Finance and Economic Development (MoFED) are not part of negotiating contracts with IOCs, they have been involved in setting up

³² Actually, licence fees and royalties are not specified in legislation, but are covered as an integrated part of any oil contract. This will be touched upon in the next section XX!!!

the fiscal regimes, to be used by the Petroleum Directorate in the negotiations (Interview 6, 2012). Furthermore, our respondent at MoFED, besides stating the fact that negotiations should follow legislation rather than being individually decided in each contract negotiation, explained that IMF has suggested one piece of legislation governing the whole extractives sector of SL. While this theoretically is a good idea, as the negotiation process to a much lesser extent will be dependent on the notions of individual negotiators, the process should be as transparent and inclusive as possible. An issue overshadowing the enactment of the PA as it happened under a certificate of emergency, meaning that stakeholders both within GoSL, Parliament and civil society hardly had a chance to scrutinise and provide input into the design of the act (Interviews 6 & 9, 2012).

7.2.2 Fiscal Regimes and Design Features

The fiscal regimes governing the oil sector in SL has been developed in cooperation between the Petroleum Directorate, MoFED, the IMF and the World Bank (Interview 8, 2012). The Petroleum Directorate has not, however, looked to the Ministry of Mineral Resources (MMR) or the Strategic Policy Unit (SPU) and their work of bettering fiscal regimes in the mining sector (Interview 1, 2012). Whether or not this would have been advantageous remains to be seen. Of course the trouble in the mining sector has as much to do with adherence to legislation, as it has to do with lacking legislation.

The prevailing fiscal regime in SL is rather complex, and does not completely align with any of the fixed models presented in section 4.1.2. However, it is very similar to the Royalty/Tax System described in the section, with some similarities to a Production-Sharing Agreement (PSA). While the PA section 67, subsection (1) states that the “*title to petroleum produced shall pass to the licensee at the well head*” (PA 2011, p. 48), typical of a Royalty/Tax System, the act also states that title to facilities transfer to the government, typical of a PSA (PA 2011, p. 48). The act also makes provisions for setting up a National Oil Company. These plans, however, are yet to be acted out. In terms of risks, this means that GoSL so far stands to gain without any immediate risks, other than failing to attract IOCs to operate in the country³³. The aforementioned gains comes in the form of signing bonuses, as specified in section PA 110,

³³ As we know, Sierra Leone already has a number of IOCs exploring the oil fields (See table 6.2).

subsection (1): “A petroleum licence may provide for the payment of one or more lump sum bonuses from the licence, which may be conditioned upon the award of a licence or the achievement of specific production targets” (PA 2011, p. 66). Further, these bonuses can even be bid upon, potentially securing GoSL a larger signing bonus than if a certain rate had been set beforehand (Ibid.). While signing bonuses secure governments revenue even if an oil field does not, the idea of letting IOCs bid on them has its pitfalls. The temptation of large initial revenue might overshadow the issues of future earnings, making it important that signing bonuses are not the most important factor.

Another factor making the venture into the oil industry even more profitable for GoSL, again in spite the risk of commercially unviable oil fields, is the area fees introduced in the PA. These area fees “shall be payable on the grant of a petroleum licence and thereafter annually on the anniversary of the grant until the termination of the licence” (PA 2011, p. 33), and “may increase at given intervals during the production phase” (Ibid.). In practice this means that, besides signing bonuses, GoSL is not only secured additional earnings, but earnings that can be raised should an oil field turn out to be commercially viable. In terms of risk, this system is extremely secure, not only eliminating the obvious risks of unrecoverable costs for GoSL, but also securing income as soon as a contract has been negotiated, assuming that legislation has been adhered to. However, as these area fees are not specified in the Petroleum Act, the Finance Act or the Income Tax Act³⁴, making it likely that it will be the responsibility of government negotiators to set a rate. Even though this could mean a mere symbolic area fee, it will still secure revenue for GoSL regardless of the commercial outcome of oil fields.

Income tax is imposed on IOCs operating within the Sierra Leonean oil sector. The tax rate is set to 35 pct., as IOCs are considered residents of Sierra Leone, according to the legislation, whereas it would have been 37.5 pct., had IOCs been defined as mining companies (ITA 2000, p. 61 & 67). As the latter rate is rarely adhered to, the question is whether this definition has any bearing on the negotiations at all. However, our respondent from MoFED, a ministry heavily involved in drawing up the fiscal regimes of the sector, informed us of a draft bill being drawn up called the Extractive Industries Revenue Act. In this act, he explained, the Petroleum Income Tax would be

³⁴ However, it is specified that the fee will be decided by square kilometre of licence area (PA 2011, p. 66)

30 pct.³⁵, and only to be paid after deductibles and cost had been deducted from the IOC's income (Interview 6, 2012). Deductibles and costs are not mentioned in any current piece of legislation relating to the oil sector of Sierra Leone. As this draft legislation will lower the income tax for IOCs, it will also introduce the Petroleum Resources Rent Tax (PRRT), a tax already introduced in the 2011 PA (Interview 6 & PA 2011, p. 65). The PRRT is set at 14.2 pct. A bit confusingly though, the 2011 PA mentions the PRRT and refers to the 2000 ITA for an explanation of rates. However, the PRRT is nowhere to be found in the latter. According to our respondent at MoFED, this PRRT will also capture windfall taxes, as these are completely left out of both the PA and the FA. One subsection of the PA addresses issues of IOCs trying to evade windfall taxes, even if mentioning of the latter is absent. "*The Minister may instruct the licensee to take all necessary and practicable steps to recover the petroleum in accordance with this act, or as the case may be, to increase the rate at which the petroleum is being recovered to a rate not exceeding such capacity as may be specified*" (PA 2011, p. 46). In practise this means that if windfall taxes are introduced, IOCs cannot avoid these by producing less. A situation that might occur, should windfall taxes cut into IOC income to an extent making lowered production desirable.

In order to attract IOCs, it has been suggested to reduce corporate income tax, or petroleum income tax, to 25 pct. and import duty has already been reduced from 30 pct. to five pct. as it is believed that 30 pct. will eat too much into cash flows (Interview 6, 2012). Furthermore, the 2011 Finance Act states that "*Any person importing plant, machinery or equipment for any business purpose, excluding resale, shall be entitled to import the duty-free for any period of five years chosen by that person*" (FA 2011, p. 9). While these measures certainly make SL more attractive to foreign investments, they also represent a significant cut into the country's earnings. The question is whether or not the oil fields are valuable enough, as to attract IOCs, regardless of duty-free import of components. This question becomes difficult to answer, as GoSL has made no appraisals as to possible quantity and value of the offshore oil. A point further elaborated on it section 7.4 and 8.0.

Research and development (R&D), training of local staff and social services benefitting the general public is deductible by 100 pct. (Ibid. p. 10). While the latter might make sense, as it, if

³⁵ According to the Petroleum Directorate, the income tax is already fixed at a minimum of 30 percent (Interview 8).

not creates incentives, at least removes financial obstacles in terms of generating local content, the two former might create a growth in local knowledge and education. The question is whether or not especially R&D would occur regardless of tax deductions.

Royalties are mentioned in the PA but rates are to be found in the ITA. Here they are set at 25 pct. (ITA 2000, p. 68). However, the proposed Extractive Industries Revenue Act will set royalty rates at 10 pct. on crude oil and five pct. on gas³⁶. These royalties are to be paid on export value at “Free On Board” (FOB) price (Interview 6, 2012). FOB price is the price of the oil after all expenses, excluding shipping has been taken into account. Even with talks of raising the rates on crude oil to 12.5 pct., this is still substantially lower than the initial 25 pct. mentioned in the ITA.

As the legislation governing the oil sector is fairly comprehensive and specific as to what to pay and when, one section is worrying. Section 112 of the PA allows licensees to *“receive, remit, keep and utilise outside Sierra Leone, all the foreign currency obtained from the of petroleum assigned to it by the licence or purchased in or from transfers as well as its own capital, receipts from loans and in general all assets thereby acquired abroad”* (PA 2011, p. 66). Tax planning is a common problem in extractive industries worldwide, and allowing IOCs to keep their earnings elsewhere, makes it unnecessarily difficult to monitor taxable income.

Duration is covered in the PA and as a rule no licence can last longer than 30 years. Of these 30 years, the first seven are the maximum to be spent on exploration. If no commercial discoveries have been made within the exploration phase, the licence area is to be relinquished. If a commercial discovery has been made, the remaining years of the licence will cover the production phase (PA 2011, p. 30). Furthermore, if a commercial discovery is made, the remaining exploration area is still to be relinquished at the end of the exploration phase (Ibid. p. 34). This section shows the first steps in making provisions for ring fencing. However, the act fails to follow through and there are no provisions ensuring that an IOC does not include exploration costs in the total costs covering commercially viable areas as well. The proposed Extractive Industries Revenue Act should, however, cover ring fencing (Interview 6, 2012). It is

³⁶ Gas is often a valuable byproduct of gas extraction.

still interesting though, that this has been left completely out of the existing legislation as it can translate into a significant loss for GoSL.

Despite these shortages one very important issue is addressed, namely the one of stability clauses. As these can promote investments, they run the risk of making contracts unprofitable to host economies. GoSL however, addresses this issue stating that “*terms and conditions of a petroleum licence or a permit for the laying and operating of a pipeline may be reviewed at any time that a significant change occurs under the circumstances prevailing at the time of the issue of the licence or the permit*” (PA 2011, p. 72). While rendering stability clauses useless, as these cannot trump legislation, the section also opens up for windfall taxes, as these can be introduced upon changes in circumstances, meaning that if prices of oil rises suddenly, GoSL can impose higher tax rates in coherence with changes in external circumstances.

7.2.3 Monitoring and Revenue Collection

Whether or not the fiscal regimes analysed above will have any beneficial effect on the Sierra Leonean economy depends, to a large extent, on the monitoring and collecting capacities of GoSL.

Currently all tax collection activities are undertaken by the National Revenue Authority (NRA). However, according to the Petroleum Directorate, they do not have the capacities needed for collecting petroleum taxes even though they are already collecting taxes in the mining industry (Interview 8, 2012). MoFED agrees with this observation, stating that NRA is only equipped to collect taxes such as income, corporate and so on within the mining industry. Furthermore, they do not comprehend concepts of deductibles and costs, rendering them unequipped to collect taxes from IOCs (Interview 6, 2012).

In terms of monitoring there seems to be problems as well. While a consulting agency working with GoSL states monitoring of royalties are not effective in spite of recent improvements, CSM AJME adds that GoSL has no strengths in terms of monitoring and relies solely on self-reporting by IOCs (Interview 1 & 9, 2012). This is corroborated by MMR, where our respondent further stated that he felt that the NRA should change their practice of relying on self-reporting (Interview 5, 2012).

Self-reporting does open up for a wide variety of issues. Especially if the reporting is not followed up by monitoring, GoSL could lose a significant amount of revenue on this account.

An issue stated by NMJD, is the fact that government employees responsible for monitoring are not paid sufficiently making them susceptible to outside influence, while BAN emphasises the difficulty in monitoring the structures of IOCs, making it difficult to track profits (Interview 2 & 10, 2012). Furthermore, there seem to be the issues of mismatches between reporting by GoSL and the companies involved in the mining sector of Sierra Leone, further diminishing the faith in monitoring capacities of GoSL.

At the moment, only royalties and area fees are being collected and this is the responsibility of the Petroleum Directorate. These royalties and fees contribute to an unspecified development fund, while licence payments end up in the consolidated fund. In this regard, it is interesting to note that the Cadastra System, already employed in the mining sector, is not planned to include non-tax petroleum income. However, our respondent at the Cadastra Office feels that this would be a natural choice as they already have experience in collecting royalties, fees and licence payments. However, no such plans currently exist (Interview 3, 2012).

The legislation covers this area very superficially. IOCs are to submit reports containing, among others, *“a detailed forecast of capital investments and income from sales and a financing plan for the development”* (PA 2011, p. 39), and Petroleum Directorate is required to *“provide information relevant to the National Revenue Authority for the collection of taxes, royalties and fees from petroleum operations”* (Ibid. p. 12). References as to how to monitor revenue and income are completely lacking from the legislation, leaving the relevant authorities without any tools in this area.

7.2.4 Conclusion

Institutionally, Sierra Leone has a somewhat solid point of departure. The legislation is, for the most part, in place and the country stands to gain some revenues, even if the oil fields turn out to be commercially unviable. The question is whether or not GoSL has the capacities to turn the legislative framework into actual profit. As tax rates are specified in the national legislation these should be non-negotiable. However, different rates are mentioned by respondents than the ones

found in the legislation, and there are already talks of changing the current legislation, substantially lowering both tax and royalty rates.

Further cause for worrying is warranted, as some discrepancies exist between Sierra Leone's legislature and responses given to us by a Petroleum Directorate official. According to said respondent, different licenses exist, depending on whether the licence is for exploration, extraction, production, etc. (Interview 8, 2012). However, the PA provides for one licence, covering exploration and production (PA 2011, p. 30). This might not be the most essential element of the process, however, the two possible explanations for such discrepancies paints a rather unflattering picture of GoSL's dealings with contract design features: Either the current legislation is not adhered to, or the people responsible simply choose to ignore it.

This is compounded by the fact, that even the legislature is blurred and IOCs are referred to as both resident companies and mining companies, a distinction having crucial implications on tax and royalty rates.

The Income Tax Act was enacted in 2000, long before oil was a matter of debate in Sierra Leone. This means that when the PA refers to the ITA regarding tax and royalty rates, these rates are set with parameters not including petroleum operations. This means that while these rates may be reasonable, they have no relation to an oil industry.

While legislation seems progressive and has some rather high rates, it looks as though these are already being lowered, continuing Sierra Leone's habit of conforming to corporate pressure. Ideally GoSL will follow its own legislation, which would mean progress in Sierra Leone's relationship to international corporations and its own laws and rules.

7.3 Transparency

It is difficult to track actual transparency in the emerging oil sector of SL. We can however, look into initiatives initiated with the purpose (or the side effect) of ensuring transparency. Furthermore, our respondents from civil movements possess valuable knowledge of GoSL's attitude towards transparency, as they experience first-hand what can and cannot be accessed in terms of information regarding the sector.

7.3.1 Legislation and Governmental Bodies

The Petroleum (Exploration and Production) Act (PA) of 2011 deals with transparency to some extent. However, most sections concerning transparency have to do with reporting and provisions for disseminating information are lacking. The perhaps most important section, section 5, subsection (2), paragraph (s) states that the Petroleum Directorate shall “*prepare an annual report on the status of petroleum activities in Sierra Leone, for submission to the Minister for further submission to Parliament and publication in the Gazette and in such other manner as the Minister may determine*” (PA 2011, p. 12). The Gazette is GoSL’s main news outlet, and its group of readers are limited, especially by Sierra Leone’s soaring illiteracy rates. It is therefore uplifting that the paragraph, if not urges other means of publication, then at least leaves room for it.

We will touch upon the fact that the Director-General of the Petroleum Directorate is politically appointed and the inherent risks associated with this practice in section 8.0. The PA (2011) does address this issue and states that the “*Director General shall be required to disclose any beneficial interest he holds in a petroleum enterprise or company that may become involved in the petroleum industry in Sierra Leone*” (p. 14). This section is crucial, if adhered to, as this allows the public of SL to know who the person handling their oil is. The act does not, however, require the Director General to abandon any posts in or sever any bonds to enterprises or companies, making it even more criticisable that the post is politically appointed.

Databases and registers are established as the Petroleum Directorate is responsible for setting up one containing persons involved in petroleum operations and for publishing reports on the status of petroleum operations (PA 2011, p. 11). Furthermore, the proposed minister shall keep “*a register of permits and licences granted under this act*” (Ibid. p. 70). This register is accessible against an unspecified fee, meaning that while this register seems to be transparent, it could potentially exclude persons, journalists and CSMs with limited financial resources.

The process of bidding rounds has some fairly specific provisions attached. Provisions that, if followed, have the potential to improve transparency considerably, compared to earlier experiences in the mining sector: “*The result of tenders, including the content of winning and losing bids shall be published in the Gazette and in such other manner as may be determined by*

the Minister” (PA 2011, p. 24). This section secures considerable transparency in and of itself, but is followed by a section, specifically mentioning transparency: “*The Minister may, following a transparent, fair and competitive process and on the advice of the Directorate, grant a petroleum licence to two or more applicants who offered the most favourable terms and conditions to the state*” (Ibid. p. 29). The possible issues of the Director General of the Petroleum Directorate having stakes in oil operations play a role as the PD will act as advisor to the minister. However, the wording is important as it shows that the act recognises the need for a transparent process. Furthermore, publication of bids strengthens the likelihood, of the most beneficial bid to the general public of Sierra Leone, actually wins the bidding round. However, these sections do not necessarily mean that the process plays out this way in practice. The PA establishes that terms and conditions of a licence are published with the call for bids. This is not the case: A call for bids was published in a Sierra Leonean newspaper; however terms and conditions were nowhere to be found (Standard Times, Sierra Leone, Feb. 2012). Furthermore, as will be discussed below, the civil society of SL has not seen any publications of bids or already signed exploration contracts. The latter is subjected to publication, under section 40, subsection (2): “*Each petroleum licence, and any accompanying agreement between the state and the licensee providing details on the licence conditions attached to the licence, shall be published in its entirety in the Gazette and in such other manner as may be prescribed*” (PA 2011, p. 29). It would seem that no such publication has taken place, painting a picture of GoSL not following its own legislation. Our respondent at the Cadastra Office remarked that while information was not being disseminated to the public, all information is accessible to people requesting it (Interview 3, 2012). The Ministry of Mineral Resources (MMR) confirms that oil exploration contracts are not public, but states that future contracts will be upon ratified, offering no explanation as to why previous contracts are kept confidential (Interview 5, 2012). Our respondent at the MoFED informs of a website publishing payments and revenues, however, neither he, nor anyone from both governmental bodies or civil society movements could tell us the address of the website, although they had all heard of it (Interview 6, 2012). This shows a conspicuous lack of regard for transparency, as consistency is non-existing, leaving some elements of the oil negotiation process transparent while others are not, and offering no clues as to which are and which are not. This is further compounded by the fact that the Petroleum Directorate states that exploration contracts are already public, a statement countered by both

representatives of its own government and civil society. Data on oil amounts, perhaps the most crucial piece of information in securing transparency and public participation in the process is not, and will not be, publicised (Interview 8, 2012).

7.3.2 Inclusion of Civil Society

GoSL has not, in spite of a somewhat clear legislative framework, been able to ensure transparency in the Sierra Leonean oil sector so far as described above. However, this picture becomes even murkier when including CSM's experience with this issue. The consultancy agency we interviewed in SL states that internal information sharing within GoSL has improved. However, it is not possible to get a proper impression of the processes within the oil sector, as the sector is sworn in secrecy around the presidency (Interview 1, 2012). National Advocacy Coalition on Extractives (NACE) doubts that the common citizen of SL even knows that the country possesses off shore oil as GoSL shares no information on oil related issues (Interview 7, 2012). The Association of Journalists on Mining and Extractives (AJME) claims that articles critical of the extractives industry are consequently turned down by newspapers and in general mining companies have taken over the Freetown media Scene. Furthermore, non-disclosure clauses make it increasingly difficult for journalists to investigate the extractives industry (Interview 9, 2012). Network Movement for Justice and Development (NMJD) cannot mention the players involved in the contract negotiations as they are centred around the presidency and sworn in secrecy (Interview 10, 2012).

Both NMJD and AJME agrees that while GoSL pretends to listen to civil society this is only a formality (Interview 9 & 10, 2012). Especially the process of ratifying the 2011 PA has received criticism as it happened under a certificate of emergency, meaning that civil society had no chance of commenting on it, nor did Parliament have time to get acquainted with the legislation before it was ratified (Interview 2 & 9, 2012). Furthermore Budget Advocacy Network (BAN) expresses concern that the development of the PA has not been very technocratic and without any civil society involvement what so ever. BAN is especially worried that the PA does not attempt to identify issues leading to corruption (Interview 2, 2012).

7.3.3 Conclusion

In spite of the fact, that national legislation, to some extent, addresses transparency and sets up an institutional framework in which GoSL could act, civil society paints a rather ominous picture of how this works in practise. Simple measures (outlined in section 4.1.3) like cautiously estimating oil income and publicising the estimates have not been taken. Instead AJME has publicised estimates, much to the dismay of the Petroleum Directorate (Interview 8, 2012). The Petroleum Directorate claims that AJME has overestimated the potential income, creating unrealistically high expectations within the population, while making no attempts to correct this situation by making and publicising own estimates. This situation could be explained by civil society claims that the sector is far from professionalised; however as information regarding government officials involved in the sector is notoriously hard to come by, this is mere speculation.

The setting up of a website publishing payments is a welcomed initiative, and with reports of mismatches between government and IOC reporting of payments, this could be a useful tool in ensuring transparency (Interview 2, 2012). However, while existence of the website is common knowledge, none of our respondents, both within GoSL and civil society were able to give us the address, creating serious doubt about the existence of the site or, at the very least, its usability.

In section 4.1.3 we mention the use of outside accounting services as a tool for ensuring transparency. BAN, however, were the only organisation we talked to who claimed that any such services were employed (Interview 2, 2012). No other respondent claimed to have knowledge of such practise, not even the MMR or the Petroleum Directorate, raising serious doubts to BAN's claim.

In conclusion, it seems apparent that while the provisions and the institutional framework for creating transparency are in place, the political will is lacking. And with a government that seem far from qualified to deal with an emerging oil sector, transparency and inclusion of civil society are even more important components in creating a sustainable and income generating oil industry.

7.4 Aggregate Savings or Spending Decisions

When trying to answer our fourth working question; which decisions, if any, have been made on how to spend or save the forthcoming revenues and which measures have been taken to ensure public awareness and inclusion on these issues, we will of course, where possible, try to measure these decisions comparing them to our theoretical framework. Additionally we will supplement the analysis by looking at how former extractive revenues have been spent in SL.

7.4.1 The Problem of Consolidated Funds

Drawing from our ontological point of departure we acknowledge that all economic activity is surrounded by rules and norms. The former are enforced by laws the latter through an informal process by a group of people acting out of self-interest and enforcing their rules themselves. Further we acknowledge that decisions are based on assumptions not knowledge. Combining these two acknowledgements it might be a fair explanation that establishing consolidated funds has become the norm and thereby the assumption steering decisions towards putting extractive revenues into such funds. However, this assumption might not be the best way to handle extractive revenues in a developing country like SL.

That setting up consolidated funds has become the norm is supported by the fact that the IMF pushes SL for setting up a fund similar to the one in Norway (Interview 1, 2012), additionally the National Revenue Authority (NRA) of SL has already attended a workshop in Ghana hosted by the Norwegian Government (Interview 6, 2012). But as mentioned such funds might not be the best way to handle extractive revenues in the developing world. According to Karl (2007) it has become an accepted norm that these funds are to be viewed as important fiscal tools that can aid in planning, but in fact they have some major drawbacks, especially when established in countries already lacking transparency. Sierra Leone currently ranks at the very bottom of Transparency International's CPI index, so lack of transparency is a given in our case.

The reason is that introducing a fund will create a type of parallel budget (to the national budget) that, as constituted to date, is generally not transparent and this goes for the Norway's State Petroleum Fund as well. A consolidated fund will usually not be transparent and controllable to legislatures, the press or NGOs. This is a concern already present in SL; Budget Advocacy Network (BAN) criticizes the existing consolidated fund by saying that it creates problems of

tracking amounts and utilization (Interview 2, 2012). This might be because the fund for instance consists of every mining related income received by GoSL, meaning revenues, license fees etc. Even though saving money in a consolidate fund might not be the answer for SL, there are also some clear drawbacks or certainly issues to be aware if GoSL chose immediate spending. For one, politicians might be tempted to spend on a short term basis on highly visible projects, but then again saving the revenues might cause future politicians to do the exact same, which makes the reasoning speculative and a bit useless. What one should really be aware of when spending revenues is; i) the speed of the process ii) what is really needed in the specific country. If one makes immediate spending on public investment projects, this risks being scaled up to fast to be absorbed by the local economy, also one should keep in mind that any natural resource is a finite resource. This is why Sachs (2007) argues that revenues ought to be spent on long-term investments following the Millennium Development Goals, while keeping in mind the scarce nature of resources. For a developing country like SL this means that the revenues ought not to ensure insurance or pensions but rather be spend on factors where there exists an acute need; food, water, electricity and basic infrastructure. This will not only benefit the population but also be beneficiary towards a private-sector-led economic growth. Local voice and journalist Theo Gbenda also argues in his report 'Sierra Leone's Oil Potential and Related Governance Issues' that oil revenues ought to relief pressure in key sectors like healthcare and infrastructure. So, Sachs agrees that funds work better in high-income countries as the developing countries have more acute needs at hand. SL can definitely not be categorized as a high-income country as it currently ranks as 158 on the UNDP's Human Development Index and has more than 70 pct. of its population currently living for less than 1.25 dollars a day. Karl adds to the reasoning that saving money in funds undermines the fact that the 'Resource Curse' derives from politics, meaning having an unearned income often results in putting aside the fact that any state needs to tax their own subjects. Taxing own subjects might proof politically difficult to legitimize, if simultaneously saving revenues in a consolidated fund. So, having established that, despite of international norms, SL might be better of spending revenues on infrastructure than living of the earnings from a fund, we now need to see what previous extractive revenues have been spend on and what plans there exist for the forthcoming oil revenues.

7.4.2 The Consolidated Fund of Sierra Leone

Currently there exists two options for usage of the forthcoming oil revenues; i) they will be put in the already and aforementioned consolidated fund, where the mining related incomes also goes, ii) there will be set-up a wealth fund for investments and / or a stabilization fund to handle budget deficits, however this is still in the planning stages (Interview 6, 2012). Despite of the obvious transparency concern raised by BAN; they are not able to track payment when every extractive related income are put in the same pot, setting up a stabilization fund to cut budget deficits might not a bad idea in a highly indebted country like Sierra Leone, which economy is almost solely based on loans and aid. Surely it will be better than using the oil for collateral as this will only increase the debt-risk. The Wealth fund for investments might also proof to be a good idea if the investments are being used on infrastructure and other things that can ease a private-sector-led-economic growth. Investments in infrastructure is essential, not only after receiving the revenues, but also before even entering contract negotiations: As our respondent from CSM NACE puts it, there will be no or little revenue finance to spend if GoSL does not invest in infrastructure like consistent power supply or decent roads, as a lack of these always gives the IOCs the upper when negotiating (Interview 7, 2012).

So, we do not know which investments will be prioritized if the potential wealth fund is established and the possibility of putting the revenues into the already standing consolidated fund still figures as an opportunity. Additionally the legislative framework offers no reasoning on what such wealth fund should invest in. Therefore it will only be natural to have a look at the current fund, trying to establish a picture of which investments that are and will be prioritized.

Looking at the top ten expenditures in 2012 (see table 6.1), 19 pct. actually goes directly to investments in infrastructure³⁷. So there seems to be reason for optimism. But we need to be very cautious before concluding anything: The 2012 budget of the consolidated fund is the only public accessible one we have been able to locate and 2012 is an election year in SL. Drawing from our own stay in Freetown the infrastructure investments is of course extremely visible and one could therefore fear that investments herein would decrease after the election thereby questioning whether or not the improvements will be consistent. Turning again to the top ten expenditures the remaining 81 pct. is spend on salaries, the electoral commission, the national defence and not clearly specified development projects. This is unfortunately coherent with a statement made by

³⁷ Authors' own calculations

our respondent at the Cadastra Office³⁸. Respondent stated that if current revenues were not put in the diamond development fund as savings, they would be used for development projects with no real substance, invented by internal key stakeholders to keep their own offices going, or even more sadly be used in the pursuit of pure personal interest (Interview 3, 2012).

7.4.3 Ensuring of Public Awareness and Inclusion

According to our respondents, talks on how to collect and spend the revenues have so far only derived from the CSMs, and GoSL has done nothing to include the civil society on these issues (i.e. Interview 2, 8 & 10). As we have seen local voices have suggested using the revenues to relieve pressure in key sectors like healthcare and infrastructure, additionally CSMs NACE and BAN has suggested using revenues for educational investments (Interview 2, 2012).

A third CSM, Network Movement for Justice and Development (NMJD) suggests setting up several independent funds on issues such as diversification, infrastructure and healthcare (Interview 10, 2012). NMJD respondent further adds that taxation in general is not a public debate issue emphasized by GoSL (Ibid.). This is very unfortunate if we go back to the reasoning that in order to, not only, rely on so-called unearned incomes, any state must tax their own subjects and therefore also emphasize the importance hereof to said subjects.

The Petroleum Directorate defends not talking of revenue spending in public by stating that it will do nothing good for public expectations, and that the CSMs are currently misleading the public. Respondent from the directorate states the public must not get the impression that SL will be the next United Arab Emirates, because they will clearly not (Interview 8, 2012). This might be true; however not at all addressing the issue of revenue usage in public seems at best, not completely thought through. The CSMs and thereby the civil society as a whole possess knowledge regarding the emerging oil sector and therefore not addressing the issue will increase already existing suspicions on issues such as rent-seeking behaviour. Even if the Directorate thinks the estimates made by the CSMs is too optimistic regarding the amount of possible revenues, they should address this in public or even state that estimates on forthcoming revenues cannot be made, as the sector is not even commercialized yet. Instead GoSL has chosen not address the issue in public at all.

³⁸ The statement was made 'off record' and can therefore only be located in appendix 3, not in the actual transcribed interview.

7.4.4 Conclusion

The Consolidated Fund of SL is not transparent and the civil society complains that it makes it impossible for them to track amounts and utilizations. The transparency issue is exactly the reason why the norm of establishing funds works better in high-income countries than in developing countries like SL, where there already exists a lack of transparency. Additionally SL has some acute needs if wanting to ease private-sector-led growth. Therefore it seems more reasonable to invest in infrastructure than live of the earnings from a fund. Looking at the existing fund's budget from 2012 infrastructure seems to be a highly prioritized investment by GoSL. But again with regards to transparency we must remember that 2012 is an election year and that this budget was the only public accessible one. The budget unfortunately still contained a great amount of not-specified development projects. Additionally it is a shame that the legislative framework does not offer any explanation on which investments that should be prioritized in the future, as this would have provided the civil society with a check-up mechanism.

There have been no attempts from GoSL to ensure public awareness or inclusion on neither revenue collection nor spending. This is a shame for two reasons; i) it will increase both opportunities for and suspicions on rent-seeking behaviour ii) if the Directorate really does think the estimates on forthcoming revenue amounts, published by the CSMs, are too optimistic, they should prevent future public dissatisfaction by engaging into the debate.

8.0 Analysis Part 2 - The Issue of Centralization

We will now continue with the less theory-guided part of our analysis. In this part we will compare current and previous dealings with natural resources in SL.

8.1 Centralization Then and Now

As outlined earlier we have identified centralization in the decision-making process as a former major problem when it comes to governmental management of natural resources in SL. Centralization both led to and was used for rent-seeking behaviour. This behaviour led to deterioration of regime and eventually also fostered an escalation of conflict level, making SL an unfortunate prime example of the 'Resource Curse'. SL is perhaps, besides the very much linked civil war, mostly known for its diamonds, and it was precisely these diamonds that were central for financing and worsening various corrupt regimes for decades. This is why we now pursue an answering of the following and last working-question: How do the current institutional setup surrounding management of the oil sector compare to earlier Sierra Leonean experiences with management of extractives in general and diamonds in particular, in term of centralization?

During the Steven's era everything surrounding diamond management was controlled by a small elitist group, central within this setup was Stevens himself. The degree of centralization was extreme as Stevens personally was able exercise control over dealer and plot licenses through the Ministry of Mines and additionally controlled exports through the Government Diamond Office (GDO).

Centralizing governmental management occurred as a result of rent-seeking behaviour, e.g. when the Stevens administration had to create the GDO so they themselves were in charge of exports and thereby foreign exchange. But this centralization also led to a further increase in rent-seeking behaviour as it fostered one, very small elite of political allies where everyone depended on personal favours from the regime.

As management of the diamond sector came to follow merely political criteria and centralization increased, the institutional and bureaucratic setup deteriorated. This happened partly because as Stevens control over the sector grew, he saw no reason to strengthen state institutions, as this could create a political threat from within; partly because foreign stakeholders realized that everything depended on personal favours and therefore setup foreign bank-accounts should they fall in disfavour. The regime therefore had to accept this flight of capital would they keep access

to foreign capital. Summed up a centralistic setup led to an institutional deterioration and thereby decrease in capacity building. As we wish to investigate capacities of the current administration with regard to the oil sector, it becomes relevant to determine the current degree of centralization within management hereof.

8.2 Structure of the Petroleum Directorate.

According to the anonymous international consultancy agency there only exists one governmental entity handling oil related tasks in all of SL, namely the Petroleum Directorate (Interview 1, 2012)³⁹. This is confirmed by the directorate itself (Interview 8, 2012).

This one-entity setup has raised some concerns of centralism and mechanisms hereof, much similar to those occurring during the Stevens-era (i.e. Interview 7 & 9, 2012). Concerns are on lack of transparency, political appointments and rent-seeking behaviour. Starting with the issue of political appointment unfortunately these concerns seems to be very real. According to the Association of Journalists on Mining & Extractives (AJME) negotiations are centralized around the presidency and one must be politically appointed to participate herein, as appointment is not grounded on a merit-based system; the respondent further added that this resulted in many appointments where the chosen candidates were far from qualified and that there existed no independent check-up mechanism to control these appointments (Interview 9, 2012). CSM NMJD shared this point of view (Interview 10, 2012). Sadly their concerns seem to be true; the Directorate claims that appointments are primarily merit-based (Interview 8, 2012). However we do not fully agree with this interpretation as the Directorate also admits that the president is solely in charge of appointing officials to the Directorate. Although the PA of 2011 does contain requirements on criminal records and technical experience of the candidate, there is no independent mechanism established to check whether or not this appointment was solely a political favour or a bureaucratic accurate action. Even if the candidate should prove to be unqualified, the candidate cannot be fired or in any other way be held responsible as long as the candidate's actions were carried out in good faith. Clearly there has been taken very small steps or none at all, to establish a mechanism that can prevent familiar pitfalls of a centralized bureaucracy solely based on political favours.

³⁹ Interview-notes are structured in the appendixes, so appendix 1 corresponds to interview 1 and so forth.

The second concern raised by the CSMs, the one on lack of transparency in negotiations, might not be so suspicious; after all oil is a crucial resource to any country and information should therefore not fall into the wrong hands. However the legislative framework surrounding the contract negotiations should not be sworn in secrecy. Unfortunately the genesis of the PA was sworn in secrecy, an issue raised by several CSMs (Interview 2, 7, 9 & 10, 2012). The reasoning is that the PA was rushed through parliament as an emergency issue, resulting in no-one besides the Directorate really knew what it contained when passed. Unfortunately this seems to be yet another mean of keeping all oil related management on a centralized level, as it deprives the public of the opportunity to judge the quality of the act. Further there is no reason for the full act to be rushed through parliament, as the emerging oil sector is not yet commercialized. Additionally it might have been a good idea to let the public discuss the act before passed, as for instance the Budget Advocacy Network (BAN) raised concerns about the act not being very technocratic (Interview 2, 2012).

To be fair it is not even sure that the civil society within SL possess the know-how enabling them to judge the quality of an Oil & Petroleum Act, however there still seems to be no legit reason for rushing such an act through parliament; the oil is, as mentioned, not yet commercialized and it also deprives the public of increasing their knowledge on issues relating to this very crucial resource. Actually the Development Assistance Committee (DAC)⁴⁰ recommends inclusion of the civil society on issues like this (Kragelund 2012). Therefore it should be taken seriously when the civil society in SL coherently complains that the whole process of the creation the PA have been sworn in secrecy and also none-inclusive towards them.

Extremely centralized political appointments combined with a excluding law-making process of course create an environment very suitable for rent-seeking behaviour, the last concern raised by civil society. Not surprisingly there already exists anecdotal evidence on such measures, as AJME respondent told us, that officials from the directorate had admitted to him as a journalist, to having received bribes from oil companies in exchange for more favourable conditions (Interview 9, 2012). But even though other CSMs describe corruption as an ever-present issue in SL's extractive sectors, we must be careful to conclude anything from this. All we can say is that the structure and current law-making procedures of the Directorate is more likely to create an environment suitable to foster corruption, than the opposite.

⁴⁰ Forum for selected OECD member states to discuss issues surrounding aid.

Despite the centralized one entity structure, where for instance only the President and Director General can decide on plot distribution, the directorate could possibly take other measures to make their operating mandate more inclusive: It could draw from already existing expertise in other governmental bodies. Combined with hiring outside expertise and investing in upgrading of own personnel this would also serve to lowering the boundaries on rationality thereby making GoSL better equipped for negotiating. This is why we now look at such measures.

8.3 Internal Knowledge Sharing on Extractive Issues

In phase one of the analysis, Negotiating Contracts; all theoretical input seemed to address the issue of asymmetrical knowledge as being an issue to be aware of. Drawing ontologically from New Institutional Economics (NIE) we acknowledge that choices are made with bounded rationality, meaning choices will be made before all information is gathered, as it is not even possible to gather all information. This means that negotiations will be based on assumptions. Clearly a government not used to managing an oil industry will enter such negotiations inferior to an IOC, who is able to draw from earlier experiences.

The consultancy agency, stressed a very important issue in this context; GoSL is struggling for cash (Interview 1, 2012). As we draw from NIE and recognize that institutions are made up of individuals who will, regardless of positioning, act in coherence with own interests, we will have to acknowledge salary as an important issue. Struggling for cash GoSL will not be able to recruit the same level of negotiating expertise as the IOCs. However the government could take other measures to lower the boundaries preventing them from entering the negotiations with real qualified assumptions on what to expect: One thing they could do is to draw from already existing expertise from within its own governmental bodies. In SL it would be obvious to draw on knowledge from bodies already experienced from managing the extractive sectors of mines and minerals. Such an initiative would also help decrease centralization; a factor identified by us as hugely problematic.

Such an inclusion of internal actors will of course not solve everything as the two extractive sectors are somewhat different. But if the expertise on setting up fiscal regimes, monitoring payments and activities, negotiating contracts etc. is already present within governmental administration why would one not draw from it? Another complication on the subject of inclusion is, as we know from section 5.0 that those managing the mineral negotiations have

been known for striking none-beneficiary agreements for SL. This could raise concerns on whether or not they actually possess the necessary skills and knowledge for passing on. However during our interviews a broad range of respondents modified this picture a bit. Most of them stating that qualifications were getting much better within the mining administration (i.e. Interview 1 & 5, 2012): The consultancy agency said that the mining administration was rather well equipped in collecting revenues and additionally were aware of previous contract mistakes (Interview 1, 2012). A high ranking official within the Ministry of Mineral Resources (MMR) gave this explanation: When the Civil War ended, SL almost notoriously only struck bad agreements, but this was only to signal the outside world that the war was over and SL was ready to do business (Interview 5, 2012). Now ten years later they have learned from these experiences and are redoing most contracts. The latter we had confirmed from both the consultancy agency and some CSMs (i.e. Interview 1 & 7, 2012). The agency also added that a younger and better internationally trained administration, with notably fewer tendencies towards rent-seeking behaviour was slowly taking over management of the sector. The respondent listed this as the sole biggest strength of GoSL when having to manage extractives (Interview 1, 2012).

8.3.1 Drawing from Mining Experiences?

The above reasoning on institutions being made up of individuals and the IOCs relative strength in terms of paying salaries in order to attract the best negotiators was a concern raised by nearly all CSMs. Among others a high ranking member of the AJME went as far as calling it the biggest obstacle GoSL had to face (Interview 9, 2012). The consultancy agency seemed to agree and our respondent stated that it was therefore very surprising how little co-operation there existed between the MMR and ‘the oil guys’. The agency itself had a long standing relationship with GoSL and assisted it in making the Mines and Minerals Act of 2009, but had not been asked to assist on the PA of 2011, nor on any other oil related issues for that matter (Interview 1, 2012). It really does seem surprising that the Petroleum Directorate stands reluctant to draw from these capacities. Especially when the consultancy agency, which due to a very critical standpoint towards the MMR wished to appear anonymous, among others state that capacities hereof indeed are improving; e.g. sharing information and distributing data internally, which makes monitoring easier (Ibid.).

Within the MMR there exists the Cadastra Office. Besides collecting none-tax revenues this office is in charge of the above mentioned areas where improvements have been made. Actually the office itself is a tool implemented to improve internal data distributing, according to the consultancy agency (Ibid.). Our respondent from the Cadastra Office confirmed that they currently do not assist the Petroleum Directorate or any other oil related governmental bodies. The respondent however claimed that their expertise deriving from contributing to the Mines and Mineral Act of 2009 was included when altering of the PA of 2011 (Interview 3, 2012). The latter however seems very doubtful or even untrue, as both the consultancy agency and the Petroleum Directorate told us otherwise (Interview 1 & 8, 2012). What makes it even more unlikely is that our respondent from the Cadastra Office possessed no knowledge on the structure of – or to whom the directorate, he was claiming to have assisted, responded (Interview 3, 2012). Another indicator that there had been very little inclusion of already existing capacities on the creation of the PA of 2011 came from a concern raised by our respondent at Budget Advocacy Network (BAN); he stated that the act had not been made by technocrats nor had there been any involvement of the civil society, as the whole process, according to him, had been sworn in secrecy (Interview 2, 2012). One could argue that inclusion of capacities on mining related legislation should not necessarily be included on oil related legislation: But as our respondent from the Ministry of Finance and Economic Development (MoFED) drew attention to, the IMF actually recommends setting up a consolidated ‘Extractive Industry Revenue Act’ as opposed to having individual contracts for the different extractive industries with individual fiscal regimes (Interview 6, 2012).

MoFED is yet another governmental body, whose knowledge could have been drawn from in the negotiations with the IOCs. But this inclusion has also been avoided by the Petroleum Directorate, even though MoFED is involved in the former mentioned renegotiations of the mining contracts. This is confirmed by respondents from both MoFED and the Directorate (Interview 6 & 8, 2012). To be fair, the exclusion of MoFED’s expertise could be due to the as of yet very early stage of the emerging sector. Collecting basic license fees, which is currently a task for the Directorate may not be so complicated that the expertise of a ministry of finance is needed. However this is no excuse for MoFED’s expertise not being included in the contract negotiations or in creating a legislative framework, as these also determine the state of the sector on a long-term basis.

8.3.2 Inclusion of Already Existing Internal Expertise in the Future?

The mines and mineral sector in SL is of course older, bigger and currently contributes more to the national budget than the emerging oil sector. Nonetheless, comparing the degree of internal cooperation between the two sectors, the management of the oil sector seems to be far behind. According to responses from the Petroleum Directorate itself there exists no plans of changing this, actually quite the opposite (Interview 8, 2012).

According to the high ranking official from the MMR; MMR MoFED and the NRA have formed a collective taskforce meeting on a weekly basis to discuss challenges on tracking and collecting revenues. Same respondent also stated that the Petroleum Directorate, in his opinion, possessed all the expertise necessary to deal with any sort of challenge, as they were based under the state-house and that the Directorate actually had been drawing from expertise inside the MMR (Interview 5, 2012). The latter is untrue. We have confirmation from inside the Directorate stating that they have not been drawing from any MMR expertise and this is a concern also raised by both the consultancy agency and several of the CSMs (i.e Interview 1, 7 & 8, 2012). Our respondent could have said otherwise to present his ministry in a more important manner than reality allows. His reasoning on the capacities of the Directorate also seems questionable. Being under the state-house does not automatically give one the capabilities needed to negotiate contracts and otherwise manage oil related issues.

So the picture should be very clear. The Petroleum Directorate is not keen on including other governmental bodies on its operating mandate. But how will this picture evolve in the future when actual revenues will be collected? As it is right now, centralisation will unfortunately only increase: When asked about the issue of securing forthcoming revenues the respondent from the Directorate recognizes that this ought to be easy due to fixed contract measures; it will simply require strict monitoring. This task currently lies under the authority of the NRA, but as our respondent put it, the Directorate would very much like to ease the NRA of this task. The reasoning is that the NRA does not possess the capacities to monitor both mining and oil activities (Interview 8, 2012). Actually this reasoning is backed up by our respondent from MoFED, who we interviewed prior to the Directorate interview (Interview 6, 2012). However this reasoning seems very weak; as outlined, the Directorate as it is now consists of a very small task force, somewhat politically appointed. There ought to be no reason that this governmental body should possess any better qualifications in monitoring and collecting revenues, than those

already experienced in a similar field i.e. their governmental colleagues from within the NRA or the Cadastra Office.

This above scenario is worrying. The degree of centralization on oil related management is currently very high, and there exists a wish to increase this over time. One could worry that it will become or already is a matter of centralizing control of finance. This could once again deteriorate institutional capacities and create an environment where rent-seeking behaviour and political goodwill is crucial, just like things were in the Stevens-era. An event like striking oil should objectively lead to more capacity building within the public administration. However, one thing is certain, the event will not lead to increased capacity building in any other public institution other than the Petroleum Directorate, as no other actors are or will be involved. Institutions outside the Petroleum Directorate will as a result of the oil findings, at best stay at status quo, at worse deteriorate.

The Petroleum Directorate itself does plan to make some internal capacity building, but this seems only to be strictly symbolic. Concrete initiatives are that two officials are currently studying a two years Masters-degree in Oil and Petroleum Management in the UK (Interview 8, 2012). The Directorate does pay for this, but the investment seems to be, at best insufficient. According to our respondent when these two officials come back, they will be comparable or even better than the negotiators of the IOCs (Ibid.). Again this statement is very weak; one cannot in one's right mind imagine that two officials, with no oil related experiences, would come back to SL as better negotiators than negotiators from various IOCs, who have a greater seniority. Maybe this is why a broad range of respondents told us that GoSL does not see upgrading as an investment (i.e Interview 2, 7 & 9, 2012).

The high degree of centralization and the lack of sufficient upgrading take us back to where we started; SL will unfortunately enter negotiations with the oil companies with higher knowledge boundaries than their counterparts; which makes their assumptions more uncertain than those of the IOCs. And should they still be able to strike beneficiary agreements, the lack of inclusion of inside expertise and high degree of centralization will, at the very least, make it easier for the IOCs to circumvent these agreements on a long-term basis (see section 7.1).

However there do exist other options when wanting to lower ones knowledge boundaries in a negotiable situation, this is why we now will look at the possible inclusion of outside expertise.

8.3.3 Inclusion of Outside Expertise

Once again recognizing that institutions are made up of individuals, we must also realize that these individuals, regardless of position, will act in coherence with their own interests. This means that as it might be a very good idea for GoSL to invest in their market specific social capital (MSSC), it might not be a good idea, doing so by hiring former IOC negotiators as they will be likely to have set interests qua their individual networks.

But MSSC is still of real economic value to an institution and investments herein should therefore not be neglected. One could do so by employing outside help to train own personnel or simply hire negotiators not formerly employed by any of the companies, one are doing business with. Of the latter there are no examples in SL. As our respondent from BAN expressed it, there had been absolutely no employment of outside expertise and it was only the ministers who were able to negotiate and sign the contracts (Interview 2, 2012). There might be some truth to this statement, as the Directorate admitted that it was solely the Director General together with the country's President who handled the decision-making on plot distribution (Interview 8, 2012). This latter point could become problematic, as in bidding rounds, the Government reserves the right to withdraw the bid round and is not bound to choose the highest bidder (Standard Times, Sierra Leone Feb. 3. 2012)⁴¹.

Employing outside expertise to train own personnel also seems to be limited. We have already discussed the example of two officials being sent to a university in the UK. But there also exist a few other examples. NRA has, according to MoFED, been attending a three-day work-shop in Ghana on oil negotiations. This workshop was paid for by 'Oil for Development'⁴² (Interview 6, 2012). Again the upgrading is insufficient and in this case unnecessary and incoherent with the intended policy of GoSL, as we know that the NRA will probably be eased of their forthcoming oil related tasks. The attendance at the workshop is most likely to become absolutely worthless. Another concern raised here is that GoSL only seems interested in upgrading when others, like the Norwegian government, IMF or the World Bank, are paying for it, a point of view we came across various times (i.e Interview 9, 2012).

In this context the IOCs will, according to MoFED, actually pay provisions for funds established for upgrading government personnel (Interview 6, 2012). At best, such initiatives completely

⁴¹ The article from The Standard Times was a call for bids made by GoSL.

⁴² Program launched and hosted by the Norwegian Government.

ignores the obvious conflict of interests, at worst GoSL once again seems very reluctant to pay for upgrading themselves.

The Directorate does not directly employ outside expertise, this is confirmed both by CSMs NACE and BAN - and the Directorate itself (Interview 2, 7 & 8, 2012). Additionally, as we have seen above, the Directorate is also unwilling to indirectly draw from outside expertise by investing in upgrading of own personnel. Once again upgrading is viewed upon as an expense rather than an investment and the oil management is kept in a small exclusive circle of officials.

8.4 Conclusion

During the Stevens-era diamonds financed and worsened the various corrupt administrations. Everything was controlled through the Ministry of Mines and the GDO. As every appointment followed mere political criteria and central control of finances grew, overall institutional capacities deteriorated, as there no longer existed an incentive to strengthen other institutions.

Currently it looks like the oil strike will not lead to any capacity building in any other governmental bodies than the Petroleum Directorate, as no one else is likely to be included. Additionally, the centralistic setup with political appointments and closed procedures on legislative work create an environment more suitable for fostering rent-seeking behaviour than the opposite. Control of political power on oil related issues is extremely centralized and this is exactly why it becomes hugely important to publish oil revenues within the National Budget: It does so, because if it becomes not only a matter of centralizing political power, but also centralizing control of finances, chances are that overall institutional capacities will once again deteriorate. The Stevens-administration(s) centralized control of power and finances and with this centralization disappeared the incentives to strengthen other institutional capacities. Such a scenario should be avoided at almost any cost.

Unfortunately, there does not seem to be any willingness towards upgrading capacities in related bodies throughout – or within the Directorate itself. SL might be struggling for cash, but GoSL also seems very reluctant to prioritizing their means towards strengthening state-bureaucracy. This is very strange as an event like striking oil should objectively lead to more capacity building within the public administration.

Future prospects of a ministry devoted to the oil sector raise the same concerns about centralisation as this will also be a one-entity set up, where the minister will be given as much, if not more, power as the current Director-General.

9.0 Conclusion

The aim of the thesis at hand was to answer following question:

How can the institutional capacities of the Sierra Leonean State, with regards to the emerging oil sector, best be described? And how does the institutional set-up compare to earlier centralistic set-ups surrounding the country's older extractive sectors in general and the diamond sector in particular?

The first part of the question can be divided into three parts: i) Human capacities, ii) legislative framework and iii) government adherence to said legislative framework. The second part of above question is best answered by looking at institutional setup managing the oil sector and looking at human capacities involved.

9.1 Institutional Capacities – Human and Legislative

Strictly speaking, Sierra Leone's legislative framework surrounding the oil sector is sound. The Petroleum (Exploration and Production) Act of 2011 provides the Government of Sierra Leone (GoSL) with a range of measures ensuring revenue from the sector regardless of the outcome of the current explorations, namely signing bonuses and area fees. A provision allowing International Oil Companies to keep earnings abroad is a major loophole for companies, and presents GoSL with unnecessary risks and challenges when monitoring and collecting tax revenues. We do not consider GoSL to be equipped to monitor tax planning on this level, as the technocracy of the Petroleum Directorate can rightfully be questioned. Further, governmental colleagues question the human capacities of the National Revenue Authority.

While the legislation, to some extent provides Sierra Leone with a good point of departure in terms of negotiations, the process suffers under the fact that legislation can be overthrown in specific cases, via a simple standard procedure of parliament. This puts a spin on fiscal provisions being non-negotiable, as everything becomes suddenly negotiable.

This further creates problems for negotiators, as increased negotiable issues will, in turn, increase levels of asymmetrical knowledge. This is unfortunate when GoSL has performed insufficiently in all parameters regarding up grading, hiring and knowledge sharing.

Recent talks of including oil revenue in the Consolidated Fund raise increased concerns regarding transparency. Civil Society in Sierra Leone has experienced problems with transparency in the other extractive sectors, and the oil sector seems to be no exception. GoSL has not yet publically addressed the issue of revenue usage, but according to MoFED all current solutions point toward incorporating the revenue in various consolidated funds. This is unfortunate, as it will only underpin current concerns regarding tracking amounts and utilisation. Further, we have concerns about prioritising of public investments derived from these funds. Investments in infrastructure has only accounted for 19 pct. of the top ten posts of the Appropriation Act of 2012, which is especially worrying as this is an election year, meaning that highly visible development projects are like to have been prioritised higher than previous years. Regarding the issue of transparency this is the only publicly available budget.

9.2 Institutional Setups

With Sierra Leone's history of centralised resource management, current trends in this area is hugely important. The Petroleum Directorate, which is the governmental body in charge of dealing with all oil related matters, outlines a somewhat well hidden one-entity structure based under the presidency. Well hidden because it does not engage itself in dialogue with neither governmental colleagues nor civil society. A point underpinned by the fact that many of our respondents did not know to whom the Directorate responded. Additionally, it is comprised of very staff members and their capacities can be questioned. These can be questioned as political appointment is practiced rather than merit based appointments. Furthermore, the Directorate does not seek to accumulate or recruit sufficient technocratic expertise.

Looking back at earlier centralistic setups in management of extractives in Sierra Leone and the consequences hereof, it is surprising that there obviously exists a lack of political will to learn from previous mistakes. Overall, lack of political will seems to be the major issue of Sierra Leones emerging oil sector.

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10.2 Journal Articles and Reports

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- Statistics Sierra Leone (2011): Foreign Trade Statistics Bulletin – 2010, Economic Statistics Division, Foreign Trade Statistics Section, Statistic [sic] Sierra Leone.
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10.3 Legislative Documents

- AA – Sierra Leonean Government (2012): The Appropriation Act
- ACA – Sierra Leonean Government (2008): The Anti-Corruption Act
- FA – Sierra Leonean Government (2011): The Finance Act
- IT – Sierra Leonean Government (2000): The Income Tax Act
- MMA – Sierra Leonean Government (2009): The Mines and Minerals Act
- PA – Sierra Leonean Government (2011): The Petroleum (Exploration and Production) Act
- PEPA – Sierra Leonean Government (2001): The Petroleum Exploration and Production Act

10.4 Web-pages

- DeBeersGroups.com (Located January, 2012): <http://www.debeersgroup.com/en/Inside-De-Beers/What-is-De-Beers/>
- DenStoreDanske.dk (Located December, 2011): http://www.denstoredanske.dk/Rejser,_geografi_og_historie/Mellem%C3%B8sten/Mellem%C3%B8sten_efter_1947/Amal
- Enomist.com (Located November, 2011): <http://www.economist.com/node/17581551>
- Eurostat (Located April, 2012) <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/>
- IBIS.dk (Located December, 2011): <http://www.ibis.dk/index.php?menuId=152&upId=73>
- MMR.org (Located May, 2012): http://www.slminerals.org/content/index.php?option=com_content&view=article&id=19&Itemid=23

- NACE.org (Located May, 2012): <http://www.nra.gov.sl/nra/aboutus.html>
- NRA.sl (located May, 2012): <http://www.nra.gov.sl/nra/aboutus.html>
- Transparency.org (Located January, 2012): <http://cpi.transparency.org/cpi2011/results/>
- UNDP.org (Located January, 2012): http://hdr.undp.org/en/media/HDR_2010_EN_Tables_reprint.pdf
- Worldbank.org (Located April, 2012) <http://data.worldbank.org/country/sierra-leone>

10.5 Interviews

(All interviews are conducted by the authors; guides, notes and one transcribed interview can be found in the appendixes)

- Interview 1, 2012. (Anonymous Consultancy Agency)
- Interview 2, 2012. (Budget Advocacy Network)
- Interview 3, 2012. (Cadastra Office)
- Interview 5, 2012. (Ministry of Mineral Resources)
- Interview 6, 2012. (Ministry of Finance and Economic Development)
- Interview 7, 2012. (The National Advocacy Coalition on Extractives)
- Interview 8, 2012. (The Petroleum Directorate)
- Interview 9, 2012. (Association of Journalists on Mining and Extractives)
- Interview 10, 2012. (Network Movement for Justice and Development)

10.6 Others

- Public Lecture: Kragelund (2012): Fremtidens Afrika – Hvordan sikres fremgangen bedst? at The Centre of Health and Society, Copenhagen, March 2012.
- Standard Times, Sierra Leone (Feb. 2012): The Sierra Leone Petroleum Directorate announces the Third Bid Round for Open Offshore Blocks in Sierra Leone.

Interview 1.0 2012

Appendix 1.0 Anonymous Consultancy Agency, interview-guide and notes.

Name:

Designation:

Date/place:

Interview Guide

Intro:

We're interested in the capacities of the government in terms of negotiating contracts, securing revenues and investment policies. You will remain anonymous throughout our thesis and if there are any questions you don't want to answer, please just let us know.

To make sure we've got everything right, we would like to ask you in what way you/your firm has assisted the government?

What is the nature of your cooperation with the government?

First off, we would like to ask if you/your organisation has been involved in the political framework surrounding oil and petroleum? If so, how?

What do you see as the main challenges when negotiating contracts and securing revenues with the IOCs?

To your knowledge, how does the government plan to address issues of asymmetrical knowledge?

Which are the government's strengths in terms of negotiating with an IOC?

Would describe the process regarding oil (and minerals) as being centralised or decentralised?

Who is involved in the decision-making process regarding contract negotiation, plot distribution, etc?

Do you have any knowledge of the design features of the possible oil contracts?

Do you have any opinion about these design features?

Anonymous Consultancy Service,

Interview notes. (Fully recorded)

No mentioning of the respondents name or the company he is employed by!

Tasks of consultancy service: Works mostly in the developing world offering assistance to Governments in areas such as justice and infrastructure. At first only advised on commercial economic issues within Eastern Europe, currently also present in fragile states as Iraq and Afghanistan. Has a long-standing relationship with the SL Government, i.e. assisting in the crucial developing process of the Mines and Mineral Act of 2009.

Currently assists on the establishing of the NMA, a broad based mineral service, semi state body, almost free of politics.

NMA should govern the sector of mining; Licenses, collecting revenues, thereby leaving the Ministry to legislation and politics. The board will be politically appointed (ideally not all board members). Appointment of operating technocrats will be merit-based. The board will appoint the executives and technocrats.

NMA will not, at first, include the oil sector. But if to be a success (minus corruption) they probably will be included.

The consultancy service have not been asked to assist within the oil sector, surprisingly there is very little co-operation between the Ministry of Mines and Mineral Resources and ‘the oil guys’.

The Ministry of Mines and Mineral Resources is doing something to address the issue of asymmetrical knowledge, but the oil is sworn in secrecy around the presidency,

Challenges of the Government in negotiating: They are not really equipped to negotiate (plus corruption). They try to employ outside help (Mines and Mineral) but have asked the WB to fund it. The Government sees upgrading as an expense rather than an investment – and they are struggling for cash!

Equipped to collect revenues (MMR): quit well! One of the Consultancy Service’s main tasks is to assist in this (be source critical!). Improvements have been made in closing gaps and sharing information, distributing data internally making monitoring easier (Royalties)

Income tax monitoring: respondent had no knowledge of this issue, but says that even though improvements have been made in monitoring of the royalties these are not even monitored properly.

Strengths of the Government: Yes, the younger generation is better educated and possesses international experience (respondent struggled to come up with an answer). There also seems to be a political will to change things (could be populism, it is an election year). Administrators are aware of previous contract mistakes (remember renewal of contract with London Mining).

- However the Oil Guys do not draw from this experience, oil issues are centralized, no activities takes place away from the State-House, respondent finds this worrying. (mining less centralized)

EITI: SL is not compliant due to total disorganization and former lack of political will to ratify. They failed the process big time, but publically states that they nearly made it.

The Petroleum Directorate is the only entity unit according the respondent's knowledge.

Design Features: IMF pushes for setting up a fund similar to the one in Norway.

Interview 2.0 2012

Appendix 2.0 Budget Advocacy Network, interview-guide and notes

Name:

Designation:

Date/place:

Interview Guide – Budget Advocacy Network

Intro:

We're interested in the capacities of the government in terms of negotiating contracts, securing revenues and investment policies. You will remain anonymous throughout our thesis and if there are any questions you don't want to answer, please just let us know.

To make sure we've got everything right, we would like to ask you exactly what the main tasks of your organisation are?

First off, we would like to ask if you/your organisation has been involved in the political framework surrounding oil and petroleum? If so, how?

Do you see any obstacles to public disclosure of revenue amounts?

How does the government publicise revenue amounts?

Do you know how Anardako and other companies have been compensated for risks incurred during exploration? Is it something they publish?

Has the government made any estimates as to possible revenue amount? If so, have these been publicised?

How does the government emphasize taxation as a public political debate issue?

How is taxation being monitored?

To your knowledge, has the government employed outside accounting services?

To your knowledge, has there been any talks of how to spend the revenue accrued from oil?

If yes, have you/your organisation been involved in these?

What do you see as the main challenges when negotiating contracts and securing revenues with the IOCs?

We know that you made a report regarding the oil. Has this led to any corporation between you and the government? Have you been consulted in this regard? If so, how?

Is it your experience that the government listens to you?

To your knowledge, how does the government plan to address issues of asymmetrical knowledge?

To your knowledge, has the government started any initiatives to prevent rent seeking behaviour? If so, which?

To what extent do you feel such initiatives would be necessary?

Which are the government's strengths in terms of negotiating with an IOC?

Do you recognize any signs of the process being centralised? If so, how?

Who is involved in the decision-making process regarding contract negotiation, plot distribution, etc?

Do you have any knowledge of the design features of the possible oil contracts?

Do you have any opinion about these design features?

Budget Advocacy Network, Interview Notes (fully recorded)

Tasks of NGO: Network of 7 organizations working on budgetary issues with a pro-poor approach; budget analysis, national budget, taxation, oil and mining and public financial issues. Aims to make sure citizens benefit and provides. Further BAN gives advice to the Government on macroeconomic issues. Works in close collaboration with Transparency International and IBIS is its strategic partner.

Involvement on oil by the Government: Assists other NGOs before hearing, but themselves mainly occupied on taxation issues.

Public disclosure: BAN supports EITI and thinks the Oil ought to part of this framework. Currently there is a mismatch between reporting by the Government and the companies (same reasoning as met before).

Key thing is transparency. No one really knew what the Petroleum Act actually contained when passed in parliament (same reasoning of the speedy procedure as NACE and others).

It is BAN's impression that the developing of the Petroleum Act has not been very technocratic; there has further been no involvement of the Civil Society as the whole process has been sworn in secrecy.

BAN do not know anything about what the companies have paid for exploration rights, nor do they know anything about possible compensation as this has not been published.

Employment of experts: No! It is exclusively the ministers whom sign the contracts and they have no technocratic knowledge, although some attempts at upgrading own personnel are currently ongoing (See notes from the Petroleum Directorate interview).

Public debate issue / taxation of companies: Yes to some degree, the parliamentary members have launched a campaign on tax exemptions, to know exactly who has the right to get such. Exemptions are not factored in the national budget.

Monitoring: Very hard to monitor structure of companies, makes it difficult to track profits. (Same reasoning on tax avoidance as 'Not Sharing the Loot')

Outside accounting service: Yes the Government does employ such, The Audit Service.

EITI: SL is a part of this, but not fully compliant due to mismatch in reporting.

Talks of how to spend oil revenues: Only from the Civil Society Movements; i.e. NACE suggests education investments. The Oil and Petroleum Act tries to specify where some of the

revenues ought to go, but it is aimed at the consolidated fund, which creates the problem of tracking amounts and utilization.

Main challenges of the Government: Besides the asymmetrical knowledge, BAN thinks it is a problem that contracts are not public.

The Government formally listens to BAN but do not take action.

Initiatives to prevent corruption in oil: No the Petroleum Act do not attempt to identify issues that will lead to corruption.

Strengths of the Government when negotiating: Development of the legal framework, but following it is another case (drawing from mining experience) neither is the civil society involved in this developing.

Weakness in procedure: Standard amongst members of parliament is that if both parts agree one can look away from the legal framework.

Negotiations and plot distributions are centralized around the presidency but they are obligated to include the Parliament and legal officers.

Respondent did not know to whom the Petroleum Directorate responded, one of his colleagues assured us that it belonged to the ministry of trade (not true).

Design features of contracts have not publically debated.

Interview 3.0 2012

Appendix 3.0 Cadastra Office, interview-guide and notes.

Name:

Designation:

Date/place:

Interview Guide – Cadastra Office

Intro:

We're interested in the capacities of the government in terms of negotiating contracts, securing revenues and investment policies. You will remain anonymous throughout our thesis and if there are any questions you don't want to answer, please just let us know.

To make sure we've got everything right, we would like to ask you exactly what the main tasks of your office are.

What do you see as the main challenges when negotiating contracts and securing revenues with the extractives companies?

We know that you've been involved in the legislative framework surrounding the Mines and Minerals Act. Have you been involved in anything similar regarding oil and petroleum?

Given your experience with extractive companies, have you been consulted regarding negotiation of oil contracts? If so, how?

To your knowledge, has the government employed experts or in any other way sought knowledge of oil contract negotiation or value of oil in general?

Does the government generally seek to employ experts in extractive negotiations? If so, who are these experts?

How do you respond to the petroleum unit, and who does the petroleum unit respond to?

How does your office view upon disclosure clauses?

Are revenues and company incomes a matter of public record?

How does your office distribute data on revenues?

To your knowledge, are these revenues included in the national budget?

Do you rely on self-reporting by the mining companies or is there an external accounting service involved?

Have you had anything to do with the money accrued from mining?

If yes, what?

Cadastra office interview notes. (Recorded but not fully)

- Tasks of office: Managing online (internal) IT based system established to secure accountability and transparency, easing access of information for internal control. Mineral rights administration: Everything from licensing (renewals, drawbacks etc.) to tracking down payment details from the companies, they report monthly and quarterly.
 1. Application
 2. Validation
 3. Payments, follows the mines and mineral act of 2009 and payments are easily checked via the digital system. They collect none-tax revenues and the companies pay them pr. land size, so relying on self-reporting by the company is no big issue here.
- Oil related tasks: Not currently assisting the Petroleum Directorate or any other related governmental bodies, but their expertise deriving from the making of the M&M act was included when altering the Oil and Petroleum act of 2011. Had no knowledge on the structure of the Petroleum Directorate or who they responded to.
- Others: The body from the MMR which negotiates with the companies is called the strategic policy unit, they have neither been involved in anything oil related, the unit negotiates by involving key (internal) stakeholder from other ministries etc. When negotiating our respondent had no knowledge of disclosure clauses.
- Sharing information: Intended to share and distribute budget and other information to key G bodies, not through the press or any other private stakeholder. Information is accessible though if one wants to see it.
- Use of revenues: (OFF RECORD) if not to the diamond development fund, then used for other developmental projects invented by internal key stakeholders who makes their own projects to keep their offices going, or they might be used in the pursuit of personal interest.

Notes

The NRA promised to respond to an email-interview but never did, despite many attempts on our behalf for making them answer.

Interview 5.0 2012

Appendix 5.0 Ministry of Mineral Resources, interview-guide and notes

Name:

Designation:

Date/place:

Interview Guide – MMR/EITI responsible

Intro:

We're interested in the capacities of the government in terms of negotiating contracts, securing revenues and investment policies. You will remain anonymous throughout our thesis and if there are any questions you don't want to answer, please just let us know.

To make sure we've got everything right, we would like to ask you exactly what the main tasks of your office are.

What are your tasks as responsible for EITI?

What is the reason for Sierra Leone not having status of a compliant country of EITI?

What do you see as the main challenges when negotiating contracts and securing revenues with the extractives companies?

Has the Petroleum Directorate drawn from your expertise in the area of extractives?

To your knowledge, has the government employed experts or in any other way sought knowledge of oil contract negotiation or value of oil in general?

Does the government generally seek to employ experts in extractive negotiations? If so, who are these experts?

What is the relation between Petroleum Directorate and your ministry?

To whom does the Petroleum Directorate respond?

Are revenues and company incomes a matter of public record?

How does your office distribute data on revenues?

To your knowledge, are these revenues included in the national budget?

Do you rely on self-reporting by the mining companies or is there an external accounting service involved?

Do you know what revenue accrued from mining is being spent on?

Ministry of Mineral Resources notes.

- Government realizes problem of asymmetrical knowledge when dealing with IOCs and has approached Revenue Watch as well as the oil department at the World Bank.
- ITAP gives funds enabling GoSL to afford consulting firms and capacity building of staff. WB consultancy projects.
- Several reasons for SL not being a fully compliant member of EITI. There are certain benchmarks. GoSL has produced first conciliation report, meaning there is progress. By November they should have reached all benchmarks.
- Further, cooperation between MMR, MoFED and NRA. Taskforce meet every week to discuss challenges regarding revenue tracking and collection. Cadastra System is recognized as a tool for this.
- Main Challenges: GoSL lacks capacity to negotiate with IOCs. GoSL realized this long ago.
- 40 percent of budget from donors. GoSL has problems finding qualified staff (in connection with negotiation).
- The Petroleum Directorate should have the necessary expertise to deal with any challenge. As it is placed under the state house, and they do draw on experience from MMR according to respondent.
- Institutions have been set up at MoFED to look at models regarding estimates in terms of revenue. Spending opportunities as well. Looking at how revenue from the combined extractives sector can be used.
- National Mineral Agency (NMA) to be set up. Would consist of mining economists, geologists, lawyers, etc. GoSL realized need for professionals in the sector.
- Revenue tracking is relying on self-reporting by companies. Respondent feels NRA should change this. Overall, the sector should be professionalized.
- Respondent attended a meeting earlier on how to spend revenue.
- Mining sector responsible for 51 percent of GDP.
- Newly negotiated contract with London Mining for Parliament to approve under 'certificate of emergency/urgency(?)'.
- Contracts will be public once ratified, though old contracts are not public.
- Oil exploration contracts not public

Interview 6.0 2012

Appendix 6.0 Ministry of Finance and Economic Development, interview-guide and notes.

Name:

Designation:

Date/place:

Interview Guide – Ministry of Finance and Economic Development

Intro:

We're interested in the capacities of the government in terms of negotiating contracts, securing revenues and investment policies. You will remain anonymous throughout our thesis and if there are any questions you don't want to answer, please just let us know.

To make sure we've got everything right, we would like to ask you exactly what the main tasks of your office are.

Is your office involved in the negotiation of oil contracts? If so, how?

Is the ministry involved in the decision-making process regarding fiscal and tax regimes to be put in the contracts?

If so, what are these regimes?

To what extent is your ministry involved in the securing/collecting of revenues?

Is the government of Sierra Leone equipped to properly secure and collect revenue?

How are the companies being monitored?

Is data concerning taxes and revenues being published?

Is there any plan for the accrued revenue from the oil sector?

Which measures do you take to attract oil companies?

What fiscal regimes have been implemented so far in connection with oil exploration?

We have heard some concerns, that the amounts received by the government from the companies do not always match the amounts given by the companies themselves. How does the ministry look upon these concerns?

Ministry of Finance and Economic Development, notes

- Revenue and Tax Division. Dealing with policies and manage cooperation with NRA. Review of policies based on feedback from NRA. Review of previous tax legislation to see if it's in line with current situation.
- Not involved in oil negotiations. No one from the MoFED is involved in the negotiation. They are, however, involved in renegotiations with the mining companies.
- The Revenue and Tax Division has worked with the Petroleum Directorate to come up with fiscal regimes for petroleum. This regime is to be used in negotiations.
- Legislation should be the basis for negotiation. Problems arise when legislation becomes negotiable (which it sometimes does).
- IMF has suggested a consolidated "Extractive Industries Revenue Act", as opposed to having individual contracts for the different extractive industries with individual fiscal regimes.
- IMF has held stake-holder consultations all over the country.
- The draft bill "Extractive Industries Revenue Act" contains different components:
 - Royalty rate of 10 percent on crude oil and five percent on gas. Initially per water debt but changed to these numbers. Royalties to be paid on export value at FOB price. There has been talk about rising rates for crude oil to 12.5 percent.
 - Petroleum Income Tax: 30 percent of taxable income. This is after deductibles and cost.
 - Suggestion for Petroleum Resource Rent Tax (PRRT). This will be 14.2 percent based on the equation on paper.
- The internationally accepted percentage for PRRT is between 14 and 20 percent.
- The number 40 in PRRT is to help get a proper range. No real reasoning behind this number.
- Windfall tax will be captured in PRRT.
- PRRT also provides ring-fencing.
- NRA is to collect all taxes in Sierra Leone.

- Problems of NRA only being equipped to collect traditional taxes like income, corporate and so on within the mining industry. Not trained in petroleum. Need training to even understand books of IOCs.
- NRA needs to understand deductibles and costs. Right now, they don't possess the capacity to collect taxes from IOCs.
- NRA and others have attended a three-day workshop in Ghana on oil negotiations. Provided by Oil for Development (NORAD).
- Also training provided by Minexco Petroleum NRA needs audit training.
- Proposal for a Petroleum Ministry. Currently they have the Petroleum Directorate who has capacity to actually monitor oil companies.
- Provision for fund to which the IOCs pay. This fund to be used for training of GoSL staff.
- Generally there is willingness from GoSL to pay for capacity building.
- EITI unit established under the office of the president.
- Respondent knows about the website publishing payments and revenues.
- One option for use of revenues is a Wealth Fund. Others are a stabilization fund geared to handle budget deficits. Wealth Fund is for investments. This is still in the planning stages.
- It has been suggested to reduce corporate tax from 30 percent to 25 percent in order to attract investments.
- Import duty has been 30 percent to 5 percent to attract companies. 30 percent will eat too much into cash flows. Some companies can negotiate with GoSL and get it duty free.
- No expectation of revenue derived from exploration. Companies pay area/surface rent and contribute to a development fund. License payments go to the consolidated fund.

Interview 7.0 2012

Appendix 7.0 The National Advocacy Coalition on Extractives, interview-guide and notes.

Name:

Designation:

Date/place:

Interview Guide – NACE

Intro:

We're interested in the capacities of the government in terms of negotiating contracts, securing revenues and investment policies. You will remain anonymous throughout our thesis and if there are any questions you don't want to answer, please just let us know.

To make sure we've got everything right, we would like to ask you, exactly what the main tasks of your organization are.

First off, we would like to ask if you/your organization have been involved in the political framework surrounding oil and petroleum. If so, how?

What do you see as the main challenges when negotiating contracts and securing revenues with the IOCs?

We know that you made a report regarding the oil. Has this led to any corporation between you and the government? Have you been consulted in this regard? If so, how?

Is it your experience that the government listens to you?

To your knowledge, how does the government plan to address issues of asymmetrical knowledge?

To your knowledge, has the government started any initiatives to prevent rent seeking behavior? If so, which?

To what extent do you feel such initiatives would be necessary?

Which are the government's strengths in terms of negotiating with an IOC?

Do you recognize any signs of the process being centralized? If so, how?

Who is involved in the decision-making process regarding contract negotiation, plot distribution, etc.?

Do you have any knowledge of the design features of the possible oil contracts?

Do you have any opinion about these design features?

Do you see any obstacles to public disclosure of revenue amounts?

How does the government publicize revenue amounts?

Do you know how Anardako and other companies have been compensated for risks incurred during exploration? Is it something they publish?

Has the government made any estimates as to possible revenue amount? If so, have these been publicized?

How does the government emphasize taxation as a public political debate issue?

How is taxation being monitored?

To your knowledge, has the government employed outside accounting services?

To your knowledge, have there been any talks of how to spend the revenue accrued from oil?

If yes, have you/your organization been involved in these?

NACE Interview notes. / OFF RECORD

- **Negotiation capacities:** The Government has no capacities in negotiations nor do they try to build them. They employ expads (note, different from mining according to the Cadastra Office), but these are far from being leading experts and are besides this rarely listened to. The companies have the strength to hire the real experts and have a clear advantage. Further the Government does not see expert recruitment as a valuable investment. NACE amongst others advocate for making the politicians understand the need for capacity building and employment of experts. When asked of governmental strengths, respondent replied 'none'
- **Use of revenues:** According to NACE (drawing from earlier experiences with mining companies) there will be no or very little revenue finance to spend if the Government does not invest in infrastructure immediately. Lack of essential infrastructure like consistent power supply and decent roads will always give the companies the upper hand when negotiating. Invest prior to negotiating.
- **Tasks of NGO:** Advocacy and capacity building of MPs. NACE have had the opportunity to educate MPs on oil related issues once and felt that they did listen to them. However, when forming the legislative framework, the government do not listen to civil society movements and uses the excuse that they already employ expads, but whom they do not really listen to (source criticism; the NGO may want to appear more competent than the expads). NACE was involved in the ongoing renewal of the mining contracts, but this is confidential.
- **Transparency:** The Government (on oil) does not publish anything about expected revenues, contracts or what they have been paid in advance by the companies. NACE advocates for them to do so. Revenues are included in the national budget but the exact amounts are difficult to track as they are put into consolidated funds. Further negotiations are gathered around the presidency and the Petroleum Directorate is also based under

this. Mining revenues have however (see above critic and notes from AJME) been published so hope exists that the same will happen with oil revenues. The government tells the public nothing when it comes to oil related issues and it is doubtful whether the common citizen even realizes that the country poses off shore oil (own note: recent event, lack of education?). The Government has made no public estimates, so the civil society has no idea what to expect in terms of revenues. Taxation of the companies is also not been made a public issue (neither mining nor oil. Citizens are left with no chance of assuming what to expect).

- Corruption: Rent seeking is a general and very large issue when dealing with extractives in Sierra Leone.

Others: get the report 'Building a fair, transparent & inclusive tax system in Sierra Leone. SL Reports.

Interview 8.0

Appendix 8.0 The Petroleum Directorate, interview-guide and notes.

Name:

Designation:

Date/place:

Interview Guide – The Petroleum Directorate

Intro:

We're interested in the capacities of the government in terms of negotiating contracts, securing revenues and investment policies. You will remain anonymous throughout our thesis and if there are any questions you don't want to answer, please just let us know.

To make sure we've got everything right, we would like to ask you exactly what the main tasks of your office are.

What do you see as the main challenges when negotiating contracts and securing revenues with the extractives companies?

Has the Petroleum Directorate drawn from the expertise of the MMR, Cadastra Office, MoFED and such?

What is the appointment procedure for the Petroleum Directorate? Political or merit based?
(What are the qualifications of the members of the Petroleum Directorate?)

Does the Petroleum Directorate consult with outside (or inside) experts?

Is the Petroleum Directorate involved in the financial areas of the contract negotiation? Is the MoFED involved? Why / Why not?

How does the Petroleum Directorate approach issues of asymmetrical knowledge?

Is it possible to gain public access to data regarding contracts with the oil companies?

Regarding the current and past bidding rounds, how do these work?

On what are the companies bidding on?

There seems to be some confusion as to who the Petroleum Directorate reports. So to clarify, who do you respond to? And keeping transparency in mind, how do you look upon the fact that neither civil society nor key government officials are certain of your place in the system?

What is the nature of the cooperation between the Petroleum Directorate and civil society?

The Petroleum Directorate, Interview Notes (Not recorded).

Tasks of Governmental body: Established as the Petroleum Resource Unit (PRU) in 2001 under the office of the president: Charged with the responsibility of representing the state in oil negotiations. Now named the Petroleum Directorate but still has the same mandate, regulates all upstream activity.

Main challenges when negotiating: Now there is none, exploration contracts is modeled through the Oil and Petroleum Act of 2011, the 2001 act was insufficient left to much to negotiating – even income tax. Now it is none-negotiable for all companies. Something are still negotiable though; signing bonuses, work-program and local content money.

Income tax is now fixed at a minimum of 30 pct. (for more explanatory notes, see interview notes from the Ministry of Finance).

Securing revenues: Should be easy due to fixed contract measures, just requires strict monitoring. This task currently lies under the authority of the National Revenue Authority (NRA) But the Petroleum Directorate would very much like to ease the NRA of their monitoring and collecting tasks when exploration is over. NRA, according to the directorate, does not have the capacities to solve tasks both within mining and oil (wish of centralization). Currently there is only being collected basic royalties and this is the task of the Directorate.

The Directorate has not drawn from experience and expertise from within the Ministry of Mines and Mineral Resources, the Cadastra Office etc. Instead the Directorate is based under the presidency and they are currently building their own capacities. According to the Directorate the subjects are very different.

Appointment to the directorate is primarily merit-based; however the president is solely in charge of doing so. The O&P act does however set up requirements concerning criminal records and technical experience.

Consulting outside experts: No! Instead the Directorate prefers to capacity build its own staff. – However the IMF and WB worked with MOFED on the fiscal regime.

Addressing asymmetrical knowledge: The Government pays for the training of a critical mass (i.e. by sending two officials to do masters-degree in the U.K. on oil and petroleum issues); according to the Directorate these officials will be comparable or even better negotiators than the ones employed by the IOCs (very questionable). Upgrading is seen as a vital investment (first time we hear this statement, include time-schedule of conducted interviews in the appendixes).

Publishing data: Data on oil amounts is not published nor will they be. Provisions are in place for publishing contracts. The current exploration contracts *should* already be published (not according to the Civil Society)

Bidding rounds: Only the president and the director in general get to decide who gets the deal.

Concerns about the public not even knowing to whom the Directorate respond: ‘They should just ask’

Co-operation with civil society movements: CSM makes their own separate research but do not involve or consult the Government. The Directorate questions their estimates, as it is not even possible to say whether the oil can be commercial yet (The Directorate might have a point keeping the AJME report launching in mind). The Directorate reckons that the NGOs are doing a bad thing for public expectations, as SL is probably not the new UAE.

Licenses: One license for exploration, extraction, production etc.

Would not promise that the oil could be commercialized due to the wording of ‘promise’ but body language indicated that this was clearly the most likely scenario.

Interview 9.0 2012

Appendix 9.0 Association of Journalists on Mining and Extractives, interview-guide and notes.

Name: **Designation:** **Date/place:**

Interview Guide – AJME

Intro:

We're interested in the capacities of the government in terms of negotiating contracts, securing revenues and investment policies. You will remain anonymous throughout our thesis and if there are any questions you don't want to answer, please just let us know.

To make sure we've got everything right, we would like to ask you, exactly what the main tasks of your organization are.

First off, we would like to ask if you/your organization have been involved in the political framework surrounding oil and petroleum. If so, how?

What do you see as the main challenges when negotiating contracts and securing revenues with the IOCs?

We know that you made a report regarding the oil. Has this led to any corporation between you and the government? Have you been consulted in this regard? If so, how?

Is it your experience that the government listens to you?

To your knowledge, how does the government plan to address issues of asymmetrical knowledge?

To your knowledge, has the government started any initiatives to prevent rent seeking behavior? If so, which?

To what extent do you feel such initiatives would be necessary?

Which are the government's strengths in terms of negotiating with an IOC?

Do you recognize any signs of the process being centralized? If so, how?

Who is involved in the decision-making process regarding contract negotiation, plot distribution, etc.?

Do you have any knowledge of the design features of the possible oil contracts?

Do you have any opinion about these design features?

Do you see any obstacles to public disclosure of revenue amounts?

How does the government publicize revenue amounts?

Do you know how Anardako and other companies have been compensated for risks incurred during exploration? Is it something they publish?

Has the government made any estimates as to possible revenue amount? If so, have these been publicized?

How does the government emphasize taxation as a public political debate issue?

How is taxation being monitored?

To your knowledge, has the government employed outside accounting services?

To your knowledge, have there been any talks of how to spend the revenue accrued from oil?
If yes, have you/your organization been involved in these?

AJME interview notes: (Fully recorded)

- Tasks of NGO: Journalist on mining and extractions uses media as a tool for informing the public about relevant issues. Works closely with like-minded to ensure coherent voice (NACE etc.) Catalogue all findings in public distributed news-letter, also broadcast through the country most popular (according to respondent) most popular radio station, culture radio 104,5 FM. Key issue is: More than 80 years of resource rich history has led to absolutely nothing, the oil boom is now here and they want to avoid a path dependency. Ensure revenues and that these are actually used for good things.

Do research on the oil sector to get the country ready i.e. by fieldwork in Nigeria, talks to all key stakeholders to ensure best possible mathematic estimates on what to expect in revenues if the current legislation is obeyed. (NB! Remember Gbenda report). AJME wants to decrease donor reliance by creating real revenue collection, in coherence with existent law.

Success in advocacy: AJME was part of forcing the Government and London Mining to renew their contract, ongoing renewal. (See notes below)

Government does formally use and accumulate views from local experts from extractive related NGO, but these are often influenced by the extractive companies, and even if not rarely listened to. They do listen and call for hearing rounds, but is questionable whether the information provided to the Government is being used.

- Transparency: A complete oil policy together with the Oil & Petroleum Act of 2011 was brought to parliament as an emergency act, thereby depriving the whole country of debate opportunities. A policy which according to AJME contains many errors. Formally the Government listens to civil society movements like the AJME but in reality there is no time for them to pay real attention. Sierra Leone not a fully compliant member of the EITI, mismatch between numbers reported by the G and the companies and anti-corruption units do not pay any attention to this. No independent 'check-up' mechanism is established. Negotiations are centralized, everything happens in Freetown and around the presidency. Delegated within PETROLEUM DIRECTORATE and SPU has a minimal level of education and experience, they are political appointed, not a merit based system, according to respondent they are fare from qualified. Even if they are somewhat

qualified they are still working in line with centralized orders of the open door policy. Outside accounting-services are not being used, at least not to the knowledge of our respondent.

- Openness: revenue incomes are published and journalists can retrieve, however not all journalists. No law on freedom of information, yet another obstacle for civil society awareness. Taxation is not a public political debate issue, nor have there been any Governmental attempts to make it so. There has absolutely no debate on how the forthcoming revenues should be spent.
- Main challenges of the Government: The relative strength of the companies compared to the Government; when extractive companies enter Sierra Leone they are legally bound to pay 37,5 pct. in royalties, but the companies always manage to negotiate their own individual taxation bill, down to as low as 3 pct. (London Mining). Hence not following legislation. AJME reckons that compensation should not even occur; law is law as they say! The O & P Act (which was rushed through parliament) is made in favor of the companies as the G gives away too much taxation; the companies are exempted from paying next to nothing. The strength of the companies also raises the challenge of asymmetrical knowledge, company experts and their ability to attract such is a major issue. Additionally contracts can only be reviewed with mutual consent, companies rarely comply. Further the Government uses an open door policy to attract investors, way to open according to respondent. When asked about governmental strengths respondent answers; none and adds that monitoring is a big problem as well, the Government solely rely on self-reporting by any extractive company present in the country (NB! Remember the digital system in Cadastra Office, however not reliant on productive amounts)
- Corruption and transparency: A main challenge here is the very frequent use of disclosure clauses (any oppositional cost can be deducted) and also the ever present issue of rent-seeking behavior. Additionally the companies have taken over the Freetown media scene, depriving the public of any real debate. They publish their newspapers and influence /bribe (explicitly said by respondent) the most well-known journalist to write in

their favor. Respondent has been offered a similar bribe, but has, according to himself, always refused, he works on a free-lance basis and has never encountered any difficulties selling and publishing his articles, except when writing critically about the extractive industries. He is now establishing his own news-paper, with himself as chief-editor. Media in Freetown has lost credibility. There have been no political initiatives to stop the companies' influence on key stake-holders. All ministers of M&M have so far been 'in bed' with the companies.

Not only the press but also many key holders within the Government is bribed and influenced by the companies, anonymous officials have admitted so to our respondent. Officials are easily influenced as their monthly salary is as low as 75 dollars monthly (prior to income tax regulation).

Interview 10.0 2012

Appendix 10.0 Network Movement for Justice and Development, interview-guide and notes.

Name: **Designation:** **Date/place:**

Interview Guide – NMJD

Intro:

We're interested in the capacities of the government in terms of negotiating contracts, securing revenues and investment policies. You will remain anonymous throughout our thesis and if there are any questions you don't want to answer, please just let us know.

To make sure we've got everything right, we would like to ask you, exactly what the main tasks of your organization are.

First off, we would like to ask if you/your organization have been involved in the political framework surrounding oil and petroleum. If so, how?

What do you see as the main challenges when negotiating contracts and securing revenues with the IOCs?

We know that you made a report regarding the oil. Has this led to any corporation between you and the government? Have you been consulted in this regard? If so, how?

Is it your experience that the government listens to you?

To your knowledge, how does the government plan to address issues of asymmetrical knowledge?

To your knowledge, has the government started any initiatives to prevent rent seeking behavior? If so, which?

To what extent do you feel such initiatives would be necessary?

Which are the government's strengths in terms of negotiating with an IOC?

Do you recognize any signs of the process being centralized? If so, how?

Who is involved in the decision-making process regarding contract negotiation, plot distribution, etc.?

Do you have any knowledge of the design features of the possible oil contracts?

Do you have any opinion about these design features?

Do you see any obstacles to public disclosure of revenue amounts?

How does the government publicize revenue amounts?

Do you know how Anardako and other companies have been compensated for risks incurred during exploration? Is it something they publish?

Has the government made any estimates as to possible revenue amount? If so, have these been publicized?

How does the government emphasize taxation as a public political debate issue?

How is taxation being monitored?

To your knowledge, has the government employed outside accounting services?

To your knowledge, have there been any talks of how to spend the revenue accrued from oil?

If yes, have you/your organization been involved in these?

NMJD, interview notes (fully recorded)

- Tasks of NGO: Civil society organization, advocacy, pro-poor approach to economy and justice related issues. Working for transparency in Mining and Extraction, lobbies on trade agreements, focuses on land rights etc. Have not been involved by the government in any hearing round or negotiation concerning oil or other extractives.

NMJD have not concentrated on oil related issues, besides being a part of NACE and other civil society coalitions. Did however raise some concern about the speedy procedure of the Oil & Petroleum Act of 2011 (same reasoning as AJME).

Trying to capacity builds themselves and other like-minded NGOs on oil related issues.

- Main challenges for the Government: To established linkages to own host economy once the extraction really sets off. To ensure use of local inputs and employment plus assuring good and fair conditions for local workers. Getting the IOCs to assist in upgrading their workforce, so the IOCs will not be so dependent on employing expats.

Another main issues is the one of asymmetrical knowledge when negotiating with the companies, the Government is according to respondent not willing to invest in the necessary expertise.

- Openness: The Government only listens formally.

Interview was interrupted. Respondent had to attend a scheduled meeting not known to us. Rescheduling will take place later.

Part 2:

- Addressing asymmetrical knowledge (Oil): Negotiation team within the Petroleum Directorate will be assisted by the UNDP and parts of the Civil Society (Assumption by respondent) The Government do not invest in upgrading own personnel (Not true according to the Petroleum Directorate, however their assumption on results of the

training seems overestimated). New trend is hoping to absorb knowledge from similar settings.

- Initiatives against rent-seeking behavior: the G launched a website with contracts, clauses etc. But this cannot be accessed. Rent seeking and to fare going clauses within contracts are an ever-present issue in SL.
- The Law do not address rent-seeking sufficiently.
- Strength of Government when negotiating: the wealth in natural resources, but needs to make clear exactly what the country possess. Geological department have insufficient knowledge of commercial values etc.
- Oil negotiations are indeed centralized, surrounding the presidency. The petroleum directorate manages all aspects, the decision making process is not inclusive and obviously sworn in secrecy. Respondent don't even know who is involved.
- Respondent have no knowledge of design features (see statement made by BAN).
- Knowledge of compensation fees to the IOCs: No contracts are published.
- Public estimates on oil revenues: No, there have never been concerning the mines either.
- Taxation is not on the public agenda
- Monitoring: Not effective, weak capacities, monitors are not paid sufficiently are easily affect able. Further there exists no independent mechanism.
- Public debates on how to spend the revenues: No, NMJD advocates for setting up several independent funds on issues such as diversification, infrastructure, health etc. (CS might be overestimating the forthcoming revenue amounts and according to the Petroleum Directorate they do nothing good for public expectations).

Appendix 11.0 Intro-letters

Two letters we always presented to our respondents or possible respondents prior to the actual interview.

To Whom It May Concern:

Our names are Klaus Kuch Jensen and Kristoffer Eskild Thomsen, both MA candidates at Roskilde University, Denmark. We are currently writing our thesis in International Development Studies on the prospects of the Sierra Leonean oil sector.

We would like to draw on your expertise in this field, through an interview. Should you be interested in helping us we would be very grateful, and off course exercise complete academic discretion.

More specifically, we are interested in capacity building tools employed by the government towards managing this fairly recent sector.

Enclosed is a letter from our supervising professor at Roskilde University, Mr. Jakob Lindahl, confirming who we are and our purpose for this interview.

We sincerely hope that this might interest you, and it would be very much appreciated if you can find time to speak with us.

We intend to call you within the next few days, so if possible, we can set a date and time together. You should also feel free to call us at any time at: **078175200**

Best regards,

Klaus Kuch Jensen & Kristoffer Eskild Thomsen

To Whom It May Concern:

This letter is to officially confirm that Klaus Kuch Jensen and Kristoffer Eskild Thomsen are students at Roskilde University, currently writing their master thesis in International Development Studies.

As their supervising professor I can vouch for their described research purpose in Sierra Leone and academic discretion.

Best regards,

Jakob Lindahl

Appendix 12.0 Real List of Respondents

This appendix will only be enclosed those versions of the thesis given to censor and supervisor

Appendix 13.0 Transcribed Interview with the Cadastra Office

Interviewer: So, we have a couple of questions. As you already know we're interested in the capacities of the government in terms of negotiating contracts and securing revenues, and also a bit about their investment policies. You'll remain anonymous throughout our project if you want to so, and if there are any questions you don't want to answer just let us know. There's absolutely no pressure. We would like to, before we get started, to make sure we got everything right about the Cadastra Office, so if you could just tell us a little about what the Cadastra Office does and what your tasks are?

Respondent: The mining Cadastra Office is an it-based system that actually manages mineral rights and helps in mineral rights administration. Before the advent of the Cadastra system documents used to be like in paper format and it was very difficult to actually access basic information relating to a specific license. For example payment details, operational reports and those kinds of things. So through the help of our development partners, the ministry was able to set up a mining Cadastra system that actually manages mineral rights within the Ministry of Mineral Resources. So for example now you can use the system to transfer a license, to cancel a license, to suspend a license, to renew a license, you know, there are a lot of other things that are involved in the system. The system, you know the licenses that are due for renewal for example it (the IT system) will notify, and all those kind of things. Then it has also helped to actually track down payment detail of specific companies you know, as per what they owe and what they have paid. In addition to that the government has also tried to set up an online position system, where all this information gathered in the Cadastra system are sent to system developers who update this on the website, giving detailed revenue reports, for example what are the quarterly, monthly, annually and what specific company has paid and what they are paying in terms of concession where they are mining. You have all those details online.

I: When you manage all of these mineral rights, are you also involved in who gets the rights? Who's approved to...?

R: Yes off course. The Cadastra system itself has a lot of phases or stages. It starts with an application. An application has to go through the application stage, it has to go through a

validation stage wherein it is actually taken to Geological Service Department, and actually check whether the plot is available or whether the plot is not available. That is where it is occupied by another company for example. To prevent issues of overlap. You know, once that is clarified, it is taken to an approval body, the mineral advisory board, where it is approved. From there were you give other payments, where we ask lines to pay to the bank, before we finally generate the license.

Interviewer 2: I was wondering when you track down these payment details of the companies, do you rely on information coming directly from the companies or from some consultative accounting service?

R: Payment details. The system is designed using the Mines and Mineral Act of 2009, where the regulations clearly specify what is to pay for each license. Some of the payments are based on area, for example exploration licenses you pay 100 dollars per square kilometre or large scale mining licenses you pay specific sum of money, so it's like, the system is designed such that the payments are inbuilt. Once the payment is made you have to check, the system will prompt you. For example if a client is supposed pay 100.000 dollars and he pays less than that, the moment you enter such payment in the system, the system will tell you the payment you've entered does not match with what is due to be paid. So straight away you cross check and see what is missing.

I 2: Ok, but they report themselves?

R: Yeah. Straight away you know what... if they pay what they are not supposed to pay; you definitely have to call them and try to raise concern that you are supposed to pay this. Why are you paying this? The system is not allowing you to enter that kind of payment.

(Short interruption as respondent has to answer a phone call)

I: In terms of income tax and other taxes, do you have anything to do with that? From the companies?

R: Presently the system is capturing non-tax revenues. License fees, royalties, community development fund or community development [inaudible] fees. That's what we are capturing at the moment. In the future we think of incorporating other taxes. But for the time being just taking none-tax revenue.

I: I'm thinking now that you mentioned the community development fund, how is what the companies are supposed to pay to this fund, how is that calculated?

R: The act makes provision for the companies to set aside 1 pct. of their gross revenue, going to community development project, but it's all based on the community has to identify specific projects, which is submitted to the Minister for his approval. And those funds are directed towards those projects.

I: Ok. So when it's 1 pct. of the gross revenue, is it what the companies report as their gross revenue?

R: You say?

I: Is it... The numbers you use for calculating the 1 pct. of their gross revenue is that the companies' reporting their gross revenue or do you have an accounting service who keeps track of them or how does that work?

R: I'm not clear about it, but I'm sure the government must have an accountant, accounting provision made for that, because the company may report anything, this is our gross revenue, so there must be an accountant.

I: That would probably be the Ministry of Finance?

R: Ministry of Finance or somebody else yes.

I: So now that you're involved with all of this in the mining sector, you and your office have nothing to do with the oil sector?

R: Not at this moment. The oil sector is presently under a different directorate, you know. But maybe in the future the government will think of incorporating the oil sector under the Ministry of Mineral Resources. But for the time being they are not under this ministry, they are operating separately outside this ministry.

I: Have you or your office in any way been asked about, because you must have some expertise in the whole revenue area, so have you been asked about this in connection with the oil? Have you advised the people now connected with the oil?

R: The mining Cadastra we've developed I'm sure is going to serve as a model for most other institutions, government, departments and agencies because it has made revenue collection and processes very transparent and accountable and a lot of other ministries are looking to it critically and see how a system of this nature can be developed for them also, and I'm sure the oil sector will not be an exception. Taking into consideration the hype, you know a lot of expectations surrounding natural resource; I'm sure most these resources have to manage... If most of these resources have to be managed transparently, a system of this nature must be put in place. So everybody knows, for example companies involved in this deal will know exactly what they pay to government and government in turn report to key stakeholders what they collect from these companies.

I 2: So at the moment you're not assisting the Petroleum Unit with anything?

R: No, not at all. We are not been in directly with them right now, except maybe if they got issues for example when they were putting together the petroleum act or the petroleum bill, they invited key stakeholders including this ministry, you know to actually debate on key issues and how to move the process forward and get their contribution.

(Short interruption as respondent has to answer a phone call)

I 2: So if you're not assisting the Petroleum Directorate with anything, to whom does the Petroleum Unit have to answer? Is it under the direct management of the Ministry of Finance or maybe the presidency or something?

R: To be honest, I don't know their structure how it operates at the moment. I know at one point or the other they've come here... People have approached this ministry for details of what is happening in the petroleum sector, because I'm sure in other countries the petroleum sector is under the Ministry of Mineral Resources or other ministries of energy or such. Most the time who come here, we refer them back to the petroleum unit. I have not been into their activities that much. I don't know the structure of how they operate at the moment.

I 2: Have you... when a company is setting up a mining plot, have you been involved in, has the office been involved in contracting, negotiating contracts?

R: In negotiating contracts? The ministry has been involved, I have not been involved specifically.

I 2: Do you know anything about the procedures? If they employ experts to manage these negotiations?

R: What I know now is that they've got a Strategic Policy Unit, that actually deals with... they are currently involved in reviewing all previous mining contracts, so that they take them up to task. That is the matter of what is enshrining the Mines and Minerals Act. What I know is before the advent of the 2009 act, companies used to have different agreements with the government, and I think, when his government came to power, they actually tried to capture most of these companies, to go back to the table and see how they revisit most of these agreements, so that they actually come to terms with what is in the Mines and Minerals Act. The companies were actually not under obligation to do it because of certain clauses set aside in their previous agreements. The government tried to persuade most of these companies, you know, to serious? Back, and revisit most of these agreements, and the Strategic Policy Unit is actually on that, and

they involve key stakeholders from different sectors. From this ministry, from Ministry of Finance, you know, and a host of other departments and agencies. They are sitting together and actually reviewing most of these things. When I think, the IMF was also working on a template for negotiating most of this contracting in the extractive sector, which will actually help in negotiating contracts in the future.

I 2: What's the unit called again?

R: Strategic Policy Unit.

I: So maybe one could imagine that now that they have an Oil and Petroleum Act now, so maybe they're going to try and make the contracts be in accordance with that act, one could imagine.

R: Yeah.

I: What was it? Yeah, in most of these mining companies' contracts, you talked about transparency and publicising their revenue, do you know if some of the old contracts at least, or maybe some of the new, do they have any clauses that states that they don't have to publicise their revenue or... Do you know if there's any of that?

R: No, I don't know if there's any clause. Because we also had a... We also thinking of it... Their revenue as we made public, as far as this thing is concerned. But I'm not sure of any specific clause that prohibits publishing revenue of mining. Because once we're even thinking of this to have most of this mining agreements, in fact, to publish them online.. Or our mining repository. Because since they are taken to parliament then they are public documents, they are not secret documents. So we are thinking in the future to have most of these agreements published online.

I 2: Having the data on these revenues, how do you distribute it? Do you give it to some consultant? Or stuff like that?

R: What we intend doing, because we just set up the system. What we intend doing is maybe annually, monthly or quarterly, we'll be distributing, sharing this revenue data to key stakeholders, you know, say the government? Diamond office, the NRA, the Ministry of Finance, you know, on a regular basis so they actually retain knowledge on what happens in the mining sector as far as revenue collection is concerned.

I 2: But just the governmental bodies, not to the press or stuff like that?

R: Well, not the press at the moment, but since we intend sending all those information online, there's no secrecy about it. Everybody can access that and what is happening.

I: Do you know anything about these revenues that come in from the companies? Do you have any idea what they're used for? How the government spends them? You talked about the Diamond Community Development Fund, so that's one place some of the money goes, but do you have any idea?

R: Yes, um... From... This is out of records, I think...

I: Let me turn this one off.

Appendix 14 – List of Digital Recorded Interviews

Please find the recordings with the attached CD

1. Association of Journalists on Mining and Extractives
2. Budget Advocacy Network
3. Cadastra Office
4. Anonymous Consultancy Agency
5. Network Movement for Justice and Development – Part one
6. Network Movement for Justice and Development – Part two
7. Ministry of Mineral Resources – Part one
8. Ministry of Mineral Resources – Part two