
This discussion paper has been commissioned by the EITI International Secretariat to help inform the ongoing discussion about the role of EITI in fighting corruption, including contributions and limitations. It provides preliminary recommendations for how this role can be strengthened. An independent consultant, Alexandra Gillies, is supporting the Secretariat with this work. The paper has not yet been reviewed or endorsed by the EITI Board. Readers are advised to contact the International Secretariat to provide comments by 31 July. Contact details can be found at www.eiti.org.

Discussion paper: The EITI's Role in Fighting Corruption

Summary

Corruption remains a widespread and harmful problem in the extractive sector. The Panama Papers and Unaoil leaks exposed suspicious behaviour by oil and mining industry players. The “Car Wash” scandal began in Brazil’s oil industry and reverberated across Latin America and beyond.ⁱ Oil industry players from the Persian Gulf played prominent roles in the Malaysian 1MDB scandal.ⁱⁱ Corruption scandals have plagued several of Africa’s top mineral producers.ⁱⁱⁱ Many of the regimes classified as “kleptocracies” are rich in oil as well. Some of the world’s top extractive sector companies, from China, Italy, the Netherlands, the UK, the US and elsewhere, have faced investigation and prosecution.^{iv} Twenty percent of the 242 enforcement actions under the US Foreign Corruption Practices Act (FCPA) came from the extractive sector – by far the highest for any industry.^v Of the 427 foreign bribery actions examined in a recent OECD report, one fifth came from the extractive sector as well.^{vi}

The prevalence of extractive sector corruption has led the EITI to face some tough questions: What role can the EITI realistically play in fighting corruption? Why hasn’t the EITI prevented extractive sector corruption from cropping up in its member countries? Why didn’t its reports expose these scandals? How can it do more?

This discussion paper aims to identify some of the EITI’s strengths and limitations in addressing extractive sector corruption, and suggest ideas for how it can do more in the future. It draws on the analysis of dozens of recent extractive sector corruption cases, several studies and evaluations of the EITI, as well as twelve interviews with members of the International Secretariat staff and other EITI stakeholders and experts.^{vii} It is a conversation-starter rather than a thorough review. The EITI International Secretariat commissioned the paper, though the views contained in it are my own. A discussion paper is being shared with the Implementation Committee for written comments, while a fuller version will be shared with submitted to the Board for consideration prior to its October 2019 meeting.

The paper focuses on how the EITI directly and explicitly works to prevent, detect or sanction acts of extractive sector corruption. It does not consider the wider, indirect dynamics through which the Initiative helps reduce corruption in the sector, even though these are potentially very powerful. The EITI has brought about greater transparency and cross-stakeholder engagement in the extractive sectors of many countries, and helped advance global transparency norms as well.

Through these means, the EITI encourages good governance and public accountability, which includes but is not limited to the control of corruption. The paper's focus on specific anti-corruption actions is not intended to take away from the tremendous value of these wider impacts.

The definition of corruption used here includes “the abuse of entrusted power for private gain” (Transparency International’s widely used definition), but also includes acts of wrongdoing by private sector actors such as collusion and the complicity of corruption’s many enablers. Corrupt acts can be illegal or legal, such as when private interests acquire influence over the state’s law making functions.^{viii} Finally, given limitations in my own expertise, the paper does not address the important topics of local level corruption or illegal mining.

1. How the EITI helps fighting corruption

Particularly because EITI reporting requirements tackle high-risk areas of the sector, as explained further in Section III, the initiative helps to address corruption in several ways. Most of these dynamics help to prevent future corruption, while others bolster efforts to detect and sanction past abuses.

1. EITI reporting exposes country-specific natural resource management practices that are vulnerable to abuse.

Identifying governance practices that are susceptible to corruption is one of the most valuable and unique contributions that the EITI makes in fighting corruption. In a number of countries, EITI reporting has revealed processes and practices where corruption could easily arise, if it hasn’t already. As illustrated in Box 1, these vulnerabilities are often country-specific, and therefore the country-specific nature of EITI reports does an especially good job of revealing them. The concerning processes exposed through EITI include cases of highly discretionary license awards; off-budget accounts subject to limited oversight; transfers of money or commodities that are not accounted for; subsidiaries that receive money but do little; license holders missing from the tax authority’s radar; legal and regulatory provisions that enable corruption; and, spending by extractive sector actors for purposes unrelated to their mandate. EITI reporting has exposed practices like these, and subjected them to scrutiny from multi-stakeholder group (MSG) members and other stakeholders. In some cases, reform has followed as a result. This powerful dynamic can restrict some of the easiest pathways through which corruption enters the system.

Illustrations of how the EITI draws attention to vulnerable practices

- Myanmar’s EITI process has helped uncover huge vulnerabilities which are now receiving more attention. Its first report revealed that the country’s SOEs retained about half of all extractive sector revenues in opaque accounts.¹ A study commissioned by Myanmar’s EITI chapter found that 98% of gemstone permits operate “without oversight and permit-holders free to choose how they produce, what they declare, and whether or not this goes through formal channels..... It is estimated that 60-80% of gemstones produced in Myanmar are not declared and therefore bypass the formal system.”¹ In Nigeria, EITI systems also prompted new insights and scrutiny regarding SOE revenue retention and expenditures.¹
- Papua New Guinea’s first EITI report explains that “out of the 27 revenue streams applicable to the extractive sector, only corporate income tax and dividends are recorded in the national

budget. Other revenues are recorded in financial reports of various agencies, without a clear explanation of how they are considered in the budget process.”¹

- An early EITI Report in the Democratic Republic of Congo (DRC) indicated that a government agency received mining payments but did not transfer them to the Central Bank, increasing risks of misappropriation. The report showed that \$88 million in mining royalties collected by one tax collecting agency could not be traced to the Treasury. After an initial enquiry, a discrepancy of USD 26 million remained. A government oversight body worked with the agency to retrace the revenues.¹

2. EITI reporting exposes suspicious deals and transactions.

When the EITI first emerged onto the scene, some observers thought it might pull back the curtain on all the sector’s dirty deals. Indeed, on a few occasions, EITI reports have contained data that triggered or informed further investigations by outside actors into specific transactions.^{ix} A journalist used EITI reports to query the identities of several mining companies in Cameroon.^x Global Witness and *The Guardian* used EITI data to raise questions about the structure of a license acquisition deal in Liberia.^{xi} Indonesian non-governmental organizations (NGOs) used cadaster data of the type published by the EITI to help demonstrate that mining companies were operating outside their allotted area, including in protected forests.^{xii} The Swiss NGO Public Eye drew on EITI data in its investigation of oil sale deals in Congo-Brazzaville.^{xiii} The Carter Center and Global Witness also used EITI reports in their investigations of the DRC’s largest state-owned mining company.^{xiv}

However, unlike criminal investigations, leaks or whistleblower statements, EITI reporting is neither forensic nor unpredictable enough to expose most instances of corruption. That’s not its primary purpose either. Instead, EITI reporting aims to spread systematic transparency across the sector.

3. EITI reporting provides anti-corruption actors with valuable context information.

When law enforcement, journalists and other actors investigate extractive sector cases, they often struggle to understand industries that are complex, unfamiliar and at times opaque. EITI reports can be essential reading in such scenarios. For instance, Chad’s EITI reports do not shed much light on the bribes paid by Griffiths Energy to Chadian officials in 2011.^{xv} But, they do provide extensive relevant contextual information about how the Chadian oil sector works, including the licenses held by Griffiths, the full text of the contract that Griffiths signed with the government and the company’s payments to the government.

Informal accounts suggest that law enforcement have used EITI reports for this purpose on occasion. Non-governmental actors benefit too. For instance, the Natural Resource Governance Institute used EITI reports to better understand the Nigerian national oil company’s oil trading business in its research on corruption risks in this area.^{xvi}

4. The EITI supports discussion, monitoring and civil society advocacy.

In the EITI, MSGs set the objectives for a country’s EITI process, oversee its implementation and provide a venue where government agencies, companies and civil society can exchange ideas. When EITI reports reveal concerns related to corruption, such as those mentioned above, the

MSG is a place where stakeholders with varying interests can discuss possible remedies, pressure the relevant agency or company to respond, and monitor progress. As noted above, the DRC's MSG followed up on concerns revealed in EITI reports and raised by external stakeholders about certain payments to government that did not end up in the treasury. In Armenia, Kyrgyzstan and Ukraine, anti-corruption appears among the MSG's objectives.

The EITI can also serve as a champion for civil society and its anti-corruption functions. At the global and country level, the EITI is well placed to encourage civil society advocacy that draws on EITI reports, facilitate cross-stakeholder dialogue about civil society's concerns, and ally with activists and journalists when they confront repression. The EITI's Civil Society Protocol helps capture this role. It requires that, in member countries, "civil society representatives are able to speak freely on transparency and natural resource governance issues, and ensure that the EITI contributes to public debate."^{xvii}

5. The EITI advances global norms and practices related to anti-corruption.

Progress made by the EITI spills over into other international anti-corruption efforts. For instance, the multi-stakeholder experience of the EITI has informed and inspired anti-corruption efforts in other sectors including construction and fisheries. One interviewee reported that the EITI's strong endorsement of *public* beneficial ownership registries and civil society as users of BO data (rather than just law enforcement) has impacted discussions by other anti-corruption actors promoting beneficial ownership reporting. Similarly, the EITI's robust approach to SOE transparency and commodity trading transparency has informed efforts by the OECD, the International Monetary Fund (IMF), the UK government and others. For instance, the EITI's requirement on "first trade" reporting helped lay the groundwork for robust consideration of commodity trading issues at the 2016 UK Anti-Corruption Summit.^{xviii}

6. EITI reporting may help deter corruption?

The transparency caused by the EITI may also deter corruption, though deterrence is nearly impossible to prove. How might this work? One interviewee recounted a conversation with an SOE official in which the official said that he receives fewer *ad hoc* requests for money from the presidency around election time since the EITI began looking at SOE transfers. Or, the EITI might prompt foreign companies to refuse to make certain suspicious payments, explaining to the authorities that they would have to disclose the payment via the EITI and that would expose them to FCPA risks. As EITI reporting continues to become more timely and comprehensive, such as the introduction of beneficial ownership reporting, this kind of deterrence effect could become more likely, though detecting and measuring this possible impact will remain quite difficult.

2. Shining a light in (many of) the right places

From a review of dozens of recent extractive sector corruption cases, it appears that the EITI requires disclosure in many of the areas most prone to corruption risk.^{xix} There are a few exceptions, in particular subcontracting and facilitators, and these are discussed in Section V.

The EITI makes robust transparency demands in the following high-risk areas. The forthcoming longer version of this paper will provide real-world examples of how corruption has arisen in these areas to illustrate why this type of reporting generates relevant information.

Licenses and License allocations. Exploration and production licenses are the industry's most valuable prizes, and competition for them creates all kinds of corruption risks. Companies use bribes, collusion and other means to gain an unfair advantage, and political elites steer licenses towards themselves or their allies. The information required by the EITI Standard's Requirement 2.2 and 2.3 could help stakeholders detect process problems such as constraints on competition or signs that an official intervened in the award process.^{xx} Investigators could dig into the list of applicants or the registry of license-holders to identify unqualified companies, companies with the same address or personnel, or other red flags.

Contracts. Contract terms often sit at the heart of extractive sector corruption cases. In order to prove bribery occurred, for instance, prosecutors usually must demonstrate that the company received some kind of unusually lucrative deal in exchange for their bribe. With the contract in hand, anti-corruption actors can ask well-informed questions about whether the company received terms that deviates from industry or market norms. Already the EITI has encouraged more contract disclosure,^{xxi} and this trend should continue with the strengthening of Requirement 2.4.

Beneficial ownership. Requirement 2.5 on beneficial ownership (BO) reporting is perhaps the EITI's most direct effort to address corruption risks. Regulators, law enforcement and oversight actors can use BO data to assess whether inappropriate individuals hold licenses, such as politically-exposed persons (PEPs), criminals or those with conflicts of interest.^{xxii} BO data can also inform a public debate about conflict of interest policies and other important anti-corruption measures. Past corruption cases reveal how PEPs have used front companies to receive lucrative extractive sector licenses, and BO disclosure should be useful in detecting and deterring this kind of behaviour. However, in other cases, top officials channeled extractive sector opportunities toward loyal proxies – a kind of self-dealing that BO disclosure is less suited to address.

State-Owned Enterprises (SOEs). SOEs receive huge amounts of funds, often operate apart from standard government oversight systems, and have proven susceptible to both bribery and rent-seeking activities. For these reasons, they sit at the center of many prominent corruption cases. Brazil's Petrobras is perhaps the most famous case, but it's far from alone. Indeed, the OECD found that officials from oil and gas SOEs were more likely to have observed corruption than those from any other industry.^{xxiii} Revenue retention, quasi-fiscal spending and other specific topics addressed by EITI Requirements 2.6, 4.5 and 6.2 appear in past corruption cases.

Payment flows / Revenue collection. Detailed payment transparency, as is called for by Requirement 4, allows anti-corruption actors to ask questions about unusually low or high payments, payments coming from unknown or suspicious actors or at unusual times, or payments routed to a recipient agency where scrutiny is limited or in a manner that violates the law. It also reveals how much money agencies take in, which can be compared with how much they then transmit to the treasury.

"First Trades." The sale of the state's share of production, usually by the SOE, features in a number of recent corruption scandals in countries around the world, including cases of bribery, the selection of unqualified buyers, price manipulation, self-dealing by top officials, the allocation of commodities without receiving payment in return, and the misappropriation of payments received.^{xxiv} EITI commodity sale data, covered by Requirement 4.2, could help stakeholders observe and understand the transactions involved in all these types of abuses.

Subnational payments and transfers. Regional and local authorities often receive large extractive revenues. In some cases the procedures for determining and making the transfers are opaque or subject to discretion, and the use of this money sometimes lacks safeguards and oversight. Reporting on money received by regional and local governments under EITI Requirement 4.6 has helped prompt greater scrutiny, including whether the transfer, management or use of the funds face corruption risks.

Other topics. Depending on the quality of the information and the country context, other EITI disclosures could address high risk areas including on reserve estimates (3.1) and production data (3.2), infrastructure provisions and barter arrangements (4.3), transportation revenues (4.4), distribution of extractive industry revenues (5.1), revenue management and expenditures (5.3) and social expenditures by extractive companies (6.1).

3. The EITI's limitations

Alongside the strengths outlined above, the EITI's ability to help fight corruption is hamstrung by a number of limitations. Some of these limitations are structural, meaning that they are inherent to the EITI's design or the wider context. Because of them, we must manage our expectations of how much the EITI can achieve in reducing corruption among its members. However, other limitations are less fixed and could be reduced with more concerted effort.

Structural limitations

Understanding and acknowledging these structural limitations will help the EITI address corruption in a fit-for-purpose manner and manage expectations for what it can achieve.

Some countries that struggle with oil, gas and mining sector corruption are not EITI members.

While the EITI does help strengthen global transparency norms, its potential to address corruption remains strongest in its member countries. Even as its membership grows, some countries that face corruption challenges will inevitably remain outsiders. Recent investigations have exposed major corruption concerns in countries that have not yet joined the EITI including Algeria, Angola, Brazil, Equatorial Guinea, South Sudan and Venezuela. In China and Saudi Arabia, prominent (and very political) anti-corruption campaigns targeted oil sector officials and executives, while in Azerbaijan, Russia and Turkmenistan, the petroleum sector sits at the center of a political economy that many analysts have characterized as kleptocratic. There is a possible upside to this limitation: some non-member governments likely lack the political will to genuinely pursue extractive sector accountability, and so their participation in the EITI may deliver relatively limited impact even if it did occur.

Many corrupt activities fall outside the EITI's scope. In many resource rich countries, corruption concentrates in the non-extractive sector where officials spend resource revenues on overvalued government contracts and other methods for spreading around the rents. One of the EITI's strengths is its coherent focus on a single sector. But, this means the EITI can do little to deliver transparency and accountability gains in the construction sector, for instance. Also, EITI reporting will not expose most cross-border illicit financial flows. In the wake of the Panama and Paradise Papers and revelations such as the Danske Bank scandal, this is one of the hottest topics in the anti-corruption field. Corrupt actors move their wealth through accounts, companies, properties and other assets located around the world, and many lenient laws and foreign enablers make it all possible. While the EITI is doing its part by advancing beneficial ownership reporting in the

sector and coordination with other entities can help broaden the disclosures' impact, its reporting will still only address a few strands of this web.

Corruption cases have arisen within the ranks of EITI members. As is the case for governments and companies worldwide, many participants in the EITI have struggled with corruption themselves. Some instances of corruption were isolated and unusual violations of the rules, and the authorities effectively detected and sanctioned the wrongdoing. Elsewhere, the corruption appears more frequent or systemic in nature. In either scenario, the EITI can bring about valuable transparency and support for the reformers working to reduce corruption risks within the entity. But, corruption cases associated with EITI members also pose challenges such as stakeholders with reservations about certain disclosures, sensitivities in discussing certain transactions, and difficult questions about the EITI's standards and impact.

Investigating and prosecuting specific acts of suspected wrongdoing is not the EITI's job. Those whose job it is, often face obstacles. While they can inform investigations and support anti-corruption efforts in several important ways, neither global nor country level EITI institutions have the mandate to investigate or prosecute specific acts of suspected wrongdoing. If they discover evidence of criminal wrongdoing, they presumably should pass off the information to law enforcement authorities – though the EITI does not currently provide guidance on how or when such a transfer should occur. Given this limitation (which seems entirely appropriate given its structure), the EITI relies on other actors (law enforcement bodies, government auditors, anti-corruption commissions, investigative journalists, etc.) to pick up the disclosed information and run with it. But, in some countries where corruption is widespread, political elites have sidelined, captured or repressed these players, or deprived them of capacity and funds. In their 2016 study, Socavool and his coauthors identify the absence of strong, independent civil society in countries with high levels of corruption as a major obstacle to EITI's ability to reduce corruption.^{xxv} The World Freedom Index and World Governance Indicators illustrate how a number of EITI countries perform poorly on measures of press freedom, voice and accountability and the rule of law, suggesting the accountability actors and the judiciary may encounter obstacles when pursuing corruption cases.^{xxvi}

Predictable transparency can be skirted by corrupt actors. The EITI helps build a sustainable and systematic form of transparency, where domestic institutions regularly disclose a wide set of information about the sector. This is one of the initiative's strengths. But, it means that EITI reporting is very different than the kinds of unpredictable leaks, subpoenas or office raids that often expose dirty deals. Actors can structure deals to avoid the EITI reporting process, just as they avoid other checks in the system. For instance, Nigerian officials set up a special escrow account to receive the controversial USD1.1 billion payment made by Shell and Eni for the rights to the oil block OPL 245, rather than routing the funds to a government agency account. This could be one reason why the payment did not appear in the country's EITI reports.^{xxvii}

The political will to fight corruption can be fickle. EITI implementation cannot, on its own, deliver cleaner government. It often sits within wider anti-corruption campaigns which can be uneven, politicized or disingenuous. Many governments take office promising to fight corruption, but then neglect the necessary reforms, allow criminal proceedings to languish, or only go after their political adversaries. In other situations, the central authorities are trying their best but they struggle to rein in corruption at the subnational level.

As a multi-stakeholder and consensus-based initiative, EITI exhibits a “tendency towards politeness.” Corruption is very sensitive and often addressed via adversarial means (investigations, accusations, prosecutions, etc.). This is not the natural territory of the EITI which brings together different stakeholders and helps them find common ground. While the EITI’s tendency towards consensus brings many benefits, addressing corruption can become quite difficult at times. Some EITI MSGs exhibit dynamics where the stakeholders don’t want to step on each other’s toes, or there’s a “cozy *entente*” among the players. As a result, efforts to discuss or address corruption risks appear timid or assume a “lowest common denominator” approach. Sometimes the actors that try to raise alarms about corruption, likely CSOs, “are signaled by the MSG as problematic, stopping consensus, delaying the publishing of reports, etc.,” according to one interviewee. MSG members may also have very uneven appetites for tackling on corruption and some may have interests that run directly counter to this pursuit, and these factors can also reduce the MSGs ability to deliver results.^{xxviii} While the EITI can do more to address corruption explicitly (see recommendations), this limitation will remain to some degree.

Non-structural limitations

These are some of the challenges that are less structural and could be more readily reduced.

Some actors use the EITI as evidence that they’re fighting corruption without necessarily fighting corruption (i.e., whitewashing). Some governments and companies present their participation in the EITI in ways that makes outsized claims about its anti-corruption potential. One interviewee called the EITI “a kudos delivery mechanism” for companies, as they face no reporting requirements upon sign-up. Government officials have claimed that a satisfactory EITI validation outcome constitutes a “clean bill of health” for the entire sector, and otherwise milk the Initiative’s reputational benefits. International actors have used it for this purpose when convenient too, holding up EITI participation as a proxy for controlling corruption.

The EITI process offers few explicit opportunities to address corruption. The EITI Standard does not for instance require MSGs to explicitly identify their country’s most pressing corruption challenges or encourage EITI reports to mention recent corruption cases, nor does it provide guidance for what national chapters or independent administrators should do when they uncover suspicious information. At the global level, the Board rarely discusses corruption or corruption cases. A few caveats to this point: the EITI is a very flexible process, so implementing countries could choose to address corruption. Its reports provide a great basis for enterprising anti-corruption actors to ask questions. As noted at the outset, anti-corruption aims are implicit in the EITI Principles and greater transparency should help reduce corruption generally speaking.

Engagement with some anti-corruption actors is limited. At the global and country level, the government agencies and company representatives that deal with corruption on a daily basis, such as law enforcement, anti-corruption commissions or corporate compliance personnel, are not typically involved in EITI implementation. In some countries, the CSOs that focus on fighting corruption are also absent from EITI bodies (though in others they are core participants). One encouraging countertrend is the improved engagement with Supreme Audit Institutions in a few countries as part of the EITI’s mainstreaming efforts.

Previous EITI Reports were of little use to anti-corruption actors. Implementing countries are already making huge strides in addressing this limitation as they strive to deliver open data, timely reports, data reliability, and robust transparency about SOEs, licensing and other high-risk

areas listed in Section III. But, as we look backward and assess the EITI's record in preventing or detecting corruption to date, the narrow scope of the reports was likely a hindrance in many countries. For instance, many early EITI reports only contained payment data, or data that was several years old. The EITI is actively tackling these challenges, including through improvements contained in the 2019 Standard and efforts at systematizing the disclosures.

4. Ideas for the future

The following ideas are preliminary, far from exhaustive, and intended to spark discussion. They include ideas on what the EITI could do itself, and what might require collaboration with various partners. Along with these possible ways forward, the wider agenda to improve the timeliness, breadth, detail and accessibility of EITI reports is enormously important as well.

What the EITI could do itself:

1. Clearly articulate its role in addressing corruption.

Right now, some actors discuss the EITI in ways that oversell its ability to fight corruption, and talk about their participation as evidence that corruption is well under control (the “whitewashing” challenge noted above). Others criticize the EITI unfairly for the fact that its member countries continue to have corruption cases or score poorly on cross-national measures of corruption.

The EITI could communicate more clearly about its role in fighting corruption. This improved messaging could:

- Describe the EITI's strengths and limitations, such as those noted above;
- Addressing corruption more explicitly in the various implementation documents, including to justify why certain types of information are required to be disclosed;
- Acknowledge openly that some EITI participants face serious corruption challenges, and that Validation does not measure control of corruption;
- Compile evidence of how the EITI is trying to fight corruption, such as through more systematic study of the uses of EITI data noted in Section II; and,
- Explain that the EITI is only one part of what's needed to rein in extractive sector corruption, and could never be a proxy for an adequate anti-corruption response. The Secretariat could provide guidance on how various stakeholders should communicate this nuance, such as when companies sign up, governments describe good validation results or donors apply EITI-related conditionality. The Board could discuss the “whitewashing” challenge and send a cautionary message to those who engage in the practice.

2. Facilitate disclosures of information on known areas of risk.

As noted above, the EITI already pushes for transparency in many areas of the extractive sector that exhibit high corruption risks, and has proven its ability to introduce thoughtful and effective new reporting standards to various parts of the sector (e.g. commodity trading). There are, however, some important exceptions.

- **Service contracting**

If the EITI was to assume a risk-based approach to prioritizing what information should be required to disclose, the oilfield and mining services sector would be at the top of the list. It is a glaring gap in the EITI Standard and the industry constituency.

The oil and mining companies typically outsource the majority of their exploration and production work to a wide range of contractors. A forthcoming report by NRG estimates that these contracts are worth somewhere between \$745 billion and \$1.3 trillion a year.^{xxix} The spending goes to all kinds of third parties, from huge multinational oilfield service companies like Schlumberger and Halliburton to tiny local providers of transport or catering services. Total, for example, spends €30 billion a year on goods and services, and made payments to 150,000 suppliers in 2016.^{xxx}

In this large and populous sector, bribery appears widespread. For example, of the 41 recent oil and gas sector FCPA enforcement actions, 31 involved subcontractors or subcontracting processes.^{xxxi} During the recent oil boom, court proceedings indicate that bribery infiltrated oilfield service deals in Algeria, Angola, Brazil, Colombia, Ecuador, Equatorial Guinea, Iraq, Kazakhstan, Nigeria, Russia, Saudi Arabia, the UK and Venezuela, with NGO and media investigations suggesting wrongdoing in still others.^{xxxii} Along with bribery, subcontracting appears vulnerable to self-dealing among political elites, contract inflation, collusion and tax evasion.

To address this blind-spot, the EITI could analyze the corruption risks and transparency needs, learn from the few countries that have addressed subcontracting (e.g., Mali, Timor-Leste), and set up a working group with some major service companies along with oil and mining companies, government and SOE representatives that oversee contracting, home country officials, and civil society. This group could discuss lessons learned from past corruption cases, what kinds of transparency measures would help, what other anti-corruption measures are needed, existing good practices, and how the EITI can add value.

- **Fixers, agents and intermediaries**

Recently, the CEO of a top trading company reported that mounting corruption investigations are causing companies like his to rethink the role that agents play in their business models.^{xxxiii} Indeed, relations with agents and intermediaries feature in ongoing investigations into possible bribery by several top traders in Brazil, and into how a Gunvor employee routed bribes to officials in Congo-Brazzaville.^{xxxiv} The traders aren't alone. Other extractive sector companies also hire individuals or companies to help open doors and drum up business in foreign countries, often paying them more if they land lucrative deals. These relationships are fraught with corruption risks. This issue is linked to the topic of subcontracting, as intermediaries are one type of third-party contractor.

Some companies have developed special policies and safeguards to lessen the corruption risks associated with these intermediaries, but information sharing about these practices and their prevalence is low. The OECD and others have also recognized intermediaries as a risk area and have published some analysis on the subject.^{xxxv} The EITI could consider helping identify methods for screening out suspicious intermediaries, such as those providing vague services, charging unusually high fees, with links to PEPs, etc., or even just increase the field's awareness of this prominent corruption challenge.

- **Other possible additions**

Other stakeholders may have further suggestions. For instance, **state capture** by powerful private interests is a major challenge facing some EITI member countries. Does the EITI have a role to play in addressing some of the channels by which state capture occurs such as lobbying or campaign finance?

3. Do even more to expose systems and practices that are vulnerable to abuse.

As noted in Section II above, EITI reporting sometimes discloses practices that are vulnerable to corruption such as off-budget transfers, payments into unusual accounts, license allocations that lack competition or scrutiny, categories of companies not being taxed, etc. These are the site of country-specific corruption risks, the kind of immediate and specific problems rarely identified by global tools or guidance. They only come to light because EITI reporting tries to shed light on the entire sector, stitching together information about all the payments, all the actors, and how they fit together. The EITI can also provide a venue for stakeholders to discuss how to handle these challenges and monitor whether they are addressed.

These revelations may be the EITI's most valuable and unique contribution to addressing corruption. To encourage further action, the EITI could support national chapters, MSGs and independent administrators to scan for risky processes in a more systematic and informed manner, looking out for common red flags, or asking open-ended questions such as "of all the payments and transactions observed, which might be prone to corruption?" Country-level *post mortems* of past corruption cases, an idea discussed below, could further help to identify vulnerable practices. EITI annual reports, validation reports and/or MSG annual work plans could address this work as well.

4. Address corruption in a more direct and intentional manner

The EITI could treat corruption more directly and with greater savvy. This won't be easy given the sensitivities involved and the limitations mentioned above. At the national and global level, some members will not want to talk about corruption, especially around real-world cases. But these constraints should not hold the entire initiative back in terms of addressing corruption cases more explicitly.

Along with the rest of the recommendations, the EITI could:

- **Consider its internal policies and practices.** The EITI's Code of Conduct is a good start in this regard, but there may be opportunities to further improve. Some observers raised questions about whether EITI could do more to address conflicts of interest, such as when a company that is heavily invested in a member country can weigh in on that country's validation process. As a champion of beneficial ownership reporting, the EITI could itself evaluate new supporting companies for the involvement of politically-exposed persons, records of criminality and scandal, or other red flags – the kind of good practice that implementing countries will hopefully follow.
- **Address corruption explicitly in the EITI's implementation.** Without adding huge new burdens, the implementation process could encourage EITI stakeholders to consider: is our EITI process helping to combat corruption in our sector? If not, how can it do better? The use of **corruption risk assessments** could help implementing countries broach this topic and target their reporting efforts toward areas of risk, especially if the assessment methodology is frank and user-friendly.^{xxxvi} The sign-up process, MSG work plans and annual reports, Requirements 1.5 and 7.3 on objectives and the follow up on report findings, elements of the EITI Standard's reporting requirements and the validation process all present opportunities to incorporate risk assessments or other anti-corruption approaches, and various guidance documents could illustrate how data could be used to address corruption risks in different reporting areas.
- **Work with supporting companies.** The 2018 Company Expectations statement contains relevant recommendations, including that companies should: "take steps to identify the beneficial owners of direct business partners, including Joint Ventures and contractors;"

and “Engage in rigorous procurement processes, including due diligence in respect to partners and vendors.”^{xxxvii} EITI could help showcase good practices among industry, and examine how to monitor these commitments and handle cases where supporting companies do not meet the expectations. To reflect the global nature of corruption and illicit financial flows, EITI could also examine the role of **supporting countries**, and again FATF reports could be a relevant entry point.

- **Monitor the use of EITI data for anti-corruption purposes.** Section II identifies several ways that EITI data could be used to help prevent or detect corruption. If the EITI monitored these types of use, it could better communicate its role in the anti-corruption ecosystem and work to replicate real-world examples of success.
- **Consider how to respond when members are complicit in corruption.** The EITI’s global and country members may wish to avoid elevating participants who have been credibly implicated in serious cases of corruption into leadership positions until a credible response to that corruption has taken place. For example, the implementing country constituency may wish to appoint representatives with strong anti-corruption credentials; MSGs may wish to exclude companies recently convicted of corruption in the country; etc.

What the EITI could do working with partners:

5. Share EITI data and red flags with corruption investigators.

EITI bodies could reach out to law enforcement agencies, anti-corruption commissions, supreme audit institutions, journalists and other actors who seek to identify corruption or corruption risks, introduce them to the information available, and exchange ideas about its potential uses. In some cases, “infomediaries” with a background in investigations could help identify what data these players may want to see.

One goal of these interactions is to raise awareness so that when investigators pursue a case in the extractive sector, they know to seek out EITI reports. Another goal is to share information about possible red flags of corruption, especially as most investigators are unlikely to comprehensively review EITI data looking for concerns. Country and global level EITI staff and independent administrators are intimately familiar with the EITI reports and have already spotted unusual or concerning transactions or process vulnerabilities. This valuable information should not be lost. The International Secretariat could provide guidance on how and when to follow up on findings from EITI disclosures, including ideas for how to navigate the issue in challenging political contexts. The same type of interactions could occur with global players such as law enforcement agencies in OECD countries and international media groups.

6. Convene new interactions among anti-corruption actors.

The EITI enjoys unique and powerful convening power. It could bring together different stakeholders to have frank and concrete discussions about specific corruption risks and how they should be addressed. Even if the interactions don’t result in immediate collaboration, they build informal ties that are useful for when issues do arise. Within implementing countries, the EITI could bring together law enforcement, anti-corruption commissions, extractive sector ministries and regulators, anti-money laundering authorities, supreme audit institutions, ethics committees, procurement boards, SOE compliance divisions, NGOs, journalists, etc. At the international level, the EITI could learn from the Financial Action Task Force’s standards and monitoring system, for example, or work with the OECD and its Working Group on Bribery to identify lessons learned from

the dozens of extractive sector corruption cases pursued by its member governments. EITI companies all have divisions devoted to ethics and compliance, but to date these experts have not contributed regularly to EITI implementation.

In terms of topics, beneficial ownership reporting may offer new opportunities. Within a country, the EITI could help arrange for the formal cross-checking of licensing and BO data between the regulator and the anti-corruption authorities. The EITI could explore whether to facilitate *cross-country* exchange of beneficial ownership data, especially when similar companies operate across the jurisdictions, possibly through cooperation with the Global Forum or OpenOwnership. The compliance staff at most EITI companies have vast experience gathering and using beneficial ownership data about potential third parties, and other EITI stakeholders could learn from their expertise. Addressing corruption risks would be a great topic for future work by the SOE and commodity trading working groups. The links between protecting civic space and fighting extractive sector corruption is another crucial issue where the EITI could convene relevant parties.

7. Learn lessons from past corruption cases, such as through cross-stakeholder *post mortem* analysis.

Learning from past corruption cases could allow the EITI to address corruption without getting involved in active investigations or legal proceedings. At the country and global level, corruption case “*post mortems*” could be a great way to bring together regulators, policymakers, anti-corruption bodies along with civil society and companies to discuss what could have prevented the corruption. Governments and companies could share how they responded to a real-world corruption problem – such as the new integrity measures adopted by Petrobras following the “Car Wash” scandal. Investigators could share how they discovered the corruption. The EITI could examine past cases to identify important trends, such as why company compliance systems failed to spot concerns in time, or what kinds of reporting are needed in high risk areas. This kind of analysis would also interest the wider anti-corruption field.

Even for past cases, the sensitivities will run high. The EITI may have to limit its analysis to cases that have reached some degree of legal conclusion, perhaps focusing on those that ended in convictions or guilty pleas. The exercises should be forward-looking rather focused on apportioning blame. Anonymizing participants or using closed-door meetings could also help. Working with partners and bringing in various anti-corruption stakeholders and experts would be important for the discussions to be fruitful. But, to ignore past cases altogether sends the wrong message that the EITI has its head in the sand on corruption, and misses an opportunity for shared learning.

ⁱ US Department of Justice, Non-Prosecution Agreement with Petrobras, September 26, 2018.

ⁱⁱ US District Court for the Central District of California. *United States v. Certain Rights to and Interests in the Viceroy Hotel Group*, Complaint. No. CV 17-4438, (C.D. Cal. June 15, 2017); Wright, Tom and Bradley Hope, *Billion Dollar Whale: The Man Who Fooled Wall Street, Hollywood, and the World* (New York: Hachette Books, 2018).

ⁱⁱⁱ For example: US DOJ, “Former Minister Of Mines For The Republic Of Guinea Sentenced To 7 Years In Prison For Receiving And Laundering \$8.5 Million In Bribes From Chinese Companies,” Aug. 25, 2017; and, US DOJ, “Och-Ziff Capital Management Admits to Role in Africa Bribery Conspiracies and Agrees to Pay \$213 Million Criminal Fine,” Sept. 29, 2016.

^{iv} Details on dozens of extractive sector companies convicted of bribery are here:

<http://fcpa.stanford.edu/industry.html>. Examples from countries named include the cases involving the UK’s Petrofac (UK Serious Fraud Office, “Former senior executive convicted in Petrofac investigation,” February 7, 2019.), the Dutch company SBM Offshore (US District Court for the Southern District of Texas, *United States v. SBM Offshore N.V., Deferred Prosecution Agreement*, Criminal No.17-686, (S.D. Tex, November 29, 2017), the Italian company Saipem (Emilio Parodi, “Italy court finds Saipem guilty in Algeria graft case but acquits Eni” *Emilio Parodi*, Sept. 19, 2018), the US company Halliburton (US Securities and Exchange Commission. *Halliburton Company and Jeannot Lorenz, SEC Order Instituting Cease and Desist Proceedings*. File No. 3-18080, Release No. 81222, July 27, 2017.), and top officials at China’s CNPC (“China jails former senior oil executive for 15 years for graft,” *Reuters*, Jan. 19, 2017).

^v Stanford Law School Foreign Corrupt Practices Act Clearing House, accessed May 27, 2019.

<http://fcpa.stanford.edu/industry.html>

^{vi} Organization for Economic Co-operation and Development. *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*. (OECD Publishing, 2014).

^{vii} I have conducted extensive research on oil sector corruption around the world for the forthcoming book: *Crude Intentions: How Oil Corruption Contaminates the World* (Oxford University Press, January 2020), and have reviewed many prominent mining cases too. On the EITI, the following papers and reports provided helpful background: Liz David-Barrett and Ken Okamura (2013), “The Transparency Paradox: Why do Corrupt Countries Join EITI?” European Research Centre for Anti-Corruption and State-Building Working Paper No. 38; Elizabeth Kasekendea, Charles Abukab, Mare Sarra (2016), “Extractive industries and corruption: Investigating the effectiveness of EITI as a scrutiny mechanism,” *Resources Policy* Volume 48, June 2016, Pages 117-128; Päivi Lujala, “An analysis of the Extractive Industry Transparency Initiative implementation process,” *World Development* 107 (2018) 358–381; Päivi Lujala, Siri Aas Rustad and Philippe Le Billon, “Has the EITI been successful? Reviewing evaluations of the Extractive Industries Transparency Initiative,”

U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute (2017); Öge, K. (2016a). Which transparency matters? Compliance with anti-corruption efforts in extractive industries. *Resources Policy*. 49: 41–50; Tina Søreide and Rory Truex, “Collaboration against corruption?: Multistakeholder groups in natural resource management,” U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute (2011); Sovacool B., N. Andrews (2015). “Does transparency matter? Evaluating the governance impacts of the Extractive Industries Transparency Initiative (EITI) in Azerbaijan and Liberia,” *Resources Policy*. 45: 183–192; Sovacool, B. K., G. Walter, T. Van de Graaf and N. Andrews (2016), “Energy Governance, Transnational Rules, and the Resource Curse: Exploring the Effectiveness of the Extractive Industries Transparency Initiative (EITI),” *World Development*. 83: 179–192.

^{viii} See, for instance: Daniel Kaufmann and Pedro C. Vicente, “Legal Corruption,” *Economics & Politics*, Vol. 23, Issue 2, pp. 195-219, 2011; and, Oguzhan C. Dincer and Michael Johnston, “Measuring Illegal and Legal Corruption in American States,” Edmond J. Safra Working Papers, No. 58 (2015).

^{ix} Most of the investigations cited did not lead to convictions or guilty pleas in courts of law, and many of the named parties deny wrongdoing and dispute elements of the various reports. This paper does not take a stance on the guilt or innocence of the parties named, but rather lists them here to illustrate how various anti-corruption actors have used EITI reporting in the past.

- ^x Emmanuel Freudenthal, “Virtual mining in Cameroon: How to make a fortune by failing,” *African Arguments*, March 14, 2016.
- ^{xi} Global Witness, *Catch Me If You Can: Exxon Complicit in Corruption Liberian Oil Sector*, 2018; Holly Watt, “ExxonMobil Liberian oil deal went ahead despite anti-corruption concerns,” *The Guardian*, March 29, 2018.
- ^{xii} Publish What You Pay – Indonesia, “Eyes on the Forest: Clear and Clean Mining Permits Need Further Review,” 24 June 2016.
- ^{xiii} Public Eye (formerly The Berne Declaration), *Philia’s Refined Ventures in Brazzaville*, February 2015.
- ^{xiv} The Carter Center, *A State Affair: Privatizing Congo’s Copper Sector*, February 2017; Global Witness, *Regime Cash Machine*, July 2017.
- ^{xv} Court of Queen’s Bench of Alberta, *Her Majesty the Queen and Griffiths Energy International, Inc. Agreed Statement of Facts*, January 2013.
- ^{xvi} Sayne, Aaron, Alexandra Gillies, and Christina Katsouris. *Inside NNPC Oil Sales: A Case for Reform in Nigeria*. Natural Resources Governance Institute, August 2015.
- ^{xvii} The Protocol defines these representatives as “civil society representatives who are substantively involved in the EITI process, including but not limited to members of the multi-stakeholder group.”
- ^{xviii} 11 countries committed to improving commodity trading transparency at the Summit. Commitments available here: <https://www.gov.uk/government/publications/anti-corruption-summit-country-statements>.
- ^{xix} This assessment of high-risk areas aligns a great deal with the areas of risk identified in: OECD, *Corruption in the Extractive Value Chain*, August 2016.
- ^{xx} The red flags mentioned here and elsewhere draw heavily on the report: Aaron Sayne, Alexandra Gillies and Andrew Watkins, “Twelve Red Flags: Corruption Risks in the Award of Extractive Sector Licenses and Contracts,” Natural Resource Governance Institute, 2017.
- ^{xxi} Robert Pitman and Don Hubert, *Past the Tipping Point? Contract Disclosure within EITI*, NRGi, 2017.
- ^{xxii} Cari Votava, Jeanne Hauch, and Francesco Clementucci. 2018. *License to Drill: A Manual on Integrity Due Diligence for Licensing in Extractive Sectors*. Washington, DC: World Bank.
- ^{xxiii} OECD, *State-Owned Enterprises and Corruption: What Are the Risks and What Can Be Done?* August 27, 2018.
- ^{xxiv} For a partial set of examples, see: Aaron Sayne and Alexandra Gillies, “Initial Evidence of Corruption Risks in Government Oil and Gas Sales,” NRGi, 2016.
- ^{xxv} Socavool, et. al (2016). “Energy Governance, Transnational Rules, and the Resource Curse: Exploring the Effectiveness of the Extractive Industries Transparency Initiative (EITI),” *World Development*. 83: 179–192.
- ^{xxvi} *Worldwide Governance Indicators*, <https://info.worldbank.org/governance/wgi/#home>; Reporters Without Borders, *2019 World Press Freedom Index*, <https://rsf.org/en/ranking>.
- ^{xxvii} Only the \$207 million signature bonus payment was reported by DPR (and not the companies) in the NEITI report. Neither party reported the \$1.1 billion additional payment made by Shell to the government. NEITI, *Final Core EITI Financial Flows Reconciliation 2009-2011 Oil Gas Audit Report*, Appendix E-1, p257-258. For more on the charges, see: Public Prosecution Office at the Ordinary Court of Milan Proc. No. 54772/13 General Criminal Records Registry. Notification of completion of preliminary investigations, Dec. 20, 2017. https://shellandentrial.org/wp-content/uploads/2018/06/decision-to-open-trial-20.12.2017_English.pdf; High Court of Justice Business and Property Courts of England and Wales Commercial Court (QBD), *Claim: Federal Republic of Nigeria (claimant) and Royal Dutch Shell PLC et. al.(defendants)*, April 2019.

^{xxxviii} Tina Søreide and Rory Truex, “Collaboration against corruption?: Multistakeholder groups in natural resource management,” U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute (2011).

^{xxxix} Rob Pitman and Kaisa Toroskainen, “ADD FINAL TITLE,” Natural Resource Governance Institute, anticipated publication date of July 2019.

^{xxx} Total, “Ethics and Sustainable Development, Key Factors in Our Supplier Relationship,”

<https://www.total.com/en/commitment/shared-development/ethics-and-sustainable-development-key-factors-our-supplier-relationships>.

^{xxxii} Analysis from Pitman and Toroskainen. Case data available at Stanford Law School FCPA Clearinghouse:

<http://fcpa.stanford.edu>.

^{xxxiii} This list came from the recent convictions or admissions of several service companies and executives including Saipem (Algeria), SBM Offshore (Brazil, Angola, Equatorial Guinea, Kazakhstan, Iraq), Petrofac (Iraq, Saudi Arabia), FH Bertling (Angola, UK), Rolls Royce (Nigeria, Russia), PetroTiger (Colombia) and guilty pleas by national oil company officials to bribery charges (Ecuador, Venezuela). The Odebrecht plea covers bribes paid to officials from Angola, Argentina, Brazil, Colombia, Dominican Republic, Ecuador, Guatemala, Mexico, Mozambique, Panama, Peru and Venezuela, but it is less clear which of these involved extractive sector contracts.

^{xxxiiii} Andy Hoffman, Javier Blas, and Mark Burton, “Back to the Marc Rich Days as U.S. Probes Commodity Traders,” *Bloomberg*, March 25, 2019.

^{xxxv} Sabrina Valle, “FBI Joins Brazil’s Probe Into Alleged Bribery by Top Oil Traders,” *Bloomberg*, February 7, 2019; Ministère public de la Confédération de la Suisse, *Jugement du 28 août 2018 contre A., ressortissant belge, Numéro du dossier: SK.2018.38*. On file with author.

^{xxxvi} OECD, *Typologies on the Role of Intermediaries in International Business Transactions*, October 2009.

^{xxxvii} TI-Australia could likely offer useful guidance here from their experience in assessing corruption risks in licensing, as could the World Bank from its AML assessment experience. Michael Nest, *Mining Awards Corruption Risk Assessment Tool (2nd edition)*, Transparency International, 2017.

^{xxxviii} EITI, “Expectations for EITI supporting companies,” 2018, <https://eiti.org/document/expectations-for-eiti-supporting-companies>.