

THE EITI'S ROLE IN ADDRESSING CORRUPTION

DISCUSSION PAPER

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Explanatory note from the EITI International Secretariat

This discussion paper was commissioned to inform ongoing debate about the role that the EITI plays in addressing corruption.

Corruption remains a significant and harmful problem in the extractives sector. By raising the bar on transparency, the EITI has undoubtedly played a substantive role in addressing corruption, but the nature of this role has not always been well understood or articulated.

In this context, the paper provides an independent and expert opinion, but is not a board-endorsed document. Its purpose is to catalyse discussion on the contribution and limitations of the EITI in fighting corruption. It is exploratory in nature and the recommendations it contains are intended as a basis for discussion, rather than a blueprint for action.

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1. Introduction

Corruption remains a significant and harmful problem in the extractive sector.

THE PANAMA PAPERS and Unaoil leaks exposed suspicious behavior by oil and mining industry players. The “Car Wash” scandal began in Brazil’s oil industry and reverberated across Latin America and beyond.¹ Oil industry players from the Persian Gulf played prominent roles in the Malaysian 1MDB scandal.² Corruption scandals have plagued several of Africa’s top mineral producers.³ 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.⁴ Twenty percent of the 242 enforcement actions under the US Foreign Corrupt Practices Act (FCPA) came from the extractive sector – by far the highest for any industry.⁵ Of the 427 foreign bribery actions examined in a recent OECD report, one fifth came from the extractive sector as well.⁶

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

This discussion paper identifies some of the EITI’s strengths and limitations in addressing extractive sector corruption, and suggests a menu of ideas on 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.⁷ Nine stakeholders provided written comments on a first draft

which was also discussed by the EITI Board’s Implementation Committee at its June 2019 meeting.⁸ This paper is a conversation-starter rather than a thorough review, and is intended to inform discussions about next steps rather than proposing a full roadmap. The EITI International Secretariat commissioned the paper, though the views contained in it are my own.

The paper focuses on how the EITI can directly and explicitly work to prevent or detect acts of extractive sector corruption. It does not consider the wider, indirect dynamics through which the EITI 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 undue levels of influence over the state’s lawmaking functions.⁹ Finally, given limitations in my own expertise, the paper does not address the important topics of local level corruption or illegal mining.

2. How the EITI helps address corruption

Particularly because EITI reporting requirements tackle high-risk areas of the sector, as explained further in Section 3, the EITI 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 the 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.

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 many of the sector's corrupt transactions. Indeed, on a few occasions, EITI Reports have contained data that triggered or informed investigations by outside actors into specific deals.¹⁰ A journalist used EITI Reports to query the identities of several mining companies in Cameroon.¹¹ Global Witness and *The Guardian* used EITI data to raise questions about the structure of a license acquisition deal in Liberia.¹² Indonesian non-governmental organisations (NGOs) used cadastre data of the type published by the EITI to help demonstrate that mining companies were operating outside their allotted area, including in protected forests.¹³ The Swiss NGO Public Eye drew on EITI data in its investigation of oil sale deals in Congo-Brazzaville.¹⁴ The Carter Center and Global Witness also used EITI Reports in their investigations of the Democratic Republic of Congo's largest state-owned mining company.¹⁵

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.

6 Of the 427 foreign bribery actions examined in a recent OECD report, one fifth came from the extractive sector.

BOX 1

ILLUSTRATIONS OF HOW THE EITI DRAWS ATTENTION TO VULNERABLE PRACTICES

MYANMAR



Myanmar's EITI process has helped uncover huge vulnerabilities which are now receiving more attention. Its first EITI Report revealed that the country's SOEs retained about half of all extractive sector revenues in opaque accounts. 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." In Nigeria, EITI systems also prompted new insights and scrutiny regarding state-owned enterprise (SOE) revenue retention and expenditures.

PAPUA NEW GUINEA



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."

DEMOCRATIC REPUBLIC OF CONGO



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 \$26 million remained. A government oversight body worked with the agency to retrace the revenues.

 When EITI reports reveal concerns related to corruption ... 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.

3. EITI reporting provides anti-corruption actors with valuable contextual 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 2011.¹⁶ 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.¹⁷

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 platform 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 to draw 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."¹⁸

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 (BO) 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, though actual reporting has not yet begun in many implementing countries.

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.¹⁹

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? In one account, one interviewee provided a glimpse into how this dynamic might work. He 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. 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.

 The EITI can ... serve as a champion for civil society and its anti-corruption functions.

3. Shine a light in 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.²⁰

THERE ARE A few exceptions, including subcontracting and intermediaries, and these are discussed in Section 5.

The EITI makes robust transparency demands in the following high-risk areas.

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. Some companies may use bribes, collusion and other means to gain an unfair advantage, and some political elites may steer licenses towards themselves or their allies. In its assessment of 18 mineral-rich countries (including 11 EITI members), Transparency International Australia found that the lack of transparency and clarity in license allocation processes were a major source of corruption risk. Another major risk was the absence of up to date or accurate license registers. The EITI Standard requires reporting that could help address precisely these type of risks.

The information required by the EITI Standard's Requirement 2.2 and 2.3, including the provision requiring that the report identify any deviations, could help stakeholders detect process problems such as constraints on competition or signs that an official intervened in the award process.²¹ 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 sit at the heart of some extractive sector corruption cases, with questions arising about whether the parties to the deal received an overly lucrative deal. With the contract in hand, anti-corruption actors can ask well-informed questions about whether the company received terms that deviate from industry or market norms. Already the EITI has encouraged more contract disclosure since 2013,²² and the latest iteration of the EITI Standard now requires disclosures of new or amended contracts from 2021.

Beneficial ownership. Requirement 2.5 on beneficial ownership (BO) reporting is perhaps the EITI's most direct effort to address corruption risks. Assuming the information is verified and reliable, 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.²³ Such BO data can also inform 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 could be useful in detecting and deterring this kind of behavior. However, in other cases, top officials channeled extractive sector opportunities toward loyal proxies who would not qualify as PEPs – a kind of self-dealing that BO disclosure is less suited to address and that may fall outside the EITI's scope.

 Officials from oil and gas SOEs were more likely to have observed corruption than those from any other industry.

 The EITI requires disclosure in many of the areas most prone to corruption risk.

State-owned enterprises. SOEs receive huge amounts of funds, often operate apart from standard government oversight systems, and some have proven susceptible to both bribery and rent-seeking activities. In some cases, the misappropriation of SOE revenues impedes the company's performance and its ability to meet its contractual obligations. For these reasons, SOEs sit at the center of many prominent corruption cases. Brazil's Petrobras is perhaps the most famous case, but it's far from alone. The OECD found that officials from oil and gas SOEs were more likely to have observed corruption than those from any other industry.²⁴ 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 and 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.²⁵ 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 extractive revenues 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 may also shed light on areas where corruption risks run high. These include: 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).

4. 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, the EITI's various stakeholders should manage their 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 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 characterised 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 within EITI countries or involving EITI supporting companies have been isolated and unusual violations of the rules, and authorities effectively detected and sanctioned the wrongdoing. Elsewhere, however, corruption appears more frequent or systemic in nature, or the government or company's leadership appears to have signed off on the behaviour.

6 While the EITI does help strengthen global transparency norms, its potential to address corruption remains strongest in its member countries.

Corruption cases associated with EITI members pose several challenges. Stakeholders may resist certain disclosures that might expose their own corrupt behaviour, or that of their colleagues or allies. Also, when corruption cases arise, they create sensitivities in discussing certain transactions. These sensitivities can create “no-go areas” for MSG discussions and other EITI activities. Corruption accusations and controversies also raise difficult questions about the EITI’s standards and impact. For instance, in June 2019, the EITI was pulled into a controversy in Senegal.²⁶ The government referenced its EITI Validation to defend its record against accusations of corruption. Civil society criticised the EITI for not helping to expose the alleged wrongdoing.

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.

6 Neither global nor country level EITI institutions have the mandate to investigate or prosecute specific acts of suspected wrongdoing.

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 the EITI’s ability to reduce corruption.²⁷ The World Freedom Index and Worldwide 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 that accountability actors and the judiciary may encounter obstacles when pursuing corruption cases.²⁸

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 EITI’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. Information disclosed in EITI Reports may also not be sufficiently comprehensive to understand the wider context when deals that may raise public concerns take place.

For instance, Nigerian officials set up a special escrow account to receive the controversial USD 1.1 billion payment for the rights to the oil block OPL 245, rather than routing the funds to a government agency account. Details on this payment did not appear in the country’s EITI Reports.²⁹

 EITI implementation cannot, on its own, deliver cleaner government.

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, politicised 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, the 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, it can make addressing corruption more difficult. Some EITI MSGs exhibit dynamics where the stakeholders don’t want to step on each other’s toes, or there’s a “cosy *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 signalled 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 corruption and some may have interests that run counter to this pursuit, and factors which also reduce the MSGs ability to deliver results.³⁰ While the EITI can do more to address corruption explicitly (see Section 5), this limitation will remain to some degree.

Non-structural limitations

Some of the challenges are less structural in nature and could be more readily reduced. These include:

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. Companies receive a reputational boost upon signing up to the EITI but they face no obligations to become more transparent, and this has prompted some concern. This means that the EITI may be seen as “a kudos delivery mechanism” for companies. Some government officials have claimed that a satisfactory EITI Validation outcome constitutes a “clean bill of health” for the entire sector, and otherwise milk the EITI’s reputational benefits. Some international actors have used it for this purpose when convenient too, holding up EITI participation as a proxy for controlling corruption.

 Some governments and companies present their participation in the EITI in ways that makes outsized claims about its anti-corruption potential.

 **Actors can structure deals to avoid the EITI reporting process, just as they avoid other checks in the system.**

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, in part because of the legal complexities that can come with discussing ongoing cases. A few caveats to this point: the EITI is a very flexible process, so implementing countries could choose to address corruption. EITI 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.

Early EITI Reports were of little use to anti-corruption actors. Implementing countries are 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 3. But, as we look backward and assess the EITI's record in preventing or detecting corruption to date, the narrow scope of the initial EITI 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 systematising the disclosures.

5. 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.

THESE ARE SPECIFIC steps directly related to tackling the challenge of corruption. Also important is the EITI's wider effort to improve the timeliness, breadth, detail and accessibility of EITI Reports, as well as its efforts to bring about greater accountability through transparency. A number of comments received on the first iteration of this paper stressed the importance of elements of this wider agenda, including encouraging MSGs to push for reform, and the strengthening of both civil society's capacity and of an enabling environment.

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 criticise 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 community could communicate more clearly and deliberately about its role in fighting corruption. The EITI Board and International Secretariat may wish to develop language and guidance that could be shared with implementing country bodies, as they may face similar communication challenges, as well as its other constituents. This improved messaging could:

- Describe the EITI's strengths and limitations in addressing corruption, such as those noted above;
- Monitor the use of EITI data for anti-corruption purposes. Section 2 identifies several ways that EITI data can help prevent or detect corruption. If the EITI tracked and shared information about these use cases, it could better communicate its role in the anti-corruption ecosystem and work to replicate examples of success;
- 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*;
- Acknowledge openly that some EITI participants face serious corruption challenges, and that Validation does not measure control of corruption;
- Provide guidance on how various stakeholders should communicate this nuance, including at key moments such as when companies sign up, governments describe good Validation results or donors apply EITI-related conditionality.
- 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 the EITI needs a more clear, transparent and fair process for detecting real and perceived conflicts of interest involving Board members, 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 supporting companies and organisations/institutions on the Board 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. Having an approach already developed is advisable, so as to be prepared if a highly controversial entity seeks to join.

In addition, the Board may wish to proactively discuss two leading challenges, and whether and how the EITI should respond when they arise:

- The “whitewashing” challenge, i.e. when a EITI stakeholder uses their EITI participation as evidence that they're fighting corruption (particularly when this might not actually be the case);
- Corruption accusations, controversies or cases that involve its members. This is more challenging, and some of the ideas introduced below may provide constructive ways for the EITI to address corruption issues when they arise without overstepping its mandate. Country MSGs may also want to consider this question, either generally or in response to real-time events.

2. Facilitate transparency and multi-stakeholder engagement around 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 prioritising 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.³¹ The spending goes to all kinds of third parties, from huge multinational oilfield service companies like Schlumberger and Halliburton to small 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 2016.³²

In this large and populous sector, bribery has reared its head. For example, of the 41 recent oil and gas sector FCPA enforcement actions, 31 involved subcontractors or subcontracting processes.³³ 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.³⁴ Along with bribery, subcontracting appears vulnerable to self-dealing among political elites, contract inflation, collusion and tax evasion.

To address this blind-spot, the International Secretariat could initiate a few activities in the near-term, including: analysing the corruption risks and transparency needs in the sector; learning from the few countries that have addressed subcontracting (e.g., Guinea, Mali, Timor-Leste) and relevant industry and international initiatives, such as the Mining Shared Value project; and setting 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 in the medium to longer term.

- **Fixers, agents and intermediaries**

Recently, the CEO of a top trading company reported that mounting corruption investigations are causing companies to rethink the role that agents play in their business models.³⁵ 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.³⁶ The traders aren't alone. Other extractive sector companies also hire individuals or companies to help open doors and secure business in foreign countries, often paying them more if they land lucrative deals. These relationships often carry corruption risks. The OECD and others have also recognised intermediaries as a risk area and have published some analysis on the subject.³⁷ This issue is linked to the topic of subcontracting, as intermediaries are one type of third-party contractor.

Should the EITI decide to examine this area of high corruption risks, it may wish to begin the discussion on this topic with its supporting company members. Many companies have developed special policies and safeguards to manage high-risk third parties including agents and intermediaries, but information sharing about these practices and their prevalence is low. At the global and country level, EITI supporting companies could be mobilised to share best practices when it comes to controlling risks in this area of shared concern. The EITI could play a convening and information-sharing role in this exercise, and then promote any best practices that emerge among its supporting companies. Practices could include methods for screening out suspicious intermediaries, such as those providing vague services, charging unusually high

fees, with links to PEPs, etc. The International Secretariat could also provide a mapping of areas in the EITI Standard where high-risk third parties are engaged, and then initiate conversations across the stakeholders to understand how risks can be reduced, including via the use of EITI disclosures.

- **Other options**

State capture by 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? Should it choose to address this issue, the EITI could begin by engaging with global anti-corruption actors experienced on this subject, such as Transparency International. The EITI could also examine the relevance of existing standards, such as the Corporate Political Engagement Index or the Standards for Lobbying Regulation, to the extractive sector and the EITI's objectives.

Other stakeholders may have additional ideas of high-risk areas that the EITI should examine in the future. At the country-level, the risk assessments proposed below may identify country-specific challenges.

3. Do more to expose country-specific practices that are vulnerable to abuse.

Without adding huge new burdens, the EITI process could encourage its implementation country stakeholders to address corruption risks more explicitly in the implementation process.

When compiling their workplan (Requirement 1.5), MSGs may wish to ask the questions: is our EITI process helping to combat corruption in our sector? If not, how can it do better? MSGs could commission or conduct corruption risk assessments, in order to help broach this topic and examine whether their reporting efforts are geared toward areas of risk.³⁸ Reducing corruption risks could also feature as an explicit part of the policy recommendations developed and pursued

by the MSG as part of Requirement 7.3 of the EITI Standard. Likewise, Validation could examine whether the process sought to identify and respond to leading corruption risks.

This evolution would require some background work and support from the International Secretariat, implementing country bodies and other stakeholders. This would include building approaches towards corruption risks assessments, building on existing assessment tools (e.g., TI-Australia's MACRA research), that are frank, user-friendly and tailored to the extractive sector. It would also require thinking through the different options through which implementing countries can address corruption risks, such as how existing disclosure requirements link to anti-corruption outcomes. For example the MSG could choose to track whether and how BO data is used by licensing authorities.

Along these lines, as noted in Section 2 above, one strength of EITI reporting when it comes to addressing corruption is the disclosure of practices that are vulnerable to corruption. These could include high-risk practices such as off-budget transfers, payments into unusual accounts, *ad hoc* 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 examines a given country's entire sector in a tailored manner, stitching together information about all the payments, actors and transactions and how they fit together. The EITI can provide a venue for stakeholders to discuss how to handle these challenges and monitor whether they are addressed.

Revealing high-risk processes may be the EITI's most valuable and unique contribution to addressing corruption. Right now they occur without much explicit encouragement or guidance. To realise the EITI's full potential in this important area, the International Secretariat

could support national chapters, MSGs and Independent Administrators to scan for risky processes in a more systematic and informed manner. These actors could examine EITI Reports and identify processes and transactions that exhibit common risky attributes and red flags. The country-level examination of past corruption cases, an idea discussed below, could further help to identify vulnerable practices. For example, if several companies pled guilty to bribing SOE officials to win certain types of contracts, then that SOE procurement system may warrant some attention.

In order for the EITI to capitalise on its unique capacity in this area, implementing countries will need the information and incentives to take it on. The International Secretariat and partners could develop guidance on how to identify vulnerable processes (such as via red flags, and the examination of past corruption cases), how they should be treated in EITI Reports, the kind of follow up by the MSG and others to ensure the risks are addressed, and examples of how this positive dynamic has worked in other countries. A few MSGs may wish to adopt "reducing high-risk practices" as one of their work plan objectives, especially if addressing corruption is among their top concerns. EITI Validation reports could also record whether EITI Reports identified high-risk processes and whether these processes then received any reform, as part of their effort to track whether EITI disclosures are having wider impacts.

4. Work with supporting companies.

The EITI's supporting companies represent a crucial constituency in the fight against corruption in the extractive sector. They possess enormous knowledge and experience in managing corruption risks that the EITI has yet to tap into.

The 2018 EITI Company Expectations statement contains recommendations related to reducing corruption risks, so may be a good starting point.

The statement says 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.”³⁹ The EITI could help showcase good practices among industry in these areas, consider how to monitor these commitments across its company members, and decide how to handle cases where supporting companies do not meet the agreed expectations.

As noted above, high-risk intermediaries appear frequently in oil, gas and mining corruption cases, but this topic has not yet been addressed by the EITI. Several EITI supporting companies have committed to banning or reducing the use of these parties. Perhaps this is the kind of good practice that could be discussed by EITI stakeholders, as part of the supporting company effort to reduce the sector’s accountability and corruption risks.

Supporting companies could also consider whether publishing their anti-corruption policies could be a valuable step forward, as right now these policies are often only available to internal or regulatory audiences, or the public versions contain more aspirational principles than concrete approaches. The defense industry has made some strides forward in this practice.

Should the EITI decide to work more with its industry constituency on these issues, it could learn from other efforts such as WEF’s Partnering Against Corruption, the UN Global Compact, the B-Team, the collective action work of the Basel Institute on Governance, and “integrity based approaches” such as the Integrity Icon Initiative that looks to “name and fame,” or consider collaborating with these players so as to avoid duplication.

To reflect the global nature of corruption and illicit financial flows, the EITI could also examine the role of supporting countries, and reports from the Financial Action Task Force on Money Laundering (FATF) could be a relevant entry point.

What the EITI could do working with partners:

5. Engage with anticorruption actors as users of EITI data.

In implementing countries, 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 via EITI reporting, and exchange about its potential uses. In some cases, the EITI may want to partner with anti-corruption experts with a background in investigations to help facilitate these engagements, as they could help identify what EITI data is most relevant and consider any legal implications.

These interactions would raise awareness so that when investigators pursue a case in the extractive sector, they know to seek out EITI Reports and understand how best to use the data. To accomplish this, the International Secretariat may wish to develop guidance on how different types of EITI reporting, namely those outlined in section 3 such as licensing and SOE data, can be useful to anti-corruption actors.

EITI bodies could also share information with anti-corruption actors about possible areas of concern, high-risk transactions or corruption red flags. 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. In some cases, this information could be actionable for relevant authorities (domestic and foreign) or non-governmental anti-corruption actors, or at least provide valuable context. The concerns could also hold valuable lessons about how practices go wrong, which can inform reform efforts and policy design in the particular country and beyond. The International Secretariat could provide guidance on how and when to proactively

share information about corruption risks arising from EITI disclosures, including ideas for how to navigate this issue in challenging political contexts. Depending on the prevailing context, this type of interactions could occur with country-level authorities or non-government actors or global players such as law enforcement agencies in OECD countries and international media groups.

6. Engage with anti-corruption actors on shared issues of concern.

The anti-corruption and extractives governance communities too often function as separate silos, but have much to learn from each other. One key angle, noted in Recommendation 5 above, is for the EITI to disseminate its reporting to anti-corruption actors. But that's not the only option for mutually-beneficial engagement.

As Transparency International noted in its feedback on this paper, there would be significant value in the EITI further strengthening its voice at flagship anti-corruption and integrity events, including to support public beneficial ownership reporting. For example, the 2019 FATF Private Sector Consultative Forum had a strong focus on both corruption and beneficial ownership. Others include the IMF/World Bank Spring and Annual Meetings, which have had an increased focus on corruption in recent years, and the OECD Integrity Week in addition to the IACC which the EITI has regularly engaged with.

More engagement with FATF in particular could be fruitful. The two multilateral organisations assess relevant but separate practices across a wide set of countries, and perhaps the standards they assess as well as their assessment

 On certain topics, it could bring together different stakeholders to have frank and concrete discussions about specific corruption risks and how they should be addressed.

methodology could hold value for each other. The EITI could also seek to engage more with the IMF as the latter ramps up its efforts to address corruption. For instance, a few EITI member countries have featured prominently in IMF lending decisions where both corruption and extractive sector concerns concerns. The IMF will assess corruption more regularly among its members and could benefit from learning about the kind of high-risk processes mentioned above. If and when the EITI has some more explicit anti-corruption objectives up and running, these kind of interactions would be all the more fruitful for all involved. Building on existing OECD interactions, including with its anti-corruption divisions, also makes sense.

The EITI enjoys unique and powerful convening power at the country and global level. On certain topics, 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 actors who could be convened include 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 and journalists, depending on the context and the issue of focus. Cross-national conversations on specific topics could involve anti-corruption actors, enforcement authorities, company representatives (including from compliance departments), experts,

media and civil society. Given the increasingly cross-border methods of many anti-corruption actors from prosecutors to journalists, thinking beyond the traditional “country” versus “global” spheres could bear fruit too.

For example, these interactions could occur around the topic of beneficial ownership reporting. At the country-level, 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 supporting 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 also be a great topic for future work by the SOE and commodity trading working groups. Other crucial topics where the EITI could convene relevant parties include the link between protecting civic space and fighting extractive sector corruption, and generating public accountability in extractive sector procurement.

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. 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 identify trends across past cases, 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.

This exercise could form part of several of the recommendations mentioned above. They could form part of the corruption risk assessments conducted by MSGs and help MSGs or other implementing country players to identify extractive sector practices that are vulnerable to abuse (and therefore worthy of more attention). They could also form the basis of discussions among EITI supporting companies, or across extractive sector and anti-corruption sector actors. For instance, a company involved in a recent scandal involving an intermediary might wish to share the steps it has taken to improve its third-party compliance systems in the future. Other companies could learn from their approach, and civil society could better understand what constitutes good corporate practices in avoiding corruption-prone partnerships.

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 than focused on apportioning blame. Anonymising participants or using closed-door meetings could also help. The findings, such as information about common red flags or process weaknesses, could be anonymised as well. 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.

Endnotes

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