Report

# The Possible Shape of a Land Transparency Initiative

## Lessons from other transparency initiatives

Anna Locke & Giles Henley

Key messages

- Transparency is not an objective in itself but a means to an end.
- Possible aims of a land transparency initiative are to improve the impact of land investments on poverty alleviation and food security in developing countries, and increase security of tenure and transparency of land governance.
- Clear indicators of success and a monitoring system need to be established from the start, with flexibility to adapt these as needed as the initiative evolves.
- Meaningful consultation and participation are key and need adequate time and space to develop.
- Data should be of high quality, openly available, and in an accessible, widely used format, although this can often be the main factor causing problems of transparency.
- A clear institutional structure for governing a land transparency initiative needs to be set up with distinct roles and mandates at international and national levels.

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# Abbreviations

| | |
|---|---|
| CAFOD | Catholic aid agency for England and Wales |
| CFS | Committee on World Food Security |
| CIFOR | Center for International Forestry Research |
| CoST | Construction Sector Transparency Initiative |
| CSO | civil society organisation |
| CSR | corporate social responsibility |
| DAC | Development Assistance Committee (OECD) |
| DFID | Department for International Development (UK) |
| EITI | Extractive Industries Transparency Initiative |
| FAO | Food and Agriculture Organization of the United Nations |
| FPIC | free, prior and informed consent |
| GIFT | Global Initiative on Fiscal Transparency |
| GIZ | Gesellschaft für Internationale Zusammenarbeit |
| HDI | Human Development Index (UNDP) |
| IFPRI | International Food Policy Research Institute |
| ILC | International Land Coalition |
| LEITI | Liberia Extractive Industries Transparency Initiative |
| LGAF | Land Governance Assessment Framework (World Bank) |
| LTI | Land Transparency Initiative |
| MFST | Making the Forest Sector Transparent |
| MPI | material project information |
| MSG | multi-stakeholder group |

| | |
|---|---|
| NGO | non-governmental organisation |
| OBI | Open Budget Initiative |
| OCI | Open Contracting Initiative |
| OCP | Open Contracting Partnership |
| OECD | Organisation for Economic Co-operation and Development |
| PWYF | Publish What You Fund |
| PWYP | Publish What You Pay |
| SOE | state-owned enterprise |
| UNDP | United Nations Development Programme |
| VPA | Voluntary Partnership Agreement |
| WSSD | World Summit on Sustainable Development |

# Executive summary

## Focus of the report

This report provides input into discussions on a global land transparency initiative (LTI), which was the focus of talks at the recent G8 Summit in June 2013. It draws principally on lessons from five existing voluntary transparency initiatives that cover a diverse range of issues and include features that an LTI might share: the Extractive Industries Transparency Initiative (EITI), the Construction Sector Transparency Initiative (CoST), the International Aid Transparency Initiative (IATI), the Open Contracting Partnership (OCP),[1] and the Making the Forest Sector Transparent (MFST) programme. The review of these five transparency initiatives was complemented by discussions with the UK Department for International Development (DFID)[2] and a brief review of key points of reference for governance in the land sector, particularly the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (henceforth referred to as the Voluntary Guidelines) developed by the Food and Agriculture Organization of the United Nations (FAO) .

This report focuses mainly on land acquisition for agricultural investment, rather than other land uses such as forestry and mining concessions or infrastructure developments.

## Context and justification

Between 2007 and 2010, the number and scale of reported land deals negotiated in the global South rose substantially, driven by the biofuel boom, the global food crisis, and increased plantation forestry activity (Global Witness et al., 2012).

While many have welcomed the increased interest in investing in agriculture, with its potential to bring significant benefits to the host country and its citizens, the increase in large-scale land acquisition has sparked concerns about outcomes, particularly around the level of benefits and risks generated and their distribution (see, for example, Global Witness et al., 2012 2012; De Schutter, 2010) and the impact on tenure security of existing land rights holders and the need to protect and respect those rights (FAO, 2012; IF Campaign, 2013b).

[1] Formerly called the Open Contracting Initiative.

[2] This includes the presentation of initial results to DFID at a meeting on 30 May 30, 2013.

In a large number of cases, there has been no public disclosure of information on the terms and conditions of the land acquired in developing countries, and media reports have often been the sole source of information available. The lack of publicly disclosed information is attributed to two main factors:

- Deals are conducted in secretive settings and are struck by different government bodies, such that information on the deals is not well coordinated across government and is difficult for outsiders to access. Incentives to make information public do not exist.

- Developing countries often lack a well-functioning land administration system that records and maintains up-to-date information on land transactions.

This has led to calls for better governance in the land sector (World Bank, 2011). At the 2013 G8 Summit, hosted by the UK at Lough Erne, world leaders highlighted the need for greater transparency and accountability on land, open data and extractives, and pledged to work towards achieving this.

## Main findings

We considered the aims and focus of the five transparency initiatives (TIs) – what they want to achieve and why – and how they have tried to achieve those objectives and effect change.

### Aims and scope of transparency initiatives

The TIs reviewed offer some guidance for an LTI in terms of scope, particularly the EITI and MFST programme. Looking at the five TIs, we identified three main groups of issues that they aim to resolve, which are similar to issues faced by the land sector:

- lack of information in the public domain (CoST, OCP);

- domination of policy processes by elites that do not represent users of the resource who most depend on it for their livelihoods (MFST); and

- lack of consolidated and standardised data (EITI, IATI).

This combination provides conditions ripe for corruption and mismanagement of revenues and resources with consequent poor value for money, persistent poverty in resource-rich countries, and greater likelihood of social conflict.

Interpreting the TIs' implicit theories of change, they are based on the belief that placing information in the public domain in a consolidated and standardised format set by an international institution should reduce opportunities for corruption and mismanagement of funds, and provide for more equitable power relations. Being part of a 'progressive club' in itself can also act as a driver of change to open up the space for more democratic discussions. However, pressure to increase the scope of TIs (such as the EITI) reflects a real appetite for moving beyond receiving information on decisions that have already been taken; civil society stakeholders in some EITI countries are pushing for access to information when contracts are negotiated so that they can influence decisions further back in the value chain that they feel will have a more transformative impact.

The experience of some of the TIs demonstrates that deciding what information to include can be contentious and time-consuming, and the process can end up with

the lowest common denominator – usually the issue that everyone can reach agreement on reasonably easily, which is rarely the one that will produce meaningful change. Experience from the early days of the EITI indicates that revenue transparency was one of the few issues that stakeholders could agree on among the different issues debated in the discussions that fed into the EITI.[3]

### Indicators of success

Of the five TIs, the MFST programme has perhaps the most relevant indicators for the land sector. It has used a two-step approach to measuring success, which could be adapted for an LTI: (1) using sector-specific governance indicators (*framework* and *data* indicators) to assess the state of governance in each country's forestry sector; then (2) measuring the programme's success in moving towards those indicators to determine if the mechanisms adopted have been successful, such as quality and quantity of information available in the public domain, and quality of analysis undertaken by civil society. Some of the indicators selected to measure the effectiveness of TIs have been seen as less meaningful – for instance, the 2011 evaluation of the EITI suggested that the number of candidate countries was not a meaningful indicator because candidacy did not require changes in country performance (Scanteam, 2011).

### Process of effecting change

The five TIs use three main pathways for effecting change: providing information, strengthening civil society engagement, and building an effective institutional framework for governing and implementing the initiative.

#### Information provision

All of the TIs aim to provide information to the public in a more harmonised and accessible form, although the nature of the data collected can differ substantially. For instance, up to 2013, the EITI largely concentrated on collecting quantitative data from official accounts,[4] while others such as the MFST programme gather qualitative information such as stakeholders' perceptions of transparency and information availability. In the interests of making data more accessible, the new version of the EITI standard has stipulated that member countries should provide basic contextual descriptions alongside the quantitative data.

The very problem that often causes a lack of transparency can also constrain the success of a TI: lack of good-quality, easily accessible information. Some of the TIs have gathered and published information in different formats and not machine readable, therefore limiting its use by stakeholders. This was a significant constraint for the EITI, and the new EITI standard encourages data to be produced in a machine-readable format. While this is certainly a step in the right direction, more could be done to sort and present information to make it more accessible to the public. For instance, the Liberian EITI (discussed on page 43) publishes scanned contracts on the web but these are not machine readable.

[3] More recently, there has been growing consensus has grown on the need to disclose information on other issues, including licences and production figures.

[4] New rules introduced for the EITI in 2013 prescribe including narrative sections into the reports describing the state of the extractives sector. Although the international EITI focused on quantitative data, the amount and type of information collected could differ significantly between national EITIs.

While the TIs have information provision at their core, there is a trade-off between the accuracy of information and the amount that can be collected and analysed, given time and financial constraints. Achieving the right balance has proved challenging in some cases.

#### Civil society engagement

Most of the TIs have sought to engage civil society through the creation of multi-stakeholder groups (MSGs), with the exception of the MFST programme.[5] The degree of success achieved by the MSGs has differed between countries and between initiatives, and even within an initiative.

In the EITI, at its most basic, the MSGs have provided a space for dialogue, bringing stakeholders around the table and creating space for discussion where none existed before. At best, MSGs have given civil society organisations (CSOs) the opportunity to exert influence over the process of defining a TI's objectives, selecting the information to be gathered, and monitoring its impact. Liberia's EITI is often cited as a good example of an active civil society, working together with a proactive government, to extend and deepen the EITI beyond its basic provisions, covering mining, forestry and agriculture, and including the obligation to publish the contracts signed between companies operating in these sectors and the Liberian government.

However, in many cases, governments have not provided CSOs participating in EITI processes with adequate information to enable them to play an active part in meetings and decision-making (in Mozambique, for example, as discussed below).

Outside of the MSGs, other mechanisms such as public seminars have been used to engage civil society in debates associated with TIs.

#### The role of international CSOs

International CSOs played an important role in launching some of the TIs reviewed and have provided support to national CSOs through access to knowledge and funding. In the case of the EITI, a coalition of UK-based non-governmental organisations (NGOs) called Publish What You Pay (PWYP), with funding from the Revenue Watch Institute, was active in negotiating the EITI at global level and providing coordinated support to national CSOs that had signed up to the initiative. Publish What You Fund (PWYF) – a coalition of CSOs campaigning for better information on aid – played a similar role for the IATI.

#### Institutional framework

The EITI provides the main example of a transparency initiative with a clear institutional framework; the other TIs are much more recent, while the MFST is a programme rather than an initiative with a long-term institutional structure. The EITI has institutions both at national level (mainly through national coordinating committees) and at international level through the EITI International Board, which provides checks and balances to protect against abuse at national level as well as shoring up the credibility of the initiative. The International Board has various roles: setting international data and reporting standards; approving accession and validation of candidate countries; and monitoring compliance of members. At

[5] The approach taken by the MFST programme was to build civil society capacity to demand and monitor forest sector governance and transparency through engaging a variety of networks, coalitions and platforms.

national level, the institutional framework can vary, but usually comprises a national multi-stakeholder governing body that oversees a national secretariat and establishes a national multi-stakeholder committee. Auditing is carried out by an independent company to reconcile payments and, in the case of the Liberian EITI, analyse the post-award process related to contracts.

However, the role of the International Board in guaranteeing transparency and engagement with civil society at national level has not always worked as anticipated. In Mozambique, for example, some CSO members registered a complaint with the International Board about the lack of transparency and effective space for negotiation on the national committee, and requested that Mozambique not be granted compliant status. While the International Board acknowledged their concerns, Mozambique was granted compliant status; the CSO members concerned subsequently resigned from the national committee.[6]

## Recommendations

Our review of the five transparency initiatives highlighted several key lessons to take into account if a decision is taken to establish a land transparency initiative.

### Lesson #1: transparency is not an objective in itself but a means to an end

A land transparency initiative (LTI) will need to carefully consider the aims, pathways of influence and underlying conditions required to achieve its desired goal. While the five TIs reviewed were quite clear about what they were trying to address, there seems to be a sizeable gap between the original goal and the final outcome, which itself was not always clearly articulated.

From the public discussions on land through the IF Campaign and the recent G8 Communiqué, it appears that an LTI would share some of the other TIs' concerns about developmental outcomes, particularly the EITI, the MFST programme and the IATI. **One of the key aims of an LTI is likely to be to improve the impact of land investments on poverty alleviation and food security in developing countries.**

**Increasing security of tenure and transparency of land governance is likely to be another principal aim of an LTI.** There appears to be a consensus that implementing the Voluntary Guidelines on the Responsible Governance of Tenure is the best way forward to ensure this (IF Campaign, 2013b; G8 Communiqué, 2013, para. 44; G8 UK – TAG 2013).

In transparency terms, an LTI could aim to **build transparency around land tenure conditions and procedures, and of land governance** – that is, the process of making and implementing the decisions that lead to those conditions and procedures. This could fit in with both the G8's stated objective of providing greater information on agricultural investment and supporting the implementation of the Voluntary Guidelines (G8 Communiqué, 2013). It could bring significant benefits, including reducing conflict over land and decreasing social tensions; achieving better deals for host countries and their citizens; and encouraging greater and higher quality investment. This could conceivably be a step towards the goal of

[6] Personal communication with Carlos Castel-Branco.

'economic growth and food security' envisaged at the G8 Summit, provided that the ingredients for success identified from other TIs are present.

The pressure to increase the scope of the EITI and the launch of the OCP reflect an appetite for influencing decisions further back in the value chain, when contracts are negotiated, and this could usefully be a focus of nationally based LTIs. This is in line with both the Voluntary Guidelines and the G8's intentions (FAO, 2013: 147; G8 Communiqué, 2013: para 44).

**Lesson #2: clear indicators of success and a monitoring system need to be established from the start, with flexibility to adapt these as needed as the TI evolves**

While this is standard practice with most donor programmes, the EITI, for example, did not have clear indicators of success or a monitoring system in place at the start, which has caused some difficulty in measuring its impact beyond tracking the publication of data on revenue transfers. Moreover, establishing clear and robust indicators not only enables impacts to be measured but also focuses discussions on what can realistically be achieved through a land transparency initiative. The World Bank's Land Governance Assessment Framework (LGAF) could be used as a starting point for developing locally appropriate framework and data indicators, while the MFST programme's approach towards evaluating success of specific programme components could be drawn on to provide options for measuring success more broadly in terms of improving developmental outcomes and protecting rights – for example, an increase in the quality and quantity of information on large-scale land acquisitions in the public domain, and stronger civil society coalitions producing high-quality analysis and effective joint statements.

**Lesson #3: meaningful consultation and participation are key**

This can take a lot of time to set up, but it is important to allow adequate time and space for effective participation in order to reach consensus on meaningful issues. At national level, multi-stakeholder platforms are the default mechanism for achieving participation and consultation but certain things need to be in place to avoid this becoming a box-ticking exercise: a well thought through process of selecting capable and neutral representatives from government, private sector and civil society (including robust self-selection processes); effective links from these representatives back to their wider constituencies; involvement of the platform in negotiating which information should be gathered; timely provision of information and reports for discussion; and capacity by representatives, particularly from CSOs, to analyse and apply the information provided. If such conditions do not already exist, they would need to form part of the process of setting up the transparency initiative.

International CSOs could play an effective role in supporting national CSOs to play their part in an LTI, providing access to information and funding. In the case of land, several CSOs, such as Global Witness and Oxfam, have been advocating for greater transparency in the land sector, with others coalescing around the IF Campaign. There are also private voluntary organisations such as the Omidyar Network that are interested in facilitating stakeholder discussions on land transparency. This could support the launching of an LTI. The role that the International Land Coalition (ILC) could play is less clear and needs to be explored further, but it could provide a useful platform for building the capacity of national members to use any information produced by an LTI.

**Lesson #4: data should be of high quality, openly available, and in an accessible, widely used format**

This raises a conundrum – lack of good-quality, easily accessible information is often the main factor causing problems of transparency. Careful consideration is needed to balance the quality, variety and resource intensity of data generation. The new version of the EITI emphasises the need for data to be 'relevant, reliable and usable' (EITI, 2013) and a strict focus on these criteria will be useful to ensure that an LTI targets its goals accurately. Benchmarks for gathering information for an LTI may need to be set low initially, with the aim of gradually increasing the range and quality of information provided.

**Lesson #5: a clear institutional structure needs to be set up with distinct roles and mandates at international and national levels**

While the national institutional framework needs to embody the spirit of participation and make provision for independent verification of progress, it is important to have an international body to set minimum benchmarks for data standards and transparency indicators, and to monitor progress towards these. The international body can also provide the sense of welcoming countries to a progressive 'club', which is a powerful incentive for signing up, and can provide a certain level of protected space for debate. Although the whole language of 'transparency' sounds neutral and apolitical, meaningful change on processes of contesting access to vital resources is anything but. It is vital that there are functional institutions that enable people to use the information to participate in decision-making processes or to contest decisions which may potentially do them 'or their constituencies harm.

Using a pilot phase to explore a suitable institutional structure and the costs associated with it is important. Although costs for core functions and limited country activities in an LTI pilot could be borne by a single donor-funded project, these are likely to grow rapidly as the initiative is rolled out to other countries. Exploring the potential to access financial support from public and private donors, as well as mechanisms for regular payments from companies, needs to be explored closely before or during the pilot phase. This will help to inform the type and scope of an LTI.

**And finally… capitalise on the momentum for an LTI created at the recent G8 Summit.** Capitalising on international momentum more than 10 years ago proved crucial for the launch of the EITI: 'Without such a large-scale international event as the WSSD [World Summit on Sustainable Development, 2002], it is doubtful that the UK Government would have invested as much energy and as many resources as it did to ensure that EITI got up and running' (van Oranje and Parham, 2009). However, it should be noted that enthusiasm for the EITI was shared between key governments, CSOs and businesses; there is still a need for stakeholders in any LTI to come together to agree on scope, aims, etc.

# 1 Background and introduction

## 1.1 Context

Rising interest in commercial land, the growing number of land deals, and the concern that these have generated in the past few years have led to calls for better governance in the land sector (World Bank, 2011). Between 2007 and 2010, the number and scale of reported land deals negotiated in the global South rose substantially, driven by the biofuel boom, the global food crisis, and increased plantation forestry activity (Global Witness et al., 2012).

In a context where African countries in particular have struggled for years to attract significant and sustained investment in agriculture, many have welcomed the increased interest in investing in agriculture, which could bring numerous benefits. However, the increase in large-scale land acquisition has sparked concerns about outcomes, particularly around the level of benefits and risks generated and their distribution (see, for example, Global Witness et alal; De Schutter, 2010) and the impact on tenure security of existing land rights holders and the need to protect and respect those rights (FAO, 2012; IF Campaign, 2013b). In some cases where land has been transferred to investors, local communities have been involuntarily displaced, or have been insufficiently consulted and compensated.

In a large number of cases, there has been no public disclosure of information on the terms and conditions of the land acquired in developing countries, and media reports have often been the sole source of information available. The lack of publicly disclosed information is attributed to two main factors:

- Deals are conducted in secretive settings and are struck by different government bodies, such that information on the deals is not well coordinated across government and is difficult for outsiders to access.
- Developing countries often lack a well-functioning land administration system that records and maintains up-to-date information on land transactions.

This has led to concerns about two broad types of impacts: on the development outcomes of investment and on the rights of those affected by land acquisitions. This is illustrated by two key communiqués issued on land transparency in the run-up to the 2013 G8 Summit hosted by the UK:

> *'Weak land governance and property rights systems can lead to opaque land deals, which facilitate corruption and undercut responsible actors seeking access to land for productive investment. Weak governance in many developing countries allows unproductive land speculation and undermines agricultural productivity.'* (G8 Communiqué, 2013: 10)

> *'The right kind of investment can play a positive role… However, when investment is not well regulated and conducted transparently, it can have the opposite effect… Often, (the land) deals are being struck in private, without the free, prior and informed consent of the communities who live on the land.'* (IF Campaign, 2013b)

The lack of publicly available information on land deals provided by national governments has prompted civil society efforts to compile and publicise information on the numbers, characteristics and implications of these land deals.[7] While these efforts have made some headway, there remain considerable gaps in the availability of accessible, robust and accurate data.

## 1.2 Aim and focus of the study

Although establishing a blueprint for a land transparency initiative (LTI) is beyond the scope of this research, this report aims to suggest elements that need to be considered when thinking through the shape and focus of a global LTI, as well as the process of setting it up and implementing it.

The report draws principally on lessons from existing voluntary transparency initiatives, complemented by discussions with the UK Department for International Development (DFID)[8] and a brief review of key points of reference for governance in the land sector, particularly the Voluntary Guidelines on the Responsible Governance of Tenure (see Box on the Voluntary Guidelines in Chapter 4). While in the run-up to the G8 summit, DFID initially focused on the need for greater transparency of large-scale land deals through improving the level and quality of information available, the G8 partnership's agenda shifted over time to a broader focus on the implementation of the Voluntary Guidelines.

This report focuses on land acquisition for agricultural investment, rather than other land uses such as forestry and mining concessions, or infrastructure developments; this is because most attention on land has focused on agricultural land deals. While the lessons and recommendations in the report may be applicable to land acquisition in these other sectors, they would first need to be checked against the particular characteristics of those sectors.

## 1.3 Approach and methodology

The report is based on the selection and analysis of literature on transparency initiatives (TIs), and interviews with researchers and practitioners at national and

[7] NGOs include GRAIN (www.grain.org), the International Land Coalition and ActionAid, and international organisations including the World Bank, the Center for International Forestry Research (CIFOR) and the International Food Policy Research Institute (IFPRI).) have conducted research into land acquisitions. Open Development Cambodia is an example of a national-level civil society initiative.

[8] This includes the presentation of initial results to DFID at a meeting on 30 May 30, 2013.

international levels with experience in transparency initiatives (see Appendix 1). We identified a group of transparency initiatives that offered relevant lessons for a land transparency initiative; lessons were identified through analysing common responses that emerged in the interviews and literature.

## 1.4 Limitations to the analysis

While the discussion of existing transparency initiatives raises relevant issues for a land transparency initiative, we need to be cautious about whether it is possible to establish one blueprint for land transparency across a wide range of countries. One point that emerged from the comparison of key initiatives was that the apparent success of one did not mean that its model could be applied across other sectors with equal effect. Rather, careful consideration of the specific dynamics at play in each sector is needed, accounting for differences in the levels of national development in the countries concerned, and their institutions for governing land.

A second constraint to our analysis is the relatively short period of time over which the TIs have been operating (with the exception of the Extractive Industries Transparency Initiative (EITI)), which limits the ability to evaluate their progress and success in achieving their respective objectives.

## 1.5 Overview of existing voluntary transparency initiatives

This section provides an overview of the different transparency initiatives that have been set up, and highlights characteristics that are relevant to a potential G8-initiated land transparency initiative.

The term ‘transparency initiative’ is an umbrella term for initiatives that share a common goal of improving a sector’s governance through the shared approach of increasing transparency of relevant information and processes. Donors, multilateral institutions and other stakeholders (e.g. private voluntary organisations) have promoted and funded international TIs in areas that suffer from poor governance (e.g. forestry, extractives, construction industries) or where there is a specific public interest in how resources are being disbursed (e.g. aid, public services). These areas often involve prominent government activity, including collection of revenues, public service delivery, budgeting and procurement. Table 1 presents a selection of some key areas of government activities and international transparency initiatives that cover each area.

## Table 1: Selection of key transparency initiatives

| Area of government activity | Transparency initiative |
|---|---|
| Disbursement of aid | International Aid Transparency Initiative (IATI) |
| Budgetary and fiscal processes | Open Budget Initiative (OBI); Global Initiative on Fiscal Transparency (GIFT) |
| Revenue flows from natural resource extraction | Extractive Industries Transparency Initiative (EITI) |
| Procurement, award of contracts and performance | Open Contracting Partnership (OCP); Construction Sector Transparency Initiative (CoST) |
| Public services, public integrity, public resources, safer communities, corporate accountability | Open Government Partnership (OGP) |
| Compliance with high standards of sectoral good governance | Making the Forest Sector Transparent (MFST) programme |

We selected five of these initiatives to look at in more detail, which cover a diverse range of issues and include features that a land transparency initiative might usefully share.[9] These are the International Aid Transparency Initiative (IATI), the Extractive Industries Transparency Initiative (EITI), the Construction Sector Transparency Initiative (CoST), the Open Contracting Partnership ()OCP), and the Making the Forest Sector Transparent (MFST) programme.

### 1.5.1 IATI

The IATI was launched in 2008 to support donor commitments on aid laid out in the Accra Agenda for Action.[10] It aims to standardise the reporting of aid spending so that information is easier to access, use and understand, using a common format. Previously, donors and recipients did not use the same categories or standards for reporting, which made the collection and analysis of aid flows difficult and time-consuming. To date, 22 countries have endorsed the IATI standard, and more than 130 donors and CSOs which provide and receive aid have published their data in line with it. IATI is governed by a multi-stakeholder steering committee, and has a technical advisory group and secretariat to assist with implementation. These operate only at the international level; there is no national-level decision-making or consultative process, nor is there a central database on aid flows, a task retained by the OECD's Development Assistance Committee (DAC).

IATI is a fairly 'light-touch' transparency initiative with a largely technical focus. It provides examples of how harmonisation of data (standardisation of reporting and computability) can be included from the outset of an initiative, and has established

[9] Proposals for features of a land transparency initiative have been made by various commentators, including the IF Campaign, and the 2012 report produced by Global Witness, the Oakland Institute, and the International Land Coalition, *Dealing with Disclosure*. (Global Witness et al 2012)

[10] The Accra Agenda for Action laid out the basis for aid disbursement and spending along internationally agreed commitments, by donors and recipients of aid.

a suitable monitoring framework (including responsibilities) that could provide useful lessons for an LTI.

### 1.5.2 EITI

The EITI was launched in 2002 following events and reports in the late 1990s and early 2000s that brought attention to how resource-rich countries were failing to transform their oil, gas and mining wealth into positive development outcomes because of mismanagement of projects and finances, and corruption. Deviation of revenues from mining, oil and gas projects from government coffers meant that such revenues were not available for public investment and expenditure.

The EITI started out with a small number of countries that looked at possible implementation on a pilot basis, and was formalised between 2003 and 2005. Since then, its governance structure has grown and the number of countries that are deemed compliant, or have signed up to the initiative, has expanded to 39.[11] It is governed at international level by a selected group of its members, who come from four identified constituencies: implementing countries, supporting countries, companies, and civil society organisations (CSOs). Implementing countries have national-level governance structures, which include multi-stakeholder groups. To date, the main feature of the EITI has been its reporting rules and independent audits, which offer a standard for transparency in reporting financial flows from natural resources; countries that adhere to the rules are recognised as EITI compliant.

In May 2013, the EITI adopted a new standard, which expanded its scope and changed some of its rules. Data on revenue flows must now be provided on a company basis rather than aggregated basis. Countries must now provide more information to make reports more readable, including on the fiscal regime of the country and how deals in the extractive sector are structured.

Of the five TIs reviewed, the EITI has been in operation for longest, providing opportunities to review progress and evaluate success. It has developed governance structures that rely on multi-stakeholder approaches at both the international and national levels, providing insights relevant to the creation of an LTI that intends to operate at both levels. The diverse experiences of national-level EITI implementation also provide insights into the importance of contextual factors in implementation, and demonstrate how these can affect the impact of transparency.

### 1.5.3 MFST

MFST is a four-year programme (which ran between 2008 and 2013) implemented by the international NGO, Global Witness, and national CSOs in seven forest-rich countries. Through local NGO partners, the programme has worked with forest-dependent local communities to empower them to assert their rights and hold governments to account on the use of forest resources. It has focused on building capacity to monitor available information in the forest sector, and compare disclosure and dissemination of this information.

Its main tool for assessing transparency has been a report card, which is used to assess the level of public access to information, and how well the country performs in relation to both its international and constitutional commitments, and to the

[11] As of September 2013, EITI members included 23 compliant countries and 16 candidate countries.

information needs of forest-dependent peoples. It does not have a multi-stakeholder group approach, working instead through individual, national-level CSOs; nor does it provide a standard to which countries can adhere. However, it provides a range of detailed indicators to monitor transparency in the forest sector, assessment of which is done by CSOs rather than professional bodies (unlike EITI and CoST).

MFST provides an example of a transparency initiative with a specific focus on sectoral governance, which has developed relevant monitoring indicators that could be adapted to governance in the land sector.

#### 1.5.4 CoST

CoST is an international initiative launched by DFID and multilaterals, such as the World Bank, which uses a multi-stakeholder approach to improve transparency and accountability in publicly funded construction projects. It started with a three-year pilot project in eight countries and has since been launched formally as a long-term initiative, with membership expanded to 11 countries. It has an international secretariat and (interim) multi-stakeholder board that provide oversight, and national-level multi-stakeholder groups. Key actors include government procuring agencies, companies, professional bodies such as construction associations, and civil society groups. CoST implementation involves the proactive public disclosure of basic information on construction projects complemented by an independent assurance exercise that assesses the accuracy of information disclosed, and whether the project is performing well.

As well as highlighting lessons on possible institutional frameworks for a land transparency initiative, CoST's experience of piloting projects in several countries provides insights into the process that an LTI could follow in testing its scope and aims. Moreover, as CoST operates further back along the value chain than initiatives such as the EITI – mandating reporting and assessment of both the initial tendering of the project and changes made to the project throughout its lifetime – this could provide a model for an LTI that is concerned with influencing projects at the decision-making stage.

#### 1.5.5 OCP

The Open Contracting Partnership (OCP) is a new initiative that promotes full disclosure of information in public contracts, enabling observers to monitor for signs of mismanagement of public funds. It currently works at global, regional and national levels to develop a set of principles around open contracting and disclosure standards, and to increase the capacity of citizens to monitor government contracts.

OCP provides a useful point of reference because it has a strong focus on the disclosure of contractual terms but also aims to ensure that the disclosure of information is standardised and produced in a format that makes it more accessible to a wide audience. It also focuses on participation, aimed at collaborative engagement between governments, private sector and civil society to improve contracting processes and outcomes (OCP 2013; OCP n.d.).

### 1.6 Structure of the report

This report explores different aspects of each transparency initiative in more detail, highlighting features that are particularly relevant to an initiative to promote greater transparency in the land sector:

- The second chapter looks at the **aims and scope** of existing voluntary transparency initiatives, identifying which issues they are trying to

resolve, what areas they cover, and how their success in achieving their objectives is measured.

- Chapter 3 analyses **how** the different initiatives have tried to achieve their objectives.

- The final chapter presents **conclusions,** with key lessons from existing transparency initiatives, and outlines some initial **recommendations** to assist the thought processes for establishing, designing and implementing a land transparency initiative.

# 2 Aims and scope of transparency initiatives

This chapter identifies which issues the five selected initiatives aim to resolve, their focus and scope of coverage, and the data needed to support their aims and monitor their impact.

## 2.1 General issues and objectives identified by transparency initiatives

### 2.1.1 Issues

The five transparency initiatives (TIs) selected for analysis share an aim (among others) of addressing the problems of corruption or mismanagement of funds and resources, and the low development impact of available resources (natural and aid) caused by three main, inter-related issues:

- There is insufficient relevant information in the public domain to enable citizens to influence decisions that affect them in relation to resource use or allocation.
- This is often compounded by the way that available data are presented, with providers of information frequently following their own particular ways of selecting and presenting information, rather than aggregating data in a harmonised and standardised way.
- Policy processes are dominated by elite groups that do not represent the main users of the resources, and there are no mechanisms in place that allow sufficient control or tracking of resource flows.

Figure 1 groups together the issues that the five TIs are aiming to resolve and their impact, while Table 2 lays these out in more detail for each transparency initiative.

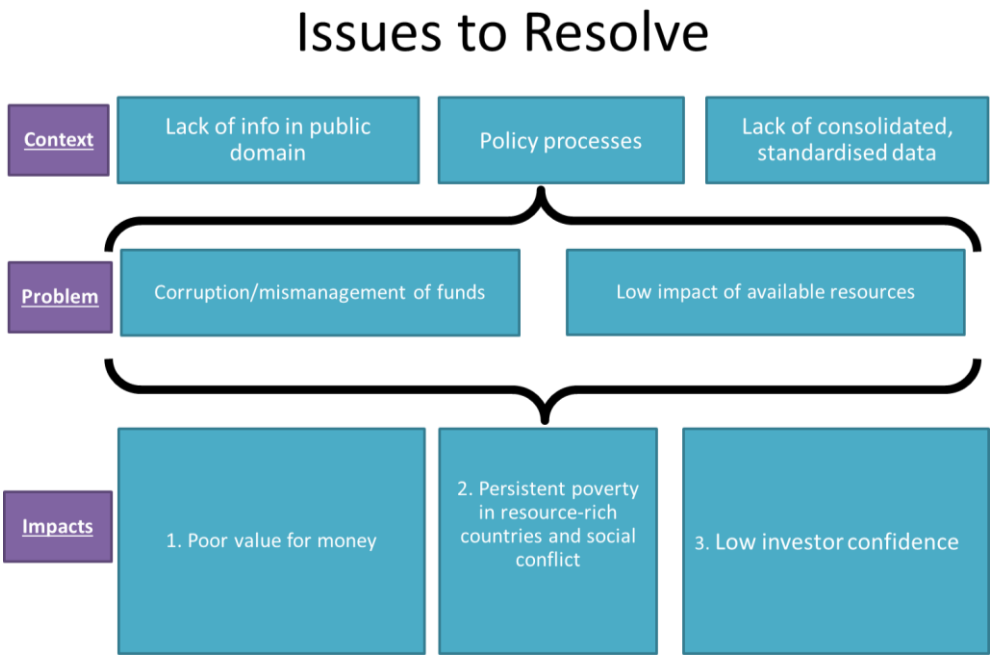
### 2.1.2 Impacts

TIs identify several main impacts from the existing situation in each sector, including the persistence of poverty and conflict in resource-rich countries (e.g. EITI, MFST) and poor value for public money disbursed (e.g. CoST and IATI). Other impacts include low investor confidence, which leads to a lack of high-quality investment, and inefficiency, which leads to fewer resources being available for spending on social goods.

### 2.1.3 Objectives

By resolving the issues of the lack of consolidated, standardised data in the public domain and unequal power relations in policy processes, TIs aim to improve efficiency in allocating resources and delivering services or greater value for money (usually for the public purse). The higher levels of efficiency and higher public revenues from better deals should also provide more financial resources to be spent on poverty reduction and development priorities, contributing to promoting equitable and sustainable growth.

## Figure 1: Problems and their impacts identified by transparency initiatives




*Source: Based on authors' analysis of TIs' websites and corporate documents.*

## 2.2 Specific issues and objectives

While the issues, impacts and objectives can be summarised and generalised across the five TIs, each has its own particularities, as follows.

- The MFST programme was driven by concerns about 'export-driven commercial scale exploitation of forests' that was threatening customary rights and circumventing established legal procedures for getting access to forest resources (Global Witness, 2010). This was attributed to the lack of information in the public domain that is accessible to forest-dependent communities and CSOs, as well as unequal power relations in policy processes, which prevents better management of forest resources for the benefit of the resource-dependent communities (ibid).

- Similarly, CoST views the lack of publicly available information on construction contracts at different stages of the project cycle as the background to poor mismanagement of construction projects, with negative implications for value for money (quality and cost) and investor confidence (CoST, 2012: 6): 'mismanagement and corruption

during construction often results in high cost and poor quality infrastructure which undermines the potential benefits' (CoST, 2013: 1).

- The OCP has identified as its starting point the problem of limited information in the public domain on how public contracts are formed, the text of agreements, and details of the performance of contracted entities. Public contracts play a central role in supplying essential goods and services to citizens and provide a source of public revenue. However, in many countries 'public contracting has been identified as the government activity most vulnerable to wastefulness, mismanagement, inefficiency, and corruption' (Marchessault, 2013: 1).

- When the IATI was being discussed, campaigners for greater transparency of aid, such as Publish What You Fund, felt that no one knew exactly how much money was being spent, where or on what – not even the governments receiving aid – which undermined the potential and effectiveness of that aid in terms of its developmental impact (Modernize Aid, n.d.). The IATI recognises the need for more information on aid flows to be available in the public domain, with strong emphasis on the need for this information to be standardised and collated.

- Similarly, the momentum for the EITI was created initially by the lack of information on revenue flows between extractive companies and national governments, which was seen as undermining the positive impact that a country's mineral resources could have on its development for the benefit of its citizens: 'A country's natural resources belong to its citizens. Citizens should have the right to see what their government is receiving from these resources. However, in too many countries this information is not publicly available' (EITI, 2013). Subsequently, the EITI highlighted the need for standardised and consolidated information on revenue flows. Scope and coverage of the EITI differs between countries: while Liberia has extended the EITI to include the forestry and agricultural sectors, as well as information on contracts, other countries (such as Mozambique and Tanzania) have largely focused on the extractive sectors and revenue flows between those sectors and national government.

## Table 2: Overview of the goals and context of transparency initiatives

| | EITI | CoST | MFST | IATI | OCP |
|---|---|---|---|---|---|
| **Geographical focus** | 56 countries, divided into groups of implementing (39) and supporting countries (17).[12] Implementing countries are mostly in Africa and Central Asia, but increasingly from other regions. Six more countries (including developed countries) intend to join. | Nine countries in Europe, Central America, East Africa, and Southeast Asia are implementing CoST in one or more of their government procurement departments. | Seven forest-rich developing countries (Ghana, Cameroon, Liberia, Peru, Ecuador, Guatemala, Democratic Republic of Congo). | Not specific to any one geographic region. | Not specific to any one geographic region. Countries are beginning to endorse the OC Principles but this is not the same process as implementing an OC "standard". |
| **Transparency about what?** | Until 2013, transparency of payments made by extractive industries and revenues received by governments was required. The new EITI broadens the types of data disclosure to include contextual information,[13] information on State-owned Enterprises (SOE) activities and state revenue from sales of resources, and deepens requirements to include all government payments[14] and company payments at the project level. | Transactions along the full project cycle of procuring construction services for government infrastructure (e.g. roads, power, and housing).[15] | 1. Processes of governance in the forest sector.<br><br>2. The amount of information on forest governance disclosed by governments to the public in forest-rich countries | Aid types and flows from donor to recipient countries. | Public contracting, from planning to completion of obligations. |

[12] These support the initiative, through promotion, technical assistance and financing.

[13] Contextual information includes production ownership of licences, allocation of revenues within the state, and fiscal regime.

[14] Previously only payments made above a defined threshold defined through national processes.

| | EITI | CoST | MFST | IATI | OCP |
|---|---|---|---|---|---|
| **Existing weakness in governance which justifies the initiative** | Many resource-rich countries under-perform economically, and do not transform natural resource wealth into sustainable economic growth. | The construction industry is one of the sectors most prone to corruption.<br><br>Much of the investment in the construction sector is wasted, leading to high prices and poor quality. This raises the costs of maintenance and creates danger in key infrastructure.<br><br>When ineffective control mechanisms[16] are in place to ensure that actors are accountable to the government and public, corruption and mismanagement can thrive. | Forest sector policy processes have been dominated by a narrow group of elite interests, which have agreed the use of public forests undemocratically (without the knowledge or consent of ordinary people who may rely on the use of those resources). | Aid flows are difficult for governments and citizens to account for and predict, leading to low effectiveness. | Many governments and citizens do not get the full benefit from public contracts because of non-transparent and non-participatory contracting processes and contract management. |
| **Existing weakness in information which justifies the initiative** | There is a lack of consolidated and standardised data on revenue flows into government coffers. | Information from contracts is not in the public domain. Information available is only presented in a technical format that is not readily understood by the public. | There is no overview of the level of transparency in forest sector governance in project countries, including laws associated with good governance, and processes of transparency (e.g. regularity and quality of data published). | Aid data are classified in different ways by different donors, and are not harmonised. | There is limited information in the public domain on how contracts are formed, text of agreements, details of performance, and government oversight. |

[15] The original proposal was the disclosure of project information during the implementation phase of the cycle, namely on changes to the project that affect time and cost. Pilot countries widened this to include project planning and design.

[16] Control mechanisms include budget review, feasibility analysis, design approval.

| | EITI | CoST | MFST | IATI | OCP |
|---|---|---|---|---|---|
| **Core goal of initiative** | To make the EITI's 12 Principles and 6 Criteria on reporting of revenue flows from extractive industries the internationally accepted standard for transparency in the oil, gas and mining sectors.[17] | To encourage the disclosure of material project information (MPI)[18] on public construction projects, and to independently assess whether those projects delivered value for money. | To improve forest sector policy and practice through making forest sector governance more responsive and accountable to poor forest-dependent people in project countries. | To improve the transparency of aid information in order to increase the effectiveness of aid in reducing poverty. | To increase disclosure and participation in public contracting. |
| **Indicators of success** | No specific list of indicators identified.<br><br>The terms of reference for the Scanteam review of the EITI (2011) used numbers of candidate, compliant and supporting countries; supporting companies and investors; completed validations; and communication indicators.<br><br>'Big Picture' indicators were also used (e.g. World Bank | Indicators have recently been developed at the international level and are being introduced at national level. Up to 2013 these were specified on a project-by-project basis. | • An increase in the quality and quantity of forest sector information in the public domain;<br><br>• An increase in transparency and participation in decision-making processes related to forest use;<br><br>• An increased acceptance and implementation of explicit processes for civil society to hold public | Not identified for final outcomes/ impacts. For intermediate outcomes, these are: adoption of the standard by the majority of DAC donors and major CSOs, and increasing numbers of other stakeholders working towards adoption. | Only indicative indicators have been identified so far.[19] |

[17] The Principles assert EITI participants' recognition of the developmental role of natural resources, and the rights of national governments to manage these in the interests of citizens, as well as other points. The criteria prescribe the conditions of implementation, including regular publication of payments and receipts in a comprehensible and comprehensive manner, auditing requirements, and civil society's participation in the design, monitoring and evaluation of the process.

[18] Material project information (MPI) is defined as information that is sufficient to enable stakeholders to make judgements about the cost, time and quality of the infrastructure concerned.

[19] These include: increased number of contracts that are publicly disclosed; improved quality of publicly available information on contracting; enhanced accessibility to contracting data; increased and more strategic use of contracting data; increased opportunities and mechanisms for participation throughout all phases of contracting; increased number of citizens participating in contracting processes; more timely and effective follow-up actions based on citizen monitoring feedback; more and better -equipped champions promoting open contracting.

| | EITI | CoST | MFST | IATI | OCP |
|---|---|---|---|---|---|
| | governance indicators, gross domestic product (GDP) growth, UNDP HDI, etc.). | | servants to account (both demand-led and provision-led);<br>• Stronger civil society coalitions producing high-quality analysis and effective joint statements;<br>• Increased national and international advocacy to demand accountability and improve policy and practice across the forestry sector. | | |
| **Intended final user** | Not defined for the global initiative. Beneficiaries are listed as countries, companies and civil society. | Not specified. Relevant stakeholders listed include the public, media, parliamentarians and other authorities. | Forest-dependent poor people and the CSOs that represent them. | Aid recipient governments, citizens, NGOs, community-based organisations, anti-corruption activists. | Not identified. |

## 2.3 Indicators of success

Linked strongly to identifying the aims and scope of a transparency initiative is the need to establish clear indicators of success to ensure that the initiative is on track to meet its originally defined objective(s), including wider developmental aims. Because TIs blend local and international-level activities to bring about changes at a societal level, they have highly complicated results chains (Scanteam, 2011). Establishing a monitoring framework during the design phase can help strengthen the logic for the initiative and identify where there are gaps in its theory of change. While this is longstanding practice in the donor community, it reportedly did not happen with the EITI, which has only belatedly set up a monitoring system. When designing a 2011 evaluation of the initiative, the terms of reference had to retroactively identify the indicators of the benefits that the EITI had brought (Scanteam, 2011). By contrast, during its formation, the IATI developed a theory of change chart that clearly identified intermediate and ultimate outcomes and decided on indicators to measure these (IATI, 2010).

When designing the monitoring framework, key questions should be answered: what will be measured and when, and who will do the measuring.

### 2.3.1 When to measure

Identifying and formalising indicators from the outset is important to ensure that monitoring is a clear component of the transparency initiative, and can help to clarify ownership of and responsibilities for monitoring activities. Decisions regarding the role of monitoring have differed between TIs. For example, because the MFST programme was funded by a single donor within a governance funding framework, it was clear that evaluations would be carried out by external evaluators at specified intervals using indicators agreed in advance (IDL Group, 2011). For the EITI – a multilateral initiative whose ownership and length was less well-defined – it was less clear who would carry out these tasks and when,. Like MFST, CoST established a set of indicators and a monitoring framework during its design phase. However, in this case, although it was accepted that indicators were needed, carrying out this work during the design phase may have been too early, as some of the key reporting features were still being tested and needed to be proven viable. Designing indicators when proponents did not know whether all items of information could be easily collected through the reporting processes was therefore highly challenging, and slowed down the initial momentum for piloting CoST in specific countries (CoST, pers. comm.).

As well as measuring the processes and outcomes of a transparency initiative, it is important to set up a counterfactual to measure what would have happened in the absence of the initiative. This helps establish whether the transparency initiative has made a difference to what would otherwise have been the case. This could use a comparison with other comparable countries or sectors that are not involved in the initiative, and by monitoring changes over time. For instance, the EITI evaluation in 2011 compared economic and governance indicators between EITI and non-EITI countries with similar wealth levels (Scanteam, 2011).

### 2.3.2 What gets measured?

Ideally, a monitoring framework for a transparency initiative would look at both its performance towards achieving several intermediate outcomes and its contribution to final outcomes (e.g. changing governance and economic performance). The concept of a results chain, in which activities produce outputs that then lead to outcomes, is useful for selecting appropriate indicators to measure. Because TIs typically have multiple actors that conduct activities at different levels (e.g.

international bodies solicit members, negotiate principles and oversee processes; national bodies negotiate the contents of, and produce, reports), using disaggregated results chains to identify suitable indicators can provide more detail on what was successful than aggregated results chains, which group outputs or outcomes across multiple activities.

#### EITI

The Scanteam (2011) evaluation of the EITI found that disaggregating outcomes by national or international processes helped to identify appropriate indicators for each. Indicators such as the number of supporting countries, companies and investors, and number of media hits about the EITI, were better indicators for measuring activities of the international institutions (i.e. the board and secretariat), and the relationship between the EITI process and these indicators was fairly straightforward. By contrast, the number of country reports produced and the regularity of their disclosure were more accurate measures of national-level processes, and were more likely to be determined by national-level factors outside the control of the EITI process. This approach also helped to identify what indicators better reflected the 'core' objective of the EITI; media hits and numbers of supporting companies could be high in the absence of better governance, but the regularity of reports produced was more likely to be indicative of improvements in governance, and merited closer attention.

To measure the impacts of EITI membership on actual economic and governance performance, the review looked at whether selected global indices had improved for member countries. These 'big picture' indicators included credit ratings, macroeconomic indices of ratings from the World Bank Country Policy and Institutional Assessments and national growth rates, corruption indices, and human development indices. Overall, the results from this evaluation were inconclusive: countries implementing the EITI did not necessarily improve their scores in these indices or perform better than countries that were not implementing it. The inconclusive results highlighted that moving from better procedures to better governance is highly complicated, as well as confirming the usefulness of tracking national-level processes and results.

#### CoST

During the pilot phase of CoST, indicators were specified on a project-by-project basis (CoST, 2012). Since then, CoST has been developing a global construction transparency index, made up of indicators measuring the enabling environment, levels of public disclosure, the level of social demand, and sector transparency. The index will provide international comparability of transparency in the construction sector (CoST, 2012) but has yet to be released.

#### IATI

In the case of the IATI, indicators were established for intermediate outcomes, reflecting direct impact rather than broader, more indirect final outcomes. Relevant indicators for a possible land transparency initiative include:

- measurement of the number of DAC and non-DAC donors and leading CSOs that adopt the IATI standard, aiming for the majority of DAC donors
- recognition of the information standards and availability in policy documents and speeches
- the number and type of users of the IATI information portal (aidinfo) and assessment of the uses of this information, including use of

feedback from beneficiaries in donor monitoring and evaluation processes. Related to this is evidence of the use of shared knowledge on aid by infomediaries.[20]

The IATI also looks for evidence of increased capacity on the part of information users through expressed demand for better aid information and effective use of grants by infomediaries, particularly for making information accessible to target groups.

Finally, the IATI looks beyond aid information to measure whether the initiative has encouraged greater transparency in resource use more broadly, measured through an increase in the number and variety of organisations working towards open standards for information sharing, and willing to explore and test changes.

#### MFST

The MFST programme holds interesting lessons for a land transparency initiative because it has a well-designed approach towards measuring governance improvements, made up of two stages. The first stage looks at monitoring improvements in governance and transparency in the forest sector. The second stage looks at how its activities have had an impact on improved governance.

#### MFST's approach towards monitoring and communicating governance

MFST's approach towards monitoring and communicating governance provides perhaps the most relevant example for a land transparency initiative. It selected areas of forest governance quality and monitored these regularly to assess how governance has changed over time. Indicators were established for each area through a bottom-up approach based on consultation with local CSOs working with forest-dependent communities, who used different sources of data depending on national conditions. For instance, revenues and perception audits were used in the Democratic Republic of Congo and Liberia, while documentation of compliance with information provision law was used in Ecuador (Young, pers. comm.). These were designed not to be comparable or ranked across countries (as they relied on asking stakeholders questions about governance that were specific to each country), and they specifically did not aim to provide an overall score for forest governance. However, questions were categorised under common indicators, providing a common interface for all countries, and guidance was given to help ensure consistency between assessments by different CSOs in different countries (see Global Witness, 2012a).

Report cards that compiled this information were used to make this monitoring exercise publicly available and comprehensible for non-specialist users. The report cards were also used to engage with the government on governance issues. Table 3 (below) illustrates the different common indicators used in the report card. The **framework indicators** measure whether key legal frameworks and processes are in place. **Data indicators** measure whether outputs from the governance structure are available in the public domain, how regularly they are published, and how accessible these are to forest-dependent communities. These indicators were published in different formats, including a simple red-yellow-green assessment of each indicator and a detailed database laying out the basis for each 'traffic light'

[20] In the context of TIs, an infomediary is an institution that can synthesise and communicate information from a TI process into messages that can be understood by a wider or specific audience.

(see, for example, http://www.foresttransparency.info/cameroon/2012/themes/17/). More detailed report cards that made use of 60–80 indicators were also produced for assessing governance for forestry Voluntary Partnership Agreements.[21]

## Table 3: The 20 indicators measured by country MFST programmes

| Framework Indicators | Data Indicators |
|---|---|
| • Freedom of Information Legislation<br>• National Forest Policy<br>• Codified Forest Law and Supporting Norms<br>• Signed VPAs and Other Agreements on Forest Products<br>• Provisions for Transparency in Forest Laws and Norms<br>• Recognition of Customary Rights in Forest Laws and Norms<br>• Formal Procedures for Consultation on New Forest Norms<br>• Legal Right to Free Prior and Informed Consent<br>• National Land Tenure Policy<br>• Consultation before Commercial Logging Allocation<br>• Regulation of Environmental Services<br>• Strategic Environmental Assessment | • Forest Ownership and Resource Use Maps<br>• Legal Documents for Commercial Logging Operations<br>• Reports on the Verification Process of Eligibility of Commercial Operators<br>• Forest Management Plans<br>• Reports from Independent Forest Monitoring<br>• Data on the Distribution of Forest Royalties and Incentives<br>• Information on Forest Law Infractions<br>• Annual Forest Authority Report |

*Source: Global Witness 2010*

The evaluation process for the MFST programme disaggregated success measurements into different components. A log frame for identifying success, which differentiated between different levels and countries, was devised at the outset, including an overarching goal to improve benefits for forest-dependent communities. More specific to the programme (and reflecting its aim to increase local civil society demand for better forest governance) were five broad indicators for measuring how well the programme performed. These were:

- an increase in the quality and quantity of forest sector information in the public domain
- an increase in transparency and participation in decision-making processes related to forest use
- an increased acceptance and implementation of explicit processes for civil society to hold public servants to account (both demand-led and provision-led)
- stronger civil society coalitions producing high-quality analysis and effective joint statements
- increased national and international advocacy to demand accountability and improve policy and practice across the forestry sector.

[21] Making the Forest Sector Transparent developed an adaption of the report card methodology specifically to take advantage of an initiative external to the project: the Voluntary Partnership Agreements. The VPAs, once signed, are legally binding between a timber-producing country and Europe, and so a failure to meet the disclosure obligations contained within each country-specific VPA appendix is potentially a failure to comply with this international legal agreement. See: http://www.foresttransparency.info/cms/file/566. Although six VPAs have been completed, none have yet been fully implemented, so it remains to be seen if/when non-compliance with the 'transparency annex' will lead to suspension of the timber trade with Europe.

**Who does the measuring?**

Different groups may monitor the implementation of a transparency initiative of their own accord, depending on their stake and level of interest in it. Within the five TIs reviewed, monitoring occurs at different levels:

- In the IATI, monitoring is done by the steering committee as well as by the board. It also uses external evaluators to independently assess its progress and success. The EITI takes a similar approach.
- The MFST programme jointly identified indicators with national CSO partners that were applicable to the specific focus of the national-level programmes. In terms of its own monitoring, it followed a standard DFID project approach, establishing indicators at the outset, with independent reviews at mid-term and completion.
- In the case of CoST, regular monitoring of country-level performance is carried out by the multi-stakeholder groups. Monitoring and evaluation is done by independent bodies, but managed by the multi-stakeholder group.

## 2.4 Compliance mechanisms

One of the debates around transparency initiatives centres on the question of whether their members' performance should be monitored against compliance indicators and whether action should be taken when they are found to fall short of these (Kingsmill, pers. comm.). Of the TIs reviewed, only the EITI has a formal compliance mechanism: the International Board can suspend or revoke membership if a country does not uphold the EITI standard. For example, the Democratic Republic of Congo was temporarily suspended from the EITI in April 2013 for not meeting full disclosure requirements, and for lacking assurance of the reliability of figures in its report. This compliance mechanism is viewed by some as the main way that a voluntary initiative can become binding (MacInnes, pers. comm.).

On the contrary, CoST chose not to include a compliance mechanism that would grant the board power to revoke membership, because it views greater disclosure for procuring entities as a learning process at the current stage (Matthews, pers. comm.).

# 3 How do transparency initiatives aim to bring about change?

The previous chapter analysed *what* the five existing transparency initiatives (TIs) reviewed are trying to achieve based on the problems identified in their particular area. This chapter looks more closely at *how* they expect to achieve those objectives and some of the assumptions that underpin the process. Most explain how they will bring about change using stylised results chains that map out what steps follow from specific activities, but not necessarily *how* these steps come about (i.e. what behavioural changes take place).[22]

## 3.1 Generalised theory of change

Figure 2 maps out pathways that are common to most of the transparency initiatives in a generalised theory of how to resolve the issues of the lack of consolidated, standardised data in the public domain, and unequal power relations in policy processes.

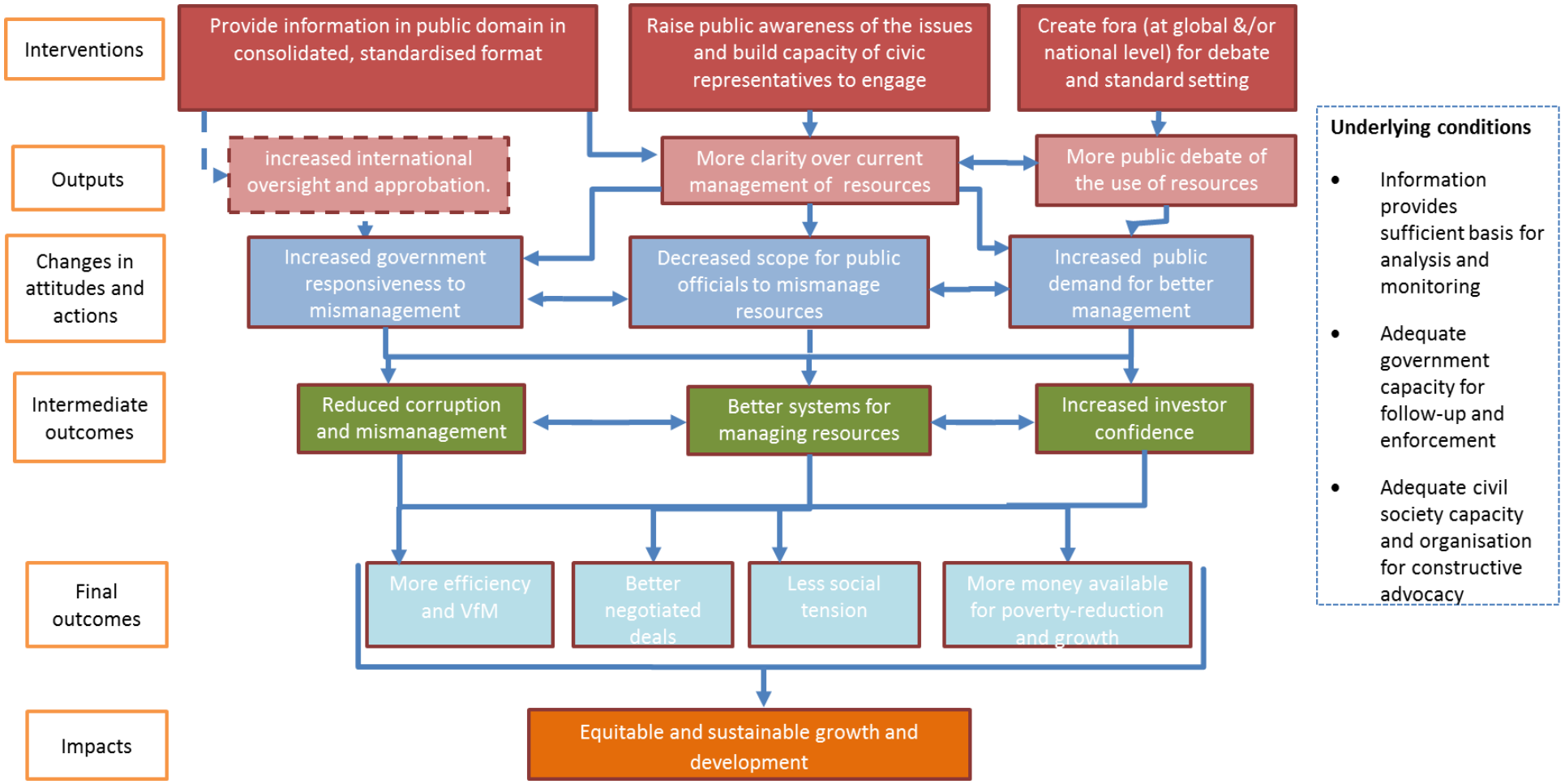
As Figure 2 demonstrates, the TIs studied use two types of interventions or activities to effect change:

- All the TIs include public provision of relevant, useful and reliable information on different aspects of the sector or activity covered (the supply side).

- Some (e,g. the EITI and MFST) also aim to improve civil society engagement and ability to demand change by: raising awareness of issues; building capacity of different constituents to engage in processes, understand governance of the sector, and process information that is generated; and create space for debate and negotiation, normally through multi-stakeholder groups.

[22] For the EITI and CoST, these were produced after the start of the initiatives.

## Figure 2: Generalised theory of change of transparency initiatives



- While TIs expect some changes to occur through a combination of increased information, capability, and domestic and international pressure, some also rely on compliance mechanisms to bring about change.

These interventions are expected to generate more knowledge and opinions or value judgements on how well resources are being managed. More clarity on the current management of resources or sectors is a direct result of the greater volume of high-quality information. Together with the forum created by the multi-stakeholder groups, these interventions should raise the level of debate on management of the sector or resource, which provides better understanding and expectations of resource use. As well as internal or constituent-based pressure for change (through demand from constituents and within the multi-stakeholder group), some TIs expect membership to confer international approval, which reflects well on leaders. Conversely, failure to comply with the rules and suspension or de-listing due to non-compliance brings international disapproval.

Positions taken by domestic and/or international bodies associated with the initiative are expected to lead to changes in the attitudes and actions of those governing the management of resources. Leaders will, in principle, act to correct mismanagement or corruption, and ongoing scrutiny reduces the scope for officials to mismanage resources. Better understanding of what constitutes a good deal, facilitated by public debate, raises public expectations for benefits from deals or activities and provides a benchmark to judge performance.

The effects of these changes are to reduce corruption and mismanagement of resources, mainly by public officials. With more clarity over, and public interest in, their operations, systems for managing resources are expected to improve.

Common final outcomes attributed to these changes include: more money to invest in growth-enhancing and poverty-reducing activities; improved social cohesion because the public has greater trust in the government managing resources in their interests; and greater confidence for investors who face fewer unknown risks related to their fiscal obligations and reputation. Some TIs (the EITI and CoST) also predict higher investor confidence as there is better information on the investment climate.

Ultimately, the higher levels of efficiency and higher public revenues from better deals are expected to provide more financial resources to be spent on poverty reduction and development priorities.

Table 4 presents more detail on the underlying theory of change for the five selected TIs.

## Table 4: Theory of change for selected transparency initiatives

| | EITI | CoST | MFST | IATI | OCP |
|---|---|---|---|---|---|
| **Theory of change**<br><br>**(how greater transparency is expected to generate change)** | EITI did not have a detailed theory of change at the outset.[23] A simplified theory of change is that strengthened transparency of natural resource revenues can reduce corruption, and the resulting increased revenues from extractive industries can be used to transform economies, reduce poverty and raise the living standards of entire populations in resource-rich countries. | Disclosure of material project information can reveal where control mechanisms have broken down and when other accountability mechanisms are compromised. Transparency and accountability ultimately reduce corruption, improve efficiency and competition in tendering, and improve management. This leads to good-quality infrastructure at a low cost, saving available resources for other priorities and greater investor and user confidence. | Better information on where there is a low level of transparency in governance.<br><br>-> coordinated civil society monitoring and advocacy of forest tenure conditions and procedures and decision-making.<br><br>-> improved forest governance and transparency<br><br>-> improved life of poor forest-dependent people. | When people are able to access and use information, they can challenge existing power relationships. This information will increasingly be made available in a form that enables users to access it easily and to combine it with other sources of information. As a result, people living in poverty will be able both to demand a fairer share of resources and ensure that this money is used in ways that meet their needs. | Existing incentives and capacity determine if and to what extent stakeholders engage in open contracting. When stakeholders promote disclosure and participation, they begin to interact and collaborate across government agencies, companies and civil society organisations. This collaboration can serve to enhance accountability and trust among these actors. Increased accountability and trust make it more likely that responsible parties will act upon contracting problems, which will reduce mismanagement and inefficiencies and improve contract performance. Better performance can lead to greater satisfaction among citizens with public and private providers. This satisfaction, in turn, contributes to the legitimacy of the whole process and reinforces the incentives for responsible stakeholders to continue engaging in open contracting. |

[23] A Working Group to develop a theory of change was established in 2012 to follow up on findings from the 2011 Scanteam evaluation, which subsequently developed plans to incorporate stronger definition of causal chains in national -level EITI plans (EITI Theory of Change Working Group, 2012).

| | EITI | CoST | MFST | IATI | OCP |
|---|---|---|---|---|---|
| **Expected final outcome** | Not specified, but expected to enhance accountability, public financial management, and the environment for direct investment. These lead to sustainable economic growth. | Several, including:<br><br>public procuring entities more accountable; corrupt behaviour inhibited; more efficient spending; more competitive tender markets; more efficient delivery systems. | Forestry policy is reoriented towards the needs of ordinary (forest-dependent) people. | Accelerated poverty reduction and more effective use of resources. | Better value for money for governments, level playing field for private sector, and high quality goods, works and services for citizens. |
| **Information examined by the initiative** | Company payments (taxes, royalties and other payments, including corporate and personal income tax) and government revenues. | 1. Information on tender process and contract award (contract award price, engineers' estimate, number of tenderers, cost, time, and quality).<br><br>2. Information on contract implementation (changes in time and cost). | Information for 20 indicators of forest transparency, including<br><br>12 framework indicators (on whether the legal, policy and regulatory framework includes provisions for forest sector transparency and good governance), and 8 data indicators (on whether key documents and data on forest sector activities are published regularly). | Existing donor transfers to aid recipient governments and information on charity and foundations' donations and receipts.<br><br>These are submitted to, rather than collected by, the IATI. | The Open Contracting Global Principles encourage the disclosure of:<br><br>1. Contracts, including licenses, concessions, permits, grants or any other document exchanging public goods, assets, or resources (including all annexes, schedules and documents incorporated by reference) and any amendments.<br><br>2. Related documents such as pre-studies, standard bid documents, performance evaluations, guarantees, and auditing reports;<br><br>3. Key pieces of information concerning contract formation.<br><br>4. Information related to performance of the contract. |

| | EITI | CoST | MFST | IATI | OCP |
|---|---|---|---|---|---|
| **Information produced by the initiative** | Standardised audit reports that include both new and consolidated financial figures of revenue and payment flows (usually not previously in the public domain). | Basic information on projects throughout the project cycle (identification, procurement, preparation, implementation and completion) including some not previously in the public domain. | Standardised, harmonised existing information and new information through report cards that use these indicators. | First phase reclassified public data; the second phase involved the release of new data. Data released from agencies is standardised in line with IATI requirements. | Key information from contracts (how this is presented is not specified at this stage). |
| **Intended final user** | Not defined for the global initiative. Beneficiaries are listed as countries, companies and civil society. | Not specified. Relevant stakeholders listed include the public, media, parliamentarians and other authorities. | Forest-dependent poor people and the CSOs that represent them. | Aid recipient governments, citizens, NGOs, community-based organisations, anti-corruption activists.<br><br>Citizens in donor countries; donors and development agencies. | Governments, citizens, NGOs, community-based organisations, anti-corruption activists. |

## 3.2 Information provided

### 3.2.1 Type of information

The type of data collected can differ substantially: some TIs focus on official data such as revenue flows, whereas others include information based on perceptions of stakeholders. For instance, up to 2013, the EITI largely concentrated its efforts on collecting quantitative data[24] while others such as the MFST programme gather qualitative information such as stakeholders' perceptions of transparency and information availability. However, in the interest of making data more accessible, the new version of the EITI standard has stipulated that member countries should provide basic contextual descriptions alongside the quantitative data.

Because of the technical nature of the analysis needed to determine whether the sector is improving towards the expected outcomes, some TIs require specialists to carry out data collection and analysis. For example, CoST's assurance process uses construction experts to assess whether information is credible and if it represents good value for money. The EITI uses recognised auditing firms to analyse revenue information. As well as having the technical expertise to assess information, the use of independent ('third party') assessors contributes to the credibility of the process, which is important for both parties to the transparency initiative as well as wider stakeholders. On the other hand, MFST relies on local CSOs who are working with forest-dependent communities, believing that they are best placed to accurately capture the features that are important for affected peoples.

As Table 4 demonstrates, each TI has a particular focus for the data collected and information provided, as follows.

- The EITI collects information on company payments (taxes, royalties and other payments, including corporate and personal income tax) and government revenues, and compares them through standardised audit reports. Liberia's EITI is unique in also publishing information on contracts signed between extractive, forestry and agricultural companies and the Liberian government.

- CoST promotes the disclosure of information from publicly funded construction projects in order to enable stakeholders to hold decision-makers to account (CoST, 2013). CoST provides basic information on projects throughout the project cycle (identification, procurement, preparation, implementation and completion) based on information on the tender process and contract award, and on contract implementation (incorporating changes in time and cost).

- The MFST programme publishes information in the form of a forest transparency report card intended to compare disclosure and dissemination of information, such as forest management plans, concession allocation, revenues, and legal contraventions within and across the member countries (IDL Group, 2011).

[24] New rules introduced for the EITI in 2013 prescribe including narrative sections into the reports describing the state of the extractives sector. Although the international EITI focused on quantitative data, the amount and type of information collected could differ significantly between national EITIs.

- Although the IATI recognises the need for more information on aid flows to be available in the public domain, there is stronger emphasis on the need for this information to be standardised. The IATI sets standards and guidelines for publishing information about aid spending rather than creating a new database or an alternative to the work done by organisations such as the OECD's Development Assistance Committee (DAC) to produce statistics about past aid flows and aid activities (IATI website). It includes a common system for categorising different types of aid spending/commitments, with all participants using the same terminology and definitions so that it is easier to share and compare information, and a common electronic format designed to make it easy to share information and thus reduce transaction costs (Modernize Aid, n.d.).

- The OCP aims to make disclosure of core classes of contracting documents and data the default action for procuring agencies and companies, using information from original terms of reference, bidding documents, and contract terms and conditions. At this early stage, the OCP has not yet specified how it will present key information from contracts.

### 3.2.2 Breadth and scope of information

There is a trade-off between the accuracy of information and the amount that can be collected and analysed, given time and financial constraints (see Box on CoST below). The amount of information that is collected is based on views and decisions on what is considered important. TIs take slightly different approaches to defining what is important: the EITI sets a general principle for including all financial payments in the sector, but leaves the decision about which information is significant and relevant to include to the national level (World Bank, 2008). On the other hand, during its pilot phases, CoST decided to select a broad range of construction projects to monitor, including large and smaller projects from a range of different sectors. As it expands to cover more projects, it may need to use sampling methods to ensure coverage of major projects. Thresholds for which information is relevant are likewise decided at the country level.

The decision on what information to include can be contentious and time-consuming, and an early decision is required on whether this is negotiated between stakeholders or decided through other means. Experience from the early days of the EITI indicates that revenue transparency was one of the few issues that stakeholders could agree on among the range of issues debated during the World Bank's Extractive Industries Review (one of the precursors to the EITI). Some CSOs were pushing for a moratorium on the World Bank Group's support to extractive projects, for guarantees of free, prior and informed consent (FPIC) from local communities affected by extractives projects, and for adoption of stronger environmental, social and human rights safeguards. Revenue transparency was 'arguably one of the least contentious issues' (van Oranje and Parham, 2009) if perhaps the lowest common denominator in the discussions among stakeholders.

### How much information to collect? Experience from CoST

Negotiations around CoST in Tanzania included discussions about what types of data the initiative would collect from public procuring entities. As CoST Tanzania started before other CoST country programmes, the discussions influenced the broader standard of information collection, and informed what may be feasible in other countries.

CoST Tanzania requires the collection of 38 pieces of information proactively, and up to 27 information types for retroactive publication, which must be made available on request. Some of this information is basic and easy to provide, such as the size of project, date and location, while other types are more onerous, but considered important to the initiative (e.g. why there have been changes in the costs of a project). The list of information was drawn up through consultation with stakeholders, based on in-country experiences.

However, it is unclear whether all the items of information provided on projects are actually being monitored and used by the public. This may be due to limited awareness of the initiative, as few public reports have been produced. However, there is also a sense that some information being collected and presented in reports may be superfluous, because civil society organisations are not using that information.

*Source: CoST website and interviews with CoST stakeholders.*

#### 3.2.3 Format and presentation of data

All of the TIs aim to provide information to the public in a more harmonised and accessible form, adopting different strategies depending on the intended users. This incorporates four main elements:

- *The quality of the information presented* (accuracy and clarity of presentation). This can present a paradox for those involved in TIs; the very justification for a TI is often the lack of good-quality information and if existing information is poor, there may be little that can be done to improve it.

- *Access to the data*. This is influenced by whether databases and all relevant information are open to the intended users.

- *Ease of analysis*. A growing area of focus for TIs and similar initiatives is to ensure that data are provided in a machine-readable format. This means that data can be easily aggregated and analysed using computers without the need to translate pieces of information into usable formats. Much of the discussion in the G8 Summit centred on the need to have open source data that are machine readable.

- *Compatibility with end user needs*. The format of the information that is produced by the TI may or may not be easily understood by the intended end users, who are meant to benefit from accessing the information. For instance, lengthy, digitalised numerical or descriptive reports will not be accessible to many potential users, including affected communities with low literacy rates or even time-pressed journalists. However, data need to be made available in a format that

some intermediate users can easily use and interpret in order to communicate to other user groups.

Not all TIs have performed well in each of these areas, partly because they tailor information for different users.

CoST, for example, has had some success in using existing electronic platforms for public procurement, which has ensured that information is in commonly used formats. However, in some countries, there are concerns that information in CoST reports is not being used by CSOs that could act on behalf of end users, partly because they do not have the capacity to interpret the information.

The MFST programme has focused on making information available to its specified end users (forest-based communities) through local CSOs. It also provides report cards that are easy to understand, for international audiences. Although summary data can be compared online, it is not machine readable (although owing to the limited timeframe and amount of data released, this may not have been deemed necessary).

On the other hand, the IATI focuses on making data on aid easily accessible and machine readable (in the commonly used XML format). This is intended for intermediary users such as recipient governments and aid analysts who can then further analyse and use the data for different purposes. However, it does not provide information in formats that can be readily understood by end users – usually beneficiary groups and communities in project sites.

Likewise, the EITI has largely focused on providing information that can be analysed and used by intermediaries rather than end users, although in some countries (e.g. Liberia) outreach activities are organised through town hall presentations of findings. In several countries, the EITI faced initial challenges of low quality reports (Tisné, pers. comm.), making it difficult to use and process the data. For instance, although full contracts are disclosed in the Liberian EITI, the format in which they are published does not allow easy analysis.[25] The aim to make data machine readable is also now taking hold, but the lack of machine readability has hindered the use of EITI data (Tisné, pers. comm.).

## 3.3 Civil society engagement

Several activities are key to ensuring that citizens have the capacity to demand change based on the greater availability of information through transparency initiatives. These include activities to strengthen civil society engagement in monitoring developments in a specific sector, and the ability of (and space for) civil society to participate in the decision-making process and subsequent implementation.

[25] Although contracts are available on the Liberia EITI website in pdf format, they are not sortable. or machine readable. Some scanned copies of contracts are not searchable, and some are not available online because of size limitations.

### 3.3.1 Nature and structure of participation

#### The prevalence of multi-stakeholder groups

Most of the TIs have sought to engage civil society through the creation of multi-stakeholder groups (MSGs), with the exception of the MFST programme (see Table 5).[26] The level of success achieved by the MSGs has differed between countries and between TIs:

- At its most basic, the MSGs have provided a protected space for dialogue, bringing stakeholders around the table and creating space for discussion where none existed before. Acosta (2010) found that the EITI led to greater CSO participation in the extractives sector, a wider space for discussions on the role of natural resources within the economy, and the creation of space for dialogue between CSOs, the government and extractive companies, where CSO voices were more likely to be listened to. In some countries, such as Azerbaijan, that space had not existed before the establishment of the EITI (Tisné, pers. comm.).

- At best, MSGs have given CSOs the opportunity to exert influence at key stages: defining the objectives of a TI, selecting which information is to be gathered, and monitoring its impact. Liberia's EITI is often cited as a good example of an active civil society, working together with a proactive government, to extend and deepen the EITI beyond its basic provisions, covering mining, forestry and agriculture, and including the obligation to publish the contracts signed between companies operating in these sectors and the Liberian government. In general, in cases where CSOs were able to participate at an earlier stage in the EITI process, this has enabled them to help shape its design (Mainhardt-Gibbs, 2010).

[26] The approach of the MFST programme was to build civil society capacity to demand and monitor forest sector governance and transparency through engaging in a variety of networks, coalitions and platforms.

## Table 5: Civil society engagement in selected transparency initiatives

| | EITI | CoST | MFST | IATI | OCP |
|---|---|---|---|---|---|
| **Multi-stakeholder component?** | Yes | Yes | Not explicitly, but CSOs engaged in a variety of networks, coalitions and multi-stakeholder platforms. | Yes | Yes |
| **Intended function of multi-stakeholder group** | Provides a forum for dialogue and a platform for broader reforms along the natural resource value chain.<br><br>CSOs within the multi-stakeholder group monitor government and business reporting of revenues and royalties and provide assurance to external validators that they received full and accurate information. | Helps agree shared objectives and pursue them to improve value for money and efficiency and effectiveness.<br><br>It manages the monitoring and evaluation process. | National-level CSOs gather and publish data on the project website.<br><br>CSOs participate in multi-stakeholder platforms convened by others as one route for advocacy. | The steering committee, secretariat, and technical advisory group are all multi-stakeholder groups. | Active in working groups for developing a set of global principles and setting data standards. |
| **Composition of the multi-stakeholder group** | Government, mining and hydrocarbon companies, civil society organisations. | Government, construction companies, civil society organisations. | Not predetermined, more variable and opportunistic. | Multilateral and bilateral donors; foundations, partner countries, CSOs, aid information experts. | Donors (GIZ, the World Bank Institute), international CSOs and another transparency initiative (the secretariat of CoST). |

However, Aaronson (2011) found that, in many cases in the EITI, governments were not providing participating CSOs with adequate information to take an active part in meetings and decision-making. In around half of implementing countries, the government did not treat CSOs as legitimate partners, which meant they were unable to exert much influence on the EITI process. In Mozambique, for example, CSO representatives on the national steering committee expressed concern about the limited scope of EITI application, but were unable to effect change (Castel-Branco, pers. comm.). Two of the three CSO representatives eventually pulled out[27] of the national steering committee in protest at the level of transparency of discussions and what they perceived as the government's limited willingness to address civil society concerns (Castel-Branco, pers. comm.; Ossemane, 2012a).

#### Selecting participants

Many TIs encourage the different constituent groups to select their own representatives. Indeed, there is a general rule in the EITI that each constituency should select its own representatives for both international and national institutions. Some countries, such as Liberia, have additional steps, including approval by the country's executive, which could raise concerns about CSOs having to be perceived as 'government-friendly'.

While the basic principle of self-selection appears simple and neutral, in practice, it can throw up some difficult issues. In Mozambique's experience with the EITI, some stakeholders felt that the process of selecting CSOs was rushed and did not establish sufficiently systematic selection criteria. Another concern was that not all CSO members were truly neutral and independent from the industry they were meant to be governing: one of the three CSO representatives was drawn from the Association of Mining Engineers, whose members are employed by the mining industry.[28]

A broader difficulty is finding CSOs that are representative of the affected target population. This issue arose in CoST's multi-stakeholder groups where the lack of CSOs working on corruption in the construction sector meant that these positions were typically filled by organisations that had a general anti-corruption mandate, or contractors' associations. For instance, in Tanzania, one anti-corruption organisation that is active in multiple fora (including as the CSO member representative on the EITI) also serves on the CoST multi-stakeholder group.

#### Other mechanisms for engaging civil society

Outside of the multi-stakeholder groups, other mechanisms have been used to engage civil society in debates associated with transparency initiatives. Some countries (e.g. Liberia, São Tomé, Nigeria and Ghana) organised public fora and seminars to encourage citizens to participate in discussions and debates about extractive issues and governance.

[27] The two CSOs concerned, CIP (Centro de Integridade Pública) and IESE (Instituto de Estudos Sociais e Económicos), published a letter in Mozambique's main newspapers explaining why they had decided to leave the national steering committee.

[28] Personal communication with Carlos Castel-Branco.

In the case of the MFST programme, direct support is provided to national-level CSOs. Grants are allocated to CSOs working with forest-dependent peoples' to 'empower communities and CSO/NGOs to identify their own needs for organisational development as well as supporting local level advocacy activities' (IDL Group, 2011), and a core function of the national CSO is to engage on policy processes in order to influence sector reforms towards greater transparency and more effective systems of accountability, using the report card to assist with prioritising where to focus its efforts.

### 3.3.2 The role of international CSOs

Support provided by international networks of CSOs and organisations that are directly or indirectly affiliated with the initiative has been important for the success of TIs. Of the five TIs researched for this study, the EITI was the clearest example of this: the Publish What You Pay (PWYP) coalition and the Revenue Watch Institute (an independent policy institute) provided coordinated active support for CSOs in countries that had signed up to the EITI (see box).

A similar role was played by Publish What You Fund (PWYF) in the case of the IATI. PWYF is a coalition of CSOs advocating for better governance, aid effectiveness and access to information on aid. Launched at the 2008 Accra High Level Forum on Aid, PWYF is funded mainly by the Hewlett Foundation and the Open Society Foundations (formerly the Open Society Institute).

#### The Experience of Publish What You Pay

The Publish What You Pay (PWYP) coalition was founded in 2001-2002 by a small, ad hoc group of London-based NGO representatives[29] to tackle the 'resource curse' by campaigning for greater transparency and accountability in the management of revenues from the oil, gas and mining industries. It was formally launched with the support of the Revenue Watch Institute (formerly the Open Society Institute's Revenue Watch Programme). Since then, it has grown to become a global network spanning more than 65 countries with over 350 community organisations, international NGOs and faith-based groups, and more than 25 national civil society coalitions.

PWYP's work initially focused on Angola, based on findings and policy recommendations from the work of Global Witness, which had highlighted the role of oil companies and private banks in Angola's civil war and the problems created by the lack of transparency on revenue flows. In 2001, as a result of Global Witness's appeals for greater transparency to the heads of oil companies operating in Angola, BP agreed to publicly disclose information on total net production, aggregate payments to the Angolan state-owned oil company (Sonangol), and total taxes and levies paid to the Angolan government.

The Angolan government reacted negatively to this, threatening to withdraw BP's licence, and BP subsequently backed down from its commitments on transparency. This incident brought the revenue transparency issue to the attention of the world

[29] Global Witness, Transparency International, Open Society Institute, Oxfam GB, Save the Children UK, and CAFOD.

media at a time when transparency and good governance were emerging as priorities for many international institutions for various reasons:

- Research was being published on the problems caused by corruption, mismanagement of resources, and violations of human rights in oil- and mineral-rich countries.
- Corporate social responsibility (CSR) initiatives were putting more pressure on companies to be accountable to local communities and shareholders.
- Multi-stakeholder groups were being used as a platform for debate in other initiatives, such as the Kimberley Process for diamonds, and the Voluntary Principles on Security and Human Rights.

Perhaps most importantly for the launch of the PWYP and the EITI, in 2000, the World Bank Group launched a review of its support to oil, gas and mining investments. This was undertaken in response to civil society groups' concerns about the socioeconomic and environmental impact of the Group's activities in the extractives sector (IFC website). The Extractive Industries Review was 'instrumental in compelling the World Bank Group and extractive companies to adopt and implement a strategy for improving revenue transparency' (van Oranje and Parham, 2009: 39).

PWYP played a catalytic role in putting resource revenue transparency high on the agenda of governments, companies, investors, donor agencies and international organisations, and in establishing the EITI. The coalition emphasised civil society participation as a central feature of implementation of the initiative. PWYP also played a central role in the development and enlargement of the EITI after its launch, and coalition members were influential in obtaining the support of more governments, companies and other civil society groups for EITI.

PWYP has been critical in holding EITI stakeholders accountable for the implementation of their commitment to increase transparency of payments and revenues. As well as playing an advocacy role at international level, PWYP has supported members with capacity-building and advocacy at regional (Africa) and national level, and has supported the establishment of national civil society coalitions. Depending on the country context, this involves proactively reaching out to local groups to encourage participation in the campaign and to stimulate the creation of national coalitions or responding to local requests for assistance.

*Source: van Oranje and Parham, 2009*

## 3.4 The debate on country coverage

One of the debates on TIs is whether they should have a high accountability bar, covering a small number of countries, or whether to start with a broad range of countries, and gradually select members and accountability thresholds, cajoling members into a more workable, progressive effort (Tisné, pers. comm.).

Starting small may allow for more transformative change to take place and create the sense of belonging to a 'progressive club'; setting the bar too low erodes this as there are likely to be many more stakeholders involved and may allow some countries to engage with the process in a tokenistic rather than meaningful way, as

some have judged to be the case with the EITI (O'Sullivan, pers. comm.), This weakened the EITI's image as a 'club of reformers'.

However, starting small can mean losing the opportunity to reach and engage with a wider range of stakeholders, laying the foundations for gradual but meaningful change. The Open Government Partnership, another transparency initiative, started with a very broad approach: a low entry bar was set, which means the initiative now faces a considerable challenge in taking a more progressive direction (Tisné, pers. comm.).

Even where an initiative starts small, constraints on institutional capacity and significant differences between countries can make it difficult to scale up. CoST started with a pilot involving eight countries that were at different stages of development, with very differing political economies. While this provided a broad base for learning, it also produced a large number of issues that the small implementing team struggled to deal with.[30]

## 3.5 Institutional framework and modalities of existing transparency initiatives

Transparency initiatives differ in their organisational structure, their presence at international and national levels, and their reliance on different mechanisms to carry out work. Although some of these differences may come down to how long each initiative has been operating and how well funded it is, some are also due to the level of contestation of the subject they deal with and how they aim to address governance.

Table 6 gives details of the structure of the five TIs studied for this report. Three (EITI, MFST and CoST) have institutional structures at the national level as well as the international level. As EITI and MFST deal directly with the management of national resources by the state, there is a clear rationale for stronger emphasis at the national level. Similarly, CoST has a stronger emphasis on country-level decision-making, which it claims is necessary because of country-specific differences in the construction sector. On the other hand, the IATI only has international-level institutions because its focus is confined to a data standard for reporting, and is not aimed at addressing national governance processes.

Although the EITI and CoST have institutions at both international and national levels, they have different functions and authority. Overall, the EITI is more prescriptive, with more powers retained at the international level, vested in the International Board and secretariat, which approve country membership and set out the requirements that countries must meet to become compliant with the EITI. The Board appoints the validator (who carries out the country validation against the EITI standard) and provides standard terms of reference for the independent administrator (who reconciles information from different sources to produce the EITI reports). The standard states that all substantive operations in the country must be included in the scope of the EITI but leaves responsibility for defining these to the national-level multi-stakeholder group.

[30] Source: interviews with CoST team members.

CoST, on the other hand, is more flexible and 'country centred'. The International Board does not set high or binding requirements for country membership, and there is currently no scope for suspending or de-listing countries. National-level multi-stakeholder groups decide which projects and procuring entities are included in the initiative'. There is a list of information for disclosure drawn up by the initiative; however, international institutions do not prescribe the frequency or other characteristics of the reporting process. The national multi-stakeholder group appoints the assurance team and its work plan and approves its reports.

## Table 6: Institutional frameworks and modalities

| | EITI | CoST | MFST | IATI | OCP |
|---|---|---|---|---|---|
| **Type of initiative, length of operation and source of funding** | Public–private partnership, funded by a multi-donor trust fund overseen by the World Bank. It was announced in 2002 and is open ended. | Donor, multilateral and nationally funded long-term programme (15-20 years after establishment in 2012). | Donor-funded, four-and-a-half-year project implemented by Global Witness (2008-2013). | Multi-stakeholder initiative launched in 2008, with funding until at least 2016. | Currently a campaign governed by a steering group working towards formalisation. |
| **International and national institutional structures** | At the international level, it has a board made up of implementing countries, supporting countries, civil society organisations, industry and investment companies, and has a full-time secretariat based in Norway.<br><br>National-level EITIs have different structures, but usually have a multi-stakeholder working group as a governing body and a secretariat. | At the international level, it has an interim multi-stakeholder board and a UK-based secretariat.<br><br>National-level programmes have adopted different legal structures. Registering as an independent legal entity is an attractive option, but only the Philippines has been able to do so. As MSGs need a legal identity to undertake certain functions to effectively govern programmes, many have relied on national construction councils. | MFST is a programme under the ambit of a DFID fund expressly designed to 'strengthen the demand side of good governance' (2006 DFID White Paper). Global Witness acts as the project lead and coordinates internationally. It has CSO partners in all the project countries, which are responsible for local implementation. | At the international level, it is governed by a steering committee of donors, partner countries, foundations, CSOs and aid information experts. It also has a multi-stakeholder secretariat.<br><br>There are no national-level institutional bodies that process or discuss data. | At the international level, it has a multi-stakeholder steering group. |

Table 7 provides an overview of the division of activities in these two TIs.

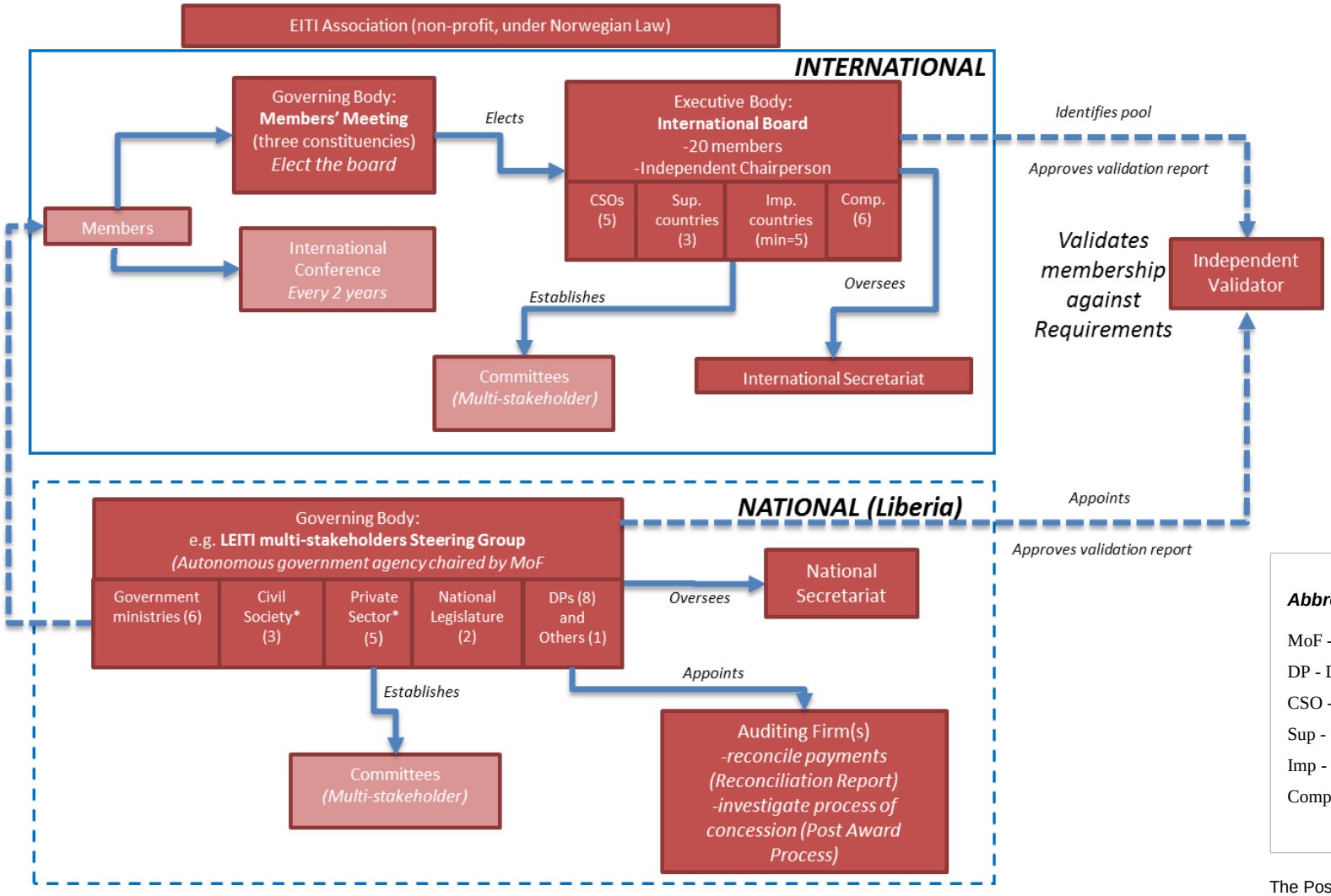
## Table 7: International and national-level institutions in the EITI and CoST

| | EITI | | CoST | |
|---|---|---|---|---|
| **Level** | International | Implementing country | International | Implementing country |
| **Development and adoption of standards** | Board establishes international principles and requirements; minimum information needed in reports. | Multi-stakeholder group (MSG) decides materiality thresholds for size of company; inclusion of financial flows; sets extensions to the scope (e.g. Liberia). | Board establishes international principles; essential features, and minimum information needed in reports. | MSG decides what projects to include; materiality thresholds for size of company; inclusion of financial flows. |
| **Membership and validation** | Reviews candidate application (board and secretariat); sets deadlines for initial and follow-up validation and first report; appoints validator;* sets corrective actions; suspension and de-listing. | The government decides to join; submitting application (jointly with MSG). | Board solicits countries, responds to countries' applications, and jointly decides on scope of CoST. | Government or CSOs decide to sign up to the country, and apply with an implementation plan. |
| **Reporting process** | Board selects standard ToRs for the independent administrator's activities. | MSG approves all reports and selects independent administrators; maintains a work plan*. | None identified. | MSG selects assurance team and approves reports. |

**Changes to the EITI brought through the introduction of the new EITI standard in 2013. Under previous rules implementing countries could appoint the validator and the work plan was not strongly emphasised.*

Figure 3 presents the key institutions involved in governing the EITI at the international level and at the national level, using the example of Liberia. The box that follows describes how the EITI is organised at these different levels to carry out its work and avoid conflicts of interest.

## Figure 3: EITI governance structure




***Abbreviations used:***

MoF - Ministry of Finance
DP - Development Partners
CSO - Civil Society Organisations,
Sup - supporting
Imp - implementing
Comp - companies

### Institutional structure of the EITI

The EITI's organisational structure has evolved to balance representation by different constituents, and has clear linkages between international and national-level initiatives, and specific rules and institutions that govern it.

**International level**

At its highest level, the EITI Association is registered as a non-profit body in Norway, where its secretariat is based. The apex governing body is the **Members' Meeting**, which meets on a biennial basis and elects members to the **International Board**. Members are divided into constituencies, depending upon whether they represent civil society organisations, governments or companies. Each constituency decides on the process to elect its representative board members and alternates to the board. EITI rules determine how many board seats each constituency has, how members are replaced and how voting procedures occur. As well as general meetings, the board can create committees to examine and decide on specific issues relevant to the EITI. Committees require representation from all constituencies.

The Board also oversees an **International Secretariat** that is responsible for the day-to-day running of the EITI.

One of the main tasks of the Board is to oversee and sign off on the processes that see countries become EITI candidates and graduate from being candidates to being EITI-compliant. It selects independent companies to carry out third party verification of a candidate country's compliance with requirements.

**National level**

The structure of the national-level EITI institutions often resembles that at the international level, with some differences that reflect the political realities on the ground. In the case of Liberia, the apex governance institution – the **Multi-Stakeholder Steering Group** – is made up of government ministries, CSOs and companies, but also includes representatives from parliament, donors and a tribal council. Although CSOs and companies are self-nominating, their appointment is signed off by the President. A **Secretariat** oversees the day-to-day running of the LEITI, and is closely involved in processes that the EITI undertakes. The Steering Group was responsible for appointing companies to carry out validation procedures to ensure that the country adheres to the rules to become EITI-compliant, and for subsequent audits.

In Liberia, the EITI produces two types of reports: a reconciliation report that reconciles the payments made by companies with those received by government; and a post-award audit, which retroactively examines whether contracts agreed in sectors covered by the LEITI were carried out in line with the law. This latter process potentially holds important lessons for a land transparency initiative.

*Source: EITI website and interviews.*

## 3.6 Funding of existing transparency initiatives

Initial funding for transparency initiatives has largely come from public and private Western donors. For the EITI, CoST and MFST, initial seed funding from DFID

financed the pilot activities. A key partner in establishing the IATI and running the secretariat – aidinfo – received funding for this work from DFID (aidinfo website).

Attempts to diversify funding sources for the TIs that have moved past their initial phase (EITI, IATI and CoST) have met with mixed success:[31]

- The IATI receives funding for its (relatively low)[32] costs for the secretariat and technical advisory activities from Finland, Ireland, Netherlands, Germany, Australia, Spain, Sweden and Norway (IATI website).
- Although significantly more expensive than other TIs, international political support after the pilot phase provided the EITI with a wide base of funders. These include several Western governments, as well as oil, gas and mining companies. However, the majority of funding still comes from supporting country governments.
- By contrast, CoST has faced difficulties in expanding its pool of supporters in the years following its pilot phase, and efforts to secure funding are still ongoing (Provost, 2013). The box below gives further details of the different experiences of funding the EITI and CoST.

### Funding transparency initiatives

#### The experience of the Construction Sector Transparency Initiative (CoST)

The UK Department for International Development (DFID) set up the original Construction Sector Transparency Initiative (CoST) pilot programme in May 2008, providing £3.4 million to run programmes in seven countries up until December 2010 (UK Parliament, 2011). Following completion of the pilot phase, the World Bank provided $1.5 million to finance CoST from 2011-2013 (CoST website). This funding went to the International Secretariat for multi-stakeholder group operations, coordination and management, the assurance services, monitoring and evaluation, and capacity-building for civil society. GIZ (German Development Cooperation) has also subsequently provided support.

Following the pilot phase, some participating countries have continued to finance programme activities by incorporating them into national systems. For instance, systems promoted by CoST Philippines have been incorporated into the government procurement services (CoST website). There has also been some success in sharing costs with host organisations (e.g. for facilities and staffing), and attracting funding from other donors for national-level programmes (CoST website

[31] Funding for the MFST projectprogramme provided under a grant from DfID'sDFID's Governance and Transparency Fund ended in 2013. The OCPOCP, which is hosted at the World Bank Institute, is still in its pilot phase.

[32] Budget sources indicate that costs for these activities amounted to around £600,000 per year (IATI website).

and Petter Matthews, pers. comm.). However, the costs for the running of the international programme – estimated at $4 million per year – still need to be met by other funding sources (Provost, 2013). The costs for starting new country programmes are also high, at between $150,000 and $500,000 per year (Provost, 2013). To address these funding challenges, CoST aims to attract more support at the national level, part of which is used to cover costs of technical services provided by the International Secretariat (Petter Matthews, pers. comm. ).

## The experience of the Extractive Industries Transparency Initiative (EITI)

The EITI's pilot phase was largely funded by DFID, which spent around £4.5 million on secretariat and pilot activities between 2002 and 2007. Since 2007, funding for EITI activities at the international and national level has come from several sources.

**International management**

A set of principles for funding the EITI have been agreed by its members. The government of Norway, which hosts the Secretariat, is the single largest donor (EITI website). The remaining costs are shared equally between supporting countries and international development institutions, and private companies, with each group paying the same amount. However, in reality, supporting countries and IDAs have contributed more than 50% in all years (EITI website), either directly or through a Multi-Donor Trust Fund (MDTF) housed at the World Bank.

The number of organisations that make financial contributions to the EITI has risen over the years to 54 in 2012, the largest number of which are oil and gas companies that pay between $10,000 and $60,000 per year (EITI website). While civil society organisations provided some financing in 2008, there have been no contributions for the international institutions since then. Implementing countries must meet the costs of validation to become an EITI member themselves (EITI, 2013).

**National-level activities**

Financing for national-level activities is shared between the government and grants from other donors. The World Bank's MDTF finances activities in some, although not all countries. For example, in Liberia, the African Development Bank is the largest external donor (LEITI website). CSOs in implementing countries have largely received funding from outside sources, including donors and private foundations; The Soros Foundation has provided financial support for activities in several countries.

The broad understanding of the problems and potential for addressing transparency in the extractives sector has been an important factor in attracting a diversity of funding sources to pay for the EITI. However, the wealth in the industry has also meant that the EITI and supporting governments have been able to target many different sources to provide funds, allowing the EITI to expand its country membership base and the number of activities it conducts. Although CoST has been able to attract endorsement from construction companies, it has not been able to tap into these for financial support. The extractives industry may be fairly unique in having companies that can provide significant amounts of money on a regular basis; other transparency initiatives may struggle to replicate its funding model.

# 4 Implications for a land transparency initiative

This chapter sets out some of the key issues that a land transparency initiative (LTI) would need to take into account when considering what it wants to achieve and how to achieve it, drawing on the experience of the TIs presented in the previous chapters.

## 4.1 Issues and possible aims of a land transparency initiative

To what extent could an LTI draw on the scope and aims of existing TIs to form its own objectives?

### 4.1.1 Issues

Some of the main concerns arising from large-scale land acquisitions are similar to those driving the TIs reviewed (see Figure 1 on p.9): lack of information in the public domain on land acquisitions and their impacts; the opacity of the deals that underpin the acquisition; lack of consultation with and participation by affected communities in negotiating the land deals; and the low levels of benefits generated from the investments (IF Campaign, 2013b; G8 Communiqué, 2013). These and other problems related to specific deals, and large-scale land deals more generally, have been discussed extensively within the literature.[33]

### 4.1.2 Possible aims and scope

What could be expected to result from resolving these issues and what could be the main focus of an LTI? In the transparency initiatives analysed, reduced corruption is expected to generate increased revenues and better application of the revenues (EITI), and more efficiency and greater value for money (CoST). Rebalancing power relations is expected to strengthen demand for a fairer share of resources by host countries and their citizens (MFST, IATI).

From the public discussions on land arising from the IF Campaign and the G8 Communiqué, it appears that there is basic agreement that an LTI would share

[33] See Cotula (2011) for a review of contracts for large-scale land deals, and Global Witness et al. (2012) for a discussion of the importance of contract disclosure in land deals.

concerns about developmental outcomes with some existing TIs[34] and that it should base its approach on the Voluntary Guidelines on the Responsible Governance of Tenure. The key aims of an LTI are therefore likely to be twofold: **to improve the impact of land investments on persistent poverty in developing countries**; and to **increase security of tenure and transparency of land governance in line with the Voluntary Guidelines**.

## 4.2 How could a land transparency initiative achieve these aims?

A starting point for an LTI at international level could be to concentrate on collating, checking and publishing data on large-scale land acquisitions. The capacity to do this would need to be established at national level. An ambitious LTI could attempt to set a global standard for transparency in the land sector to which members would have to adhere, and include sanctions for non-compliance, similar to the approach taken by the EITI.

The types of data that an LTI could mandate publishing may differ by country depending on prevailing disclosure practices. However, an ambitious LTI could include information on key elements of the contract agreed with an investor, including the location, size, duration of lease, benefit-sharing arrangements, and what pre-contract assessments and consultation processes took place, in line with relevant national or international legal or voluntary requirements. To contribute towards the aim of strengthening tenure of existing rights holders, information on changes in the legal status of lands affected by the investments could provide an indication of how tenure security is enhanced or worsened by the investments.

One of the key issues to agree on is at what stage different pieces of information are made publicly available. The pressure to increase the scope of the EITI and the launch of the OCP imply that there is an appetite within such initiatives for influencing decisions further back in the value chain, when contracts are negotiated, and this could usefully be a focus of a global or nationally based LTI. This is in line with the Voluntary Guidelines and the G8's intentions: the draft guide to implementing the provisions on agricultural investment contained within the Voluntary Guidelines envisages 'transparency, meaningful participation, assessments and monitoring… during the three phases of an investment project, i.e. contract negotiations, project implementation and project end respectively post-project period' (FAO, 2013: 147). The G8 Communiqué stated that the G8 will 'support greater transparency in land transactions **including at early stages** [our emphasis]' (G8 Communiqué, 2013: para 44).

However, setting standards for transparent negotiation of contracts may be resisted by countries whose processes do not provide for wide participation in contract negotiation, and by companies who believe that providing more information is against their best interests.

A less ambitious entry point could therefore be to set out minimal and best practice standards for providing information on processes of land transfers (including large-scale land acquisitions), and the public disclosure requirements for land-related activity (e.g. reports on numbers and sizes of transfers on a yearly basis). This may

[34] Particularly with the EITI, MFST and IATI

provide some additional information on how much data governments provide and also generate pressure to publish more information that is currently not in the public domain in some countries. This may also be attractive if a standard could be applied to both developed and developing countries, limiting the scope for criticism that the initiative requires a higher standard of transparency for the latter compared with the former. However, it falls short of providing core information on certain terms in contracts, which some stakeholders argue is critical.

### The Voluntary Guidelines on the Responsible Governance of Tenure, and transparency in the land sector

The guiding principle of the Voluntary Guidelines developed by FAO is that 'Responsible governance of tenure… promotes sustainable social and economic development that can help eradicate poverty and food insecurity and encourages responsible investment' (preface). The Guidelines spell out the need for land-based investments to result in positive developmental impacts, to be 'consistent with the objectives of social and economic growth and sustainable human development focusing on smallholders' (para 12.3) and identify specific outcomes, such as promoting and securing local food production, and creating employment (para 12.4).

The Guidelines include a focus on the transparency of tenure systems, seeking to enhance transparency and improve the functioning of tenure systems, and strengthen the capacities and operations of organisations concerned with tenure governance, as well as to promote cooperation. 'States and non-state actors should endeavour to prevent corruption with regard to tenure rights. States should do so particularly through consultation and participation, rule of law, transparency and accountability' (extract from para 6.9).

They aim to protect the rights of existing landholders and guard against 'undesirable impacts on local communities, indigenous peoples and vulnerable groups that may arise from, inter alia, land speculation, land concentration and abuse of customary forms of tenure' (para 11.2).

They stipulate that states and investors should recognise and protect legitimate tenure rights, safeguarding against dispossession of such rights (paras 12.4, 12.6, 12.12), including states investing or promoting investment abroad (para 12.15).

The Guidelines propose that states and other parties promote transparency in the land sector by ensuring that 'information on market transactions and information on market values are transparent and widely publicized, subject to privacy restrictions' (para 11.4). Another mechanism or tool is that 'States should establish appropriate and reliable recording systems, such as land registries, that provide accessible information on tenure rights and duties in order to increase tenure security and to reduce the costs and risks of transactions' (para 11.5).

They also spell out guidelines for the process of large-scale land (tenure rights) transactions, emphasising that these should be conducted in a participatory and informed manner, with contracting parties providing comprehensive information to those involved, ensuring that the resulting 'agreements are documented and understood by all who are affected' (para 12.11).

Finally, the Voluntary Guidelines highlight the need for 'different parties to conduct prior independent assessments on the potential positive and negative impacts' when large-scale, land-based investments are involved (para 12.10).

*Source: FAO, 2012*

At country level, stakeholders may place equal or higher priority on underlying issues, such as reform of legislation, the need for formalised recognition of individual or group land rights, and the processes that are associated with this (for example, mapping and providing documentation). The question of whether an LTI would cover the full range or only a subset of these issues would need to be decided. One way of looking at this is whether an LTI would focus on transparency of the status of land ownership, or the processes for exchanging land, or both. In Tanzania, a land transparency partnership agreement developed with the G8 included both, focusing on 'land tenure conditions and processes, and land governance'. This may be an effective starting point for the involvement of other countries, but would need further discussion.

## 4.3 Monitoring and evaluation: some dos and don'ts

What does our review of the experience of the selected five transparency initiatives tell us about defining indicators of success and establishing a monitoring system? One clear message is that establishing a monitoring framework during the design phase of the initiative can help strengthen the logic for the initiative and identify any gaps in its theory of change. Setting out intermediate and final outcomes and impacts, and indicators to measure these, is critical to measuring success. However, setting up a robust monitoring framework when features of the transparency initiative are untested can be premature. Questions about whether the indicators will be used for compliance purposes, and how members will be sanctioned if they fall short of them, also need to be given full consideration.

Identifying and formalising indicators from the outset is important to ensure that monitoring is a clear component of an LTI. This can clarify the ownership and responsibilities of monitoring, and crystallise the aim and scope of the overall initiative.

As well as measuring progress towards specific outcomes (amount, quality, frequency and comprehensiveness of information that is made public), it is important to establish a counterfactual to measure whether the LTI has made a difference. This could use a comparison with other countries with similar features (e.g. similar levels of economic development, distribution of land and legal frameworks) that are not involved in the transparency initiative, or other sectors within the same country (e.g. a difference in methodology), or by evaluating changes over time.

In practice, different groups may monitor the implementation of an LTI on their own initiative. Ensuring that criteria for success that reflect what is important to those affected by the issues are captured and occupy a prominent weighting in evaluation can help ensure that local-level impacts are not bypassed. Local CSOs may well be best positioned to carry this out. However, it could be important for the LTI to have its own monitoring component, as it is in the best position to gather information on implementation and can use monitoring information to provide feedback directly into processes. Having its own monitoring output can also provide a baseline against which other groups monitoring implementation and success can compare their views and findings, which can promote further discussion and interest in the issue.

### 4.3.1 Indicators of success

The indicators of success chosen for an LTI will depend on the aims that are agreed. However, it will be important to clarify the basic indicators as early on as

possible in the process to link them to the desired impact. The Voluntary Guidelines on the Responsible Governance of Tenure are likely to be an important reference point for developing suitable, widely approved indicators of success.

Do existing TIs provide indicators that could be transferred to an LTI? As discussed in Chapter 2, this has been a challenge for many TIs, including the EITI. However, the MFST programme could provide a useful reference point, particularly in the two-stage approach it takes to measuring success: first, using sector-specific governance indicators to assess the state of governance in each country's forestry sector; then, using indicators of the programme's success in moving towards those indicators to determine if the mechanisms adopted by the initiative are successful.

The World Bank's Land Governance Assessment Framework (LGAF) (see box below) could be taken as a starting point for developing locally appropriate framework and data indicators, while the MFST programme's approach to evaluating different programme components could be drawn on to provide options for measuring the success of a land transparency initiative in improving developmental outcomes and protecting rights – for example, an increase in the quality and quantity of information on large-scale land acquisitions available in the public domain; and stronger civil society coalitions producing high-quality analysis and effective joint statements.

Perceptions of a transparency initiative can also be important for its ongoing credibility and support. Monitoring awareness of, and attitudes towards, the transparency initiative could be used as an important measure of its success. Finally, indicators of success also need to be process-based, and monitor how outcome-based indicators are implemented.

### LGAF indicators for good land governance for large-scale land acquisition

- Communal land is mapped and rights to it are registered.
- Conflict resolution mechanisms are available and work quickly and effectively.
- Land use restrictions can be identified (and have been checked).
- Public institutions in the sector perform their functions effectively.
- Incentives for investors are clear, transparent, and consistent.
- Mechanisms to share benefits from investments with communities are available and applied.
- Land transfers are negotiated directly with land users and properly documented.
- Key parameters of project design and implementation are available publicly.
- Approval processes are transparent and efficient.
- Social and environmental safeguards are clearly identified and adhered to.
- Compliance is regularly checked.
- Avenues for both parties to lodge complaints are clearly understood.

*Source: adapted from* *http://siteresources.worldbank.org/INTLGA/Resources/LSLA_Scorecard_June_2013.pdf*

## 4.4 Selecting data

Deciding on the data that an LTI would collect and publish should directly reflect decisions on its aims and scope. A common recognition of the aims of the LTI will therefore be a precondition to collecting the information.

Careful consideration is needed to balance the quality, variety and resource intensity of data generation. The new version of the EITI emphasises the need for data to be 'relevant, reliable and usable' (EITI, 2013) and a strict focus on these criteria will be useful to ensure that the LTI targets its goals accurately:

- *Relevance:* Given the high costs of collecting and verifying some pieces of information, stakeholders need to be clear about how each piece of information can be used and its relevance, such that non-critical information is not collected at the expense of information that is more useful. That said, flexibility to change the types of information collected may be required to ensure that the LTI continues to target relevant data.[35]

- *Reliability:* Guaranteeing good-quality data can be one of the more difficult issues for a TI at the beginning, given that the lack of reliable data is often one of the drivers for setting up the initiative in the first place. Benchmarks for an LTI may need to be set low initially, with the aim of gradually increasing the range and quality of information provided.

- *Usability:* It cannot be taken for granted that the data format used in the LTI will be widely used, so data standards should be discussed and decided on from the outset, maximising synergies with the provisions on open data agreed at the G8 Summit to ensure that data are provided freely and openly.

## 4.5 Civil society engagement

There is a strong argument for civil society representation in an LTI at an early stage, and explicitly providing a role for serious consultation that takes on board clearly articulated aims of civil society stakeholders in the process (Seufert and Suárez, 2012). Indeed, although reviews of other transparency initiatives have revealed a lack of demonstrated impact on anticipated final outcomes, there have been positive impacts on civil society participation in some countries.

Factors that may determine how CSOs participate are likely to include the space they are allocated in influencing the direction of an LTI and the resources they have to do so.

[35] In the case of the EITI, companies may be able to change when facilitation payments are made (e.g. from bonuses upon signature to bonuses at other stages). To monitor these, the EITI may need to take an approach that allows the capture of payments.

### 4.5.1 Are multi-stakeholder groups the answer?

In theory, the multi-stakeholder group (MSG) approach allows an important space for participation by CSOs and the private sector, and is widely seen to be a necessary component of any transparency initiative. It benefits the initiative by bringing the combined experience and interests of the different groups together, and allows their views to be heard. The involvement of different groups is also crucial in conferring legitimacy to the initiative, making its findings and recommendations more credible and widely accepted than if it involved a more restricted set of groups or interests (Luttrell, 2008). The Voluntary Guidelines advocate setting up MSGs, or using existing ones, at local, national and regional levels that would be responsible for implementing (and monitoring implementation of) the Guidelines, and evaluating the impact of the Guidelines on governance, food security and sustainable development.[36]

### 4.5.2 Criteria for success

However, some key building blocks need to be in place to ensure that multi-stakeholder groups are effective. It is important to clarify from the outset whether the group's function is a consultation body, or a decision-making body. This avoids false expectations of the influence that a multi-stakeholder process may have. If it has decision-making powers, clarity is needed on the breadth of its scope, and whether it has the legal mandate and executive power to make decisions that were previously within the government's remit. How it coordinates its activities with other government agencies and processes is important to ensure that its decisions fit in with ongoing processes and divisions of authority. Finally, a land transparency initiative (or any other transparency initiative) should not circumvent other forms of democratic accountability by making decisions that would otherwise be negotiated through mechanisms involving citizens and the state (Luttrell, 2008). Finally, the threat of sanctions such as expulsion for non-compliance with LTI rules may strengthen the hand of the MSG to make demands for more transformative changes.

Participation by different groups needs to meet several criteria to serve the effectiveness and credibility of multi-stakeholder groups. For an LTI to be seen as legitimate, it is important that the participants are representative of the final beneficiaries of the information, and that they have an organisational mandate and values to represent the final users in multi-stakeholder processes. This can be difficult to achieve if final users do not have strong and well-organised representation. Although it may not be possible to ensure that interests of final users and representatives are completely aligned, some steps can be taken to limit exclusion of their interests:

- Selecting CSOs to be involved in the multi-stakeholder group should use a process that is self-determined to ensure that the participating organisation is effectively independent of the influence of other groups.

- Establishing rules and independent channels of funding will be important for maintaining the independence of groups (especially CSOs) throughout the process.

[36] Clause 26.2 of the VGGTs.Voluntary Guidelines on the Responsible Governance of Tenure, 2012.

- During the running of multi-stakeholder group activities, rules of engagement, and equal and timely access to resources and information will be necessary to ensure that the playing field within the group remains level, and does not favour certain participants over others, which would compromise the group's ability to reach decisions through consensus.

An important lesson from the EITI's experience is that it is not necessary for national-level CSOs to have full capacity to engage with the initiative prior to the launch of the transparency initiative, as long as there is support from other international bodies or networks. For example, national CSOs benefited from their engagement with the international or national representation of the PWYP coalition in gaining access to knowledge and funding. In the case of land, several CSOs, such as Global Witness and Oxfam, have been advocating for greater transparency in the land sector, with CSOs coalescing around the IF Campaign. There are also public voluntary organisations, such as the Omidyar Network, which are interested in facilitating stakeholder discussions on land transparency. This could support the launching of an LTI.

The role that the International Land Coalition (ILC) could play is less clear and needs to be explored further, but it could provide a useful platform for building capacity of national members to use any information produced by an LTI.

## 4.6 Setting up a clear institutional structure

### 4.6.1 International and national-level institutions

Establishing a structure that is seen to be appropriately participative and credible, but still able to maintain progress on agreeing its aims, is an important balancing act for any transparency initiative. Most of the TIs examined have set up institutions with different functions at both the international and national levels in order to meet these different challenges, and provide checks and balances at different levels.

Even though the national level may be seen to be the appropriate level at which to make decisions, international-level institutions still have certain useful functions. As gate-keepers of the transparency initiative 'brand', international governance bodies can provide advice and exert some pressure where a national-level process is diverging from original goals or underperforming. Supra-national bodies may have a clearer mandate for setting conditions of association and can impartially judge performance against these. As they are less likely to be captured by reticent companies or governments, the international governance bodies may have more flexibility to adjust rules where needed.

However, an international body may have its own interests that can sometimes conflict with those of national-level stakeholders. For instance, to expand membership of the transparency initiative to more countries, there may be an incentive for international bodies to play down shortcomings or concerns about individual countries' compliance, which may be flagged by other stakeholders. By taking a conciliatory or lax approach towards membership status, international

bodies may be seen to undermine national-level negotiation processes.[37] Although such issues may occasionally be unavoidable, national-level processes may be more appropriate to resolve certain issues; limiting the potential for international bodies to sanction deviation from rules is important if these are to remain useful and credible.

#### 4.6.2 What might the institutional structure look like for an LTI?

Would an LTI act as a group of country-based processes, or include international-level processes and institutions?

Although international bodies may be the norm for TIs that aim to standardise processes of information generation across countries, there may be particular challenges associated with setting up an institution at international level with regard to a land transparency initiative. There are several key differences between the extractives sector (for example) and the agricultural sector in terms of the nature of the companies involved, which poses a potential challenge for deciding who could adequately represent business interests around the table to reach consensus on aims and objectives. Specifically:

- There is a more diverse set of companies investing in land-based agriculture, compared to the extractives sector, in terms of size and geographical scope.[38] This implies that agreements reached with companies at the international level are less likely to be automatically cascaded down to the national level through internal company regulations.

- In contrast to the extractives sector, key interests in the land sector are more clearly located at the national level. Although the wave of recent acquisitions includes foreign companies, the main private sector actors who are involved in land are not multinational corporations with activities in multiple countries, but rather individual companies focusing on one or two projects, many of which are national companies in the country in question.

A question also arises as to whether a core agenda for land exists at international level, around which an international institution could form. The Voluntary Guidelines do provide a set of issues that have been debated at international level. Alternatively, an international institution could focus principally on setting standards for, and facilitating the collection of, basic information on land-based investments and acquisitions.

Given the need for checks and balances between national and international levels, it could be useful to have an international institution to implement a global LTI that could, at a minimum, coordinate and set standards for information gathering and

[37] In Mozambique, civil society members of the EITI felt that, by recognising Mozambique as EITI-compliant despite the existence of (in their view) substantial outstanding issues raised by CSOs, the EITI board and secretariat had undermined the national-level negotiation process (Castel- Branco, pers. comm.).

[38] In this respect, the agriculture sector shares similarities with the construction sector, which has a similarly large numbers of companies involved, although it has a much larger number of procuring entities.

publication. Such an institution could also draw on other elements in the G8 agenda: the Communiqué presented some good ideas on sharing information on companies, taxes and profits across countries. Joining up that information across the different G8 themes would shine a light along the value chain, enabling host countries to make more informed decisions on agricultural investment and the investors that would best promote development.

An LTI may need to have substantially more diversity than the TIs reviewed when applying general provisions at **national** level. Starting cautiously with a small group of countries that share some common features in their land governance issues may also help to reveal areas where international comparison and standardisation are more feasible.

### 4.6.3 Should a separate structure be established for land?

If stakeholders agree that an international institution is necessary and desirable, would that imply setting up a new, separate institution to manage an LTI or would it be better to look at options to incorporate land transparency into existing organisations or initiatives? One option suggested has been the Open Contracting Partnership (OCP), which has a small group of civil society organisations (Transparency International, OXFAM USA, CoST Integrity Action, GIZ,[39] and the World Bank Institute (WBI) represented on the steering committee, and a set of specific focus areas, including land. Could an LTI be a part of this or would it need a separate secretariat? This question could also be applied to the implementation of the Voluntary Guidelines, which identify the Committee on World Food Security (CFS) (see box below) as the global forum for assessing progress on their implementation, and their impact and contribution to improving tenure governance (para 26.4). An immediate step would be to explore options for where to house an LTI and how ongoing processes, such as the CFS or Open Government Partnership (OGP), could support its functions.

#### Could the Committee on World Food Security monitor a land transparency initiative?

The Committee on World Food Security (CFS) was established in 1974 as an intergovernmental body to serve as a forum in the United Nations system for review and follow-up of policies concerning world food security. During 2009, the CFS underwent reforms to make it more effective by including a wider group of stakeholders and increasing its ability to promote polices that reduce food insecurity.

It aims to work in a coordinated manner in support of country-led processes that lead to food security. It is comprised of a Bureau and Advisory Group, Plenary, a High Level Panel of Experts (HLPE) and a Secretariat (based at the Food and Agriculture Organization of the United Nations (FAO) in Rome).

There are several reasons why the CFS could monitor a global LTI:

- It shares some aims with an LTI, working to promote accountability and best practice.

[39] While GIZ is actually classified as a limited company, it often plays the role of a CSO.

- It is supporting related activities to promote the Principles of Responsible Agricultural Investment (PRAI).
- It led intergovernmental negotiations on the Voluntary Guidelines on the Responsible Governance of Tenure via multi-stakeholder discussions, including participants from international agencies, civil society organisations, private sector representatives, and research institutions.
- It is perceived to be inclusive as these five categories of stakeholders are represented on the Advisory Group, which works to ensure linkages with different stakeholders at regional, sub-regional and local levels and to ensure an ongoing, two-way exchange of information.
- It is politically central within the UN food system.

However, the CFS does not appear to have a mandate to undertake monitoring or evaluation of the implementation of specific policies, such as the Voluntary Guidelines, and it is unclear whether it is interested in taking on such an institutional role (MacInnes, pers. comm.). As the CFS has a core focus on food security, which is only one of the concerns of the potential LTI, its focus might be perceived as too narrow.

Moreover, there are several concerns about whether the CFS could operate effectively in a monitoring role for an LTI. Prior to its reform in 2009, the CFS was largely seen as irrelevant. While the FAO's role of being a global hub for knowledge management in agriculture and natural resources was recognised during the evaluation that preceded this reform process, there are concerns about the level of commitment to, and awareness of, the role of the CFS by member countries. Moreover, there are challenges in terms of resources and capacity to carry out its role effectively, and concerns that it lacks the ability to respond to issues and implement programmes in an agile manner.

*Sources: Brem-Wilson, 2010; CFS 'The new structure of CFS', http://www.fao.org/cfs/cfs-home/cfs-about/cfs-structure/en/; Council Committee for the Independent External Evaluation of FAO (CC-IEE) 2007*

### 4.6.4 Funding a land transparency initiative

The experience of existing TIs, particularly the EITI, shows the importance of establishing a secure source of long-term funding that goes beyond the initial seed money needed to launch an initiative. The EITI established the principle that funding needs should be shared equally by national governments together with international development agencies, on one side, and private companies on the other.[40] In practice, the first group of funders has shouldered more than 50% of the funding.

The same system could be applied to an LTI, although development agencies may have to be prepared to take on a significant portion of funding needs over the longer term, possibly through the establishment of a trust fund. The greatest challenge may

[40] Remaining funding needs once Norway, the biggest funder, had made its contribution.

be in identifying which private companies would contribute, given the potential difficulty of deciding who should sit round the table at negotiations.

## 4.7 Should a land transparency initiative start narrow or broad?

The initial countries selected for establishing a transparency initiative are often important in determining how it is shaped. Starting with a limited number of carefully selected countries and testing the methodology and approach with these before expanding to other countries could be important to ensure that implementation of the LTI remains in line with initial expectations, and that resources are not overstretched by servicing a large number of countries and participants. Funding considerations may also be an important factor, as the costs of the programme would probably increase rapidly with each additional country involved, especially since differing national conditions may limit the potential for replication of processes and learning. Starting with a smaller number of similar countries may be the best option to properly implement LTI processes in each of these before expanding.

Two parallel processes could take place:

- Focus on a few countries for more in-depth support of the broad goals of the global LTI, tailored to specific requirements and concerns in those countries, through partnership agreements. This is an approach that DFID and other G8 countries are already implementing.

- A more iterative approach at global level, possibly with a much lower bar for the level and detail of information but with a much broader range of countries involved. Ideally, this would be seen as the start of a progressive movement towards more exacting data standards and availability.

## 4.8 Creating the momentum for change

Finally, the experience of the different transparency initiatives reviewed here underlines the importance of creating momentum through events, campaigns and pressure from different stakeholders, and capitalising on those activities to mobilise energy around a common focus. As van Oranje and Parham (2009) observed in relation to the EITI:

‘Without such a large-scale international event as the WSSD [World Summit on Sustainable Development, 2002], it is doubtful that the UK Government would have invested as much energy and as many resources as it did to ensure that EITI got up and running.’

The G8 Summit may fulfil a similar role with regard to a land transparency initiative if sufficient shared enthusiasm between key governments, CSOs and businesses can be built.

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Making the Forest Sector Transparent http://www.foresttransparency.info/

Open Contracting Partnership: http://www.open-contracting.org/

Transparency and Accountability Initiative: http://www.transparency-initiative.org/

# Appendix 1: List of people interviewed

| Name | Position |
|---|---|
| **Radhika Sarin** | Oxfam Private Sector Policy Adviser, previous EITI board member |
| **Rob Nash** | Oxfam Private Sector Policy Adviser |
| **Corinna Gilfillan** | Head of US Office at Global Witness and Board Member of EITI |
| **Martin Tisné** | Director of Policy at the Omidyar Network |
| **Carlos Castel-Branco** | Former Director of IESE, Mozambique |
| **Diarmid O'Sullivan** | Independent Researcher, previous EITI board member |
| **Sam S. Tokpah** | Head of Secretariat, Liberia EITI |
| **Petter Mathews** | Director, CoST International Secretariat |
| **John Hawkins** | Programme Manager, CoST International Secretariat |
| **Jehad Abdullah** | Multi-stakeholder Group Chair, CoST Tanzania |
| **William Kingsmill** | Principal, The Policy Practice, previous Senior Governance Adviser at the World Bank |
| **Bubelwa Kaiza** | Publish What You Pay representative on the Tanzania EITI |
| **Erica Westenberg** | EITI Policy Officer, Revenue Watch Institute |

# Appendix 2: Principles for Responsible Agricultural Investment (rai)

**Principle 1**
Responsible investments in agriculture and food systems:

- enhance people's food security and nutrition
- contribute to the progressive realisation of the right to adequate food in the context of national food security.

**Principle 2**
Responsible investments in agriculture and food systems:

- generate positive socioeconomic impacts for all, women and men
- respect international core labour standards as well as, when applicable, obligations related to standards of the International Labour Organization (ILO)
- apply, as appropriate, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

**Principle 3**
Responsible investments in agriculture and food systems:

- use, develop and regenerate natural resources sustainably
- contribute to climate change mitigation and adaptation.

**Principle 4**
Responsible investments in agriculture and food systems:

- respect cultural heritage and landscapes and traditional knowledge consistent with international agreements
- are considered legitimate by local and other relevant stakeholders.

**Principle 5**
Responsible investments in agriculture and food systems are supported by policies, laws and regulations which:

- are consistent with each other
- address all aspects of responsible investments as described in this document.

**Principle 6**
Responsible investments in agriculture and food systems are:

- supported by good governance
- implemented with meaningful consultation and participation of affected communities and free, prior and informed consent of indigenous peoples.

**Principle 7**
Responsible investments in agriculture and food systems are strengthened by:

- non-discriminatory access to justice grievance mechanisms
- fair, effective and timely mediation, administrative or judicial remedies.

**Principle 8**
Responsible investments in agriculture and food systems are based on independent, transparent and participatory assessment of their potential impacts on food security and nutrition, societies, economies, tenure rights, environments and culture before, during and after each investment, with mechanisms for regular review.

All actors involved in investments in agriculture and food systems are accountable for their decisions, actions and the impacts thereof.

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