

# The development of the Extractive Industries Transparency Initiative

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Transparency in the extractive industries is no longer exceptional. It is becoming the norm. This is a relatively recent development, and the Extractive Industries Transparency Initiative (EITI; <http://www.eiti.org>) has played a leading role in mobilizing governments, industry and civil society in advancing this agenda. This article reflects on the development of the EITI and explores its potential to contribute to national debates about the management of the extractive industries. The work by the Nigerian EITI (NEITI) is an example of how information about the revenue flows from the sector can help stimulate debate and reform. As the EITI grows, there is a need to strengthen our standard, incentivize innovation and recognize achievement. A central challenge remains: how to harness transparency to promote accountability. There is a rising tide of data, but more needs to be done to make it useful. The EITI has made a good start, and the EITI movement needs to seize the opportunity to use EITI to encourage deeper reform in the management of the sector.

## 1. The development of the EITI

In the late 1990s and early 2000s, there was growing international recognition and attention to the 'resource curse'. Terry Lynn Karl,<sup>1</sup> Jeffrey Sachs,<sup>2</sup> Joseph Stiglitz<sup>3</sup> and Paul Collier<sup>4</sup> among others highlighted that the potential benefits of natural resource wealth were not being realized, and paradoxically were routinely associated with increased poverty, conflict and corruption. The problems included but went beyond the phenomenon of 'Dutch Disease' (ie currency appreciation and the decline in non-resource sectors). Other common effects included revenue capture by elites who did not face the normal accountability that results from the imposition of taxes on the population, the failure of tax systems to ensure fair revenues were paid and the exacerbation of regional and community tensions. The range of governance challenges that needed to be addressed included fair and efficient systems for licensing, bidding, contracting,

\* EITI Chair. This article is up to date to 8 November 2013.

<sup>1</sup> TL Karl, *The Paradox of Plenty* (1997).

<sup>2</sup> J Sachs and A Warner, 'The Curse of Natural Resources' (2001) 45(4-6) *European Economic Review* 827-38.

<sup>3</sup> M Humphreys, J Sachs and J Stiglitz, eds, *Escaping the Resource Curse* (2007).

<sup>4</sup> P Collier and A Hoeffler, 'On Economic Causes of Civil War' (1998) *Oxford Economic Papers* No 50, 563-73; P Collier and A Hoeffler, 'Greed and Grievance in Civil War', 26 April 2000, Washington, DC: World Bank, <<http://worldbank.org/research/conflict/papers/greedhtm>> accessed 8 January 2014.

revenue collection, auditing, local content and public spending. The environmental and social impacts of these industries were also major causes of complaint. It was widely recognized that there was no single reform that on its own could effectively address all of these problems. However, a common conclusion was that greater transparency and dialogue between stakeholders must be part of the solution.

The academic analysis was complemented by the work of journalists and campaigners, including Global Witness and Oxfam America. International financier George Soros established a 'Revenue Watch' programme under his Open Society Foundations to investigate the flow of funds from oil companies to governments in the Caspian region. NGOs stepped up their efforts, campaigning for laws that would compel companies to report their payments to governments, particularly in vulnerable developing countries. The civil society campaign slogan of 'Publish What You Pay' (PWYP) was drawn from a Global Witness report, 'A Crude Awakening'.<sup>5</sup> Launched in December 1999, it focused on the opaque mismanagement of oil in Angola. The report concluded by calling on the operating companies to adopt 'a policy of full transparency [in] Angola and in other countries with similar problems of lack of transparency and government accountability'.<sup>6</sup>

Responding to the campaign in February 2001, British Petroleum (BP) published the signature bonus of US \$111 million it paid to the Angolan government for an offshore licence, and committed to publish more. This sparked a strong reaction from the Angolan Government. In his 2010 memoir, 'Beyond Business', Lord John Browne, then Chief Executive Officer of BP, recalled how he received a cold letter from the head of the Angolan national oil company, Sonangol, stating that, '[I]t was with great surprise, and some disbelief, that we found out through the press that your company has been disclosing information about oil-related activities in Angola'. The backlash and threats from the Angolan government, led Lord Browne to conclude 'Clearly a unilateral approach, where one company or one country was under pressure to "publish what you pay" was not workable'.<sup>7</sup>

The oil companies argued for a shift away from company reporting, as sought by PWYP and others, to reporting by governments, in order to reduce conflict with host governments. If company reporting was to be required they wanted a global effort to level the playing field that required all companies operating in a country to disclose so that those that embraced transparency would not be at a competitive disadvantage.

The UK Department for International Development (DFID) convened a series of meetings of government, industry and civil society representatives. There was agreement that it would benefit all parties if some kind of reporting standard should be jointly developed. At a conference in London in June 2003, a Statement of Principles<sup>8</sup> to increase transparency of payments and revenues in the extractive sector was agreed. These 12 EITI Principles

<sup>5</sup> Global Witness, 'A Crude Awakening: The Role of the Oil and Banking Industries in Angola's Civil War and the Plunder of State Assets' (1999) <<http://www.globalwitness.org/sites/default/files/pdfs/A%20Crude%20Awakening.pdf>> accessed 8 January 2014.

<sup>6</sup> *ibid.*, 3.

<sup>7</sup> J Browne, *Beyond Business* (2010).

<sup>8</sup> EITI Principles, <<http://eiti.org/eiti/principles>> accessed 8 January 2014.

centred on the need for transparent management of natural resources. They affirmed that ‘a workable approach to the disclosure of payments and revenues is required, which is simple to undertake and use’ (principle 10), and that ‘a public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development’ (principle 4).

Over 40 institutional investors signed a statement of support for the EITI which argued that information disclosure would improve corporate governance and reduce risk. Following this meeting, a number of countries including Nigeria, Azerbaijan, Ghana and the Kyrgyz Republic, committed to explore how these principles might be applied in practice. They were later joined by Peru, the Republic of Congo, Sao Tome e Principe, Timor Leste, and Trinidad and Tobago.

Building on the Principles, the emerging coalition behind the EITI agreed a set of criteria that had to be satisfied by countries that signed up to follow the principles. In 2006, the Validation Guide was approved, which provided a procedure and rules for assessing whether the principles and criteria were being followed. Through a country-led process, countries that met the validation indicators were designated as EITI ‘compliant’, meaning only that their reporting complied with EITI’s basic rules.

Put simply, the EITI is about making sure that citizens have access to reliable and useful information about how much their governments are getting from the exploitation of their nation’s finite oil, gas and mineral resources. To achieve this, EITI implementation has two core components.

1. **Transparency:** oil, gas and mining companies disclose their payments to the government, and the government discloses its receipts. The figures are reconciled by an independent administrator, and published in annual EITI Reports alongside contextual and other information about the extractive sector.
2. **Accountability:** a multi-stakeholder group (MSG) with representatives from government, companies and civil society is established to oversee the process and communicate the findings of the EITI Report, and promote the integration of EITI into broader reform efforts in that country.

## 2. The EITI in 2014

As of January 2014, the EITI is being implemented in 41 countries,<sup>9</sup> with more countries preparing to join including France, Italy, the UK and the USA. Over the years, the EITI has refined the procedures to give effect to the EITI Principles. The latest version of this is the EITI Standard,<sup>10</sup> adopted in May 2013 at the EITI Sydney Conference. The EITI Standard is a set of minimum requirements; several of these relate to EITI reporting, which has to be done annually and without long time delays, and has to cover all material payments made by all companies with significant operations in the country. The

<sup>9</sup> See updated list at <<http://www.eiti.org/countries>> accessed 8 January 2014.

<sup>10</sup> <<http://eiti.org/document/standard>> accessed 8 January 2014.

EITI Standard now requires transparency beyond revenue payments from companies to governments, including disclosure of licencing information, sales by state-owned companies and significant social payments made by companies. Other requirements relate to accountability, for example requiring that reports provide contextual information on questions such as tax arrangements, proportion of government revenues from extractives, quantity of production, likely exhaustion dates, etc so that any concerned citizen reading the report would be able to understand the contribution of extractives to their economy.

Up until now EITI has been a minimum standard, and there has been a danger that reporting simply ticks the EITI boxes and does not lead to improved accountability. EITI implementation success hinges on the ability to develop the process to meet the challenges in each country and encourage reform in underlying systems. For example, in some countries corruption is a significant challenge and EITI reporting helps to begin to verify that funds have been properly accounted for. In other countries, building trust in local communities in how the sector is governed is a priority, which warrants a greater focus on sub-national transfers and local communications. In all countries, the data need to be presented in such a way that it leads to more informed debate and better management of the extractive sector.

Through the adoption of the enhanced EITI Standard in 2013, implementing countries are encouraged to go beyond the minimum requirements where stakeholders agree that this is appropriate (EITI Standard, page 10). The EITI Standard calls on MSGs to 'set EITI implementation objectives that are linked to the EITI Principles and reflect national priorities for the extractive industries' (requirement 1.4) and that 'Multi-stakeholder groups are encouraged to explore innovative approaches to extending EITI implementation to increase the comprehensiveness of EITI reporting and public understanding of revenues and encourage high standards of transparency and accountability in public life, government operations and in business'. (requirement 1.4). MSGs are for example encouraged to publish contracts and, if they decide not to do so, to explain why contracts are not being published.

In order to be recognized as an EITI implementing country, the government needs to apply for 'EITI Candidature'. A number of sign-up steps are required, including constituting the MSG. Where the international EITI Board accepts the country's application, the country has 1.5 years to publish an EITI Report, and 2.5 years to complete Validation. As of January 2014, 25 of the 41 implementing countries were designated compliant with the basic rules. Collectively, these countries have published 181 EITI reconciliation reports, covering over a trillion dollars of payments. Over 750 people serve on EITI MSGs and some 350 people around the world work full time on the EITI.

### 3. Why countries implement the EITI

The relevance of EITI principle 1 has not changed: 'We share a belief that the prudent use of natural resource wealth should be an important engine for sustainable economic

growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts.<sup>7</sup> With implementing governments from all continents, committed to reforms and openness to varying degrees, and with varying levels of economic development, many more specific factors motivate EITI implementation. These include the following beliefs and assumptions:

- That greater transparency leads to less corruption and mismanagement.
- That following an internationally recognized standard demonstrates a commitment to openness and reform.
- That the EITI improves the investment climate and thereby attracts greater and higher quality of investment. Some early evidence suggests that joining the EITI is associated with an increase in the ratio of FDI inflows to GDP.<sup>11</sup> In many cases, extractive companies have encouraged the government to implement the EITI Standard. Companies benefit from a level playing field with consistent disclosure requirements. Companies are also often keen to demonstrate how much they contribute to the economy.
- That EITI implementation in developing countries will attract the support of multi-lateral institutions such as the IMF and the World Bank.
- That EITI compliance will ensure that company and government accounting and auditing systems are working efficiently and effectively, and will highlight opportunities to reform and strengthen these systems.
- That EITI implementation, in countries where citizens distrust how the government manages the country's natural resources, will improve the general level of trust.

#### 4. EITI and other efforts, including company listings requirements

It was recognized from the outset that the EITI will not on its own be sufficient to drive the necessary reform. In recent years, there have been radical new proposals to require comprehensive company reporting in this sector. In the USA, listed companies are to be required to report all payments to governments across the world. The USA enacted mandatory disclosure legislation as part of the US Dodd–Frank Wall Street Reform Act,<sup>12</sup> although the details on how this will be implemented are by October 2013 still unclear due to legal challenges from the American Petroleum Institute. The European Union has also passed legislation requiring larger extractive companies listed or headquartered in the EU to disclose their payments to governments in all countries where they operate.

These measures are welcome, and will serve to further entrench resource revenue transparency as a global norm. Some have argued that these developments would

<sup>11</sup> <<http://www.uni-heidelberg.de/md/awi/forschung/dp538.pdf>> accessed 8 January 2014.

<sup>12</sup> <<http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>> accessed 8 January 2014.

make the EITI redundant; however, there are four key ways that the EITI complements and enhances these efforts to improve revenue transparency:

- (i) The EITI does more than just publishing the numbers, EITI is ‘data plus people’.<sup>13</sup> Countries implementing the EITI have a multi-stakeholder platform for dialogue about the management of their country’s natural resources.
- (ii) The EITI is not only about companies reporting their payments to government. Governments also have to report revenues received, and these data are reconciled. Discrepancies and inaccuracies are uncovered and can be acted on.
- (iii) A significant proportion of natural resources are owned and exploited by companies that are not listed in the USA or the EU, eg, by national oil companies. The EITI requires disclosure by all companies operating in the country, including detailed requirements regarding the activities of state owned enterprises.
- (iv) The EITI provides an international standard, but is implemented nationally. This means that the national MSG determines how to adapt the EITI implementation process to reflect local circumstances, needs and preferences.

## 5. EITI impact

It is difficult to quantify the effects of EITI reporting after only 5 years of reporting with few countries being engaged in the early years. Measuring levels of corruption, trust and capacity is challenging. The impact of the EITI is perhaps best assessed by engaging with the users of the EITI process and data. The implementation of the EITI in Nigeria is illustrative.

## 6. Impact in Nigeria

In the face of rampant corruption, Nigeria has made some significant strides since joining the EITI.<sup>14</sup> Public disclosure of the government’s oil revenues in Nigeria has uncovered regulatory loopholes and discrepancies between what the government has received and what they should have received according to the relevant laws and contracts.<sup>15</sup> These identified discrepancies include payments that cannot be traced and missing tax payments from the national oil company NNPC that the Nigerian EITI (NEITI) argues are incorrect deductions of fuel subsidies. These deductions amount to US\$8.3 billion in missing revenues for 2009–2011 (which is a larger amount than what the federal government spent on education during that same period).

<sup>13</sup> <<http://eiti.org/blog/what-eiti-role-growing-transparency-world>> accessed 8 January 2014.

<sup>14</sup> Corruption perceptions are also changing. For many years leading up to 2004, when Nigeria joined EITI, it was last or second-to-last on Transparency International’s CPI. By 2012, the CPI ranked Nigeria 139th out of 176 countries. <<http://www.one.org/africa/blog/making-transparency-work-for-development-in-nigeria/>> accessed 8 January 2014.

<sup>15</sup> <<http://eiti.org/news/billions-stake-nigeria-seeks-more-accountability>> accessed 8 January 2014.

In addition to chasing up missing funds in collaboration with tax collection agencies, NEITI officials are active in pushing for longer-term reforms. They recently presented their recommendations on how Nigeria's draft Petroleum Industry Bill (PIB) should be improved,<sup>16</sup> and are meeting with parliamentarians, media and other government officials to ensure that its recommendations are followed. They have also made recommendations for a series of reforms in government systems and are pressing for implementation of their recommendations.

In Nigeria, the EITI has won public trust in its reporting, but high trust creates high expectations. Speaking about Nigeria's problems with oil theft, President Goodluck Jonathan challenged Nigeria EITI to 'track down the thieves and those who receive the stolen crude oil'.<sup>17</sup> A recent report by Chatham House estimates that the country annually loses between US \$3 and \$8 billion as a consequence of theft of oil.<sup>18</sup> Nigeria's oil theft is not something that the EITI can solve. Many more efforts are needed to improve the governance of natural resources in Nigeria. However, NEITI is playing a useful role in clarifying the problems and remedies and building support for necessary reforms.

## 7. Conclusion, EITI necessary but not sufficient

Bringing the diverse stakeholders together around the table was an accomplishment in the early days of the EITI. Since the EITI principles were drawn up 10 years ago, the EITI has demonstrated that such a multi-stakeholder approach can go beyond the lowest common denominator standard and can create a process of learning that has gradually raised the bar. The EITI has gained support because all stakeholders have seen benefits from being part of the process. This has helped to create an expectation of transparency in the extractive sector which was previously notoriously opaque and murky.

At the first EITI Conference 10 years ago, stakeholders were able to reach agreement on 12 sentences that became known as the EITI Principles.<sup>19</sup> In May 2013, the experience and consensus had deepened and broadened significantly to allow the adoption of the EITI Standard at the EITI Global Conference, held in Sydney.

Transparency is not an end in itself. It has to lead to improved accountability and better management of these resources for the benefit of the people in whose countries they are found. Countries implementing the EITI Standard are required to ensure that their country's citizens are well-informed and able to engage in public debate on how the country's resources should be managed. The EITI is more than a standards body; it is becoming a global movement for reforms of non-transparent, inefficient and poorly designed governance of natural resources, which has led to such adverse results in too many countries.

<sup>16</sup> <<http://neiti.org.ng/index.php?q=press-releases/neiti-and-debate-petroleum-industry-bill-pib>> accessed 8 January 2014.

<sup>17</sup> <<http://premiumtimesng.com/business/146655-jonathan-wants-eiti-help-track-illegal-exporters-refiners-nigerias-stolen-crude-oil%E2%80%AC.html>> accessed 8 January 2014.

<sup>18</sup> <<http://www.chathamhouse.org/media/news/view/194258>> accessed 8 January 2014, p 31.

<sup>19</sup> <<http://eiti.org/eiti/principles>> accessed 8 January 2014.

Finally, there is a deeper challenge regarding the impact of the EITI. The objective of the EITI is to provide information that adds value to the public discourse about governance of the extractive industries. There is now a rising tide of data, but there is a danger that debate drowns in a vast quantity of undigested data. Through the rolling out of the new EITI standard, we hope to create a platform which will enhance national and global transparency and accountability and therefore help to improve the lives of hundreds of millions of poor people living in countries rich in natural resources where vast numbers of people live lives mired in extreme poverty.