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Beyond governments: lessons on multi-stakeholder governance from the Extractive Industries Transparency Initiative (EITI)

The recognition that some complex governance challenges are best managed through collective approaches is fundamental to the EITI. The EITI is based on the proposition that governments must increase their transparency and demands the same openness from all companies in the oil, gas, and mining sectors. This chapter briefly explores what lessons can be drawn on what works, why it works, how it works, and, perhaps more pertinently, where this approach does not work.

It is written by two practitioners closely involved in the international management of the EITI, and is a series of observations drawn from personal experience. Their conclusions invite further analysis by researchers.

The history of the development of the EITI

This chapter seeks to draw lessons on multi-stakeholder governance from the EITI. To draw these lessons, it first charts the brief history of the EITI, describing what it is, how far it has come, and why it has developed as it has.

It is often thought that the EITI was launched in 2002. It is true that then-UK Prime Minister, Tony Blair, outlined the idea of the EITI in a speech intended for the World Summit on Sustainable Development in Johannesburg in September 2002. However, the problematic relationship between Prime Minister Blair and President Robert Mugabe of Zimbabwe, meant that the British Prime Minister never actually delivered his prepared remarks as intended.

The idea of mentioning the EITI in that speech followed campaigning by Global Witness, other civil society organizations, and individuals,

like George Soros. Their campaign slogan of “Publish What You Pay” was drawn from a Global Witness report, “A Crude Awakening”¹. Launched in December 1999, it focused on the opaque mismanagement of oil in Angola. The report had 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”².

Responding to the campaign in February 2001, Lord John Browne, then-Chief Executive Officer of BP, committed to publish payments made to the Angolan government. This sparked a strong reaction from Angola. In his 2010 memoir, “Beyond Business”³, Lord Browne 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”⁴. Lord Browne went on to conclude, “Clearly a unilateral approach, where one company or one country was under pressure to ‘publish what you pay’ was not workable”⁵.

Following the publication of the Blair speech, the UK Department for International Development (DFID) convened a meeting of civil society, company, and government representatives. There was agreement that some kind of reporting standard should be jointly developed. At a conference in London in June 2003, a Statement of Principles to increase transparency of payments and revenues in the extractive sector was agreed⁶. These 12 EITI Principles centered on the need for transparent management of natural resources. They affirmed that there was a belief that “a workable approach to the disclosure of payments and revenues is required, which is simple to undertake and use”⁷.

¹ Global Witness (1999), *A Crude Awakening: The Role of the Oil and Banking Industries in Angola’s Civil War and the Plunder of State Assets*, available at www.globalwitness.org/sites/default/files/pdfs/A%20Crude%20Awakening.pdf.

² Global Witness, n. 1, p. 3.

³ John Browne (2010), *Beyond Business: An Inspirational Memoir From a Remarkable Leader*, London, Orion.

⁴ Browne, n. 3.

⁵ Browne, n. 3.

⁶ EITI, *The EITI Principles and Criteria*, available at <http://eiti.org/eiti/principles>.

⁷ EITI, n. 6, Principle 10.

Following this meeting, a few countries, like Nigeria, Azerbaijan, Ghana, and the Kyrgyz Republic, explored how these principles might be applied. They were later joined by Peru, the Republic of Congo, Sao Tome e Principe, Timor Leste, and Trinidad and Tobago.

In March 2005, the EITI stakeholders and implementing countries again met in London. UK Secretary of State for International Development, Hilary Benn, summarized:

Our experience in the four countries that have piloted EITI... is that while different countries have taken different approaches to implementation, this needs to be backed up by clear international rules of the game for the initiative to be effective and credible⁸.

These different approaches to the principles were boiled down to six EITI Criteria, which sought to establish “the rules of the game”⁹. Benn also announced the establishment of an International Advisory Group, which would include representatives of governments, companies, and civil society organizations, to take the EITI forward.

At this point, it became clear that the EITI was not evolving, as some had anticipated, into a voluntary standard for companies but rather into a disclosure standard implemented by countries. The criteria focused on

Regular publication of all material oil, gas and mining payments by companies to governments (“payments”) and all material revenues received by governments from oil, gas and mining companies (“revenues”) to a wide audience in a publicly accessible, comprehensive and comprehensible manner¹⁰.

They also recognized that civil society had to be actively engaged in the process to ensure accountability¹¹.

By the time of the third EITI Global Conference in Oslo in October 2006, the implementing countries (now joined by Niger and Cameroon) were preparing their first EITI reconciliation reports. Azerbaijan had already produced reports covering revenue from 2003–2005 and Nigeria a report covering 1999–2004. The International Advisory Group had provided guidance on how to produce these reports in its EITI Source Book of 2005. The International Advisory Group had sufficient emerging ap-

⁸ DFID (2005), EITI London Conference – 17 March 2005, Global Coalition Signs up to New Rules for Transparency on Oil, Gas and Mining, available at www.dfid.gov.uk/Documents/news/pr-eiticonference17mar05.pdf.

⁹ N. 6.

¹⁰ EITI, n. 6, Criterion 1.

¹¹ EITI, n. 6, Criterion 5.

proaches to introduce the EITI Validation Guide, which set out the indicators that implementing countries had to meet in order to become EITI compliant. The guide was introduced at the Oslo conference, effectively marking the end of the beginning for the EITI.

At this time it was also agreed that the EITI should have its own governance structure, board, and secretariat. The EITI International Secretariat was later established in Oslo.

With the principles setting out its aims, the criteria containing its minimum requirements, and the guide establishing its indicators, it was thought that the EITI had a structure in place that would clearly frame the expectations of implementing countries. However, it quickly became clear that many issues had been left open, such as how long implementing countries had before they would have to be “validated” and how long they would have to meet the standard.

So, in 2009 and 2011, the EITI Board issued the *EITI Rules*. Replacing the EITI Validation Guide, these included six “policy notes” that provided further clarification and guidance. The “indicators” became “requirements” and were addressed more as steps to be followed by implementers than as indicators to be assessed by external validators. The EITI had evolved into a standard.

It had also become a *global* standard. By September 2012, 36 countries were implementing the EITI, with Colombia, Tunisia, and the US (among others) preparing to begin implementation. A total of 95 EITI reconciliation reports had been produced covering more than USD 700 billion of revenues paid.

Challenges of, and tensions between, being a global standard and a national process

At its core, EITI implementation has two components: transparency and accountability. *Transparency* is achieved through the annual publication of what the companies pay in taxes, royalties, and bonuses to a government, and the publication of what the government claims to have received. In an in-country *accountability* process, a national commission (or multi-stakeholder group, in EITI parlance) oversees the implementation process. The group is crucial to ensuring that the EITI is implemented according to the global standard and, at the same time, that the

application of the standard is adapted, as relevant, to the specific needs of the implementing country.

This has led to 36 EITI models for 36 implementing countries. Liberia's EITI reports include the forestry sector; Togo's includes water; Nigeria's and Iraq's include figures on the physical production of oil and gas; Mongolia's records environmental costs; Peru's includes payments to sub-national levels of government; and Ghana's includes the spending by these sub-national governments. There are numerous other variations on the core EITI model and such innovations are encouraged. The EITI should be a platform for securing management oversight and data as they are needed in each country. It tempers this flexible approach with an insistence on the need for a robust, core global standard with brand reputation and credibility.

This course – between a nationally-owned process and an internationally-owned standard – has been a tough one to steer. Countries complain that the standard is not flexible enough to accommodate their circumstances, whilst international stakeholders complain that the EITI brand is in danger of being damaged by diverse implementation. Conceptually, the process should be nationally-owned, but the standard belongs to the international body. Practically, the lines are not easily drawn.

Designing the right standard

Around the world, the extraction of oil, gas, minerals, and metals is still nowhere near to bringing the benefits to ordinary citizens that it should. As with many international processes, the great temptation was to create an all-encompassing solution when designing the EITI. Development history is littered with well-intentioned governance models that do not acknowledge existing processes and the vested interests of different players. They bite off more than the stakeholders can chew. The evolution of the EITI reflects the incremental pursuit of a focused ambition, but it also faced enormous challenges of communication, momentum, and linkages to other and wider reform efforts.

There is no magic bullet for a problem as complex as natural resources management. It would be naïve to think that any single intervention, including the EITI, could solve the violence, mismanagement, and environmental disasters of the Niger Delta, for example. The consensus approach of the EITI standard has led to just one aspect – revenue transpar-

ency – being tackled first. Revenue transparency might not be the most pressing or important issue in many resource-rich countries, but it has proven to be a sound entry point for bringing all parties to the table.

The EITI International Secretariat is often asked why the EITI does not require contract transparency or transparency about how governments spend the money received. It typically answers that a process with big companies and small NGOs on its board should not be issuing requirements on how governments spend their money. It is for the citizens of that country, through democratic processes, to decide how public money should be spent. It is also for them to decide how and if the EITI platform in their country can seek to foster wider change. If it cannot, it will soon become redundant.

In country after country, even basic revenue transparency has become the starting point for other discussions, such as whether deals are good, whether tax regimes are right, whether money is going missing, and how it is spent. Whilst the minimum requirements are focused, the implementation clearly does not need to be.

It is disappointing when commentators fail to recognize the impressive implementation work done in many countries by criticizing the EITI for being too limited. However, the criticism serves as a reminder of three things. First, the EITI has to keep the message about its role both clear and humble. The EITI is necessary but not sufficient to tackle the challenge of resource management. To paraphrase Professor Paul Collier, “The EITI is the right place to start, but the wrong place to finish”, though its multi-stakeholder platform can be a powerful tool for wider debate than just revenue transparency. Second, the EITI needs to link better with other efforts. Thirdly, the EITI cannot stand still and survive: its minimum requirements need to guarantee better data quality. They could, for instance, ask for more detailed reporting by each company and about each revenue stream in each implementing country. The EITI should also do more to encourage countries to go beyond the minimum requirements.

How the EITI evolves depends on what consensus can be gained at what time. The consensus about revenue transparency in the extractives sector is changing particularly fast at the moment and there are a number of complementary efforts in train. In 2011, the musician and activist, Bono, went so far as to say that natural resource transparency is the “next big thing” in development – bigger than debt cancellation¹².

¹² Bono on Africa (interview in UK newspaper, *The Observer*, of February 20, 2011).

Since then, the US government has issued disclosure requirements for extractive companies listed in the US under s. 1504 of the Dodd-Frank Act¹³. Changes to the EU transparency directive are being drafted to bring about similar rules in Europe¹⁴. Designed, as they are, to be complementary to the EITI, these requirements will increase the clamor for fairer rules for all companies, whether listed, private, or state-owned. US-listed companies are expected to respond to s. 1504 by pushing recalcitrant countries to implement the EITI to ensure a level playing field.

Those people who want s. 1504 to succeed are the same as those who want the EITI to succeed. The EITI and s. 1504 are not in an “either/or” relationship. There is no beauty contest. Whilst s. 1504 will lead to more information being available, the EITI will ensure it is discussed in the countries that have the resources. Good management of natural resources needs both and more.

Avoiding having the standard used as whitewash

In accommodating wider demands and challenges, the EITI needs to be conscious of its credibility as a minimum standard. Some of the worst-offending countries are implementing the standard successfully; others remain completely outside the process. The EITI cannot magically create political will for reform in countries where there is none. Moreover, assessing real political will is a perennial challenge for development initiatives, as is finding the balance between encouraging and keeping difficult countries inside the tent, and throwing them out.

In attempting to resolve these conundrums, the EITI needs to note two specific points. Firstly, the EITI is not just implemented by government: it is also implemented by civil society organizations and companies. Often where the regime is repressive and kleptocratic, the EITI is the only platform available for dialogue or reform efforts among other actors. Secondly, due to the nature of natural resources, these EITI member countries are, on the whole, countries in which conventional aid instruments do not

¹³ Dodd-Frank Wall Street Reform and Consumer Protection Act, HR 4173 (111th).

¹⁴ Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, OJ 2004 No. L390, December 31, 2004, pp. 38–57.

succeed – aid flows simply do not match up to the revenues from extractive resources. There is an growing school of thought that codes and standards, like the Natural Resource Charter and the EITI, and wider innovative governance efforts, like the Open Government Partnership, coupled, as they are, with peer pressure, are the best mechanism available for nurturing political will for reform.

Balancing the need for data with the need for accountability

Transparency is not an end in itself. It has to lead to improved accountability, to questions being asked and actions taken. Even a minimal EITI report can highlight important issues nationally and internationally. The EITI's 2008/2009 report on the Democratic Republic of Congo (DRC) certainly shocked some readers by revealing that the DRC government received less than USD 200 million for its mining resources over two years¹⁵. That is less than USD 1 per person per year for resources that are linked to the deaths of over 5 million people.

The EITI has given civil society a voice and a platform to speak out on these issues for the first time. It still has a long way to go. But, with support from international coalitions, like Publish What You Pay, and NGOs, like the Revenue Watch Institute, it has increased the capacity of ordinary citizens, parliaments, and media outlets to provide effective oversight in the area of natural resource extraction many times over. EITI implementation has also provided protection to activists in this sensitive sector in some oppressive states.

Governments' capacities to assess and improve their revenue collection process have also increased. The World Bank and other international development agencies have provided on-going technical support to implementing governments and funded many of the EITI reports. Nigeria's review of its 10 years of EITI reporting highlighted that at least USD 9 billion more government revenue from the sector was received in 2008 than would have been the case before EITI reporting¹⁶.

¹⁵ EITI, DR Congo Unveils Mining and Oil Revenue for 2008 and 2009, website, March 8, 2012, available at <http://eiti.org/news-events/dr-congo-unveils-mining-and-oil-revenue-2008-and-2009>.

¹⁶ Nigeria Extractive Industries Transparency Initiative (NEITI), 10 Years of NEITI Reports – What Have We Learnt?, available at www.neiti.org.ng/sites/default/files/publications/uploads/ten-years-neiti-reports.pdf.

In the early days of the EITI, these platforms for dialogue and oversight were the chief success of the EITI. There was strong evidence that bringing hostile parties to the table reduced tensions, particularly in post-conflict environments, like Liberia, the DRC, Afghanistan, and Iraq. There was great commitment to implement and a great number of countries with multi-stakeholder groups that were giving platform and voice to a variety of stakeholders. But, by the end of 2008, there were less than a dozen actual EITI reports, and most of them were poor quality. In other words, there were groups in discussion but without data to inform their discussions.

At that point, the EITI was in serious danger of becoming another institution for building development processes. It needed to shift its focus back to the production and the use of the data. It had to (and did) put more effort into developing easy-to-use databases to compare data across time and across countries, so as to help inform national debates.

But again, it would be naïve to think that the simple act of publishing data would always and sustainably improve management, just as it would be naïve to think that platforms for dialogue will always sustainably improve management if not informed by good data. We have seen cases where the EITI has failed by just focusing on one or the other. And we have seen cases where the EITI has been a highly effective catalyst for wide ranging reforms.

Increasing the impact

Despite strong anecdotal evidence of its success, the EITI suffers from the same challenge as most governance measures – how to establish whether it really does lead to better natural resource governance, less corruption, more accountability, and, ultimately, to more citizens in more resource-rich countries reaping more benefits from their wealth. This information gap is somewhat exacerbated by the challenge the multi-stakeholder approach brings to the EITI: the actors behind the EITI do not always share a vision and common purpose.

Scanteam was commissioned to evaluate the impact of the EITI in October 2010¹⁷. Whilst it applauded the EITI's great success in building a

¹⁷ Scanteam (2011), *Achievements and Strategic Options: Evaluation of the Extractive Industries Transparency Initiative Final Report*, available at <http://eiti.org/document/2011-evaluation-report>.

brand and a global coalition for improving transparency in an opaque sector, it could discern little impact at the societal level in implementing countries. Moreover, the EITI Principles established back in 2003 were not necessarily fulfilled by the EITI Criteria and minimum requirements.

Under the 2011 standard, EITI reports tell citizens what was paid. In most cases, they also say how much was paid by each sector or each company. However, the reports could go further, and, in fact, stakeholders are demanding more from the EITI. Some argue that the EITI reports could inform citizens more about how much *should* have been paid (and whether that represents a good deal) or how the money was managed (and whether it was properly spent for the benefit of the people). Others argue that the reports should inform the analysis of tax management and regimes, the economic consequences of commodity price fluctuations, and/or the exhaustion of non-renewable resources.

Since 2011, under the stewardship of EITI Chair, Clare Short, the EITI has been undertaking a strategic review of how it could be further improved. The board agrees that “standing still” is not an option.

Whatever the future EITI framework looks like, it will likely need to reflect the three changes to the EITI concept over the past decade. Particularly, it will have to ensure that:

- The focus is on EITI reconciliation reports, which have to continue to improve in quality, providing timely, comprehensive, and comprehensible data. To date, too much focus has been on the validation process, rather than on the EITI reports themselves.
- The EITI does better at providing incentives to countries to exceed the minimum requirements and recognizing those who provide leadership.
- The EITI is not seen as a stand-alone country exercise but is embedded in governments’ financial and other oversight systems.

Governing a governance initiative

Governing a multi-stakeholder initiative, like the EITI, poses its own challenges. The techniques for governing multi-stakeholder efforts are quite different from those used to govern civil society organizations, multilateral organizations, or corporations. Mechanisms, possibly including voting rules, have to be found that balance the different stakeholders’ interests and

accommodate their different ways of working. The governance arrangements for multi-stakeholder processes have to be able to evolve as the organization grows. The EITI's development process has a number of lessons for similar initiatives.

The EITI is a non-profit members' association under Norwegian law. It has a board with representatives from governments, civil society, and companies that is answerable to a conference and members' meeting, which is convened once every two years. It was decided early on that the EITI should not seek to become a multilateral organization. This was thought time-consuming and a potential risk to the efficiency of the EITI as an organization.

The representatives of countries, civil society organizations, and companies on the EITI Board have a duty to "[A]ct in the best interest of the EITI at all times...", under art. 13 of the EITI Articles of Association. Nonetheless, the board members remain the representatives of their respective institutions, each of which has its specific interests. Even if it is not unusual in a political context to have governing bodies with different interests represented, it is unusual to have so many different interests around the one table. This means that progress is incremental and often slow. Information channels and messages to each stakeholder group have to be carefully designed and nuanced. Agreements have to be caucused in working groups, committees, and networks. Even the most simple of decisions can be debilitatingly slow.

However, once a decision is agreed, it sticks.

Conclusions

The international community has a long way to go in ensuring that natural resources bring benefits to all. Poor governance, powerful vested interests, and corruption are enormous challenges. The EITI formed and continues to grow in response to these challenges and the recognition that they can only be addressed through Collective Action.

Here, we would highlight three important lessons:

- If the Collective Action is at both the national and international level, a careful balance needs to be struck between country ownership and international standard setting. Strong governance structures are the key to finding this balance.

- Collective Action through a multi-stakeholder effort, such as the EITI, requires patience with incremental progress. This presents challenges of communicating objectives and demonstrating impact, of linking with other efforts in the same field, and of keeping momentum for deeper implementation. The consensus amongst the vastly different stakeholders evolves and so too must the goals of the Collective Action.
- Collective Action is not a panacea for the problem of lack of political will, though it can be the best option available.

In the authors' view, there are few areas of development in which the benefits for all stakeholders of slow but assured progress justify the efforts involved in multi-stakeholder governance. Management of the extractive industries is one of the few exceptions arising, as it did, from a perfect storm of motivations to sit down at the same table. Sustaining that initial momentum has required strong leadership by all actors – government leaders willing to embrace reform and tackle inherent vested interests; company representatives willing to look beyond narrow self-interest to establish long-term licenses to operate; and civil society representatives ready to couple activism with engagement.

Such “Beyond Governments” and Collective Action solutions to governance challenges need to be carefully designed and calibrated to avoid ineffective bureaucracies failing to exceed a lowest common denominator of limited value. But, together with other governance efforts, voluntary as well as mandatory, they can form part of the battery of efforts required to ensure good governance.