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Background Paper

Natural Resources, the Extractive Industries Transparency Initiative, and Global Governance

Volker Lehmann

The Hague Institute for Global Justice

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www.globalsecurityjusticegovernance.org

Abstract

This background paper argues for a comprehensive governance regime for minerals and carbon-based energy resources and addresses the interlocking challenges that their extraction and consumption create for environment, security, and justice. Recalling the academic debate about the resource curse that led to the establishment of the Extractive Industries Transparency Initiative (EITI), EITI's strengths and weaknesses are discussed and several implications for future policy making are outlined. Fragile states are especially challenged, since they in particular are short of the domestic institutions needed to harness benefits from natural resource abundance for sustained and sustainable development. Yet even in more favorable settings, EITI's premise that transparency in revenue generation will foster broader societal transformations so far seems illusory. More needs to be done to increase responsiveness of participating companies to transparency demands, but also to prevent leakage of revenues through tax loopholes. Finally, the sustainable development agenda currently negotiated by all UN Member States, if implemented properly, could lead to a more sustainable extraction and deployment of natural resources within planetary boundaries.

About the author

Volker Lehmann, Ph.D., is a Senior Policy Analyst with the FES New York office. He currently focuses on international peace and security issues, particularly with regards to the United Nations, and on the various aspects of reforming the UN. He previously worked as a consultant and journalist, and he was the editor of the journal "Biotechnology and Development Monitor" at the University of Amsterdam. He received a Master's in Biology from the Free University of Berlin and a Ph.D. in Political Science from the Graduate Center of the City University of New York. Contact: vlehmann@fesny.org

Commission on Global Security, Justice & Governance
http://www.globalsecurityjusticegovernance.org
https://twitter.com/BetterGlobalGov

The Hague Institute for Global Justice
Sophialaan 10
2514 JR The Hague
The Netherlands
Tel: +31 (0)70 30 28 130
http://www.thehagueinstituteforglobaljustice.org
https://twitter.com/HagueInstitute

The Stimson Center
1211 Connecticut Avenue, N.W., 8th Floor
Washington, DC 20036
United States

Tel: +1-202-223-5956
http://www.stimson.org
http://twitter.com/StimsonCenter

1. Introduction

The quest for and utilization of natural resources is intertwined with humans' historical, political and economic development for as long as records of human history exist. Over the last two centuries, however, economic and social development have particularly been fueled by an exponential increase in use of natural resources. As a result, to date humanity's industry and intensification of resource utilization have created two unprecedented conditions: Never have transboundary movements of natural resources, goods, services and people had such a global extension. And never have these activities challenged as much as they do now the finiteness of the earth. As the intrinsic planetary boundaries become apparent, so do political consequences: Individuals and countries alike increasingly base their security concerns on access to these finite resources. Receiving a fair share – or not – of resources for utilization will therefore become a matter of justice. As will be the sharing of the environmental consequences of resource utilization, especially with regards to climate change. Both challenge in an unprecedented way the existing political governance structures.

The work of the Commission on Global Security, Justice, and Governance is based on the interconnectedness of these sets of challenges. It is therefore timely also to analyze natural resources at exactly this particular intersection of security, justice and governance. As will become apparent, natural resource governance touches upon the three key governance cases of the Global Commission's work: Fragile and conflict-affected states; cyber-economy; climate and people. This background paper should help formulate policy recommendations to improve governance of these three critical global issues.

To analyze how natural resources can be utilized as an instrument for justice and security, while avoiding to become a source of instability and injustice, this background paper will proceed as follows: First, define key terms, concepts and feedback loops that provide the backdrop of this background paper. Second, review key arguments of the literature about the 'paradox of the plenty', the so-called 'resource course'. Third, hone in on the Extractive Industries Transparency Initiative (EITI) as one of today's most advanced global governance efforts to prevent adverse effects of resource commodification. Fourth, reflect on fragile states and their specific challenges when dealing with resource abundance. Fifth, outline a number of policy recommendations for different actors on the national and international level. And sixth, formulate a few questions for further investigation.

2. Key terms, definitions and feedback loops

2.1 Natural Resource

At its most fundamental level, natural resources are all the animated and non-animated sources of actual or potential wealth that can be found in their natural state, such as timber, water, land, wildlife, minerals, metals, stones and hydrocarbons. Renewable resources can be replenished by natural processes at a rate that is comparable to their rate of consumption. Non-renewable resources exist in a fixed amount, for example gold, or they cannot be regenerated commensurate with the level and speed of their consumption, for instance coal (United Nations Environmental Programme 2009, 7). All resources are interconnected on the ecological level as they share geo-chemical-ecological characteristics. But they are also connected by social, technological, economic and political factors. These linkages form a so-called 'resource nexus' (Andrews-Speed, et al. 2012), which implies that the utilization and commodification of one resource requires the use of one or more others (e.g. carbon-fuels for extracting minerals or desalination of water; water for planting crops or for extracting minerals; minerals for fertilizing crops, etc.). Such a 'resource nexus' approach is most meaningful when addressing the overall limitations and boundaries of the planet as a whole. However, the majority of theoretical inquiry and practical solutions focuses on non-renewable resources, which excludes all types of living materials (e.g. organic matter, biofuels etc.). Therefore, unless mentioned otherwise, in this paper the term 'natural resources' will be used only for minerals, metals and stones and fossil fuels such as coal, gas and oil.

Another important factor for the political economy – and thereby for the governance – of natural resources is that they vary in abundance and in value-to-weight ratio. Diamonds, for example, can be extracted by a small group with simple tools and such artisanal mining does not require large-scale upfront investment. This and the fact that diamonds can be smuggled and sold rather effortless makes them a highly 'lootable' commodity suitable for financing armed groups (Lujala and Rustad 2012, 10). The extraction of copper, on the other hand, requires huge upfront investment in large-scale industrial mining equipment and transportation facilities. Hence, copper is not at all 'lootable', but its extraction preselects for multinational, large-scale investors and operators, which comes with its own preconditions and repercussions. For example, the Bingham Canyon Copper Mine in Utah is the deepest open-pit mine in the world. Not coincidentally, it is owned by Rio Tinto, the world's third-largest mining company.

2.2 Extracting and Extractive Industries

Mineral and carbon-fuel extracting corporations are among the world's largest and most profitable enterprises. The for-profit extraction of natural resources is a central element in the contemporary global economy. Today's economic and social activities have become unthinkable without the extraction of resources from the earth. Quarrying, mining, digging by human beings now move more earth every year than the global hydrological cycle (VanDeveer 2013). At the beginning of the 21st century, human impact on the global environment and the earth as a system have reached a level that makes humanity a geophysical force, large enough to denote an new geological epoch, recently dubbed as 'Anthropocene' (Crutzen 2002).

2.3 Repercussions for Security

The idea of an 'Anthropocene' suggests that humanity does not run out of resources any time soon, but that the unabated acceleration of resource consumption will endanger many life-sustaining functions of the global ecosystem (VanDeveer 2013, 1), especially its absorption capacities for carbon dioxide and other greenhouse gases. The most recent assessment of the Intergovernmental Panel on Climate Change (IPCC) estimates that half of the tolerable total amount of carbon to keep global temperature rise to 2 degrees Celsius is already in the atmosphere (Intergovernmental Panel on Climate Change 2013, 27). To have at least a 50 percent chance to stay below the 2 degrees Celsius threshold, only one third of the globally proven reserves of fossil fuels can be consumed by 2050 (International Energy Agency 2012, 25). Already now, tangibly catastrophic events such as storms and flooding have increasingly been considered to be caused by climate change. National security strategies have begun integrating this into their planning (U.S. Deparment of Defense 2014), and also the UN Security Council has put the linkage between environmental degradation and threats for peace and security squarely on the international agenda.[1]

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[1] See UN Security Council Presidential Statement S/PRST/2011/15, 20 July, 2011.

2.4 Climate Justice and Resource Justice

As the window for averting run-away effects from climate change closes soon, energy production needs to shift away from carbon-based resources. Moreover, consumption patterns, especially in the already industrialized world, as well as resource efficiency need to change, too. This raises manifold challenges for global environmental equity: Who will shoulder responsibility for past impacts on the climate and what does that imply for future rights to use natural resources for development, even if that adds to environmental degradation and climate change? As a principle of equity in international law, the 1992 United Nations Conference on Environment and Development (UNCED), also known as the Earth Summit, established the notion of 'Common but differentiated responsibility' (CBDR). This principle acknowledges the historical differences between industrialized and developing nations in their contributions to global environmental problems, as well as differences in their capacities to resolve these problems (CISDL Legal Brief 2002). Since the 1992 Rio Declaration (United Nations 1992), CBDR has become the cornerstone of environmental justice and sustainable development for the member states of the UN. For example, it was also included in the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol, which, however, was not ratified by major polluters such as the United States. They, but also China and India, refused to commit to legally binding reductions of carbon dioxide. As the negotiations for a follow-up agreement to the Kyoto Protocol will have to be concluded until December 2015, on November 11, 2014 the United States and China bilaterally declared a differentiated approach to curb climate change. While the United States promised to cut net greenhouse gas emissions 26-28 percent below 2005 levels by 2025, China announced to peak its carbon emissions at the latest by 2030 (The White House: Office of the Press Secretary 2014). At the same time, the currently negotiated text for the post-2015 sustainable development agenda still does include CBDR as a core principle for all UN Member States.

2.5 The Quest for Governance

The challenge for UN Member States to harmonize in 2015 different strands of international treaty negotiations is only one aspect of why global governance seems to have become such an elusive quest to date. Sovereign nation states still remain the entities with the largest amount of governance authority. But this assumes that the states' institutions and functions are relatively intact, which is not the case for numerous fragile states and states affected from conflicts.

Equally important, in addition to states, governance actors also include non-governmental organizations (NGOs), corporations, and international organizations, all of which add their own norms, behaviors and processes to the mix. Governance therefore is not only a matter between and within states, it also occurs between and within corporations, and among companies, states, NGOs and citizens (Andrews-Speed et al. 2012, 8).

For the governance of natural resources, this has two implications: First, local, national, regional and international levels interact. Second, poly-centric decision-making will exert influence over neighbors and other actors further away – at times with unintended consequences.

If there is one example for the full range of complex interlinkages, it would be the governance of natural resources in the Democratic Republic of Congo (DRC): The UN Security Council has issued numerous sanctions to prevent gold exploitation from fueling armed rebellions, at the same time the UN has supported several functions of statehood – e.g. security, elections – while others, such as domestic bureaucratic structures and guidelines for resource extraction are now being developed nationally. At the same time, the DRC participates in the regional governance of natural resources through the International Conference on the Great Lakes Region (ICGLR). On the side of the countries that consume resources from the DRC, voluntary guidelines legislation has been devised by the OECD and by the EU. In the United States, thanks in large to the lobbying of internationally active NGOs, Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) has made reporting about using resources from the DRC compulsory for publicly listed companies (Compliance and Capacity International 2013). But while companies can now declare the resources as 'conflict-free', the unintended side effect of the regulation is that many vendors have now switched over to other countries, thereby making the resources 'Congo-free'.

It is against this backdrop that the Background Paper will look at the EITI. As a relatively young 'mid-range' governance initiative it brings together different stakeholders such as states, firms, and civil society; it has voluntary as well as compulsory elements; it has a moderate to narrow mandate; and it has an outreach that is potentially global, but that is currently still hampered by missing key countries (i.e. China). The EITI cannot give answer to all the challenges related to natural resource governance, but it will certainly have to be gauged against its own aspirations. The ensuing analysis will explain how these standards can be fulfilled more comprehensively if inter-linkages 'down' to the ground and 'up' to the international treaty bodies will be strengthened.

3. Abundance of Non-renewable Natural Resources: Blessing or Curse?

Inquiries into the relationship between a country's endowment with natural resources and its prospects for development have over time led to different outcomes. Initially seen as an asset (e.g. Rostow 1961), since the 1980s natural resource wealth has been conceived as a 'paradox of the plenty': Why is it that many societies cannot translate their abundant natural resources into peaceful, economic and social development? Beginning in the mid-1990s, the notion of a 'resource curse' took root as a broad catch-phrase for various negative repercussions of abundant natural resources (Rosser 2006). Three sub-genres of literature can be discerned, all of which have struggled with the refinement of the causal relationship between resource abundance and its negative impacts:

- Fuel for armed conflicts: Natural resources such as 'blood diamonds' or gold have become associated with many of the world's most protracted violent intrastate conflicts, especially in the DRC. Yet whereas there is a high level of correlation between resource abundance and civil war, the causality is by no means clear. Studies by Collier and Hoeffler (1998, 2002, 2004) that examined the relationship between natural resource abundance and civil war indicated that natural resources are seldom the sole driver of conflict. Instead, their abundance has often lengthened armed strife or has provoked relapse (Rustad, Lujala and Le Billion 2012).
- Economic performance: A number of seminal works demonstrated that natural resources could negatively impact economic development (Sachs and Warner 1995). One sub-genre is the literature on the 'Dutch Disease', dubbed after the consequences of a natural gas boom in the 1970s in the Netherlands. Back then it led to an appreciation of the real exchange rate, which in turn damaged manufacturing and other tradable sectors (Rosser 2006, 13-14). It has repeatedly plagued those countries whose booming resource-exporting sector of the economy led to an appreciation of the real exchange rate, which renders the non-resource export sector uncompetitive. Consequently, countries with abundant resources were found to export less manufactured goods than resource-poor countries (Leite and Weidmann 2002). However, later studies have at times questioned the negative effects on economic development (Alexeev and Conrad 2009).

- Political Regime: Inspired by a seminal paper by Ross (2001), several scholars have examined the hypothesis that oil, gas, and minerals cause authoritarianism. Resource abundance was found to be a hindrance for democratic development in manifold ways, especially through the generation of rents – which are earnings much above normal profits. Rents all too often provide a windfall only for elites closest to the extractive sector. And with a massive inflow of non-earned income, governing elites become more independent from their citizens: the linkage of 'representation and taxation' breaks down and gives way to governing elites' unaccountable, over-exuberant and myopic spending patterns. Such a 'rentier state' increases rather than ameliorates economic inequalities, irrespective of the absolute wealth generated by natural resources (Africa Progress Panel 2013, 10). Yet longitudinal studies questioned the law-like negative effects of increasing resource reliance on political developments. Resource rents may at times have prolonged dictatorship, but they do not by default undermine democracy (Haber and Menaldo 2011).

To date, in all three fields of 'resource curse' research, in addition to contrarian views questioning the negative impacts, also those studies exist that have corroborated the initial 'curse' hypothesis (Arezki and van der Ploeg 2011, Ramsay 2011). But while such mixed results from empirical research look inconclusive at best, the findings may not even be that contradictory (Morrison 2013). It has been criticized that too much inquiry into the 'resource curse' had been reductionist as it explained a country's development outcome solely in terms of its natural resource base (Rosser 2006). Instead, in any given country the varying effects of natural resource endowment and utilization should be seen as a result of much more complex social and historical developments. Therefore, a general agreement has evolved that resources' societal impact are a result of the institutional environment in which they are found (Morrison 2013, 1118). In other words, resources do not come with good or bad attributes. Rather, decisive for positive or negative outcomes is the institutional way in which their commodification is governed and how the proceeds are distributed.

Despite the common understanding of conditionality that this preliminary literature review reveals, two caveats remain problematic when turning to the formulation of practical policy strategies. First, an overwhelming majority of the resource curse literature focuses on oil. Second, there is an emphasis on the generation of revenues, but less attention on the circumstances under which resource extraction occurs – neither socially, nor environmentally. They too will have to be addressed when looking at practical steps for governing natural resources.

4. The EITI – A Tool for Transparency and Potentially More?

4.1 EITI History and Procedures

By the early 2000s individuals and organizations began deriving practical lessons from the theoretical inquiries into the 'resource curse'. In particular, these early efforts highlighted concerns about transparency of payments from extractive industries to governments and the recorded revenues. Gross discrepancies and injustices were criticized by NGOs such as Global Witness and the campaign 'Publish What You Pay'. They argued that especially the payments of oil companies to governments need to be made transparent so that the potential for corruption can be reduced. Such transparency concerns were extended to cover also other resource extracting industries. Led by the United Kingdom, governments began formalizing transparency guidelines, which were officially released as a Statement of Principles at a conference in London in June 2003 (see Box 1) and which laid the foundations of the EITI.

Box 1: The EITI Principles

1. 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. We affirm that management of natural resource wealth for the benefit of a country's citizens is in the domain of sovereign governments to be exercised in the interests of their national development.
2. We recognise that the benefits of resource extraction occur as revenue streams over many years and can be highly price dependent.
3. We recognise 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.
4. We underline the importance of transparency by governments and companies in the extractive industries and the need to enhance public financial management and accountability.
5. We recognise that achievement of greater transparency must be set in the context of respect for contracts and laws.
6. We recognise the enhanced environment for domestic and foreign direct investment that financial transparency may bring.
7. We believe in the principle and practice of accountability by government to all citizens for the stewardship of revenue streams and public expenditure.
8. We are committed to encouraging high standards of transparency and accountability in public life, government operations and in business.
9. We believe that a broadly consistent and workable approach to the disclosure of payments and revenues is required, which is simple to undertake and to use.
10. We believe that payments' disclosure in a given country should involve all extractive industry companies operating in that country.
11. In seeking solutions, we believe that all stakeholders have important and relevant contributions to make – including governments and their agencies, extractive industry companies, service companies, multilateral organisations, financial organisations, investors, and non-governmental organisations.

Source: https://eiti.org/eiti/principles%20 [retrieved 10/10/2014]

These 12 EITI Principles centered on the idea that natural resource wealth benefits all the citizens of a resource-rich country when the proceeds from these resources are managed in a transparent and accountable manner. The EITI stipulates that transparency can be reached when government information about revenues are reconciled with extractive industries' information about payments to these governments. Soon after the release of the EITI Principles, first pilot studies on how to implement the EITI were conducted by Nigeria, Azerbaijan, Ghana, and the Kyrgyz Republic. The next round of interested countries included Peru, the Republic of Congo, São Tomé and Príncipe, Timor Leste, and Trinidad and Tobago. Along the way, criteria for the implementation of the EITI and an EITI Validation Guide with indicators for countries' EITI compliance were devised. In February 2009, Azerbaijan became the first EITI Compliant country, with Liberia, Timor Leste, Nigeria and Ghana soon following suit.[2]

Over time the Principles, together with the requirements and guidelines to implement them, evolved into the current EITI Standard, which was adopted at the last EITI global conference in 2013 (Extractive Industries Transparency Initiative 2013a).

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[2] See https://eiti.org/eiti/history [retrieved 10/22/2014].

To date, EITI's governance structure is codified in the EITI Articles of Association as a non-governmental entity according to Norwegian law. The articles of the EITI Association stipulate in further detail governance of

a) Members' Meetings; Members' meetings are held alongside EITI global conference (which take place every 2 to 3 years) by the groups constituting the EITI: countries (implementing and supporting), corporations (including institutional investors) and NGOs. These Members' Meetings appoint the EITI Board.

b) The EITI Board; The EITI Board oversees the EITI between the global conferences. It has 20 members from the three different constituencies. An independent chairperson is head of the board, currently Clare Short, the former minister of development of Great Britain.

c) The International Secretariat; Under the direction of the EITI Board through its Chairperson, the International Secretariat runs the day-to-day business of the EITI. The International Secretariat is located in Norway.

Countries wanting to implement the EITI need to meet a set of requirements before they apply: These include a clear statement of the government's commitment, developing a work plan that sets objectives for what the country wants to achieve with the EITI, and establishing a Multi-Stakeholder Group (MSG) composed by representatives from government, corporations, and civil society. The MSG is in charge of overseeing the implementation of and reporting on the EITI in a country. It produces the EITI reports and makes sure that they enter the country's public debate.

Once the application of the country has been accepted by the Board, the country has become an EITI Candidate. It then has a maximum of five years to fulfil the seven detailed requirements of the EITI Standard (see Box 2). Countries are motivated to sign up to and to implement the EITI to send a signal to potential international investors and financial institutions that improved transparency will also improve accountability, good governance, as well as economic and political stability. As a result, conflicts around the extractives sector are considered to become less likely, which makes this sector more attractive to foreign investment and also helps improve the general investment climate.

Box 2: EITI Requirements

1. Effective oversight by the multi-stakeholder group.
2. Timely publication of EITI Reports.
3. EITI Reports that include contextual information about the extractive industries.
4. The production of comprehensive EITI Reports that include full government disclosure of extractive industry revenues, and disclosure of all material payments to government by oil, gas and mining companies.
5. A credible assurance process applying international standards.
6. EITI Reports that are comprehensible, actively promoted, publicly accessible, and contribute to public debate.
7. The multi-stakeholder group to take steps to act on lessons learned and review the outcomes and impact of EITI implementation.

Source: https://eiti.org/files/English_EITI%20STANDARD_11July_0.pdf [retrieved 10/22/2014]

The candidate country then undergoes a comprehensive validation exercise. Countries can be suspended or delisted, if no meaningful progress is made. Once a country passes, it is declared EITI Compliant by the Board. After that, EITI Compliant countries will undergo validation every three years.

Important for the take-off of the initiative was the engagement of the World Bank. At the inception of the EITI in 2004, the Bank established together with the UK's Department for International Development (DFID) a Multi-Donor Trust Fund (MDTF). It is governed independently from the EITI Board and Secretariat. With this involvement, the Bank has not only brought almost US$60 million in financial assistance to EITI programs in 37 countries, but the Bank has also lent is technical expertise to governments on EITI issues as part of broader Bank-supported programs on extractive industries reform, natural resource management, good governance and anti-corruption.

4.2 EITI's Achievements

To date, the EITI is the most encompassing normative and practical framework for the governance of natural resource extraction. It is an example for the abovementioned (see "The Quest for Governance", p.3) complexity of contemporary governance structures. The EITI is multi-layered, requiring international, national and sub-national reporting on resource-related revenues. It is also poly-centric as it brings to the table different actors from government, industry, and civil society with their own respective agenda and political and policy background they need to cater to.

During its short period of existence – the EITI became fully operational with an elected Board and Secretariat only in 2007 – the initiative has seen a rapid increase in the number of countries that have joined the compact. As of October 2014, there are 48 countries implementing the EITI: 31 compliant and 17 candidate countries.[3] The 207 years covered in EITI reports disclosed government revenues from oil, gas and minerals, worth US$ 1.3 Trillion (Extractive Industries Transparency Initiative 2014).

Equally important, the EITI established principles for transparency in the extractive industries that were picked up by many relevant global actors such as international organizations (e.g. World Bank) and global extractive corporations (e.g. BP, DeBeers, Vale).[4]

The rapid adoption of the initiative can in part be attributed to its limited focus and target area: Honing in exclusively on the extractive industry sector made the requirements for implementing countries manageable. The operational approach, while also being limited, allowed for demonstrably more transparency due to the reconciliation reports and for an information-based and participatory debate on a country level (Scanteam 2011, 2). Moreover, the initiative also fostered dialogue between groupings that had previously not interacted with each other. This was an achievement particularly important for the fragile situation of post-conflict countries such as Liberia where multi-stakeholder platforms brought together hostile parties and reduced tensions among them. Information by the Liberian EITI (LEITI) about the payments of mining and logging companies to the government were taken up and discussed widely throughout Liberian society. Communities affected by extractive activities took to the local community meetings organized by LEITI. Prior to this initiative, there had not been forums for the discussion of such potentially contentious issues which had fueled the conflicts of the past (Extractive Industries Transparency Initiative 2010). And in the case of the Democratic Republic of Congo, an increasingly popular EITI broadened civil society organizations' participation even from remote areas and it also led to the government's disclosure of previously opaque contracts with companies from China (EITI Democratic Republic of Congo 2012, 15).

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[3] The number of EITI Compliant countries includes the Central African Republic (CAR), although the EITI Board temporarily suspended the CAR's compliance status after a coup d'état in March 2013. The Board argued that the coup had led to political instability and had left the country without a recognized government necessary for effective EITI implementation.

[4] For a comprehensive list see https://eiti.org/supporters/companies?page=1 [retrieved 10/22/2014].

In many countries, increasing transparency has already translated into financial gains for federal budgets. In Nigeria, for example, the Nigerian EITI (NEITI) identified missing payments, mostly from the Nigerian National Petroleum Corporation (NNPC), of almost US$ 10 billion. After publication of the audits, US$ 2 billion could be recovered for the Nigerian federal government (Extractive Industries Transparency Initiative 2013b, 7). This also led to the revision of the 2012 Executive Draft of the Petroleum Industry Bill (2012 PIB), which was deemed insufficient to restructure the NNPC (Gillies 2014).

4.3 EITI's Shortcomings

Despite such undoubtedly important achievements, the EITI has been criticized on various accounts. The official evaluation of EITI in 2011 (Scanteam 2011) came to the conclusion that transparency may have improved. At the same time, the societal results that the EITI also aspires for – transformed economies, reduced poverty, and raised standard of living – are nowhere near to be reached. The evaluation contended that one of EITI's fundamental challenges is the absence of a causality chain, a theory of change, for how EITI intends to contribute to societal transformations (Scanteam 2011, 3). The EITI bears a key tension between transparency as a goal in and of itself, versus wider societal changes. To begin with, transparency is limited in its reach, because in many countries civil society organizations only have a limited technical and legal capacity to interpret information about financial flows from extractive industries. Moreover, even if civil society organizations were to have the necessary expertise, their leverage to induce change is often restricted. For many countries and governments, accountability to civil society is a challenge in its own right that touches upon political, economic, legal and social sensitivities (Ospanova, Ahmadov and Wilson 2013, 23). The EITI does acknowledge the dilemma that some of the countries participating in the Initiative only allow for limited civil society involvement, and urges the countries to see civil society participation as crucial for all aspects of the EITI process (EITI Standard, 2013, 40).

A case in point of this dilemma is Azerbaijan. Despite priding itself of being the first EITI Compliant country, the democratic space has continued to dwindle due to government's human rights violations (Ismaylova and Kazimli 2014). Azerbaijani civil society groups contend that they are threatened and cannot play the critical role that is part of EITI's multi-stakeholder approach.[5] Consequently, Human Rights Watch demanded that the EITI suspend Azerbaijan's membership.[6] While the EITI Board did not go that far, it downgraded Azerbaijan from Compliant to Candidate status in April 2015.[7] This is certainly a positive development, but more needs to be done to formalize how violations of the requirements for civil society involvement can be sanctioned.

Formulating a set of negative repercussions is even more glaringly absent with regards to the third stakeholder of the EITI process, the extractive industry companies. Strictly speaking, 'EITI' is a misnomer, because the consequences for failing to establish transparency are not equal for participating countries and companies: "Validation is an essential feature of the EITI process. It serves to assess performance…and [i]t also safeguards the integrity of the EITI by holding all EITI implementing countries to the same global standard." (EITI Standard, 2013, 35, emphasis by the author) In its current form, the EITI only knows sanctions for countries, who can be labelled non-compliant and can be delisted. Such compulsory measures do not exist for companies whose cooperation remains voluntary. The EITI is therefore in line with other voluntary corporate codes of

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[5] See http://eiti-ngo-azerbaijan.org/?p=627 [retrieved 11/1/2014].
[6] See http://www.hrw.org/news/2014/08/14/azerbaijan-transparency-group-should-suspend-membership [retrieved 11/1/2014].
[7] See https://eiti.org/news/azerbaijan-downgraded-candidate-country [retrieved 6/5/2015].

conduct, such as laid down in the Guidelines for Multinational Enterprises of the Organization on Economic Cooperation and Development (OECD) and the UN Human Rights Council's Guiding Principles on Business and Human Rights. Yet leaving it at the corporations' own discretion how to abide by the EITI framework creates a number of problems. To begin with, so far companies have fulfilled their requirements when they report the amount they paid to governments for resource extraction, irrespective of the actual value of the extracted resources. The discrepancy is exacerbated by transnational corporations' sophistication in tax evasion. Intra-company trade between subsidiaries allows for transfer pricing (or mispricing) below the market value, with the untaxed surplus then sheltered in tax havens. The EITI, while aiming to be a global framework, does not address such transboundary flows. Making them more transparent would undoubtedly benefit all countries but this cannot be achieved by resource-rich countries alone. To tackle the problem of tax evasion would require a country-by-country reporting of corporations' profits (Visser 2012, 18).

For the time being, extractives companies that are listed as supporters of the EITI have only halfheartedly embraced the call for more specific reporting. In the United States, Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) required publicly traded natural resource extractive companies to disclose to the Securities and Exchange Commission (SEC) the amount of payments above US$ 100.000 by type, by project and by government. When in August 2012 the SEC issued a rule for the implementation of Section 1504, this was immediately challenged by the American Petroleum Institute (API) on behalf of several oil companies, such as BP, Chevron, Exxon, Shell and Statoil. Interestingly, all of these companies, as well as the API, are listed as supporters of the EITI (Ospanova, Ahmadov and Wilson 2013, 11). In July 2013 a federal court agreed with the API's complaint that the SEC had overstepped its congressional mandate and put the implementation of Section 1504 on hold (Ernst&Young 2013, 1). The obvious contradiction between companies' voluntary commitments towards greater transparency and their action to block such requirements when they are mandated by law speaks for itself. Whether or not such tactics will diminish corporations' reputational benefits that they hope to gain from signing up to the EITI also depends on whether the EITI has inbuilt mechanisms for reprimanding or even sanctioning its private sector stakeholders. So far, these mechanisms do not exist.

The limited scope of the EITI is a contentious issue also in another way. According to the EITI Principles, the purpose of the initiative is the "prudent use of natural resource wealth," which, if not properly managed, "can create negative economic and social impacts." (EITI Standard, 2013, 9). No reference is made to ecological and environmental repercussions of the extractivist endeavor, the option of not extracting does not seem to exist within the EITI. This is all the more important as in many situations the livelihood of people and peoples closest to the exploitation site are endangered by such activities no matter how transparent they takes place.

4.4 EITI Beyond Transparency Toward a Broader Resource Governance Tool?

Despite such criticism and the outcome of the EITI's first external review in 2011, which advocated for a broader standard aiming for more social linkages, EITI's principles have remained unchanged. Instead, when the EITI Global Conference in 2013 adopted the new EITI Standard (Extractive Industries Transparency Initiative 2013a), the amendments were much more narrowly focused on increasing transparency by refining requirements for reporting and verification. Most importantly:

- Reporting of revenues will have to be disaggregated, stating types of payment, company, government agency, and project. These reporting requirements should bring consistency between the EITI and the requirements in the United States (now put on hold) and Europe.

- State-owned companies are required to report on financial flows to other government entities, and on the revenues they are supposed to collect for the government. As in the above case of Nigeria's state oil company, this provision should help to recoup substantial assets for the benefit of the public budget.
- Reporting of revenue transfers from the central government to the subnational level. This should increase the transparency of how much of resource extraction revenues stays with the central government and how much flows back to where the actual extraction takes place.

As the lawsuit about the project-level reporting under Section 1504 of the Dodd Frank Act shows, progress is not always guaranteed. On a more general level, this leads to two different trajectories, bearing distinct challenges for strengthening the EITI:

1. Make it more compulsory with a limited reach. The EITI is currently voluntary, but EITI implementation is mandated by law in a number of countries, including Nigeria and Norway. Also for corporations, requirements such as regarding transparency, could be increased. While fewer countries and companies may be inclined to support a more coercive framework, their backing may be more substantial.
2. Leave it relatively weak but extend its reach, for instance by bringing in more resource-consuming countries, rising economic powers, and their companies.

In both cases, it is important that more western industrialized countries will be joining the EITI. It would send the message that responsible and transparent natural resource management is not only a task for countries in the developing world. Moreover, it would also add to the pressure on multinational extractive companies that are headquartered in these countries, to become more supportive of the EITI. To date, the United States is an EITI Candidate, but for example Canada and Australia – both also states with considerable extractive industries operating abroad – are still hesitant.

To conclude, the biggest strength of the EITI may be also be its biggest weakness: By focusing on transparency and accountability and by presenting narrow, specific parameters for how to measure revenue reporting on natural resource extraction, EITI now presents itself as a coherent and quantifiable framework acceptable to countries and companies alike. But by predominantly focusing on transparency and accountability, broader implications of natural resource exploitation for economic, social, and environmentally sustainable development are missed. In all fairness to the EITI, very few – if any – global governance frameworks would have been able to transform economies, reduce poverty, and raise the standard of living for the entire population in resource-rich countries in such a short period of time. But one of the key weaknesses of the EITI is that its causality of change (transparency leads to accountability, which leads to better state institutions, which leads to better governance, which leads to better standard of living) assumes a relationship between state and non-state actors that is incomplete. To begin with, it overstates the social embeddedness of many corporations. At the end of the day, corporations are the real operators in resource extraction, and they may see both governments and civil society as external obstacles to their activities that need to be overcome rather than actors that need to be respected, let alone deferred to. And secondly, to hope that natural resource governance can benefit from improved relationships between citizens and state institutions only makes sense when these relationships are not broken in the first place. This gap is particularly relevant for fragile states, as will be elaborated next.

5. The Special Situation of Fragile States

Ever since the publication of the World Bank's 2011 World Development Report, the linkage between state fragility and development is receiving increasing attention by the institutions of global governance (World Bank 2011). And rightfully so, because there are more than 1 billion people living in countries that are affected by repeated cycles of political and criminal violence. This is also reflected in the dismal record of low-income fragile or conflict-affected countries with regards to achieving any of the Millennium Development Goals (MDGs) prior to 2015.

As part of the 2011 Busan meeting on development partnerships, a number of conflict and post-conflict countries began coordinating their efforts and set up the so-called "g7+" Group.[8] Among its currently 20 member states are many countries that are rich in natural resources. As a consequence, the governance of these resources has been embraced as a key challenge and opportunity and g7+ countries have flocked to the EITI: To date (June 5, 2015), out of 20 g7+ members there are 8 EITI Compliant Countries and 4 EITI Candidate Countries (see Table 1).

Table 1: g7+ Countries and EITI Status

g7+ Country	EITI Status (as of 8/22/2014)
Afghanistan	Candidate Country
Burundi	/
Central African Republic	Suspended
Chad	Compliant Country
Comoros	/
Cote d'Ivoire	Compliant Country
Dem. Republic of Congo	Compliant Country
Guinea	Compliant Country
Guinea-Bissau	/
Haiti	/
Liberia	Compliant Country
Papua New Guinea	Candidate Country
Sao Tomé and Principle	Candidate Country
Sierra Leone	Compliant Country
Solomon Islands	Candidate Country
Somalia	/
South Sudan	/
Timor-Leste	Compliant Country
Togo	Compliant Country
Yemen	Suspended

Sources: http://www.g7plus.org/introduction; http://eiti.org/countries [retrieved 6/5/2015].

[8] See www.g7plus.org

Within the g7+ there are some tacit efforts for coordination and peer learning underway. For example, in January 2012 the Government of Sierra Leone launched an online depository of all of the mining activity in the country.[9] While such efforts are laudable and bear future potential, the general conundrum remains: Prolonged, repeated conflicts all lead to post-conflict states that are institutionally more poor than is the case in non-fragile, resource-rich countries. But g7+ and other post-conflict countries need even more the rules, institutions, and citizen understanding to govern natural resources for sustained economic development. (Collier 2012)

Such long-term developments are always in danger of being undermined by short-term fixes, for example attracting investment from international extractive companies by favorable tax arrangements or in-kind payments such as resource-for-infrastructure. Fragile states such as the g7+ would certainly profit from an international environment that gives space to and is in support of longer-term strategic development planning. Which means that peace, stability, and development are acknowledged as mutually reinforcing. Not coincidentally, the g7+ countries are currently most outspoken in favor of an integration of a peace goal into the UN's Post-2015 Sustainable Development Agenda. (Pereira 2014)

6. Policy Recommendations

The following policy recommendations are ranked by increase in complexity: from specific recommendations for national governments over improving the EITI to the global level of UN negotiations.

Calibrate natural resource strategies: To date, all major resource-consuming countries have formulated strategies to facilitate their industries' access to external natural resources. European measures, such as the Raw Materials Initiative, but also national initiatives, such as the German Raw Materials Strategy will have to be scrutinized and – if need be – recalibrated – so that they do not counteract the EITI and other standards for sustainable natural resource extraction.

Introduce gradation into the EITI: While the EITI Standard encourages countries to implement measures that go beyond the minimum requirements, the opportunity for countries to earn extra credits should be strengthened. Proposals exist for an 'EITI Plus', which would make a broadening of the initiative more attractive, for instance by including sustainability standards. National EITI multi-stakeholder groups should experiment with provisions to dedicate portions of the revenues from extractive industries towards a post-carbon infrastructure. Such investment decisions have long-term consequences, because development trajectories can be locked into a carbon-based pathway or into an alternative route.

Implement more stringent reporting requirements for companies: The revised EITI Standard requires more specific reporting that list companies' payments on a project-by-project basis. The EU guidelines and Dodd Frank 1504 are steps in the right direction. At a minimum, companies that are listed as EITI supporters should abstain from blocking the legal transparency requirements in court that they are otherwise supporting on a voluntary base.

Adopt more comprehensive frameworks: While it is generally acknowledged that resource-rich countries profit from increased transparency, real social transformation requires more. Not all of it will happen within the framework of the EITI. One initiative underway, which could be

[9] See http://www.g7plus.org/s/PL-Note-1-EN-Sierra-Leone-Mining-Transparency.pdf [retrieved 11/05/2014].

complimentary to the EITI, is the model Natural Resource Charter (Natural Resource Governance Institute 2014). Unlike the EITI, which is mostly focused on the various aspects of revenue generation, the Charter also contains policy guidelines for managing the revenues from natural resources, their distribution, and the investment for sustainable development. In a similar vein, when African Heads of States adopted the Africa Mining Vision (AMV) in 2009, this was an attempt to steer away from the race to the bottom between African countries to attract foreign direct investment into the extractives sector and define collectively new priorities and linkages (African Union 2009). For example, the AMV wants to strengthen the role of artisanal miners and use proceeds from mining for a diversified industrialization.

Support fragile states: As the threats of a 'resource curse' are often elevated for conflict-affected and fragile states, their concerns should be taken seriously. Support from the industrialized world has to acknowledge that the task is not to make every fragile country "become like Norway". In this vein, in-kind-remuneration schemes are not per se detrimental to development of fragile states. What they do often suffer from, however, is China's monopolistic position in the resource-for-infrastructure trade. Multilateral bodies such as the World Bank and the African Development Bank have a sketchy track record regarding the financing of extractives projects. But they could play a useful role by providing technical advice, such as for setting up appropriate revenue savings funds or a framework for royalty payments, which are less prone to tax evasion.

Close tax loopholes: As many resource-rich countries see a considerable revenue leakage due to tax evasion, the remedy for this can only be on an international level. This requires the participation of industrialized countries, not only because of the transnational extractive companies headquartered there but also because of these countries' dominating position in the flow of global finances.

Strengthen sustainable natural resource extraction by UN frameworks: More limited governance guidelines such as the EITI can be strengthened by global agreements. For example, in the current version of the Sustainable Development Goals (SDGs) Goal 12 ("Ensure sustainable consumption and production patterns") specifies as a target that all UN Member States have to take action by 2030 so that natural resources are used and managed in a sustainable way.[10] Formulating indicators for measurement and strategies for the successful implementation of this target provides an opportunity to link up the general question of natural resource governance with extractives activities. The removal of non-renewable resources from their original surrounding is an inherently unsustainable activity, for which costs and benefits have to be carefully addressed. At a bare minimum, extractives industries aiming for more sustainability should a) have the consent of the local communities in which the resources are extracted; b) generate and share revenues in an inclusive manner; and c) generate a 'net benefit' by increasing human welfare gains without undermining the environment's life supporting facilities. For a positive outcome beyond the local level, this also requires that the sustainable extraction of natural resources, especially carbon-based fuels, is restricted to a level commensurate with the efforts to curb climate change.

Targets and indicators for SDG 12 may not specifically address climate change, not in the least because SDG 13 ("Take urgent action to combat climate change and its impacts") acknowledges that the primary intergovernmental forum for the global response to climate change remains the UNFCCC. But current negotiations on both UN frameworks provide a chance that different global governance agreements, or parts thereof, do at least not cancel each other out. The EITI and other more specific governance agreements could potentially be strengthened by more encompassing global agreements. Transparent resource extraction has its role to play, but only if it respects the overarching ambition of sustainable development within the planetary boundaries.

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[10] See http://sustainabledevelopment.un.org/focussdgs.html [retrieved 11/4/2014].

7. Further Research

- Germany, one of the world's largest economies and dependent on vast amounts of imported extractives, is currently preparing for its EITI candidacy. This process is worth monitoring as it could lead into two directions: It could increase the general acceptance of the EITI standards. Or it could increase the legitimacy and acceptance of the German Raw Material Strategy that is geared towards safeguarding the country's population and the country's industry's demand for extractable natural resources.
- How do companies from rising economies, i.e. China, Brazil, India, South Africa, comply with reporting requirements such as those stipulated by the EITI and with voluntary corporate codes of conduct in general? Is their behavior different and if so, is this because they are often times state-owned (especially Chinese) companies?
- How will the newly founded New Development *Bank* (NDB), the BRICS Development Bank, address natural resource governance?

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