

Mining and the Extractive Industries Transparency Initiative

**A review of international and in-country experiences of the EITI from the
perspective of supporting mining companies**

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Commissioned by the ICMM President

August 2015

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Preface and Acknowledgement

From its inception, ICMM has recognized the benefits of more open and transparent information flows related to mining and metals operations. Mining and metals' full contribution to society and the ecosystem that is our home – the net of benefits, costs and risks over the long term – is not well understood. Sometimes this has led to ill-conceived public policy. Simply put, without openness and transparency, enhancing related decision-making is severely impeded.

In concrete terms, ICMM's stance has led to public statements including concrete member commitments in 2003, 2005, and 2009. EITI has always figured at the centre of these commitments.

Throughout this involvement, the thread of continuity for EITI's mining constituency has been Edward Bickham, first as a representative of Anglo American, then as a representative of ICMM, and latterly as an advisor to ICMM and the mining constituency board members. He has participated in the design of the original EITI architecture right through the 2013 approval of a new and up-dated Standard. This document is intended to be a contribution to discussion. It reflects the views of the author but does not purport to be a statement of policy on behalf of ICMM or of the mining constituency more broadly.

He saw the first country validated in 2009, just as he now sees 48 implementing countries of which 28 have been declared compliant. He has seen resistance on the part of OECD countries turn to quiet commitment to seek EITI validation – first Norway and latterly the US, UK, France, Italy, and Germany along with formal endorsements by the G-8 and G-20 countries. Together this adds up to an EITI now serving as a de-facto global standard.

Throughout this rapid growth and evolution, the EITI mining constituency has been a key contributor. Now after a decade, it is timely to turn the mirror around and look at the constituency itself – to assess our role and to ask how we might be more effective.

To serve as a foundation of such a review and to put in writing something to serve as a lasting component of corporate memory, ICMM asked Edward to reflect on the EITI, its history and its constituent parts and ask what our constituency has done well and how we might yet do better. This report is the result.

It summarizes the remarkable story of EITI – a unique multi-interest consensus-driven organization that has and continues to put into practical action the principle of “overlapping consensus” the power of which was first recognized by legal scholar John Rawls in 1971. But more than that and in particular, in a considered way this report highlights the mining constituency's constructive role and how it can be more effective as we move ahead. It provides a foundation for our EITI-related work to be still stronger in the future.

ICMM is very appreciative of the role that Edward has played over the past 12 years in the mining and metals constituency of EITI. His contribution has consistently been proactive, constructive, and insightful.

ICMM President
International Council on Mining and Metals

Background

This Review was commissioned in 2013 by the International Council on Mining and Metals (ICMM) on behalf of those mining companies that have declared support at the international level for the Extractive Industries Transparency Initiative (EITI). The terms of reference are at Annex 3.

Given the passage of ten years since the adoption of the EITI Principles, the study's purpose was to review: i) mining industry actions within EITI to date and how they can be improved; ii) how the mining industry is seen by other constituencies; iii) how the EITI can be improved from the mining industry point of view. An advanced draft of the Review was discussed under the auspices of ICMM during 2014 and a number of more organisational and administrative recommendations were implemented, including the appointment of an EITI Co-ordinator to support the mining constituency involved in the implementation of EITI at an international and national level. This final version was produced in March 2015 for a mining sector strategy discussion on EITI and related themes.

ICMM is now sharing the Review with the EITI International Secretariat and the EITI Board as a contribution towards the EITI Governance Review, currently being undertaken by the EITI Board. The document is intended to be a contribution to discussion. It reflects the views of the author and does not purport to be a statement of policy on behalf of ICMM or of the mining constituency more broadly.

Methodology

The research for the Review was undertaken between August and December 2013. The Review draws upon:

- the author's personal knowledge of the EITI, derived from an involvement dating back to the launch of the concept in 2002 through to leaving the Board in May 2013;
- a review of EITI, ICMM and civil society policy documents related to transparency and accountability in the extractive sector;
- one-to-one interviews with industry representatives active at both a corporate and national level;
- questionnaires administered to both supporting companies at head office level and to industry personnel close to or actively involved in national multi-stakeholder groups; and
- one-to-one interviews with senior representatives from implementing and supporting governments; civil society organisations; and from oil and gas and investment companies

In a number of places the 2013 text has been updated to reflect recommendations that have already been implemented or to reflect changes in the external environment. A small number of additional interviews were conducted in the opening months of 2015, largely for fact-checking purposes, but the review remains primarily based on the original research.

About the International Council On Mining And Metals (ICMM)

The International Council on Mining and Metals (ICMM) was established in 2001 to act as a catalyst for performance improvement in the mining and metals industry.

It brings together 23 mining and metals companies as well as 35 national and regional mining associations and global commodity associations to maximize the contribution of mining, minerals and metals to sustainable development.

ICMM is a membership organisation, led by the CEOs of many of the world's largest mining and metals companies and associations. ICMM is committed to driving social, economic and environmental progress.

ICMM serves as an agent for change and continual improvement. Its vision is of leading companies working together and with others to strengthen the contribution of mining, minerals and metals to sustainable development.

Executive Summary

This Review was commissioned in 2013 by the ICMM on behalf of those mining companies that have committed themselves to support EITI¹ at an international level and was updated in March 2015. It seeks to cover: the impact of EITI on the governance of natural resources and on the mining industry; sentiment towards the Initiative within the industry; the views of other stakeholders about the future of EITI; the effectiveness of the industry's participation and how this might be optimised; and potential strategies for the mining sector within EITI over the coming three to five years.

Section A sets out the current context for EITI. It outlines some in-country achievements, including building greater understanding of the contribution made by the extractive sectors and creating a dialogue between groups which have previously had largely adversarial relationships. There are now 48 implementing countries (with more in prospect), support has been pledged by leading institutions including the G8, G20, African Union, United Nations and World Bank; and it has played a large part in creating a presumption of transparency in the governance of the extractive sectors. Six contextual factors affecting EITI's development are identified in the review:

- First, the need to be cautious about making the Standard ever more ambitious whilst the reality persists that many countries teeter on the edge of non-compliance even in implementing the traditional core rules. There is a danger of a crisis when the EITI seeks to validate countries against the more exacting Standard in 2015/16. Nonetheless, there are clear benefits from having a clear and objective pass/fail validation process as long as there is a clear route back to compliance once flaws have been rectified.
- Second, EITI largely developed during years in which commodity prices, investment and government revenues rose. Most EITI reports in countries where mining is significant showed, for example, a big increase in tax revenues for 2010/11 and 2011/12 compared with prior years, reflecting strong prices and the end of payback periods for some newer mines. As of 2015, prices, investment and tax revenues have fallen over the last two to three years for metals; over the last six months oil prices have fallen precipitately. At the national level these falls have led to some frustration and sense of grievance with widening fiscal deficits in some countries as anticipated revenues have failed to materialise. EITI may either help countries to work through what is an inevitable downturn in a cyclical industry; or the process may experience an erosion of goodwill and increased friction between stakeholders.
- Thirdly, home country mandatory reporting laws, such as is required by the Dodd-Frank Act s. 1504 and the EU Transparency Directive, are expected to generate data at the international level alongside that coming from EITI. EITI's advantages include that it also requires government disclosure of revenues received, thereby allowing discrepancies between payments and receipts to be identified within countries; it creates a level playing field for all companies operating in specific countries; and has an accountability mechanism through the work of national Multi-Stakeholder Groups. However, one of the factors which reduces

¹The EITI mining constituency consists of over 40 companies including 23 ICMM member companies: African Rainbow Minerals, Anglo American, Anglo Gold Ashanti, Antofagasta, Areva, Barrick, BHP Billiton, Codelco, Freeport McMoRan, Glencore, GoldFields, GoldCorp, Hydro, JX Nippon Mining and Metals, Lonmin, Mitsubishi Mining and Metals, MMG, Newmont, Polyus Gold, Rio Tinto, South32, Sumitomo Metal Mining and Teck Resources and the following non-member companies: Alcoa, Alliance Mining, Arcelor Mittal, Avocet, Base Titanium, Centerra Gold, Dundee Precious Metals, Eramet, Goldlake, Fleurette Properties, HudBay, IAMGOLD, Impala Platinum, Kinross, London Mining, Newcrest Mining, OK Tedi Mining, Oxus Gold, Oz Minerals, Sherritt International, Talas Copper and Gold, Tata Steel and Vale.

EITI's impact is the common two year time lag in publishing payments. It is to be hoped that the advent of newer home country data will act as a spur to accelerate the production of host country reports. The Review notes the risk, however, that armed with the partial data generated by mandatory home country disclosure, some host governments and activists will be misled in to thinking that simple comparisons between extractive projects in different countries provide a reliable guide to what tax any given project 'should' be paying wherever it is located. In reality many different factors determine the profitability and tax carrying capacity of each mine; these are explored in the report. The landscape on mandatory reporting looks a little different in 2015, given the continuing failure of the SEC to produce a revised set of regulations for the implementation of s.1504 following the American Petroleum Institute's legal challenge.

- Fourth, a number of OECD countries have recently become implementing countries or declared their intention to seek EITI candidate status. This is a welcome commitment to the same values in the governance of their extractive industries as they have advocated for countries in the political 'South'. Nevertheless, if not carefully handled, the trend risks absorbing limited International Secretariat resources and distracting from the 'development' focus of EITI. If OECD countries are too readily granted derogations because of constitutional or political issues, through the 'adapted implementation' provision, this may spur perceptions of 'double standards'.
- Fifth, the continuing lack of involvement of the BRICS countries is of significance because of their growing importance as international investors in the resources sector and their significance as producers of a number of major minerals.
- Finally, there may be an impact on EITI from the wider discourse (e.g. in the G8 and OECD) around the taxation of multinational companies including on issues like transfer pricing.

Section B examines attitudes towards EITI in the mining sector based on in-depth interviews and questionnaires involving international corporate personnel and managers involved in national implementation. There is strong support. EITI is widely seen as having had broadly positive effects in implementing countries and for the industry. Positive impacts identified include improvement in the governance of natural resources (although some see the impact as small), building trust, reducing scope for corruption, facilitating dialogue in a sector where relationships are prone to conflict, and a growing understanding of the contribution that extractive companies make to host country economies.

Potential risks for the industry are perceived to arise from EITI being manipulated by campaigners for higher taxes or contract renegotiation; increased costs and bureaucracy arising from national processes and the disclosure of commercially sensitive information. Concerns were also expressed about: the dangers of overloading national processes; EITI losing its focus on revenue-related issues in favour of becoming a 'catch-all' process; the need for stronger governance arrangements for national Multi-Stakeholder Groups (MSGs); and about the limited outreach and support given to the private sector, compared with civil society especially around the new Standard.

Survey participants believe that EITI will become increasingly significant over the next 3 - 5 years. Over that period, industry participants would like to see: more countries participating; an increased focus on how revenues are used (decisions around expenditure priorities are seen as 'political' and outside the scope of EITI but transparency about the allocations made and how well money is used are clearly within the ambit of the EITI Principles); a bigger emphasis on sub-national flows; and using EITI to help implementing countries to attract new investment. EITI is seen as presenting

opportunities for industry: to explain its contribution; to participate in policy-orientated dialogues; and to be seen as part of ‘the solution’ rather than be cast as ‘the problem’. However, fears about lack of people and resources to devote to participation, were seen as constraints.

Section C provides feedback from representatives of other stakeholders – civil society; implementing and supporting governments; oil and gas companies; investors; the EITI Secretariat and international financial institutions. The immediate priority was seen as supporting implementing countries to digest the requirements of the new Standard and to avert a crisis around validations in 2015/16. The importance of government leadership of in-country processes was widely acknowledged. Concerns were expressed, however, about limited continuity amongst government representatives on the International Board especially given the desirability of implementing countries taking a more active role in shaping the EITI.

There have been debates in some countries around those items in the new Standard that are ‘encouraged’ with many CSOs pushing hard around contract transparency (albeit perhaps with less traction than was initially anticipated). The potential medium-term aspirations of a range of civil society groups are also explored although some wariness was expressed about a dissonance between the agendas of ‘northern’ versus ‘southern’ NGOs. Some civil society aspirations for the future of EITI include: hardening the provisions on contract transparency and beneficial ownership² to become ‘requirements’; tracking ‘where the money goes’; auditing the processes through which licenses and concessions are allocated; greater focus on what companies ‘should have paid’; and, potentially covering environmental and community issues.

There is support for a governance review, in part to ensure that with more implementing countries and a more complex Standard, the Board remains effective in providing direction, oversight and support to the International Secretariat and appropriate guidance to implementing countries.

Section D provides personal reflections on possible directions for the EITI. It suggests that through the advent of the new Standard and with greater discretion being given to national Multi-Stakeholder Groups, the ‘game has changed’ with both greater opportunities and risks for the industry – but with active participation by company representatives in EITI structures being an imperative.

Whilst EITI cannot (and should not) be a platform for determining tax levels, industry representatives need to engage around the issues – and be better equipped to do so. The current emphasis on the topic flows not from the advent of EITI but from a prolonged (albeit now ended) period of relatively high commodity prices and, in part, from a failure by industry to explain cost pressures and their impact on profitability during some of these years. This is not just a matter of industry interest. Well-conceived mining investment has significant potential to help drive the development of many low and middle income countries; poorly-conceived policies and regulatory instability will truncate investment, the building of new mines and stifle the opportunities that they create in areas like export earnings, tax revenues, employment, infrastructure and supply chain development.

The Review notes that EITI is seen by many in the international community to be the pre-eminent extractive industries governance initiative. The question is posed whether mining companies and industry associations are giving it a commensurate priority or fully understanding its expanding scope.

² The provisions on beneficial ownership in the Standard were jointly drafted between mining industry and civil society representatives. They envisaged that disclosure would automatically be required from 2016. That remains a good aspiration but pilot implementations have moved more slowly than anticipated throwing up problems around which government agencies should lead implementation; the lack of a legal base to ensure compliance and different definitions of the meaning of ‘beneficial ownership’

The paper notes that, despite the step change achieved by the leading mining companies in areas such as safety, environmental management, human rights and social performance, distrust is still widespread in some host societies and may have even deteriorated somewhat in recent years. Some producer country governments and some international institutions have focussed their concerns about tax arrangements for multinational companies on the extractive sector. The question is, therefore, posed whether and how mining companies might seek to use EITI structures and transparency as a means of addressing these concerns more pro-actively and, possibly, more effectively.

Options for longer term focus are set out. EITI is unlikely to be a suitable vehicle for addressing environmental and community-level issues since they need a local, rather than national, focus and require the presence of different stakeholders around the table. EITI should avoid ‘mission sprawl’. In terms of using EITI to promote better development outcomes and poverty alleviation, a key area for scrutiny is the effectiveness of how resource revenues are used. The question is also posed whether there are ways in which EITI might be made a more effective counter to corruption. The industry should also consider promoting a wider focus on mining’s economic contribution rather than solely on fiscal issues. The risks of such an approach are also noted. The Review challenges the industry to develop a long-term strategy towards EITI; to adopt a more consistent approach towards transparency issues; and to invite other stakeholders to join it in reflecting on the recent resources ‘boom’ so as to identify lessons learned.

Section E sets out 20 recommendations for ICMM, the mining sector supporting companies and the EITI International Board and Secretariat. These include measures for improving communication within the mining constituency. ICMM should update its Position Statement on Transparency to reflect the changes in the EITI Standard and use the platform offered by EITI to increase stakeholders’ understanding of mining’s economic contribution and the drivers of investment decisions. The desirability of increasing industry input to EITI training and to the work of the Multi-Donor Trust Fund is noted. Other suggestions include: finding appropriate mechanisms for recognising those countries that use EITI most effectively or innovatively to address reform challenges; complementing the provisions on beneficial ownership with requirements for implementing countries to establish a register of interests for those Ministers, government officials and their families with an involvement in policy towards the extractive sector or the allocation of licenses; and of looking to improve the quality of governance arrangements within some national MSGs.

Annex 1 provides a short history of the EITI and of the evolution of its rules, culminating in the adoption of the Standard in May 2013. Notably, whilst there have sometimes been tensions between the perspectives and objectives of the constituencies represented on the International Board, the multi-stakeholder process has delivered a series of significant rule changes agreed by consensus. Indeed EITI is one of the most successful multi-stakeholder initiatives in any sector. The habit of working together to build trust has allowed a steady expansion of the areas covered by the initiative. A brief review is provided of the topics on which there have historically been differences of opinion, including on:

- a) the extent to which EITI should be flexible or rigid in the interpretation of its rules;
- b) how broad a protection EITI should provide for civil society activists; and
- c) questions as to whether EITI and mandatory home country reporting are complementary or competitive.

A brief account is given of the mining sub-constituency's involvement in shaping EITI, including of ICMM Position Statements and of the Memoranda of Understanding between ICMM and the EITI Secretariat.

The Review notes the mining constituency's 'co-ownership' strategy which involves both proactively seeking to contribute to the overall direction and success of the initiative, as a matter of public benefit, as well as promoting mining's economic contribution. The mining representatives on the Board have been closely identified with initiatives to promote transparency around barter for infrastructure deals; to require the publication of annual national EITI activity reports; to create more visibility around sub-national payments and transfers; to improve procedures for budgeting for and managing resource revenues; to promote consideration of value for money in the spending of resource revenues; and to provide greater transparency around the ownership of mining licenses. Mining companies and associations have played a pivotal role in promoting the adoption of EITI in countries like the Philippines, Ghana and Zambia and have worked with civil society to keep processes alive in Peru and Madagascar during periods of government disengagement.

Section A EITI Today - Context and Challenges

The 2011 Scan Team evaluation criticised EITI's lack of measurable impact on big picture items such as corruption and poverty in resource-driven economies and attributed this in part to its narrow remit. Industry representatives were, however, less critical - arguing that its tight focus on revenue transparency was a strength. According to this view, EITI should be seen as a brick in a wall of resource governance initiatives rather than as the wall. EITI may contribute to the realisation of some bigger goals but it is unlikely to do so without linkages to other initiatives. In the event, the coverage of EITI has been broadened to include a number of additional elements of resource governance and the consensus between the constituencies has been found to stretch further than was once imagined.

EITI has emerged as one of the most successful multi-stakeholder processes in any sector and certainly the most effective in the extractive sectors. Whilst there may be questions about impact which can only be answered with the passage of time, it has created higher expectations of transparency and may have a 'viral' effect on other aspects of the governance of resource dependent countries. It is regarded as the international standard in its field and commands support from institutions such as the G8, G20, World Bank, IMF, regional development institutions and the OECD. Significant resources have been committed by donors, especially through the Multi-Donor Trust Fund.

Within the 48 implementing countries, there seems to be a trend towards greater dialogue between stakeholders with an interest in the governance of the sector, a lot of information is now available to representative institutions and citizens that was not before and there is the potential for greater challenge around whether time-limited resource-related revenues are being used sustainably. Hard data showing impacts that are directly linked to EITI implementation is difficult to identify, although a recent academic study has suggested that based on a sample of 81 countries, joining the EITI increases the ratio of foreign direct investment inflows to GDP on average by around two percentage points³. Other achievements or notable innovations using EITI at country level include:

³ Enhancing Foreign Direct Investment via Transparency? Evaluating the Effects of the EITI on FDI' Maya Schmaljohann, University of Heidelberg, January 2013

- **Identification of unpaid taxes:** in Nigeria non-payment of \$ 8.3 billion in taxes was uncovered, largely from the national oil company;
- **Sub-national implementation:** growing disclosure around sub-national payments and transfers in Ghana, Peru and Indonesia;
- **Extension to other sectors:** including water (Togo) and forestry and agriculture (Liberia); forestry (CAR); and electricity (Kyrgyz Republic); and
- **Improved sector governance:** process audits of how licenses were awarded (Liberia); improved revenue collection (Togo); reform of the management of government financial information (Chad); and audits of the allocation of resource revenues and plans for value for money audits (Nigeria).

The 2013 Standard marked a significant broadening of EITI's scope and a shift in a decentralising direction with emphasis being placed upon national Multi-Stakeholder Groups determining their country's priorities and designing their work plans and success criteria accordingly.

Key challenges associated with the new Standard and changes in the external environment

i) Implementing the new Standard

Many implementing countries, however, operate (at best) on the edge of compliance with a frequent need to apply for extensions or to spend a period in suspension. Although some sections of the Standard are 'encouraged' rather than 'required', EITI has become significantly more demanding. To facilitate the change, the Multi-Donor Trust Fund committed to spend up to \$50 million on in-country support and to finance civil society capacity building. In comparison, however, relatively little attention has been directed at the company constituency to help it optimise its contribution to national debates.

As already noted, a number of currently compliant countries may fail their revalidation in late 2015 or early 2016 because of flaws in their reports under the new Standard. The International Secretariat has on at least three occasions sought to persuade the Board to move away from a binary pass/ fail approach to validation and from the concept of 'compliance'; and to adopt something more nuanced which recognises and rewards progress. On each occasion the Board has chosen to retain the pass/fail approach whilst rejecting ideas such as awarding countries 'stars' to mark the quality of their implementation. Validation requirements and regular deadlines have acted as a discipline and driven continued implementation.

In reality, the Board takes an inclusive approach and seeks to interpret the rules in such a way as to keep countries that show progress and commitment within the process. If several countries were to lose 'compliant' status when measured against a more demanding Standard then, rather than abandoning the current validation model, it would be better to condition expectations so that the loss of 'compliant' status and a reduction to 'candidate' for some countries is not seen as a rejection of their commitment. In such a situation it would, however, be important to provide a proportionate means for countries to address their shortcomings and thereby to reclaim their compliant status. Another option might be, on a one-off basis, since the problems seem to relate specifically to the provisions of the new Standard, to provide for an additional year of grace for countries with validation deadlines in 2015/16.

ii) Falling commodity prices and the EITI reporting time-lag

In a number of major mining countries – as newer mines have come to the end of earn-back periods and the impact of higher prices were felt – EITI reports covering 2010 and 2011 but published in

2012 or 2013, showed significant escalations in tax revenues compared with previous years⁴. Arguably the time lag was unhelpful to the industry given that over the period of relatively high metals prices pressure in many countries was rising for bigger benefits from mining. Thus, even as these were being delivered they remained invisible to the public.

It is too early to make a judgement, against a background where many countries felt that they failed to benefit sufficiently from the peak of the commodities boom, how the fall in tax revenues from mining has affected government-company relations or public opinion. Ghana's announcement of a mining windfall tax in early 2014, just as many mines in the country struggled for viability, set a discouraging precedent. The proposal was eventually abandoned but only after the President had accused the industry of 'blackmail' for making it clear that such an imposition would lead to mine closures and job losses. Zambia's hike in royalty rates in late 2014 triggered an acrimonious debate and threatened significant mine closures.

Regrettably, a change sponsored in the new EITI Standard by the mining sector, to encourage greater transparency around government budget projections, so as to anticipate major price falls and the potential for fiscal deficits to emerge, was introduced too late for the immediate crisis. It will, hopefully, provide a tool for improving dialogue and planning for the future!

iii) Mandatory reporting in home countries versus EITI

Even though s.1504 of the Dodd-Frank Act will not enter in to force in the immediate future, the adoption of the EU Transparency and Accountancy Directives will ensure that data regarding extractive industry payments to governments will soon become available on a project by project basis. Once the US regime becomes operative and the proposed Canadian home country reporting regime is implemented some may question the relevance of EITI.

Whilst such legislation may have the attraction for some NGOs of delivering on the original concept of Publish What You Pay – i.e. of focusing on company payments – mandatory home country reporting is uni-dimensional when compared with EITI. EITI enables comparisons to be made between company payments and government receipts so that attention can be focussed on any discrepancies and governments engaged around how the revenues are used. EITI is also much more likely to provide comprehensive coverage of all the companies operating in a given country than can be achieved by a patchwork of home country legislation which in the case of the US legislation, for example, excludes unlisted, private companies from reporting requirements. Through country ownership and the existence of multi-stakeholder groups EITI provides an accountability mechanism alongside transparency together with a means of promoting dialogue and building social capital. As Johnny West of Open Oil has pithily expressed it, EITI is 'data + people'. As one Southern civil society activist interviewed for this study observed: 'Dodd-Frank and the EU Directive are not a replacement for EITI – that would be like pulling up the roots and risking the roof falling in'.

Thus, it is important that mandatory reporting does not weaken EITI. Rather, the fact that some data will be available from home countries within a year of payments being made should act as a spur to implementing countries to move away from reporting two years after when payments are made.

iv) The influx of OECD countries

⁴ EITI Reports for Ghana (2011) showed revenues from mining up from \$210 million to \$500 million; Tanzania (2011) showed revenue from gold mining more than doubling; Zambia's 2010 report showed mining tax revenues up by 50% and in Guatemala (2011) mining revenues were up 58% compared with 2010.

The failure of the United Kingdom to implement EITI, having championed the idea, was a significant problem in the early days of EITI. It was used specifically by some within the South African Government to argue that EITI was a neo-Imperialist construct – however irritating this may have been for African implementing countries such as Nigeria, Ghana or Liberia. This attitude was in evidence when Azerbaijan sponsored an EITI-endorsing resolution in the UN General Assembly only to see it significantly watered down by South African and Brazilian diplomats.

Norway was for many years the only OECD country to implement EITI. However in 2014, first the USA and then the UK, were accepted as candidate countries. Australia appears to be mulling its options having, with strong mining industry advocacy, run an EITI pilot. Although all three of them have relatively small extractive sectors, France, Germany and Italy all seem set to apply for candidacy. Few stakeholders within Norway seem to believe that much has been gained by their implementation within the country (albeit it has clearly underpinned their international leadership position) and there are limited expectations of direct benefits amongst the would-be implementers in Western Europe; but their willingness to ‘do as they say’ is to be welcomed. As a government representative from one OECD country put it: ‘it may take away from the perception that Northern countries are telling those from the South to ‘eat your spinach’’.

Nevertheless, although the political support for EITI is to be welcomed and may ease the way for further outreach to the BRICS, there are two significant dangers:

- Firstly, the influx of developed countries trying to find ways of making EITI processes interesting and relevant to them, may contribute to making the Standard more elaborate and scarce International Secretariat resources may be diverted away from the EITI’s core ‘development’ focus.
- Secondly, there is the danger of creating a perception of double standards. A provision was included in the new Standard which allows countries to apply to implement EITI on the basis of ‘adapted implementation’. This allows a country with a complication associated with their extractive sector or with their constitutional arrangements – like the US or Australia - to apply to the International Board for derogation from compliance with elements of the Standard. The Board will have to approve any such ‘opt-outs’ with great caution. In recent years, for example, countries like Peru which provides constitutional protection for tax privacy or Indonesia, which has complex and overlapping jurisdictions, have been told that they must find ways to make their arrangements comply with EITI rules or be delisted. A comparable problem around tax privacy seems to be emerging in the US. EITI must avoid the perception of applying different standards between developed and developing countries.

v) Lack of involvement from the BRICS

The influx of OECD implementers may, as implied in the previous paragraphs, help to motivate some of the BRICS to re-evaluate EITI. After all, they have each endorsed the EITI when acting as part of the G20. Both Brazil and South Africa have companies that are international supporters of EITI and active civil society groups and as resource-rich economies, EITI implementation would have a strong rationale. Some Chinese resource companies are already co-operative in supporting EITI implementation in third countries and MMG, owned by China Minmetals, is an ICMM member company and a declared supporter of EITI. Although it would be highly desirable, it is not essential for China, India and Russia to become implementing countries but as

increasingly important international extractive industry investors, it would be desirable to bring them into closer alignment with EITI.

vi) The international discourse around tax and transparency

There is no evidence that tax evasion or aggressive tax avoidance is more prevalent in mining than in other sectors. However, the extractive sector is strongly represented in Africa where a debate around tax evasion, avoidance and illicit financial flows is generating a lot of interest.⁵

Thus, the debates within many EITI implementing countries may be coloured by a broader international focus on the global tax agenda. Issues around, for example, accounting for project construction costs and other capital allowances, are particularly prominent in the mining and oil and gas sectors because of their capital intensive nature and long-lead times. Under many current arrangements, significant corporate income tax payments may not flow until some years after a mine comes in to production. This can create friction with host governments and problems for them in guiding public expectations.

The mining sector is currently in an uncomfortable situation with simultaneous alienation of some investors and some host governments. Investors believe that they received relatively low returns from the industry across the cycle compared with other long-term, high-risk sectors. There is also anger amongst some host governments who believe – a belief supported by some IFIs and NGOs – that they too should have received higher returns at the height of the boom. This Review is not the place for a rehearsal of the arguments other than to note two points. First, it is the author’s impression that in many countries, the popular demand for a higher national tax take is often based on confusion between total sales revenues and mining profits. Secondly, the mining industry has historically done a poor job in engaging internationally on these issues, including on the unprecedented escalation in mining costs between 2006 and 2012. Two recent publications from the World Gold Council⁶ and the ICMM⁷ have, however, taken up the challenge of providing an analysis of how value is distributed as between stakeholders and of the contribution of mining to economic development.

Against this background it is inevitable that, in some countries, there will be debate within the framework of EITI and beyond about what constitutes a ‘fair’ division of benefits from mining. For example, the reasonableness of capital allowances and transfer pricing arrangements have figured on the agenda of the Independent Administrator in Ghana following the passage of that country’s EITI law. This trend, together with the new provisions in the EITI Standard on data reliability, argue for the closer involvement of participating companies’ tax and finance experts who are rarely directly engaged at national level. Their expertise is important in enabling the industry to present a comprehensive and technically correct view of the facts. **Section B Attitudes towards EITI in the mining sector**

⁵ See in particular the reports of the Africa Progress Panel, 2013, ‘Equity in Extractives’, chaired by former UN Secretary General Kofi Annan, and of the UN Economic Commission for Africa High Level Panel, chaired by former South African President Thabo Mbeki, report on Illicit Financial Flows which suggests annual losses to Africa of up to \$50 billion, of which over 60% are said to relate to multinational companies

⁶ ‘Responsible Gold Mining and Value Distribution’ 2013 and 2014 editions. The 2013 edition provided an analysis of payments by 15 gold mining companies with an approximate distribution of value between stakeholders of \$35 bn to suppliers; \$8.5 bn to governments; \$ 8bn to labour; and only \$3.4 bn to investors.

⁷ ‘The role of Mining in National Economies’ 2nd Edition, 2014

In-depth interviews were conducted in Q4 2013 with senior mining company executives drawn from both international and country levels. In addition, written questionnaires were distributed, drawing responses from 13 international supporting companies (11 ICMM members and 2 others) and 20 in-country managers (including from Chambers of Mines) active in 17 countries. No further fieldwork was done in 2015 to validate the earlier findings.

i) In-depth interviews with mining industry representatives

Overall, there is strong support for EITI at most levels and satisfaction that the industry has played its part in building a successful initiative which has created more trust and dialogue at both a national and international level and has shown the industry to be willing to be ‘part of solutions’. One seasoned observer commented that the process is having an impact on corruption and ‘is making people better informed and equipped to ask the right questions’. A past member of the Board delegation voiced a concern that the level of endorsement from international organisations may go beyond the EITI’s capacity to deliver. He noted that EITI has within its ranks a number of ‘compliant’ countries which are ‘palpably corrupt’; the mismatch between expectations and reality may damage EITI’s credibility.

Explaining his company’s view of involvement in EITI as a contribution to improving risk management, one senior executive commented: ‘Extractive companies are investing in increasingly challenging environments where governance structures are often weak and there is little transparency or accountability. In such environments conspiracy theories abound and multinational companies can easily become targets for hostility with little public understanding of the contribution which companies typically make to the country or knowledge of how the money is spent.’

In the interviews, concerns were voiced about not overloading national processes and thereby tipping countries into non-compliance and about the risk of losing the focus which has hitherto made EITI an effective ‘change agent’. Indeed, although the industry clearly understands the need to engage around human rights, environmental and community issues there was a strong view that EITI is not the right vehicle for addressing them – unless there was a **consensus** to the contrary between the constituencies in a particular country. One interviewee commented that: ‘it is important for MSGs to remember that EITI is about oversight not enforcement – the latter belongs with the government. It is important that it doesn’t try to become some form of catch-all regulatory body.’

A common refrain was that EITI should ‘stay focussed’ and ‘stick to revenue transparency’. Upon probing, however, most of those questioned saw revenue transparency as including not only the core activity of reconciliation of payments and receipts but also: anti-corruption measures; what happens to revenues; licensing and beneficial ownership; data integrity; monitoring of resource-based sovereign wealth funds; and sub-national flows and governance.

A common concern related to capacity and bandwidth. A big investment is being made in civil society capacity building but this focus on training does not always extend to building the capacities of national business representatives, for example, to engage in multi-stakeholder policy dialogues or to equip them with an understanding of the international context. At the same time large cutbacks within the industry have potentially reduced the ability of sufficiently senior people to devote time to EITI. Some resentment was also expressed around the perception that the communication of the EITI agenda to national MSGs, especially through regional events and training, is dominated by the Secretariat, World Bank and Revenue Watch/NRGI with no private sector input.

Having noted broadly enthusiastic endorsement for EITI, the picture that emerged from detailed interviews was more nuanced. The feeling that some NGOs are seeking to use EITI, linked to Dodd-Frank and other mandatory reporting, aggressively against business is causing a more defensive mind

set. At a time when many companies are making significant redundancies, it is difficult for them to feel a sense of partnership with organisations that seek to use EITI to campaign for higher tax burdens or abrogation of contracts. One long-term supporter mused that ‘perhaps we have helped to create a monster and we would do better to rely instead on compliance with home country reporting regimes.’

This is not to deny that there will be continuing national debates about how the benefits and costs associated with mining are shared across the mine life and commodity price cycles. However, facile international comparisons between the tax payments of widely different projects are unlikely to lead to good economic or policy outcomes. Factors which will influence appropriate tax burdens include: when a project came in to production relative to the price cycle; associated project development, infrastructure, labour and energy costs; country costs of capital; foreign exchange risks; the quality and complexity of ore bodies; and when contracts/concession agreements were made.

The incident in August 2013 when material was reportedly added to Tanzania’s EITI Report deeply critical of mining’s revenue contribution without proper approval processes, caused significant damage to trust and focussed attention on the need for the EITI Board to be more prescriptive about what and how things are done in its name by national Multi-Stakeholder Groups. Integrity of process and the confidence of all the parties are fundamental. Fortunately, a guidance note adopted by the Board in 2014 reinforces the importance of MSGs seeking to proceed on the basis of consensus.⁸

ii) International corporate level feedback

The following section summarises input received from the thirteen international companies that returned the questionnaire⁹. It is not possible to make a judgement about how representative the respondent companies are of wider corporate opinion. Non-ICMM member companies were relatively under-represented (two out of thirteen). Respondents came both from companies with a limited involvement in national processes as well as those more intensively involved.

The benefits of EITI implementation are seen as:

- Greater dialogue and interactions between companies, governments and civil society;
- Better understanding and awareness of the scale of mining’s contribution;
- Diminishing opportunities for corruption and embezzlement
- Highlighting the importance of improving government financial management systems and the shared responsibilities between governments and the private sector;
- Encouragement of a culture of transparency and accountability
- Reputational benefits and approval from international investors and in-country stakeholders.

One company, however, observed that: ‘whilst our perception is positive with regard to revenue transparency; this does not automatically mean an improvement in the overall governance of natural resources’. No company could identify any overall detriment from EITI implementation although in two countries it was felt that EITI had been used as a platform for campaigns to raise tax levels – whilst acknowledging that these campaigns might well have occurred anyway.

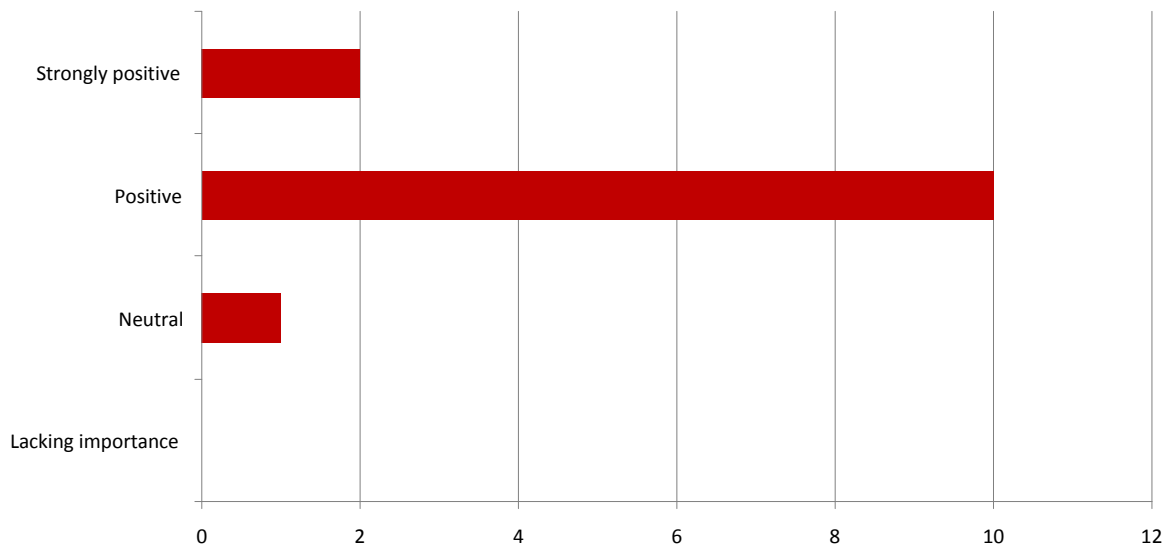
When asked to rate the perceived impact of EITI ‘on the overall governance of natural resources’ the result, presented in the figure below, was ‘positive’ but with only one company opting for ‘very

⁸ See Guidance Note 14, January 2014

⁹ Corporate responses were received from Anglo American, Arcelor Mittal, Areva, Barrick, Eramet, Freeport MacMoRan, Gold Fields, Hydro, Mitsubishi, Newmont, Rio Tinto, Sumitomo, Teck and Vale.

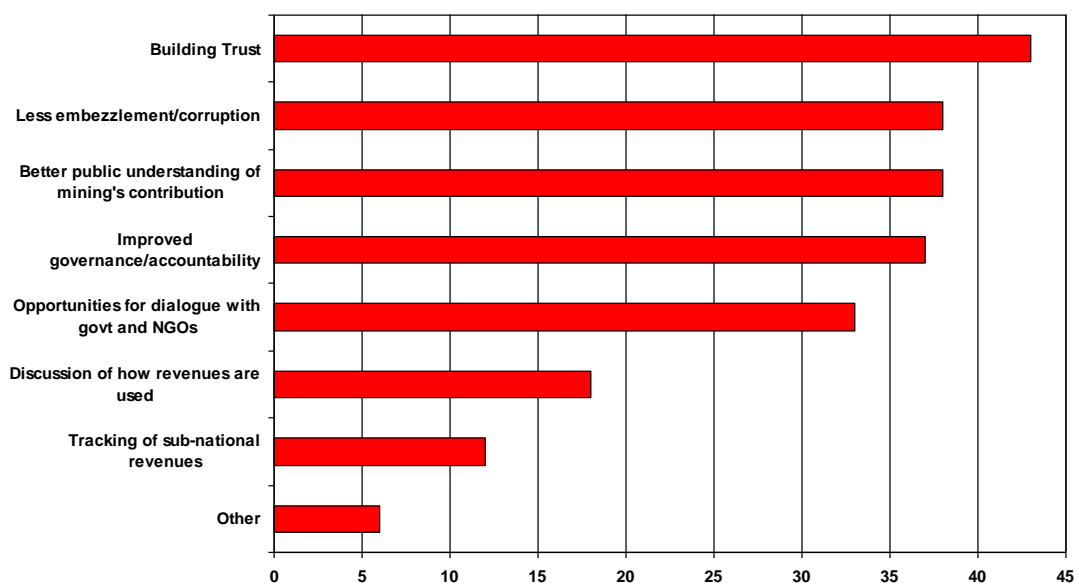
positive’. Another company observed ‘Much more needs to be done to follow-up so that transparency leads to less corruption and more accountability. Transparency is an opportunity not a result’.

Q. On balance, do you think that the overall impact of the EITI on the governance of natural resources has been:



In terms of opportunities associated with EITI, the chart below shows a strong emphasis on ‘building trust’, with reduced opportunities for corruption, improved understanding of industry’s contribution, improved accountability and more opportunities for engaging with governments and civil society bunched together, followed by discussion of how revenues are used and tracking of sub-national flows (the relatively low ranking of ‘sub-national’ may reflect that it is only a factor in a few countries). In a related question about the application of the new Standard a number of companies expressed strong support for: the inclusion of more contextual information in EITI reports; greater focus on budgeting for resource revenues; and interest in the provisions on beneficial ownership.

Indicate which you see as the most significant opportunities created by EITI:

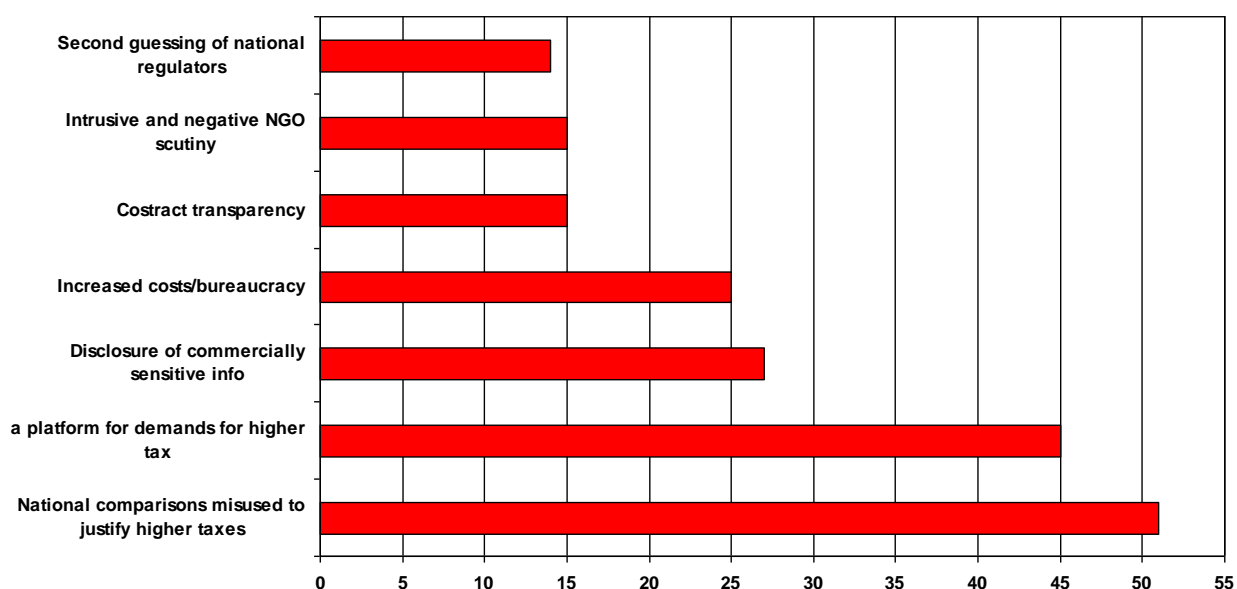


The respondent companies see seven **potential** areas of risk arising from EITI in three bands:

- **highest**, around its misuse as a campaigning platform by some stakeholders for either higher taxes or contract renegotiation;
- **medium**, involving concerns about reporting and compliance costs and the risk of disclosure of commercially sensitive information; and,
- **lowest**, the second guessing of national regulators; intrusive and negative NGO scrutiny and contract transparency.

Amongst the explanatory comments given were: ‘Overall we are very much in favour of implementation and the benefits largely outweigh the risks’ and ‘We perceive a danger that as extractive companies raise their profile through transparency – when this isn’t practiced by other sectors – we may just become more visible targets for criticism’.

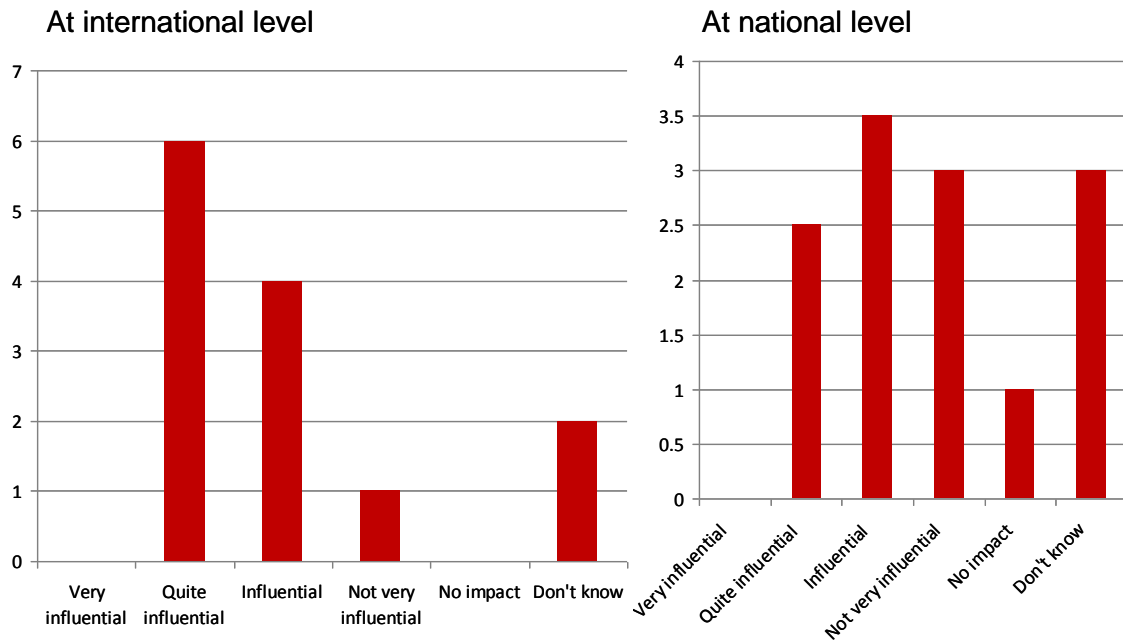
Biggest potential risks associated with the implementation of EITI



When asked about their preferences for EITI’s focus in the next five years ‘greater accountability for how revenues are used’ ranked top followed in joint second by sub-national flows; expanding the number of implementing countries and increasing understanding of mining’s economic contribution to host economies. Achieving greater alignment with other governance initiatives, improving data reliability, improving MSG governance, streamlining reporting requirements and ‘conflict minerals’ also commanded some support.

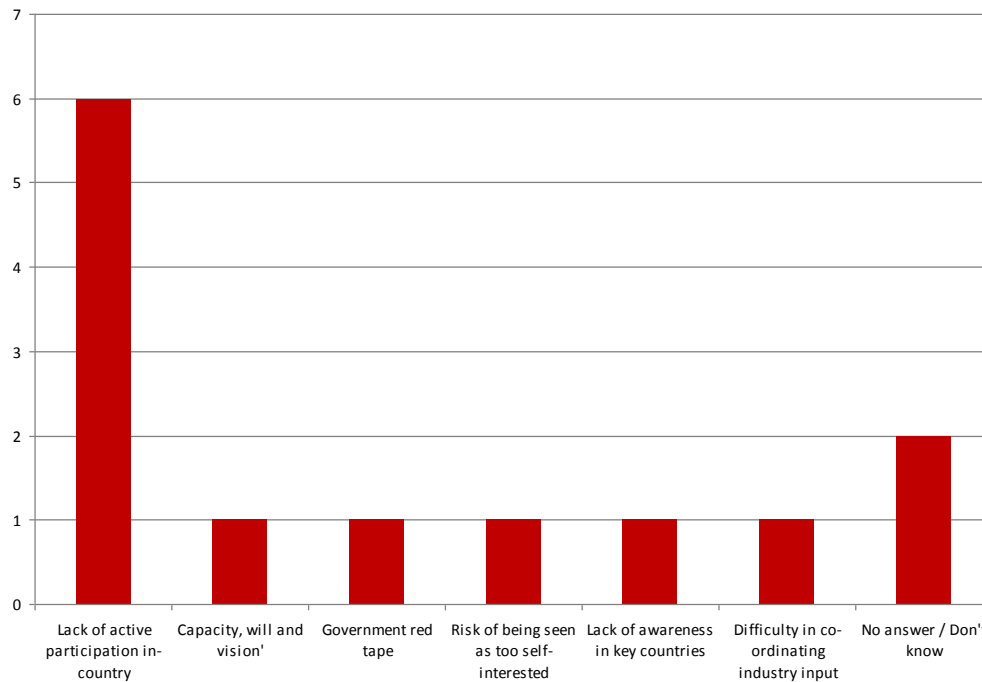
Companies were asked about their perceptions of the influence of the mining sector in shaping EITI. The chart below shows differing perceptions between international and national processes. The industry is not seen as ‘very influential’ at either level but is seen as ‘quite influential’ at the international level but with a more mixed picture nationally. On the other hand, one international level industry interviewee observed: ‘I am not sure that the Secretariat is really interested in what the mining sector has to say compared with the way that they hang on the words of civil society.’ The criticism may or may not be warranted, but the perception is regrettable.

How influential do you believe the mining industry to be within EITI?



The participating companies believe that EITI will become more important over the next five years (the choice of eight out of 13) with three seeing it staying the same, none declining in importance and two not having a view. However, as the chart below shows, there are concerns about the ability of the industry to deliver effective representation at country level – with this being cited as the main reason why mining may not be able to ‘punch its weight’ by more than half the companies expressing a view.

What do you believe are the greatest barriers to the mining industry exerting influence within EITI?



iii) Feedback from mining representatives in implementing countries

Feedback was received from twenty individuals involved in implementing countries or would-be candidate countries. These respondents were based in 17 countries; two responses were received from Australia and three from Peru. Two respondents were from national Chambers of Mines (Ghana and the Philippines) although a number of others sat on national MSGs as Chamber representatives. All were active in EITI national processes and 15 were MSG members¹⁰.

When asked about the impact of implementation on the governance of natural resources or quality of debate, respondents were broadly supportive with 50% seeing the impact as ‘good’ but with 30% disappointingly seeing ‘minimal impact’, 5% saying ‘very good’ and 15% saying ‘too early to tell’. This rating is less positive than the responses to the equivalent question at corporate level.

Three quotes help to illuminate the range of opinions:

Amongst the enthusiasts:

‘Hitherto CSOs have viewed mining companies with deep suspicion and vice versa. The EITI has addressed some of the burning issues through dispassionate deliberations’ and

‘Prior to EITI there was a total lack of transparency. It triggered an unprecedented debate around accountability for the revenues that government receives’

Amongst the sceptics:

‘EITI has done little more than ratify that we pay taxes. The value-add will come from a focus on local government and ensuring that monies are well spent.’

The questionnaire sought input about the functioning of MSGs and National Secretariats and on the dynamics between the constituencies. The answers were, for the most part, encouraging. A lack of reliable funding continues, however, to be a problem in some countries; in others, problems of turnover of government personnel or lack of political engagement were highlighted (e.g. Indonesia, Peru, Kazakhstan). Perceptions of a lack of coherence on the part of civil society representatives were also mentioned in a few cases.

Some respondents reported on what has been a ‘journey’ with difficult early encounters but with increasingly productive interactions as problems have been worked through. Some countries have had cultural problems in coming to terms with the nature of multi-stakeholder processes but most MSGs operate on the basis of consensus between the constituencies and in some cases equal representation between them. In one country feedback was that, given the unusual opportunity to be engaged by government at the top table, local NGOs were seeking to push the mandate of EITI to spread this leverage into other fields. Nevertheless, one industry representative from Peru recorded that: ‘I must acknowledge that the non-academic civil society representatives most committed to the process seem honest in their quest to help the country make better use of the wealth generated by mining. As such they have earned my respect.’

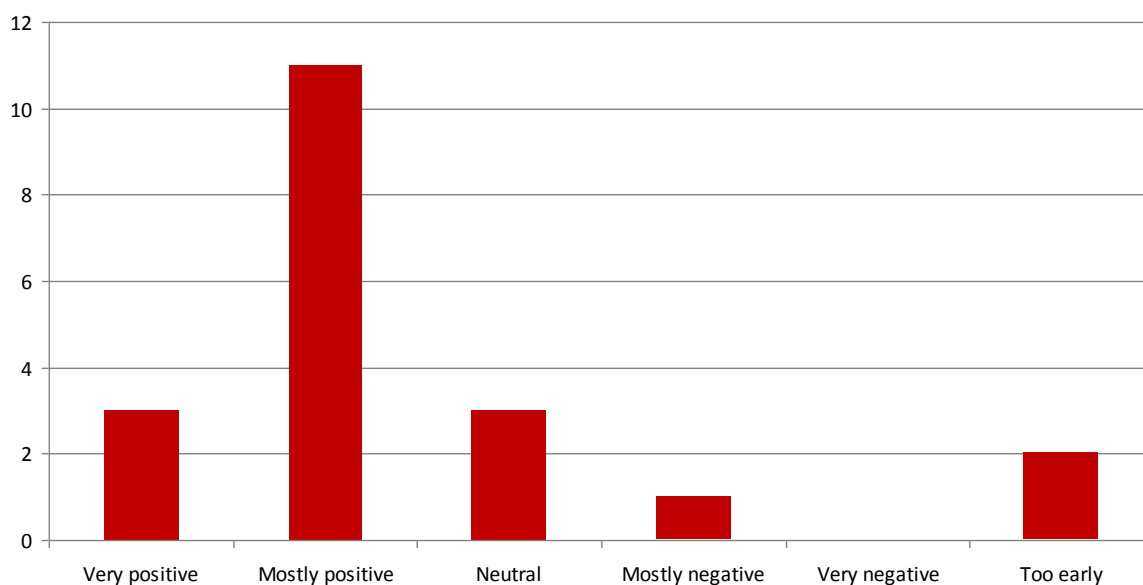
¹⁰ Countries covered are: Australia, Cote d’Ivoire, DRC, Ghana, Guatemala, Guinea, Indonesia, Kazakhstan, Liberia, Madagascar, Mali, Mongolia, Peru, Philippines, Tanzania, Trinidad and Tobago and Zambia.

National Secretariats largely receive a good rating. In a few cases respondents expressed concern about the ability of all major strands of the extractive sector to be represented on MSGs and a sense of ‘crowding-out’.

Opinions were mixed about the effectiveness of the dissemination of EITI reports and public engagement. It was mentioned, for example, as an area of relative weakness in Peru, Guatemala, Kazakhstan, Tanzania and Indonesia. Moreover, in some countries the industry seems to opt out of the public dissemination meetings – a significant omission if it wants to ensure that its contribution is better understood.

When asked about in-country reforms that have been motivated by EITI, most respondents focussed on ‘increased co-operation’ and a ‘lifting of the mystery’ around revenue flows. In Indonesia a respondent noted that ‘industry is now much more willing to share information around payments and production volumes’. From Liberia it was reported that ‘the concepts of accountability and transparency are gaining increasing traction in discussions around the management of public resources.’ The chart below shows the extent to which EITI implementation is seen as good for the mining industry – with 70% seeing it as either ‘very positive’ or ‘positive’ and only 20% as either ‘neutral’ or ‘mostly negative’.

From the perspective of the mining industry do you think that the impact of EITI in your country has been:



The quotes below show a range of opinions:

‘The process has supported the industry and allowed fair and balanced disclosure’

‘The bad perception of mining is starting to be turned off. We know that stakeholder expectations are to see more involvement of local suppliers’

‘It is providing a level playing field for investors from different countries’

‘There is too much emphasis on turnover and none on profits – comparisons of tax paid against gross turnover are totally misleading’

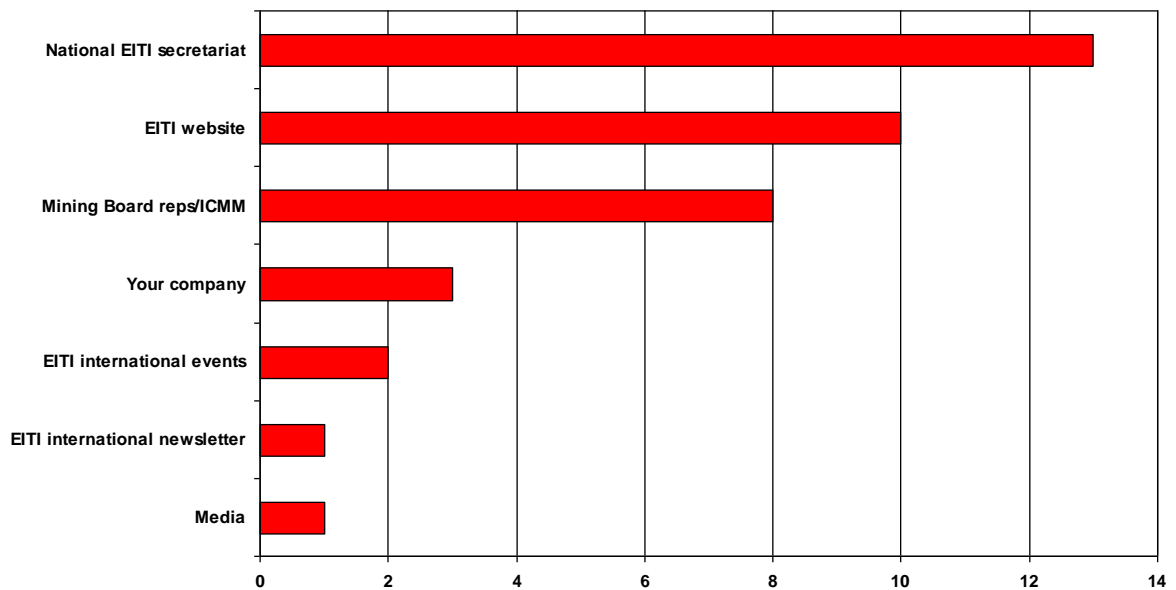
‘It could be argued that the government took inspiration from our national EITI to implement policy reforms that tightened the fiscal regime’

National-level industry respondents tend to be largely reactive and highly practical in their aspirations rather than focussing on new policy initiatives. They want: EITI to bridge gaps between the industry and society; and to create an understanding of the industry’s contribution. They hope for: greater focus on how revenues are used and the effectiveness with which they are spent; a fillip for their countries as investment destinations and to achieve greater public participation.

Some representatives were concerned about their ability to participate effectively in EITI, pointing out that both government and civil society often have people dedicated to the revenue transparency agenda and wired in to briefing networks whilst business does not.

Finally, respondents were asked about where they get information from about international developments in EITI. This varies significantly from the pattern at corporate level where information from ICMM and Board representatives is the dominant source (48 ranking points) compared with 18 from the EITI International Secretariat, 13 from the EITI website and 11 from national level feedback. The national results below suggest that there may be ineffective ‘trickle down’ of information through the corporate level since only a limited number are in receipt of feedback from mining sector Board representatives (which chiefly goes to corporate HQ executives level rather than to national MSG representatives) and very few credit their corporate headquarters with disseminating information.

From where do you learn most about international developments in EITI?



Section C. Other constituencies' views of the future for the EITI

In the preparation of this review face to face interviews were conducted with eighteen individuals from civil society, supporting countries, implementing countries, international institutions and the investor and oil and gas sub-constituencies in order to understand their perspectives on the Standard and the future direction of EITI. A number of think tank papers including from the Open Society Institute, Revenue Watch/NRGI and MSI Integrity¹¹, some academic assessments and the Scan Team 2011 EITI evaluation and 2013 report on the effectiveness of technical assistance for EITI implementation were also reviewed. This section summarises their diverse perspectives.

It is worth starting with a view from the EITI Chair, Clare Short¹², who in an article in late 2013 set out the following aspiration: 'Transparency is not an end in itself. It has to lead to improved accountability and to better management of resources for the benefit of the people in whose countries they are found. ...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.'

In a speech in October 2014, Clare set out in more detail her concept of a more decentralised EITI which she hopes will increasingly embed its philosophy of transparency and audit activities in to mainstream government functions: 'It is therefore a good time to ask, what is the aim of EITI in the longer term? This sign-up of countries has grown so rapidly that there has been limited discussion of where we intend to be in years to come. The discussion is now overdue and the answer must surely be that EITI must focus more on leveraging improvements in government systems so that there are transparent, reliable public sector systems in all countries with strong extractive sectors. Countries should be relieved of the expensive annual audit requirements as they put in place robust and transparent systems. ...The point is that each country should ask itself how the EITI can help it to deal with challenges that are important to the country by using transparency and the bringing together of representatives of government, companies and civil society.'

i) Motivations for involvement in EITI

A brief analysis of what appears to motivate each of the major actors to support EITI provides a natural starting point for this discussion. This is based on output from the interviews and the author's experience of interactions around the EITI Board table. Allowance should be made for the fact that there will typically be a range of opinions in each constituency.

For **implementing governments**, motivations tend to include: the potential to attract 'quality' foreign direct investment; to impress international financial institutions and capital markets (and thereby either to improve access to funds or to reduce the cost of capital); to tackle corruption; to mesh with wider reform programmes (e.g. Myanmar); to reduce tension and conflict around extractive activities (e.g. Peru and Tanzania); and to help prepare for becoming 'resource-driven' (e.g. Seychelles). For countries with devolution to regional tiers of government or with large sub-national revenue flows, greater transparency around such flows and around how the money is used also has attractions.

Supporting governments, tend to be motivated by concerns about helping resource-driven countries to manage the accompanying governance challenges. They mostly see transparency and the increased empowerment of civil society as a means of improving accountability and

¹¹ 'Protecting the Cornerstone: Assessing the Governance of the Extractive Industries Transparency Initiative Multi-Stakeholder Groups – MSI Integrity, 2015

¹² Journal of World Energy Law and Business, December 2013

development outcomes. For some there may be a hope that if the extractive sector can be a benign motor for growth then there will be a decreasing need for development aid and, for a few, the hope that a more conducive environment can be created for international investment, including from their own countries.

Investment institutions hope to see concrete evidence that risk can be reduced for the countries and companies in which they invest through improvements in transparency, accountability and governance in the resources sector. They are, however, waiting to see the emergence of a clear ‘business case’.

For civil society organisations, EITI provides improved access to information; it provides CSOs with an additional high quality channel for advocacy and, within some countries where this is otherwise unheard of, status and access to a place at the top table. It provides an opportunity for holding government and companies to account for how resource-related revenues are generated and used and, increasingly, for the integrity of the agreements on which such payments are based. Of course, within the spectrum of CSOs there are also many other motivations including, for some, the hope of using EITI to promote established campaigning goals in areas like human rights or the environment.

ii) Which problem should EITI be seeking to solve?

In answer to the question ‘Which problem do you think the EITI exists to solve?’ the quotes below illustrate both convergences and divergences between the constituencies:

‘The ultimate goal is to get ordinary people to see the process as credible. In Africa there is a lot of suspicion of governments and companies. EITI helps to increase public trust including of the deals being signed and how the contracts are allocated’ **Implementing government**

‘Helping countries get a ‘good deal’ for their resources – discouraging tax avoidance, better contracts and better regulatory enforcement’ **Northern NGO**

‘Three things get many members out of bed – the ‘fair deal agenda’; probing where the money goes and monitoring specific mining and oil and gas projects’ **Northern-based grassroots international NGO**

‘EITI should be about solving the problem of lack of trust and miscommunication between government agencies and citizens’ **Southern NGO**

‘EITI is about informing people how much they receive for their resources and how the money is spent. Citizens can then do their own cost benefit analysis’ **Southern NGO**

‘The resources sector can have major impacts upon a country but it is too often opaque and its value chain are not easy to understand’ **Supporting government**

‘It needs to remain focussed on the idea of transparency and better governance in the extractive sector. It cannot be a human rights instrument or a generalized protection for civil society activists’ **Supporting government**

‘It would be good for EITI to play a part in overcoming the presumption of a ‘resource curse’. EITI should be a way of changing the terms of the debate so that revenue flows are transparent and the money is used well’ **Supporting government**

‘It offers different things for different groups – which is why different people can seek to achieve different things through it. For us it’s a development issue, helping countries to use their resources to reduce poverty and lay the foundations for sustainable growth.’

International Institution

The points above suggest significant areas for potential collaboration between industry and other stakeholders. Nevertheless, any institution that is based on differing objectives for different people has the potential for instability. However, if a multi-stakeholder process is to command continuing involvement and support, it must have decision-making processes that assure each participant that they can be confident that their perspectives and interests will not be prejudiced. As a track record is established and relationships are built it may become possible to do more together. Conversely, whilst there is understanding that stakeholders will retain distinct perspectives, for one constituency to promote an agenda through the Initiative that is inimical to the interests of another may cause the painstaking process of trust building to go in to reverse. As a non-industry stakeholder who has been at the centre of EITI’s development commented: ‘Things can unravel quickly if goodwill goes out of the system.’

iii) Priorities and concerns

At Board level in 2013 there was a consensus that the priority was to help implementing countries to digest the requirements of the Standard. One implementing government representative was concerned, however, that much of the running on developing the Standard had been made by CSOs and the World Bank, with business reasonably fully involved, but that there was sparse engagement from implementing countries resulting in a limited sense of ownership. This is concerning since as former civil society (Global Witness) Board representative, Diarmid O’Sullivan has observed: ‘there is a simple truth about EITI, the process can only really move forward when the government concerned is interested in it or is ready to respond to the energy of other stakeholders’.¹³

Common concerns expressed across the constituencies include:

- the potentially ‘skewing’ impact of the admission of some OECD candidate countries;
- tensions around ‘adapted implementation’ leading to different treatment as between countries;
- improving the quality of implementation; and
- the implications of a more complex Standard and of a greater number of implementing countries for the EITI’s international governance model.

iv) Building capacity, ‘linkages’ and should EITI have a sunset clause?

All of the constituencies saw the lack of capacities in implementing countries as a key risk. There was also a commonly held view that EITI training and capacity building events should involve training representatives from all three constituencies together since messages about the new Standard should be consistent and the whole process is dependent upon the constituencies being able to work together.

All constituencies endorsed the idea (at least in principle) that EITI cannot cover all extractive industry issues and should seek to link to other governance or reform initiatives. IMF expenditure-related programmes were, for example, cited as a potential area to link with on tracking revenue allocations and expenditures – albeit it has limited public profile and is seen by some as rather

¹³ ‘What is the point of transparency?’ Diarmid O’Sullivan, Open Society Institute, 2013

technocratic. However, there is a need for a clearer vision and some pilot projects to illustrate how these linkages might work. As of 2015, this remains something of a gap.

A strategic choice lies ahead. When the International Advisory Group conducted its work, most members envisaged an existence for EITI of 5 to 10 years with the transparency baton then being passed to other national and international institutions. Progress has been slower and more difficult than many anticipated and the complexity of what EITI covers has grown. Thus, the question remains whether EITI should be looking to ‘mainstream’ itself out of existence or whether it has aspirations for the longer term and, if the latter, what its boundaries should be? The view was expressed that EITI should avoid becoming a self-perpetuating organisation and should seek, over the medium term, to ensure that its mission is absorbed in to other institutions.

v) Civil Society aspirations

Almost all of the civil society interviewees expressed satisfaction with the Standard (one described it as ‘a huge leap forward’) but went on to express disappointment that contract transparency and the disclosure of beneficial ownership were not mandatory. They are keen to press ahead with mandatory project by project reporting. Whilst acknowledging the added ‘space’ that EITI has created for civil society in some countries, most of them also expressed disappointment that there had not been agreement on stronger and wider protections for civil society activists. This may have been met, at least in part, by agreement at the end of 2014 on a revised ‘Protection of Civil Society’ Protocol as a complement to the Validators’ Guide. Nonetheless, this issue has proven toxic at a Board level with some seeing civil society representatives as seeking to set the bar for entry in to the EITI process too high and for giving an overly high weighting to the freedom of northern NGOs to fund their Southern counterparts.

Interestingly, two civil society representatives felt that they had worked more closely with implementing country Board representatives during the negotiation of the 2013 Standard than on previous occasions and that this should be built upon. There seemed, however, to be a subtle difference of emphasis between some northern NGOs whose focus is on holding companies to account and those from the south who seem more interested in ‘what works’, see the value in increases in trust and dialogue in-country and have a strong interest in how resources are spent.

In addition, to what CSOs see as ‘unfinished business’ (contract transparency, project by project reporting and beneficial ownership), they may push the following items, either through International Secretariat work plans (2015/16), in a revised Standard (2016) or through country level negotiations (ongoing):

- Progress on improving data comparability and machine readability so as to facilitate comparisons between projects within and between countries and to facilitate integration with the data that will be generated by home country mandatory reporting;
- Providing clearer recognition for countries going ‘above and beyond’ the requirements of the Standard so as to incentivise innovation and greater rigour. An ‘expert’ panel or a peer review process are advocated as potential models;
- Increased linkages to community-level issues so as to make the EITI ‘less of a project for elites’, including through the use of the Standard’s provisions on sub-national and social investment issues;
- Bringing environmental impacts into the scope of national EITI discussions;

- Tracking where funds are allocated and how well they are spent; and
- The promotion of audits of what companies ‘should have paid’ including greater focus on tax avoidance, transfer pricing and contracting issues and of ‘process audits’ to ensure that licenses/contracts have been awarded legitimately and in accordance with the law.

vi) Other views of the future

None of the interviewees from non-civil society groups had immediate plans for new directions for EITI. There was a strong preference for a period of consolidation and for making the new, more nationally focussed, model work. Developed country governments tended to be more interested in linkages to other initiatives (perhaps because they have a stake in them); implementing country representatives were more focussed on what rule changes mean for their own implementation; investors wanted proof that what is being done already is having an impact on the investment climate; and businesses were wary of over-load and want to see how national implementation panned-out.

It will be important, however, over the medium term to ensure that it is not only CSOs who have a strong vision for EITI’s future. After all as one implementing government Board member commented: ‘It is open to question whether the Standard is too orientated towards what international CSO think is interesting rather than what serves the interests of implementing countries – lots of countries are struggling.’

vii) Governance

Interviewees from across the constituencies favour a review of governance arrangements. Although some interviewees expressed concern that the Secretariat is sometimes seen as a ‘fourth constituency’; many others expressed admiration for the commitment and work rate of Secretariat members and of their growing maturity and mastery of their subjects. Most assessments also confirm that the Secretariat is leanly resourced but effective, a view broadly echoed in the ScanTeam review of the provision of Technical Assistance to support EITI implementation.

Thus, advocating such a review is not critical in its intent. Rather, at the international level, there is a perception that the Board is not currently exercising sufficient oversight. The point was consistently made that the burden on Board members will inevitably increase as the number of implementing countries continues to rise and as the complexity of issues covered increases. At the same time, the Board only meets physically three times a year and the tenure of members is relatively short (compared, for example, with a company Board where tenure of up to three 3 year terms is common) in relation to Secretariat members who are becoming increasingly established and expert. The suggestion was made by two interviewees that perhaps the Head of Secretariat should be subject to term limits to prevent the role becoming dominant within the organisation. The suggestion coming from most constituencies is that the governance model needs to be reviewed and the division of roles needs to be more consistent and explicit.

A number of interviewees also supported the idea of providing greater guidance to MSGs about governance and decision making processes and establishing clearer guidelines on how decisions should be made. Although some people have responded sceptically to the MSI Integrity ‘Cornerstone’ report on MSG governance, it does suggest a need for the International Board to be more prescriptive about the expectations of governance processes at national level and for this to be fully reflected in the validation process.

Section D: Commentary and Conclusions – Options for the mining sector

Mining companies are long-term investors. To succeed, they need to secure access to resources. Because of the immobility of mining assets, companies need continuing consent from stakeholders, especially host governments and local communities. Mining involves the development of publicly-owned resources (‘national patrimony’) which, as history shows, often stirs emotive (and sometimes) nationalistic debate. Because opportunities for investment are primarily geologically determined, the industry has an unusually high exposure to developing countries; with accompanying challenges of lack of government capacity, high levels of inequality and weak institutions. Moreover, mineral dependent countries tell a mixed story in terms of governance and socio-economic development; and leading mining companies increasingly need to think of themselves as development actors. In some countries the industry is viewed with suspicion and relationships suffer from a lack of trust both in ‘foreign’ companies and in the ability of governments to hold them to account.

In this context, in principle EITI offers mining companies significant opportunities to: engage constructively with host governments and civil society; to receive independent verification of their fiscal contribution; and to contribute to improving governance and, potentially, development impacts. In theory at least, implementation of EITI should: improve governance and reduce corruption; result in better informed public debate and better use of resource revenues; and reduce political risk and instability. Improved development outcomes, in turn, should help to increase the acceptability of mining to local populations. Although much remains to be proven about these assumptions, it is these factors and a desire to be seen as part of the ‘solution’ which have motivated widespread support for EITI amongst mining companies.

This chapter is intended to stimulate a discussion within the mining constituency about whether the industry is configured to maximise the opportunities associated with EITI and to manage the emerging opportunities and risks and, for the longer term, about the desired future shape of EITI.

Conclusion 1: EITI has benefited governance of natural resources and the mining industry

Although the evidence about EITI’s impact on governance and development outcomes may be largely anecdotal, it **has** played a significant part in changing attitudes towards transparency and accountability in the management of resource revenues. That is not to deny that in many implementing countries significant scope remains for reducing corruption, improving government accounting processes and for spending resource revenues more effectively. But, at the national level, participating companies are clear that EITI has helped build dialogue and increase trust.

The mining industry’s approach to EITI at the international level has been to regard itself as a ‘co-owner’ and it has been active in making its own pro-active proposals rather than confining itself to responding to the ideas of others. Through this approach, mining representatives have been able to raise the salience of a number of issues including transparency around: the role that resources play in relevant national economies; the receipt and use of revenues by sub-national entities; how revenues are used; and around ensuring transparency in resources for infrastructure deals.

Conclusion 2: The industry needs to ‘raise its game’

The 2013 Standard is more dynamic with greater discretion devolved to national MSGs. It will require company representatives involved in national processes to be better briefed and to devote time to participate in more complex, and potentially more far-reaching, processes at a time of corporate retrenchments. Increased industry involvement may be essential in helping several

countries to achieve validation against the new Standard in late 2015 and 2016. The country level questionnaire showed a concern that government and civil society representatives on MSGs in some countries have more time to devote to EITI and are better briefed. Moreover, international Board representatives would be more effective in their role if they received more ‘on the ground’ feedback from national industry representatives.

Through the Multi-Donor Trust Fund, millions of dollars are being invested in building the capacities of civil society to participate effectively. EITI is not a zero sum game and it is in the interests of the effectiveness of the initiative as a whole for civil society representatives to improve their understanding of the industry and of public financial management. In comparison, however, the industry has done relatively little to brief national-level representatives on the opportunities and risks associated with the Standard or pro-actively to offer business perspectives at civil society capacity building events. Moreover, there has also been no industry consistent interface with the work of the Multi-Donor Trust Fund. This is wrong for a Fund which should be seeking to ensure that EITI, as a multi-stakeholder process, works effectively.

The recent appointment by ICMM of an EITI Co-ordinator, Luke Balleny, will enable: the creation of a briefing network for industry representatives, the facilitation of knowledge-sharing; greater interaction with other international organisations – governmental and civil society – active around the EITI agenda and participation in regional training events were the World Bank and EITI to extend invitations for this to happen.

Conclusion 3: EITI is both an opportunity and a risk for the mining sector.

EITI is invested with significant international political expectations. Developed country governments, many developing countries, the IFIs and several NGOs regard the EITI as the most important initiative in the extractive sector. Although EITI subscriptions are the biggest line in ICMM’s budget, this is essentially a ‘pass through’ transaction’ and it is questionable whether the industry’s level of involvement matches that of some other stakeholders. The appointment of the Co-ordinator shows a welcome and significant shift.

The greater breadth of the new Standard creates an **opportunity** for EITI to address issues relevant to the governance of the sector and, thereby, to deliver on the industry’s broader aspirations for EITI. The **risk** is that without consistent engagement by business, especially when it comes to national level processes, EITI will become a ‘corporate accountability’ vehicle covering all areas of potential controversy associated with mining (and oil and gas) rather than an initiative that makes both governments and companies accountable, primarily for the payment, receipt and management of resource revenues. Indeed, one supporting government interviewee, aware of this pressure, commented that: ‘It is an easy kneejerk to drift in to allowing EITI to be seen as a way of extracting more from companies – but at least important is ensuring that the governments of resource-driven countries are held accountable for their stewardship of how the resources are used.’

Conclusion 4: Although EITI does not exist to reach conclusions around appropriate tax burdens companies need to engage more effectively on tax issues

The EITI does not exist for discussion of the appropriate burden of tax as opposed to the integrity of processes for the management of payments and receipts and related aspects of resource governance. Nonetheless, the reality is that others may seek to bring such issues to the table. In some countries, the industry may even welcome the existence of a forum in which to respond to

incendiary campaigns or ill-conceived attempts to use international comparisons between projects as a lever for higher taxes.

In general, the mining industry has not engaged consistently and substantively around tax issues at an international level, allowing damaging assertions of widespread avoidance from organisations like the African Progress Panel or the IMF to go largely unchallenged. There is an ingrained and emotive view amongst some developing country governments that they have not received an equitable share of benefits in recent years. In addition a corrosive notion has been allowed to take hold that any contract that does not deliver results congenial to a host government should be regarded as the result of weak capacities or smart corporate lawyers and, therefore, ripe for renegotiation. Such critiques need to be challenged. Indeed, undermining the extent to which contracts can be relied upon to underpin long-term investments, will have the perverse effect of increasing the cost of capital in higher risk developing countries and, thereby, discouraging investment and reducing longer-term government revenues and jobs.

In a recent article in the EITI Newsletter, Clare Short, commented that ‘much of the money that should contribute towards developing and improving societies ends up through transfer pricing and corrupt elites stashed away in foreign places to avoid fair taxation’¹⁴ The industry needs to take note and engage (through EITI and elsewhere) when transfer pricing is put on a par with corruption as a source of poor development outcomes.

Conclusion 5: If EITI is to have a greater impact on development outcomes in mineral-driven economies then it needs to have a greater focus on how resource revenues are used and on using EITI more effectively to combat corruption

Three of the EITI Principles specifically reference accountability for how resource revenues are utilised. In many countries the great challenge is how time-limited resource revenues can be used more accountably, effectively and efficiently. However, the expenditure aspects of the Standard are not widely used or discussed (as of late 2014). In some cases this focus on expenditure may be best achieved through linkages to other initiatives or processes with EITI providing the transparency overlay, and thereby encouraging governments to be clear about their expenditure allocations. The Nigerian EITI audits of where money has gone (which is reported to have exposed some \$20 billion as having gone missing through fuel subsidies) or, at a much smaller scale, the work on sub-national transfers in Peru and Ghana are all encouraging examples of ‘following the money’ without getting involved in the highly political territory of seeking to second guess expenditure priorities – which are clearly a matter for governments and parliaments to determine.

Companies have a relatively narrow but specific contribution to make in relation to the areas around their operations and how their activities may complement or contribute to regional economic development programmes and in assisting governments and MSGs to look at the reasonableness of assumptions about commodity prices and their potential impact on future government revenues. The encouragement of discussion about budgetary planning of resource revenues was only introduced in the 2013 Standard and has not yet been used extensively. It may, however, contribute to helping resource dependent countries to better manage the impact of price volatility. Some argue that it is impossible for EITI to concern itself with ‘how the money is spent’ because most extractive revenues are paid in to a governmental consolidated fund and thereafter cannot be separately identified. This is not, of course, the case where monies are

¹⁴ March 2015

earmarked for sovereign wealth funds or sharing with the regions from where most production comes. Moreover, in countries where resource revenues are a dominant factor in national budgets, given their time-limited nature and volatility, it is reasonable to encourage governments to be transparent and explicit about their strategic expenditure choices. It is in the interests of all stakeholders to see resource revenues spent effectively not least because of considerations of intergenerational equity. Natural capital should be converted in to other forms of capital as natural resources are depleted.

Although EITI may highlight discrepancies between payments and receipts and, thereby, potential misappropriation of funds, it is an imperfect tool in combatting corruption. Making the ownership of licences transparent may be helpful but this will be significantly strengthened if the provisions on beneficial ownership are given priority. The pilots conducted to date have shown some confusion about what is meant by the term, there have been questions about which national government agency should be in the lead on the issue and whether there is an appropriate national legal base. It may not be possible to move the current provision in the Standard from being voluntary to being mandatory in 2016 (as originally envisaged) but a hard deadline soon afterwards needs to be identified. A possible complementary provision might be introduced to require implementing countries to introduce a register which would record any direct or beneficial interests held by politician or officials (and close family members) connected with oil, gas and mining policy or contract/license allocation, in exploration or producing properties.

Conclusion 6: EITI has the potential to play a part in improving dialogue and development outcomes in a larger number of mining dependent countries and ICMM and its member companies should be more active in helping to make this happen

Although EITI has been successful in attracting the participation of many leading mining countries some major actors, such as South Africa, Brazil, Chile and Botswana, remain outside the initiative (in the case of South Africa for the reasons explored in Annex 1). Moreover, ICMM's 'The role of mining in national economies' report (2014) identifies countries which may not be significant global producers but for whom mining is an important part of their economy. Many of these are not part of EITI. For example, the top 20 countries ranked by the percentage contribution made by mining to national exports includes non-EITI countries such as Botswana, Suriname, Chile, Eritrea, Guyana, Namibia, Montenegro and Armenia. Thus if mining company representatives collectively believe that EITI benefits the countries where it is implemented and, by and large, the industry too, then they should be looking to be more active in proselytising the case for EITI. The EITI Secretariat co-ordinates outreach efforts but have not always been consistent in involving the private sector in this process. ICMM and the mining constituency should work with them to devise an outreach strategy to bring more mining dependent countries in to participation.

Conclusion 7: The mining industry should develop its own vision for the longer-term future of EITI

The points rehearsed above relate to the short to medium term. Indeed any revisions made to the Standard in 2016 should be limited since there is a lot of work to be done just to embed the greater demands of the 2013 edition let alone adding significant further complexities. Nevertheless, the industry should develop its own longer term vision of what the role and limits of EITI should be. This may involve asking searching questions about the extent to which EITI supporting companies are prepared to become more assertive in supporting better governance.

The table below summarises what the industry’s objectives might be for EITI in the future; what the underlying business case for each objective might be; and what a counter view might be.

Possible EITI Objective	Potential business case	Counter arguments/Comments
Promote better governance in resource-driven economies	<ul style="list-style-type: none"> • Less corruption • More accountable and open governance • Better development outcomes and therefore greater receptivity to mining investment • A more level playing-field 	<p>EITI makes corruption more difficult – but it may displace corruption in to new avenues rather than eliminating it.</p> <p>The evidence that transparency has a transformative impact on governance is still limited</p>
Oversight of the integrity of systems for allocating and maintaining licenses/concessions	<ul style="list-style-type: none"> • Less corruption • Greater security of tenure • Level playing field compared with domestic competitors or Chinese etc. market entrants • Less likelihood of challenges to licenses/contracts when government changes hands 	<p>‘Contract reviews’ have not always led to better governance outcomes – in some cases they have been used to deprive legitimate holders of licenses (e.g. First Quantum in DRC) so that resources can be reallocated to raise revenues for an elite</p> <p>Process audits may reveal shortcomings with government administrations but flaws should not be allowed to justify the removal of concessions acquired in good faith</p>
Ensure that the contribution of the mining sector to host economies is better understood	<ul style="list-style-type: none"> • Better informed debates make companies less vulnerable to populist critics • Understanding the full scope of mining’s socio-economic contribution will make continuing mining investment welcome • Fiscal contribution is volatile over the mine lifecycle; it would aid public understanding if the focus were instead on overall economic contribution 	<p>Public expectations of what the mining industry should contribute are potentially limitless and it would be unrealistic for all countries to achieve high levels of local content</p> <p>A strong emphasis on local content would lead to CSO demands for intrusive oversight of commercial contracting arrangements</p>
Support/enhance government capacity to regulate/supervise the industry	<ul style="list-style-type: none"> • It is easier to command the confidence of communities and CSOs if they believe that companies are ‘held to account’ • Predictability: if regulation is seen as effective then it is more likely to be sustained rather than be subject to arbitrary shifts 	<p>Effective regulators may still be subject to populist or corrupt pressures</p> <p>EITI is about the outcomes from regulated processes – it should not be encouraged to second guess them</p>
Transparency of sub-national transfers	<ul style="list-style-type: none"> • Increases trust amongst local /community stakeholders • Transparency makes it more likely that earmarked funds actually arrive at the local level • Increases awareness of contribution of the mining sector • Transparency may increase demands for accountability for how revenues are spent 	<p>The new EITI Standard contains more demanding provisions both around direct payments to sub-national governments and transfers to them. However, a greater focus on sub-national or regional revenue flows may lead to demands for greater EITI involvement in local community issues etc that are better handled at a site level</p>

Improved use of revenues	<ul style="list-style-type: none"> • Company attempts to improve local development outcomes are often hampered by the poor capacities of local government. EITI could help to make these weak capacities more visible • Demands for companies to pay more will be endless if the taxes paid are unable to make a significant contribution to meeting the needs and priorities of local people • EITI provides a means by which companies can legitimately participate in discussions around capacity issues and to act as advocates for relevant communities 	The EITI Principles refer both to the monitoring of payments and receipts and what is done with the money. Nevertheless some companies feel reticent about becoming involved in discussions about what governments do with tax revenues. Conversely, getting resource revenues spent better is most likely to deliver the most significant uplift to the quality of life of ordinary citizens and to counter potential ‘resource curse’ effects.
Addressing issues relating to Artisanal and Small-Scale Mining	<ul style="list-style-type: none"> • Formalisation of ASM on a basis which doesn’t clash with established mining concessions would help to reduce the current connections between ASM and organised crime and smuggling and assist in improving social and environmental performance • Initiatives to formalise ASM would enable host governments to derive tax revenues from ASM • There is wide agreement that issues relating to ASM can only be addressed on a long-term basis through a government led multi-stakeholder process. EITI could provide a suitable vehicle for dialogue 	<ul style="list-style-type: none"> • ASM goes well beyond revenue governance issues and would stretch EITI beyond its core remit • Encouraging more activist policies towards ASM may merely end up with host governments seeking to park the problem at the door of formal sector miners rather than assuming lead responsibility

The table **above** considers a range of possible industry objectives and the role that EITI might play in realising them. The diagram **below** illustrates possible areas of focus for the EITI three to five years from now (assuming that national processes prove themselves able to digest the demands of the 2013 Standard without ‘losing’ significant numbers of implementing countries). EITI should hold both host governments and extractive companies ‘accountable’ and so any model needs to retain a balance between the two.

Some of the suggested focus areas may be inimical to the interests of the industry and potentially damaging to the EITI itself (because of overstretch or because it takes it out of areas where consensus is likely to be forthcoming). Others may offer the industry an opportunity to be on the front foot. For example, an increased focus, either directly or through linkages to other initiatives, on how resource revenues are used would be of benefit to the citizens of the countries in which mining has a significant presence. A focus on value for money might lead to better public policy and less emphasis on higher taxes or royalties as the route to national salvation.

Similarly, ICMM’s work has established that mining makes a significant contribution to host economies of which taxes and royalties may not be the most significant element. These include the macro-economic (FDI, GDP contribution and foreign exchange); employment (including

indirect and induced); supply chain; skills development; social investment; and infrastructure development. The new requirement for contextual information in EITI reports provides an opportunity for building greater awareness of the wider economic contribution. But there may be both wider policy and industry benefits in focussing policy debates on this wider topic.

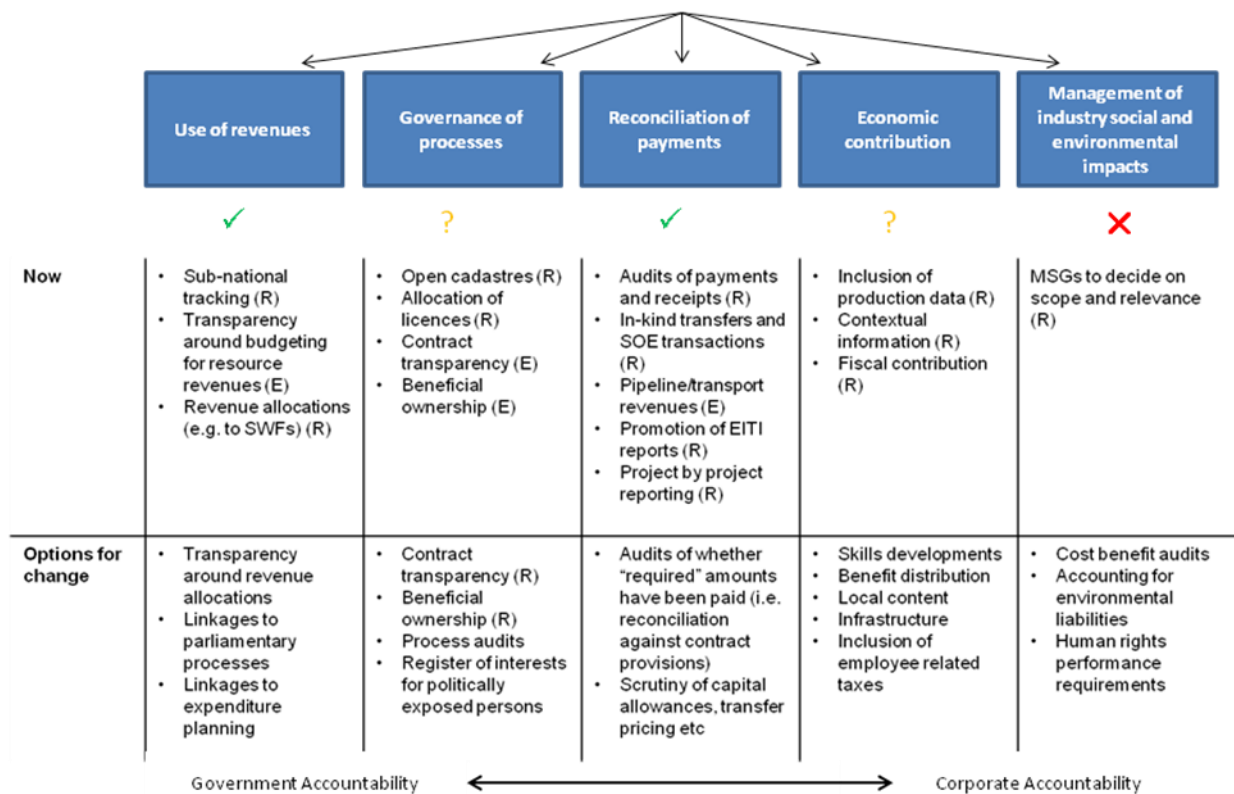
Conversely, it can be argued that this might lead to a greater bureaucratic burden and demands for more intrusive second-guessing of regulators' decisions in areas such as multi-use infrastructure or local content.

But it is also true that industry groups can often find reasons why there may be a risk in any specific action and that losers may be created. Are companies and Chambers/Associations good enough at weighing, for example, such a risk or inconvenience in the balance against potentially wider gains such as being better trusted or its contribution better understood? Do mining industry debates too easily default to the 'low profile' or reactive option?

Any strategy process of this kind should seek to answer a number of questions including:

- Given the stakeholders around the table, the supporting infrastructure and established relationships, in which areas might EITI structures have a constructive role to play?
- Is the industry right to draw a red line between transparency as between private to public and private to private transactions? A strong argument in its favour is that the disclosure of information relating to private to private relations does not necessarily have a public interest presumption and that significant issues of commercial confidentiality might be raised. Some CSOs would argue, in response, that corruption may otherwise be displaced in to this space and also that total tax liabilities are affected by the reasonableness of payments to third party suppliers. Companies might unilaterally take a lead in requiring companies tendering to become suppliers to declare their beneficial ownership.
- How might EITI best be prevented from becoming a means by which companies face double jeopardy – negotiating arrangements with regulators only to have the Independent Administrator/Reconciler and MSG seek to second guess the agreement?
- Is there sufficient overlap in the objectives of different constituencies to make a topic the subject of a consensus-building process and, therefore, susceptible to oversight or resolution through a multi-stakeholder process?
- Is it tenable for contract transparency (assuming that suitable safeguards are in place and based on experience in the interim) to remain 'encouraged' or should industry consider adopting a more forward position over the medium term?
- Is there evidence that EITI is having an impact on broader governance issues in host countries such as to justify a broadening of its remit?
- Are the expectations of international supporting companies sufficiently demanding – without being onerous – such as to prevent those with a dubious track record or without a real commitment to transparency becoming involved to the detriment of the credibility of those who have been long-term supporters?

Possible focus areas for **EITI** Extractive Industries Transparency Initiative



Section E. Recommendations

a) Recommendations for the mining sector

Recommendation 1: Strategy

Despite improvements in the social and environmental performance of leading mining companies over the last decade, there is significant distrust of the industry on the part of many governments and CSOs. EITI has, on the other hand, been helpful in equipping the industry to engage more effectively with its critics.

The mining constituency should develop a medium to longer term strategy towards the future direction of EITI. ICMM should host a workshop at which supporting mining companies can discuss both immediate and longer-term strategy issues. Options to consider include using EITI to promote greater understanding and awareness of mining's overall economic contribution.

Recommendation 2: Improve channels of communication and knowledge-sharing

The earlier draft of this review recommended that ICMM should develop a database of mining industry representatives on national MSGs. This has now been done by the new EITI Co-ordinator. It may make sense for each industry grouping on an MSG to nominate a lead contact point for liaison with the Co-ordinator and International Board members. Consideration should be given to creating a mining constituency Linked-In community, or equivalent, to aid cross-border exchange of information between industry representatives.

Consideration should be given to augmenting existing pre-Board conference calls with periodic thematic briefing calls (or webinars) when Board representatives and a selection of MSG representatives can brief colleagues on specific themes or good practice examples.

Recommendation 3: Develop better briefing materials

Briefing papers should be produced on critical topics likely to arise at country level (e.g. the economic contribution of mining; EITI and anti-corruption; EITI and transfer pricing etc.). Comparable papers can be viewed on the websites of Revenue Watch and Publish What You Pay.

Recommendation 4: Provision of industry speakers/representatives

The industry should be pro-active in offering to contribute speakers to EITI training workshops whether organised by the World Bank, International secretariat or CSOs.

Recommendation 5: Improve other stakeholders' understanding of the economics of mining projects

The quality and coherence of policy debates at all levels within EITI is damaged if there is not a common understanding of fundamental economic and commercial issues. Mining sector representatives gave a presentation to the International Board on the economics of mining projects in Oslo in March 2014 – following a recommendation in the earlier draft of this review. The presentation was subsequently widely shared within the mining constituency. It may be worth producing an annual update drawing on the excellent data in, for example, ICMM's 'Mining's Contribution to National Economies' and leading analyst reports. Such a presentation might also be distributed to national MSG members in countries where mining is a significant economic activity.

Recommendation 6: Increase the involvement of corporate tax and finance specialists

Company tax and finance professionals should be integral in addressing relevant EITI issues at both a country and international level.

Recommendation 7: Seek to promote a greater focus on expenditure and budgeting issues

Whilst the principal focus of EITI has been on the interface between companies and governments in the extractive sector, at least three of the EITI Principles also refer to the use to which resource revenues are put¹⁵. This is not to suggest that MSGs are the appropriate place to determine the right balance between, for example, education or defence expenditure. They are not. However, transparency about: the strategy for the use of time-limited resource revenues; to which levels of government, or as between key budget categories, revenues are allocated; and some focus on the effectiveness of expenditures will contribute to combatting corruption and the sustainable management of resource revenues. Indeed greater clarity about such issues, including through linkages to other public finance initiatives, may be the way in which EITI can have the biggest impact on the lives of ordinary citizens. Companies may also be able to make a contribution to MSG debates around whether public budgeting assumptions from the extractive sector are realistic given their knowledge of international markets and access to independent sources of commentary.

Recommendation 8: Consideration should be given to slightly more demanding participation criteria for EITI supporting companies

To become an acknowledged EITI international supporting company only requires that a company makes a broad statement of support for EITI and participates in EITI processes in implementing countries. They are also asked to make a voluntary financial contribution to EITI's central costs – which only some do. At the Sydney EITI Conference, Professor Michael Ross proposed that companies were insufficiently held to account and that the participation criteria set the bar too low. Professor Ross's proposals would have had the effect of alienating many companies rather than encouraging a closer involvement. However, there might, at least theoretically, be situations where a company which makes no material contribution to EITI and has a suspect record on transparency or integrity issues can still become an official supporting company – and thereby derive reputational benefits. Thus it is worth discussing, within the mining and oil and gas constituencies, what might be acceptable minimum criteria such as requiring that international supporters also commit to work with others to promote adoption of EITI in new countries where they have a substantive presence and there is official EITI outreach and publishing their tax and royalty payments on a country by country basis – as is already commonly done by ICMM companies.

b) Recommendations for ICMM

Recommendation 9: Update the ICMM Position Statement

ICMM should update its Position Statement on Revenue Transparency (which dates from 2009) so that it reflects the scope of the 2013 Standard, changes in the external environment and the outcome of industry strategy discussions.

¹⁵ **Principle 1** reads: 'we believe that the prudent use of natural resource wealth should be an important engine for sustainable economic growth...'. **Principle 4** states: 'We recognise that 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 8** says: 'We believe in the principle and practice of accountability by government to all citizens for the stewardship of revenue streams and public expenditure'

Recommendation 10: Seek to increase private sector interactions with the Multi-Donor Trust Fund

The Multi-Donor Trust Fund is a key element in the funding of in-country EITI activities and in capacity building programmes. To date it has had virtually no private sector input. This is wrong for a Fund that was created to support an international multi-stakeholder process. It appears that the World Bank would be receptive to such inputs and someone within the industry should be designated to take this forward. A new Trust Fund is in the process of being created which will have a wider focus on extractive industries and development. Thus, it will be imperative for ICMM to seek to remain close to the process.

Recommendation 11: Improve liaison with member companies around EITI issues

ICMM should work with each of its member companies to identify the most appropriate person with whom to interact on EITI issues and who is willing to act as a conduit for the flow of information to their national level colleagues. Research suggests that currently this frequently does not occur. The creation of an EITI Working Group, co-chaired by Newmont and the US National Mining Association, together with the appointment of Luke Balleny as EITI Co-ordinator should, however, make a significant difference in this regard.

Recommendation 12: Share ICMM's research on mining's contribution to socio-economic development more widely including as part of a more active programme of engagement with donor agencies

ICMM's work on mining's full contribution such as the 'Mining's Contribution' series, the 'Mineral Partners for Development' studies and the 'Role of Mining in National Economies' report should be shared more widely with EITI stakeholders, including through the EITI website 'Research' section. This work might also be deployed at events with think tanks like NRGi and with leading bilateral donor agencies who often have a limited appreciation of the development focus of many of the leading mining companies.

Recommendation 13: Learn from the last commodity cycle

ICMM should consider holding a high level roundtable (under Chatham House rules) with key stakeholders to discuss what has been learned through the most recent price cycle. To what extent are some developed country governments justified in feeling resentful; which stakeholders did particularly well during the period and why; are there changes in contracting models that should be adopted; how might cost pressures have been better absorbed; were the worst features of the classic 'resource curse' avoided; what are the lessons learned? Since price cycles typically outlast the tenure of Ministers and CEOs a mature reflections document might be useful in reducing the chances of mistakes being repeated.

c) Recommendations for the EITI Board/Secretariat

Recommendation 14: Guidance on governance in national Multi-Stakeholder Groups

The series of Guidance Notes issued by the EITI International Board in 2014 were an important innovation in providing guidance on core governance issues to national MSGs. Nonetheless,

governance arrangements appear to be very patchy. This is evidenced by the MSI Integrity Report ‘Protecting the Cornerstone: Assessing the Governance of EITI Multi-Stakeholder. Increased discretion has been devolved to country-level and the guidance around integrity of processes and the importance of a reasonable consensus between the constituencies in the taking of important decisions must be reinforced.

Recommendation 15: Seek to ensure representation of all significant elements of the extractive sectors in national Multi-Stakeholder Groups

The Standard is clear that whilst each constituency should be treated ‘as a partner’ there is no requirement for parity of representation on Multi-Stakeholder Groups. This need not be a problem as long as all distinct interests are adequately represented. Especially in countries where extractive activities involve both oil and gas and a number of different sorts of mining, it may be difficult to ensure proper representation of all major sectoral or geographical interests. Whilst avoiding enlarging Multi-Stakeholder Groups unreasonably, the Board should consider issuing guidance on this point.

Recommendation 16: Reviewing EITI’s governance arrangements

A governance review should be undertaken to define more clearly the roles of the Chair, Board, Board Committees and Secretariat and to optimise how the Board exercises oversight. Given the growth of the Initiative it may be desirable to give greater support to the EITI Chair, especially if they are located in the future in an entirely different geography from the Secretariat through the appointment of an independent Deputy Chair.

Recommendation 17: Strengthening EITI’s role in combatting corruption

The 2013 Standard envisages that in 2016 the disclosure of beneficial ownership should become a requirement (rather than just ‘encouraged’). Regrettably, this seems unlikely to be feasible on this timescale given the relatively slow progress of some of the country pilots and the complexity of the issues raised. Nevertheless such a transition should not be long delayed. When the move is made (and it might be an encouraged activity in the interim), it should be complemented by a requirement that Ministers, government or party officials with an involvement in the regulation of the extractive industries (and their close families) should be required to enter details of any relevant shareholdings or other commercial interests in a register of interests.

Recommendation 18: The Board should establish an appeals procedure or a grievance mechanism

The EITI Board should establish an appeals procedure or ‘grievance mechanism’. The Standard envisages situations in which the Board may be asked to review its own decisions; this does not represent good practice. In addition, there is a likelihood, given the growing complexity of the Standard, that there will be complaints about national level issues that give rise to disquiet for one constituency or group of stakeholders – including requests for re-validations. In the light of this and international best practices it would be desirable to create either a review or appeals panel from the Board membership or an arms’ length review body.

Recommendation 19: Recognition for implementation that goes ‘above and beyond’ the requirements of the Standard

The Board, rightly, decided not to give formal recognition of performance going ‘above and beyond’ the Standard through the Validation process. Further thought should, however, be given to a more structured process for recognising innovations. Options might include annual awards or featuring a

series of detailed and accessible case studies illustrating good practices on the EITI website. Such an awards or recognition process should also include recognition of efforts by CSOS and companies and representative industry groups to promote the adoption of EITI.

Recommendation 20: The EITI Board should debate and determine whether the initiative should have a ‘Sunset Clause’

The International Advisory Group envisaged that EITI’s existence would be time limited. The organisation should debate the concept, potentially setting a timeline of up to ten years from the next International Conference. Such a clear vision for the medium term might help to keep EITI’s mission fresh, encourage mainstreaming and avoid the initiative becoming self-perpetuating.

Annex 1. Historical Overview

1.1 A short history of EITI

Early proponents of using transparency around resource revenues as a means of addressing perceived ‘resource curse’ challenges and for reducing corruption included George Soros and the Publish What You Pay coalition and John Browne, the then CEO of BP (following a bruising dispute over disclosure with the Government of Angola). The former prioritised compelling companies to publish their payments, the latter suggested a focus on tracking government receipts. The concept of EITI, based on the reconciliation of payments and receipts, received momentum from British Prime Minister, Tony Blair, at the Johannesburg Summit on Sustainable Development in 2002 (albeit in a speech that was pre-briefed to the media but not actually delivered). UK-listed miners Anglo American, BHP Billiton and Rio Tinto – along with their oil and gas peers – gave early endorsement to the proposal. In truth the idea had been launched without much preparatory work and it was not until June 2003, at a multi-stakeholder conference at Lancaster House, that a Statement of Principles was agreed. The 12 Principles set the initiative in the context of better development outcomes, poverty reduction, increasing accountability and improving governance.

Nigeria, Azerbaijan, Timor Leste, Ghana, Peru and the Kyrgyz Republic were in the front-rank of pilot countries. G8 Summits in 2003 (Evian) and 2004 (Sea Island) endorsed the concept and in 2004 the World Bank launched a Multi-Donor Trust Fund focussed on revenue transparency. It has been crucial in financing national implementation.

At a second London Conference, held at the QEII Conference Centre in 2005, the EITI Criteria, setting out minimum standards, were adopted and an International Advisory Group (IAG) was established. The IAG was chaired by Transparency International’s Peter Eigen who subsequently became the first Chair of the EITI Board. The IAG designed the EITI’s governance structures and the Validation Guide which defined the indicators that implementing countries would have to meet to become compliant. Its report was endorsed at the third EITI Conference in Oslo in 2006 which also appointed the EITI International Board¹⁶.

Up to this point the EITI Secretariat had been provided by the Department for International Development but the UK’s then failure to implement had led to criticism. Norway offered to host an independent Secretariat and, led by Jonas Moberg, this opened in Oslo in 2007. At this time there were 15 implementing countries. The Validation methodology was approved by the Board in 2008.

In February 2009 Azerbaijan became the first country to be recognised as ‘compliant’. Shortly afterwards, at the fourth EITI Conference in Qatar, the EITI Rules were adopted. Subsequently Liberia, Timor Leste, Nigeria and Ghana achieved ‘compliance’. By mid-2009, EITI had 30 implementing countries. An early problem was the time lag before data was reported and the 2011 Rules revision (adopted at the fifth conference in Paris) insisted that reporting should be timely (within two years of the end of an accounting period) and regular. At the Paris Conference former UK International Development Secretary, Clare Short, became Chair.

Following the Paris Conference, a critical evaluation undertaken by consultants, Scan Team, was published which benchmarked EITI’s progress against its ambitious founding Principles and questioned whether it possessed a developed ‘theory of change’ (how would revenue reconciliation,

¹⁶ The EITI Board is comprised of the Chair, five representatives from implementing countries; three from supporting countries; five from civil society; five from industry (three from oil and gas and two from mining) and one investor representative and nineteen alternates

for example, lead to poverty reduction and greater accountability?) and searched in vain for proof of EITI having delivered substantive reforms. It suggested that EITI's scope was too narrow and its analysis mirrored a critique from the OECD Development Centre from 2009 and the World Bank's earlier attempt to launch the EITI++ initiative. The Scan Team Report helped to orientate a two year consultation designed to:

- broaden EITI's coverage of resource governance issues along the 'value chain';
- ensure that as the majority of implementing countries became 'compliant' the process would contain sufficient challenges to stimulate continuing interest;
- make the process more flexible so that national multi-stakeholder groups might determine national priorities; and to
- improve the timeliness and reliability of data.

A new Standard was adopted at the sixth international conference in Sydney. Amongst changes were:

- requiring the inclusion in national EITI reports of contextual information including around the role of the extractive sectors in national economies, production data etc;
- giving Multi-Stakeholder Groups greater discretion to set nationally-relevant objectives;
- more demanding requirements such as: the maintenance of an open register of exploration licenses; transparency in flows between State-Owned Enterprises and governments including around in-kind transactions (e.g. profit oil); the tracking of resource-related transfers to sub-national government entities; and project by project disaggregated reporting (subject to the caveat that this should be aligned with definitions used in US/EU legislation);
- the 'encouragement' of: contract transparency; the disclosure of beneficial ownership of companies holding contract/licenses; and of greater transparency around expenditure of, and budgeting for, resource revenues; and
- reform of the validation model.

In general, civil society sought to maximise the extent to which new areas of activity were 'required' rather than 'encouraged'. Industry and some government representatives pointed out that whilst most of the changes were desirable they risked overloading national implementation processes when, even under the old rules, a significant proportion (usually between 20% and 35% of implementing countries) teeter on the edge of having to apply for extensions, suffer suspension or risk delisting.

The ScanTeam analysis was somewhat grudging in its approach. Nevertheless, the fundamental proposition that transparency will necessarily lead to wider governance reforms is intuitive but unproven. Implementation in some countries remains process rather than outcomes driven and there is underlying agreement between the constituencies that whilst EITI should be an inclusive process, the bar will need to be steadily raised over time. The example of the Democratic Republic of Congo is, however, instructive. Despite huge challenges, in 2014 it achieved compliance and few would doubt that, through the catalyst of EITI, governance reforms have progressed and greater information has been published to Congolese citizens than would otherwise have been the case. Some would say that under no circumstances could the DRC have been allowed to fail; others would argue that if it had not been for the ultimate risk of exclusion the DRC would not have achieved compliance.

It is worth noting that through several rounds of rule-making and changes in the scope of EITI, the three constituencies represented on the Board have proceeded, albeit often after passionate debate, on the basis of avoiding votes and by reasonable consensus.

As at 1st March 2015, 48 implementing countries were participating in EITI of which 32 were compliant; over US\$1,600,000 billion in government revenues have been covered in EITI reports across 37 countries and data has been published covering 237 fiscal years.

The first batch of reports produced under the 2013 Standard emerged at the end of 2015. The author has not been able to conduct a detailed review of them. One person familiar with a reasonable cross-section expressed the view that ‘relative to our expectations when we wrote the Standard the results are disappointing but rather better than appeared likely six months ago’. Anecdotally, they contain far more contextual information, are more accessible to a general reader, cover more issues and many report interesting innovations that reflect national circumstances and priorities. For example, over the last 18 months the Nigerian EITI has produced a far reaching analysis of how oil revenues have been spent in a number of states – with far-reaching criticisms. In an important exercise in accountability, EITI in Ghana has done detailed analysis of sub-national revenue flows showing, amongst other things, that some of the earmarked revenues never arrived at the local level. The EITI report in the Philippines illuminates important information about licensing processes and contracts; and in the DRC around the role of state-owned enterprises. Their patchiness may, however, create difficulties in achieving validation for some countries.

1.2 Past areas of controversy within the International EITI Board

This section highlights areas where there have historically been differences between the constituencies within the Board. These include:

- a) **Flexibility versus Rigidity in applying the rules:** many countries have found the deadlines that lie at the heart of EITI processes challenging, because of: capacity problems; elections; lack of finance to fund reconciliation or validation reports; bureaucratic delays; or a temporary lack of political will. The Board has generally found ways to exercise discretion to keep countries in the process through extending compliance periods, subject to a test such as establishing the existence of ‘exceptional circumstances’, or through avoiding de-listing by temporary suspensions or extending deadlines. Company and government representatives have generally argued for flexibility; arguing that the ability to promote reform is greater if countries which are showing ‘meaningful progress’ are retained within EITI. Some within civil society (mostly those from ‘northern’ NGOs) have argued for a less flexible interpretation of the rules in the interests of brand protection. They have been right about the importance of occasional de-listings (e.g. Equatorial Guinea), so as to show that the process has teeth, but in general the more inclusive approach has held sway. An example of this is Peru when in 2010, despite the opposition of some civil society Board representatives, the country was kept in the process despite the seeming disengagement of the then government. Peru went on to achieve compliant status and is key to EITI’s expansion in Latin America.
- b) **Protection of civil society:** The constituencies are united in believing that the freedom of civil society representatives to participate freely in EITI processes and associated debates is fundamental. There have been a number of instances when the International Chair has had to intervene with an implementing country government in defence of an activist with a direct involvement in EITI. A Policy Note¹⁷ was negotiated and agreed as part of the 2011 rules revision. It sets out the protections which CSOs should be able to rely on for their participation in EITI. A revised protocol on the subject was adopted in draft by the Board as part of revised Terms of Reference for Validators and was finalised early in 2015.

¹⁷ Policy Note 6

Many CSOs have, however, argued that even though in many countries EITI has increased the ‘space’ available for their activities, EITI should not be a ‘bubble’ within which debate is allowed and that it should provide a broader umbrella for the protection of wider human rights. Other constituencies have tended to the view that such protection should be clearly linked to EITI implementation. As EITI Chair, Clare Short has commented: ‘In some of our members with governance problems, the EITI has opened new space for civil society around extractive issues but has not, of course, created full freedom. If the bar were to be raised too far some of the countries that arguably need EITI most could be excluded from the movement.’¹⁸

- c) **Home country mandatory reporting and disaggregation:** some of the highest octane Board exchanges have related to the interface between EITI and home-country mandatory reporting regimes created by Dodd-Frank s.1504 and the EU Transparency and Accountancy Directives. These were heightened in 2013 by the American Petroleum Institute’s partially successful legal challenge to the US Securities and Exchange Commission’s rule to implement s.1504.

Mining Board representatives have supported the principle of the home country mandatory disclosure of payments whilst expressing concern about the uncertainty caused by the poor drafting of some legislation, the costs of compliance with different reporting frameworks and the potential for it to distort competition¹⁹. However, mining representatives have been consistent in arguing that such international legislation in no way obviates the need for EITI in-country implementation.

In EITI’s early years mining industry representatives regarded the choice between aggregated and disaggregated reporting as a matter to be determined at national level but, as experience grew, they supported the consensus in favour of disaggregated reporting in the drafting of the 2013 Standard. An interviewee from the oil and gas sector reflected that for his constituency compulsory disaggregation would have been an ‘anathema’ in 2011, but that opinion had moved on. Indeed the experience of developing the rule changes in 2011 and 2013 is evidence of how, especially if trust is built within a multi-stakeholder process it is possible to widen the area of consensus. It will be interesting to see whether a similar consensus may, in the light of experience, eventually develop in support of contract transparency (assuming proper protection for competitively-sensitive information).

1.3 The Mining Sector’s Involvement in EITI²⁰

EITI’s initial focus was primarily on oil and gas because of the much higher revenues associated with that sector and stronger evidence of a ‘resource curse’ in oil dependent countries. Indeed the mining sector was initially only allocated one slot on the International Advisory Group (2005-6), but this was increased to two Board seats in 2006-7. In early 2009, EITI produced a volume of essays ‘Advancing the EITI in the Mining Sector’ having previously held two regional workshops aimed specifically at mining countries²¹.

¹⁸ Lecture to Camborne School of Mines, October 2014

¹⁹ The fact that most mining companies do not have a problem with the principle of home country mandatory reporting of payments to governments is evidenced by the work of the two leading Canadian mining organisations – MAC and PDAC – who worked to devise such a regime in collaboration with Revenue Watch and Publish What You Pay

²⁰ See Annex A for details of mining constituency Board representation since 2006

²¹ In Gaberone and Melbourne

ICMM first endorsed EITI in 2003 in advance of the Lancaster House Conference, and followed it up in 2005 with a further statement of support. The 2003 Statement endorsed the EITI Statement of Principles, committed member companies to participate in national disclosure processes; expressed a desire that the principle of transparency should be extended to other sectors and noted that:

‘Disclosure of payments made by companies to governments is a necessary, but not sufficient, condition to promote sound fiscal management to support sustainable development. A necessary next step is to look at policies and procedures to ensure that these revenues are disbursed appropriately and effectively ... we hope that this initiative will lead to broader public debate on better governance and to further action to ensure that revenues from the extractive sector are put to sustainable uses.’

The 2005 Statement committed ICMM member companies to support:

- Regular publication of all payments made to governments implementing the EITI;
- Support the credible, independent and published audit of these payments;
- Support civil society’s engagement in this process and
- Contribute to the implementation of an agreed national action plan and measure achievements against targets.’

It also set support for EITI in the context of the Resource Endowment Initiative²², in which the World Bank, UNCTAD and a number of NGOs were also involved, and which sought to define the characteristics which made resource-drive economies like Chile and Botswana succeed whilst others failed to mobilise their mineral wealth for the benefit of their people.

From the start, mining companies were aware of the danger that EITI might be used as a platform by populist elements in implementing countries to demand higher taxes. Those companies that decided, nonetheless, to support EITI generally did so on the basis that: it was incumbent on industry leaders to support anti-corruption efforts; that greater transparency would make it easier to explain to local people the contribution made by the sector; that it might contribute to better governance and improved political stability; and that it might lead to public demands for mining revenues to be better spent.

In January 2009, a new ‘Position Statement on Transparency of Mineral Revenues’ was adopted which linked support for EITI to the ICMM Sustainable Development Principles (especially Principle 1: ‘Implement and maintain ethical business practices and sound systems of corporate governance.’) Through it, ICMM member companies committed to:

- Include a statement of support for EITI on their website;
- Engage constructively in countries that are committed to EITI;
- Provide independently audited information on all material payments made to host governments to the EITI independent reconciler;
- Support the publication of relevant data so as to inform public debate; and
- Engage in appropriate forums to improve the transparency of mineral revenues – including their management, distribution or spending – or of contractual provisions on a level-playing field basis, either individually or collectively through the ICMM Secretariat.

The following year ICMM and the EITI Secretariat concluded a Memorandum of Agreement²³. Its main features included agreement to: collect ICMM member companies’ financial contributions to

²² Now known as Mining Partnerships for Development

²³ Revised in December 2013

EITI (which constitutes the largest element in the ICMM budget); cooperation in promoting shared objectives including increasing stakeholders' 'understanding of the contribution of mining and metals'; and ICMM committed to providing an annual slot for an EITI representative to speak to its Council or the biannual members' meeting. Potential areas for co-operation were outlined including:

- exploring innovative approaches to contractual relationships;
- addressing sub-national revenue distribution models and engagement approaches;
- examining broader socio-economic aspects of mining;
- working together to resolve national level problems;
- developing more effective models for the disclosure of social investments; and
- improving communication with ICMM member companies and the extent of their involvement in EITI.

Although ICMM has been an active international supporter of EITI and closely engaged with its governance processes, relatively little bilateral activity of the kind envisaged above has taken place. One example of more intense activity was the review carried out for the Secretariat on their financial and administrative systems by the ICMM's Duncan Robertson.

The World Bank floated the idea of co-operation with ICMM on sub-national implementation piloting, but the resources were not available at the time to take this forward. It is worth noting, however, that at the end of 2013, ICMM seconded a communications manager to World Bank Group for four months with the expectation of her working in support of the Multi-Donor Trust Fund.

The mining constituency Board representatives have adopted a committed and engaged approach to EITI – as befits a co-owner of a multi-stakeholder process. They have been mindful of article 13 of the EITI Articles of Association which require Board members, whilst acting as representatives of their constituency, to 'act in the best interests of the EITI at all times'.

Colleagues in the oil and gas sector have contributed in equal measure to the governance and workings of the Board. However, in relation to the overall direction of the EITI, some perceive them to have adopted a more defensive posture driven by concerns about project by project reporting and contract transparency. Nevertheless, the two sub-constituencies frequently work together and did so during the negotiation of the 2013 Standard including on issues such as disaggregated reporting and contract transparency where mining companies were generally less cautious than their oil and gas counterparts.

In the 2011 Rules revision the mining constituency were prime movers in the design of provisions to track value transfers through minerals for infrastructure barter deals; greater focus on sub-national payments; the creation of a requirement for compliant countries to produce an annual report on their activities; and strengthening the need for explicit follow-up on any discrepancies identified through reconciliation reports. Later in 2011, and early on in the review process that led to the 2013 Standard, the supporting mining companies held a consultative workshop and tabled a resulting paper at the Board strategy meeting in Indonesia. Whilst urging caution about over-burdening capacity-challenged national processes, the paper advocated a number of reforms including:

- greater transparency around how resource revenues are allocated and spent;
- creating a presumption in favour of disaggregated reporting on a 'comply or explain' basis; and
- requiring license holders to disclose the identity of their major shareholders and beneficial owners so as to help establish any connections to Politically Exposed Persons.

In the context of the negotiations leading up to the finalisation of the Standard, mining representatives were particularly associated with the following issues:

- the restoration of provisions which emphasise the need for MSGs to proceed on the basis of ‘inclusive decision making’ in which each constituency is ‘treated as a partner’ – which is seen as underpinning the commitment to consensus-based decision making;
- the strengthening of transparency around sub-national revenues so that transfers can be better monitored and understood, especially in relation to receipts by producing regions;
- the encouragement of greater transparency around public expenditure allocations and of budget processes to guard against unsustainable or overly-optimistic revenue and commodity price assumptions;
- requiring transparency about the identity of the holders of mining concessions and encouragement of the disclosure of beneficial ownership of such companies.

As of 1st December 201, over 40 mining companies were declared international supporters of EITI – with many more involved at country level. The EITI budget works on the basis of an initial slice of revenue provided by the Norwegian Government. After this, financing is supposed to be divided equally between supporting governments and the private sector with around a third of the private sector contribution coming from mining companies and two thirds from oil and gas. The table below gives an account of the financial contribution made by mining companies since 2007²⁴

Year	2007	2008	2009	2010	2011	2012	2013	2014
ICMM	\$250,000	\$200,000	\$300,000	\$300,000	\$300,000	\$400,000	\$400,000	\$413,000
Other ²⁵ mining companies	Nil	\$ 85,000	\$ 80,000	\$ 140,000	\$234,000	\$250,000	\$244,000	\$220,000
Total	\$250,000	\$285,000	\$380,000	\$440,000	\$534,000	\$650,000	\$644,000	\$633,000

In some countries, mining companies or Chambers of Mines have played a particularly pro-active part in implementation including keeping national processes alive in Peru and Madagascar. Companies and the Chambers of Mines in Ghana, Philippines, Zambia, Colombia and Guatemala were consistent and influential advocates for national adoption of EITI. In many other cases individual companies have been part of national coalitions advocating implementation and ensuring effective implementation. In a number of countries which are still to implement EITI, such as South Africa and Chile, mining companies have consistently urged adoption and continue to do so.

All international supporting companies are invited to be involved in the selection of mining sector Board representatives. Since 2010, the ICMM has taken a co-ordinating role on behalf of the mining constituency, convening briefing teleconferences in advance of Board meetings, circulating a written account of the outcomes of Board meetings and convening workshops at its biannual member

²⁴ Source: EITI Secretariat

²⁵ Significant factors in the level of income from ‘other mining companies’ include Areva’s conversion to being an ICMM member company in 2011, De Beers ceasing to be an individual supporter following its take-over by Anglo American from 2012, the adherence of Kinross from 2011 onwards, and the fact that Arcelor Mittal did not pay in 2012 but paid double in 2013. In 2014 the following non-ICMM companies contributed: Arcelor Mittal, Centerra Gold, Dundee Precious Metals, Eramet, Fleurette Properties, HudBay; Kinross, London Mining and Newcrest.

companies' meetings (with invitations extended to non-member companies). The co-ordinating role did not, however, extend to the provision of consistent support for industry representatives active in national EITI processes. The draft of this report produced at the end of 2013 recommended the appointment of an EITI co-ordinator. This recommendation has been implemented, Luke Balleny has been in post since August 2014 and, for the first time there is a register of mining representatives active in national EITI processes.

Annex 2 – International Advisory Group and Mining Sector Board Representation 2005 – 2015

Prior to 2005, EITI was led by the UK Department for International Development which convened an ad hoc series of meetings mostly involving London-based stakeholders to act as a reference group. These meetings were attended by representatives from ICMM, Anglo American and Rio Tinto.

International Advisory Group 2005 -6

Edward Bickham (Anglo American)

International Board

2007 – 2009

Edward Bickham (Anglo American)

Alt: Olivier Loubiere (Areva)

Paul Mitchell (ICMM) (2007-8)/ John Groom (ICMM) (2008 – 9)

April 2009 – 2010

Dave Baker (Newmont)

Alt: Olivier Loubiere (Areva)

Anthony Hodge (ICMM)

Alt: Edward Bickham (ICMM) (from October 2009)

June 2010 – 2011

Olivier Loubiere (Areva)

Alt: Jim Miller (Freeport McMoRan)

Anthony Hodge (ICMM)

Alt: Edward Bickham (ICMM)

2011 – May 2013

Jim Miller (Freeport McMoRan)

Alt: Edward Bickham (ICMM)

Debra Valentine (Rio Tinto)

Alt: Andrew Bone (De Beers)

May 2013 – 2015/2016

Jim Miller (Freeport McMoRan)

Alt: Ian Wood (BHP Billiton)

Debra Valentine (Rio Tinto) –

from February 2015 - **Laurel Green (Rio Tinto)**

Alt: Suresh Rajapakse (Arcelor Mittal)

from July 2014: Alan Knight (Arcelor Mittal)

Annex 3: Terms of Reference for EITI 2013 Assessment

1. **Historic overview.** To provide a brief summary of the history of EITI.
2. **Issues analysis.** To summarize key developmental issues that the EITI has faced – at the international, national and sub-national levels including:
 - a brief summary of major issues of debate identifying alternative perspectives taken by different constituencies;
 - the position taken and role that the mining sub-constituency has played in these debates;
 - key successes or set-backs from a mining industry perspective; and
 - key causative factors for outcomes that have resulted in these debates.
3. **Sub-constituency analysis.** To complete an analysis of the mining sub-constituency that covers:
 - goal and objectives of the mining sub-constituency;
 - how it is currently organized (and any changes over time);
 - an assessment of, strengths, weaknesses, and overall effectiveness;
 - relationships with other sub-constituencies and the secretariat;
 - how the mining sub-constituency is perceived by other participants in EITI including other sub-constituencies, the secretariat, and outside participating organizations; and
 - suggestions for improvements to the sub-constituency’s organization and/or approach
4. **Looking forward.** To identify 3-5 year trends and suggest implications for the mining sub-constituency relating to:
 - emerging EITI-related issues
 - changing membership in EITI over time; and
 - evolving sub-constituency objectives and tactics.
5. **Overall assessment.** To provide a brief summary of:
 - What the mining sub-constituency has done well since the design and inception of EITI; and
 - A prioritized list of what can be improved and how.

About the author

Edward Bickham has been involved in the Extractive Industries Transparency Initiative since its inception. He was appointed as the mining industry's representative on the International Advisory Group in 2005 and then became a Board member from 2007 until 2009 representing Anglo American plc. He then rejoined the Board in October 2009 as an alternate member representing the International Council on Mining and Metals, a role he fulfilled until May 2013. Since then he has served as a Strategic Adviser to the ICMM on EITI-related issues.

Edward Bickham was Executive Vice President, External Relations for Anglo American plc from 2000 until 2009 with responsibility at various times for communication, government relations and political risk, social and community development and the creation and implementation of the company's business principles. Amongst his achievements in the role was leading the development of the award-winning Socio-Economic Assessment Toolbox (SEAT process) to improve stakeholder engagement, ongoing impact assessment and local development outcomes around mining operations.

He has been involved in a number of multi-stakeholder initiatives including serving on the Steering Group of the Voluntary Principles on Security and Human Rights (2008-9) and on the Technical Advisory Group of the Investment Climate Facility for Africa (2007-9). He participated in the OECD's multi-stakeholder working group on the responsible sourcing of minerals from conflict affected and high risk areas (2011-14). He served as Chair of the ICMM's working groups on communication and human rights.

Prior to joining Anglo American, Edward Bickham was Managing Director, Public and Corporate Affairs for Hill and Knowlton UK (1993-2000) and Special Adviser to the Foreign Secretary (1990-1993). He was Director of Corporate Communications for British Satellite Broadcasting (1988-1990) and served as Special Adviser to the Home Secretary (1985-88) and to the Secretary of State for Northern Ireland (1983-85).

He was a Senior Adviser to the World Gold Council (2010-14) including on the development of the Conflict-Free Gold Standard. He has been a Senior Adviser to Critical Resource Ltd since 2009. He is Chairman of the Institute of Business Ethics, a Trustee of Care International UK, and is a Member of the Steering Board of the UK's National Contact Point for the OECD Guidelines. He is a Visiting Fellow at the Doughty Centre for Corporate Responsibility at Cranfield University School of Management.

He graduated in Law from St John's College Oxford in 1977. He is married with two sons.