

OCCASIONAL PAPER 12

Lessons of Transparency from EITI

A Report for Focus on the Global South

by Kees Visser

April 2012

Printed April 2012

Focus on the Global South

4th Floor CUSRI
Wisit Prachuabmoh Building
Chulalongkorn University
Bangkok 10330
THAILAND

Lessons of Transparency from EITI

by Kees Visser

This work is licensed under Creative Commons Attribution

This publication or parts of it may be reproduced on the condition that proper acknowledgment and citation be given to the author and Focus on the Global South. Focus would appreciate receiving a copy of the text in which this report was mentioned or cited.

To publish figures not belonging to Focus on the Global South, please coordinate with the owners for permission.

THE OCCASIONAL PAPERS are published by Focus on the Global South. Although some of the authors are Focus staff or visiting researchers, we are open to proposals from individuals or organisations who would like to submit papers for publication. The aim of the series is to publish new research and policy analysis on key issues emerging from the processes of economic globalisation and militarisation and the countervailing force of resistance and alternatives. The views expressed in this series are those of the authors and do not necessarily represent the views of Focus on the Global South

FOCUS ON THE GLOBAL SOUTH is a non-profit policy analysis, research and campaigning organisation, working in national, regional and international coalitions and campaigns, and with social movements and grassroots organizations on key issues confronting the global south. Focus was founded in 1995 and is attached to the Chulalongkorn University Social Research Institute (CUSRI) in Bangkok, Thailand. It has country programmes in the Philippines and India.

For more information about Focus and other focus publications, please visit our website at <http://www.focusweb.org> or email us at info@focusweb.org

ISSN: 1906-7437

Table of Contents

Introduction	1
The EITI.....	2
The World Bank and the EITI	4
The nonsense of ‘win-win’	9
Civil society and the EITI.....	10
Keeping natural resources in the ground.....	12
Corruption in the South?	13
Corporate tax avoidance and the type of transparency.....	17
Conclusion.....	19
Bibliography	22

Introduction

Since first being announced a decade ago, the Extractive Industries Transparency Initiative (EITI) has been heralded as a revolutionary solution to corruption and related difficulties that extractive industries bring to developing countries. While it could be argued that the EITI provides information that can be useful for well-intentioned policy-makers and others, claims that the EITI provides levels of transparency that are needed to truly address corruption, let alone a device that can address larger problems presented by resource extraction, are grossly overstating EITI's limited benefits. By limiting the discussion to transparency of government revenue and in-country company payments, EITI overlooks essential issues, from whether resource extraction is worth the human and environmental impacts, to how to distribute resource revenues. At the same time, given its voluntary nature and disregard of serious problems such as tax avoidance, the EITI fails to bring meaningful transparency into the resource industry. Unfortunately, rather than ending the "resource curse", the EITI is primarily successful in deflecting criticisms away from the World Bank and the extractive industry while concentrating the burdens and the blame on the governments of resource-rich countries.

The EITI

The Extractive Industries Transparency Initiative (EITI) was announced by Tony Blair at the World Summit for Sustainable Development in Johannesburg in 2002. In many countries in the South, in spite of the abundance of precious natural resources, poverty and underdevelopment have been exacerbated rather than overcome, leading many development professionals to theorize about a “resource curse” (see box 1). The EITI seeks to challenge and escape this “resource curse” by promoting transparency. The basic idea behind the EITI is simple; companies publish what they pay to governments for extracting oil, gas and minerals, and host governments publish the received revenues from oil, gas and mining companies. With this increase in transparency, governments would then become more accountable to their citizens, which would in turn improve governance, and lead to stability and a decrease in corruption¹. At the national level, the implementation of the EITI is overseen by a Multi-Stakeholder Group, comprised of representatives from civil society, extractive industry companies and the host government.

The EITI, however, is a voluntary initiative. The burden of taking action towards transparency is put squarely on the host countries. When a country decides to adopt and implement the EITI, it has to engage the oil, gas and mining companies operating in the country and make them report under EITI provisions. On the other hand, companies can achieve the status of “EITI-supporters” by simply making a public statement endorsing the EITI and a small annual financial contribution to the international management of the EITI. It should then come as no surprise that almost all the major Western oil, gas and mining companies are “EITI-supporters”.

¹ See the EITI’s website for its principles: www.eiti.org

Box 1: Resource curse

Before the late 1980s, the dominantly held belief was that natural resources would help lead to an industrial (Rostovian) “take-off” similar to the US and Britain in the past. In the 1990s however, a considerable amount of scholarly literature popularized the idea of a “resource curse”, which became widely accepted not only among academics, but also among policy-makers at domestic levels and in major financial institutions, as well as among many NGOs. In the resource curse literature, natural resources are usually seen to have a relationship with poor economic performance, civil war and authoritarianism². There are many different explanations for why countries are resource cursed. One of the commonly attributed factors contributing to the resource curse is the “Dutch disease”, in which the increased revenue from natural resources leads to an over-valuation of a nation’s currency, thereby making the manufacturing sector less competitive. Other theories range from focusing on governance problems in the South (for example, corrupt officials filling their own pockets and public misspending of revenues) to perspectives that are more critical of the political-economic system (for example, poor countries with a rich natural resource base are coerced by powerful nations and international institutions into pursuing policies that hamper socio-economic development, but coincide with the interests of big transnational corporations). For every different explanation of why the resource curse occurs, one can find empirical examples that support that particular perspective. There are significant variations in development outcomes among resource abundant countries. Many of these countries have performed poorly in economic terms, developed authoritarian regimes and descended into violence, while others have done reasonably well.

A significant weakness in the mainstream literature of the resource curse is the one-sided focus on economic performance. Much of the writing on the resource curse ignores ‘negative externalities’ such as the dislocation of indigenous peoples, environmental degradation, human rights violations and impacts on the livelihoods of local populations.

There are two categories of countries under the EITI: candidate countries and compliant countries. To implement the EITI, candidate countries have to: work with civil society and the private sector; appoint an individual to lead the implementation, and; produce a work plan that is accepted by the ‘stakeholders’ in the Multi-Stakeholder Group³. After this, candidate countries have two years to become compliant countries, during which time they must establish how the amounts of money they receive from oil, gas and mineral extraction will be disclosed and independently verified. To become compliant, countries will also have to establish a multi-stakeholder committee and reporting procedures. So far, 35 countries have signed up for the EITI, producing EITI reports in 29 different countries, with 13 countries having become compliant countries. The World Bank (WB) and civil society organizations (CSOs) have been involved in activities promoting the EITI in more than 50 countries.

² See Rosser (2006) for a detailed literature review on the resource curse.

³ The word stakeholders here is written in ‘quotations’ as this paper takes issue with the neutrality that is implied in the term and its usage. See the discussion on page 8 and footnote 26 for more on this matter.

The World Bank and the EITI

The EITI is, to date, the most prominent initiative in the extractive industries world. To understand its rise, one must take a look at the wider ongoing processes in the extractive industries. The EITI picked up steam after the WB put its weight behind it publicly in December 2003, following closely in the footsteps of the United Kingdom's Department for International Development (DFID). In August 2004 the WB established the EITI's Multi-Donor Trust Fund (MDTF) with DFID as the initial donor. The MDTF, which is independent from the EITI Board and Secretariat, has 13 donor agencies (various Western governments and the EU) and aggregate contributions of almost US\$ 37 million⁴. The MDTF support is delivered mainly by WB staff, and the Fund has been integrated into the WB's country dialogues and technical assistance delivery systems. The MDTF helps to promote the EITI to policy-makers and CSOs and administers the funds to provide technical and financial assistance to countries implementing or considering implementing the EITI. It also helps to establish the national EITI Secretariat, helps produce EITI reports, supports communication and outreach, and provides capacity building for governments and CSOs. For example, in 2010, the MDTF established a US\$ 1 million grant to strengthen CSO engagement in the EITI process. MDTF activities are now ongoing in more than 50 countries. Furthermore, the WB's Development Grant Facility (DGF) is used to support CSOs in capacity-building programs in order to enable these organizations to play an active part in national EITI processes, often while working closely with the Revenue Watch Institute⁵. Both the MDTF and the WB's DGF EITI programs can support CSOs in countries that have not even signed up as candidates for the EITI⁶. The WB's role has been crucial in the rise of the EITI and the EITI has been central in the WB's strategy on extractive industries.

The timing of the EITI was very welcome to the WB. In the late 1990s and early 2000s the WB's public image was at an all time low. The neoliberal development agenda of the WB was heavily criticized by academics, CSOs and even many government officials, and the WB's dealings and engagement in extractive industries were particularly under attack. International financial institutions (IFIs) such as the WB were seen as contributing to the resource curse that linked poverty, corruption, conflict and ecological catastrophe with extractive industries⁷. The WB's own acceptance of the existence of the resource curse was evident in its contribution to academic research⁸. Given the WB's core development mandate of poverty reduction, the resource curse posed obvious contradictions with its gas and oil operations. WB-supported extractive industry projects failed to protect and benefit local communities negatively affected by

⁴ See World Bank (2010: 20; 2011a). For a brochure of the World Bank propping up its connection with the EITI see http://siteresources.worldbank.org/INTOGMC/Resources/EITI_Final_Brochure.pdf (20-10-2011). For simplicity, I will use the term World Bank (WB) to refer to any of the lending, insurance or research arms of the World Bank Group.

⁵ See <http://www.revenuewatch.org/> (17-2-2012).

⁶ See footnote 4

⁷ See Peet (2003: 134-138), Guttal & Bello (2005) and the 50 Years is Enough Campaign: http://www.developmentgap.org/worldbank_imf/50Years/50Years_Platform_summary.pdf (19-10-2011).

⁸ See for example the work of Paul Collier (former Director of the Development Research Group of the World Bank) on natural resources and conflict (Collier and Hoeffler 1998), and Weber-Faht (2002) on mining and development. Weber-Faht suggests that countries with high income from mining performed less well than countries with less income from mining (although it suggests that compared to countries in the same region, countries with mineral dependent economies still do better than non-mineral economies). It must be noted that the WB's own writing on the resource curse is a lot less critical than that of activists. It focuses primarily on economic performance and conflicts (rather than ecological disasters, displacement of peoples, etc.), generally suggests market-oriented solutions and usually points the finger at governments of developing countries.

the industry, inflicted tremendous environmental damage, and funded corrupt and authoritarian governments. CSOs and extractive industry critics called upon the WB to cancel its support for extractive industry. They pointed out that the WB could no longer justify its involvement in extractive industries by arguing that attracting foreign direct investment (FDI) will automatically lead to economic growth, which then trickles down and reduces poverty. The WB had to find new ways to legitimize its extractive industry projects, especially the two major controversial pipeline constructions that it was supporting, which will be discussed later in this paper.

The World Bank's Extractive Industries Review

In response to criticisms, the WB -- under former President James Wolfensohn -- commissioned an exhaustive review of its involvement in extractive industries. The Extractive Industries Review (EIR) is the result of an independent consultation with numerous 'stakeholders' led by Dr. Salim, an economist and former Minister for Population and Environment in Indonesia. The EIR pointed to bad governance as the cause of the resource curse rather than external factors and supported the WB's argument that the extractive industry can contribute to sustainable development. However, it also suggested that good governance criteria should first be met before extractive industry projects are permitted to proceed. Furthermore, the recommendations of the EIR included a call to phase out investments in oil and coal projects. Most importantly, the EIR recommended that free, prior and informed consent of indigenous peoples should be obtained throughout the project cycle. It states that the WB should not be involved in extractive industry projects that "...affect indigenous peoples without prior recognition of and effective guarantees for indigenous peoples' rights to own, control, and manage their lands, territories, and resources". Finally, the EIR report suggested that necessary governance elements should first be in place before resource extraction is supported: "Explicit core and sectoral governance requirements should be met before a project qualifies for IFC and MIGA [WB] funding". And: "Under no circumstances should the IFC and MIGA support oil, gas, and mining projects in areas involved in or at high risk of armed conflict"⁹.

The response to the EIR by the industry and the WB was, however, rather problematic. The EIR suggested a phase out of investments in oil and coal projects, but the WB continued its funding of fossil fuel projects, spending up to a record high of US\$ 4.4 billion in coal power – the world's most carbon intensive energy -- in 2010¹⁰. While representatives from the oil industry agreed with the EIR's focus on the problem as a "governance curse" rather than a "resource curse", they disagreed with the adoption of "no-go" environmental zones and opposed a ban on the forced resettlement of local communities. Furthermore, they rejected the requirement of a "...wide-ranging set of governance standards before WB investment is permitted...", arguing instead that it should be possible to improve governance while simultaneously working on an extractive industries project¹¹. The WB's leadership also disagreed with the principle of good governance preceding projects and stated that "...to be effective, the WBG needs to engage with governments whose capacities range from very strong to extremely weak",

⁹ See EIR (2003: xiii, 21,59-60, 46-47)

¹⁰ See the Guardian (15-9-2011). The WB recently released its new energy strategy in which it no longer issues loans for new coal-fired power plants in middle-income countries. The poorest countries however may still receive loans for coal plants (Guardian 4-4-2011).

¹¹ See Nore et al. (2003: 3,4,6) for the Oil Industry response.

arguing that the risks and benefits of involvement in extractive industries should be decided case-by-case¹². The EITI embraces the idea that ‘good governance’ can be implemented in parallel to continued resource extraction and it comes as no surprise that the WB considers the EITI and its role in supporting the initiative to be its main response to the EIR.

Even though many of the EIR recommendations were rejected by the WB, the EIR arguably did not go far enough. First of all, the EIR does not address the security arrangements that resource extraction firms make with governments and private security companies, which are frequently implicated in human rights violations. Second, if the consent of indigenous peoples is to be meaningful, their rights should not only be recognized and protected, but also, they should be able to veto projects that negatively affect their lands, livelihoods and use of essential resources. And third, social, environmental and human rights standards should become mandatory and legally binding, rather than implemented through voluntary approaches as suggested in the EIR¹³. For example, the EIR suggests that corporate best practice on human rights is best measured by initiatives such as the UN Global Compact¹⁴.

The World Bank’s extractive industry projects

While the EIR was underway the WB was already involved in multiple controversial extractive industry projects, including two major pipeline construction projects, the Baku-Tbilisi-Ceyhan (BTC) and the Chad-Cameroon pipelines. The US\$ 4.2 billion Chad-Cameroon pipeline involved an experiment in which the WB tried to improve governance in Chad in parallel to the construction of the pipeline. This was in line with the WB’s refusal to take up the EIR’s recommendation to not support projects before governance criteria are met. The experiment however ended up in a debacle (see box 2).

Similarly, in the BTC pipeline construction project, the accompanying governance initiatives were introduced only to provide legitimacy to construction projects that deepened social and environmental insecurity in countries under corrupt and authoritarian regimes. One of the central governance initiatives deployed in the BTC pipeline construction project was the EITI with Azerbaijan becoming the world’s first EITI compliant country and an unlikely role-model for transparency (see Box 3).

In response to the EIR, the WB leadership claimed that “In most cases, [extractive industry] development will take place with or without WBG involvement, as governments, especially poor governments, and investors, are impatient to develop resources that promise tax revenues, jobs and profits”¹⁵. The WB leadership here denies however the huge influence the institution has in the industry and over governments to create investor-friendly host environments¹⁶. In the two pipeline projects described below, the WB played a crucial role in enabling these massive construction works by

¹² World Bank (2004: 3)

¹³ Pegg (2006a)

The UN Global Compact seeks to encourage businesses worldwide to adopt sustainable and socially responsible policies, and report on their implementation. It is based on 10 principles of human rights, labour, environment and corruption. The UN Global Compact however fails to hold corporations truly accountable as it is a voluntary initiative without any effective monitoring or enforcement provisions. See <http://www.unglobalcompact.org> (21-2-2012).

¹⁵ World Bank (2004: 29)

¹⁶ Pegg (2006a: 385)

taking on risks that private companies were not willing to take, by using their connections and know-how, and by building confidence for other private investors.

Box 2: The Chad-Cameroon Pipeline Experiment

Civil war and political instability prevented Chad's oil reserves from being exploited in the past, but after President Déby came to power in 1990, Chad's oil fields became a target for exploitation for a consortium of oil companies. In order to make oil extraction possible however, land-locked Chad had to be connected with the port of Kribi in Cameroon. The cost for this pipeline construction project was US\$ 4.2 billion, which to this day remains the largest private sector investment in sub-Saharan Africa. While the oil consortium led by ExxonMobil contributed most to the project, the relatively small direct financial contribution of the WB should not conceal the key role the WB played in the project: that of political risk management for all the investing parties and credit mobilization. Political risk management was extremely important considering that Chad fit the requirements of a typical resource curse afflicted country with its recent violent history, extreme poverty and authoritarian regime. Such a huge investment in one of the world's poorest, most unstable and badly governed countries expectedly sparked a great amount of controversy. For this reason the WB transformed the pipeline project from a "commercial project" into a "developmental project", making the involved companies less prone to reputational damage and adding legitimacy to a controversial project that was highly scrutinized by CSOs and other project critics¹⁷.

The outcome of the Extractive Industries Review recommended the WB to not work on these sorts of projects before 'good governance' criteria are met. But the WB legitimized its involvement by arguing it could improve governance and construct the pipeline simultaneously. In order to do this the WB started an experiment, which has been referred to as an instance of "shared sovereignty" by Stephen Krasner (2004). In return for financial and political support for the project, the WB made the Chadian government sign up to a number of agreements, especially with regards to how its oil revenues could be spent. For example, 80% of the revenues were to be allocated for social spending in education, rural development, health, infrastructure and environmental resources; 10% percent was to be allocated for the future generations fund; and 5% of the revenues could be spent by the government at its own discretion. President Déby was unhappy with the arrangement, but played along while the pipeline was being built, despite several controversies in the meantime (including fraudulent elections and spending a signatory bonus on weaponry). Once the pipeline was constructed and working however, Déby broke the agreement and spent much of the revenue on weaponry and self-enrichment instead. The WB's president, Paul Wolfowitz, was furious and froze loans and oil payments to the government, but ultimately backed down when president Déby threatened to shut down the pipeline operation¹⁸. The Chad-Cameroon pipeline can then be seen as a "two-speed project", where the construction activities related to resource extraction were allowed to proceed ahead of schedule, while the "capacity-building" efforts designed to improve governance faced continued delays¹⁹.

¹⁷ Pegg (2006b: 10-12); Gillies (2010: 110)

¹⁸ Benner and Soares de Oliveira (2010: 304-306)

¹⁹ Pegg (2006b); Pegg (2006a: 382)

Box 3: The Baku-Tbilisi-Ceyhan Pipeline

The Baku-Tbilisi-Ceyhan pipeline is controversial for several reasons. It has been of great geopolitical importance as it connects the oil fields in the Caspian Sea (which has the largest remaining oil deposits after the Middle East) to the Mediterranean Sea in an area that was once seen as Russia's backyard. Azerbaijan, a family-run authoritarian petro-state, signed a 30-year production-sharing agreement with a consortium of largely Western oil companies led by British Petroleum (BP) that has been described as the "contract of the century"²⁰.

In addition to geopolitical factors, the project was marked by numerous social and environmental concerns: the pipeline travels through several areas that are known for severe seismic activity and where earthquakes have destroyed entire cities in the past. Furthermore, the pipeline passes through the mineral springs of the Borjomi-Kharagauli National Park in Georgia, an area that is used by Georgia's mineral water industry which accounts for 10% of the country's exports and employs more people than the pipeline. During the construction, BP faced accusations of covering up safety problems²¹. It was also reported that peasants were misinformed by the authorities about their legal rights and that, in some cases, their land was expropriated before compensation had been agreed upon. Project agreements had been signed that made BP and its partners practically immune to any domestic law that conflicts with the company's project plans. Under these agreements, BP can demand compensation from the governments should any domestic law (including environmental, social and human rights laws) make the pipeline less profitable.

It is no surprise that the project attracted a lot of attention from activist. A network of NGOs from London to Baku, grouped under the Baku-Ceyhan Campaign, put the pipeline construction project under scrutiny²². For BP and other partners it was important to legitimize the project and lessen their political risk in a project that generated tremendous social and environmental insecurity. The WB and the European Bank for Reconstruction and Development (EBRD) stepped in to assist in mitigating political risk for private partners through "participatory development" and "corporate social responsibility". Due to the perceived commercial risks for private capital, export credit agencies and the bilateral financing institutions of several Western nations cooperated with the EBRD and the WB to put up more than US\$ 1.7 billion of public capital for the project.

The WB and EBRD helped to mitigate risk for BP and their involvement built confidence for the project in order to attract private sector financing at better terms than would otherwise have been possible²³. With the help of the WB, the 'cutting edge' of extractive industry risk management was deployed involving transparency conducts, monitoring, consultation, community participation and voluntary codes. The EITI played a big role here with Azerbaijan becoming the first oil-producing country to sign up for the EITI, and BP being the first major oil company to throw its weight behind the

²⁰ New York Times (21-11-1994)

²¹ Guardian (15-6-2005)

²² See their website: <http://www.bakuceyhan.org.uk/> (21-2-2012)

²³ Carrol (2010)

EITI. The role of the EITI here should not be perceived as empowering the local population or mitigating *their* risks, but rather, mitigating the political and financial risks for BP, the WB, the EBRD and all the other partners. As the oil started flowing through the pipeline from Baku to Ceyhan, the power of President Aliyev and his corrupt regime increased. The EITI has posed no challenge to the President's methods of governing the country or its oil sector practices. The idea that the citizens of Azerbaijan are empowered and can hold their state accountable with the publicly disclosed information of the EITI is laughable in a country where any criticism towards the state is violently crushed²⁴.

The nonsense of 'win-win'

The EITI presents itself as an initiative where everyone can gain: the governments, the population of natural resource rich countries, private companies, investors and civil society. All these actors are said to benefit by participating in this voluntary process to increase transparency. As the EITI website claims, implementing the EITI will create a more favorable investment climate in host-countries; accountability will be strengthened leading to greater economic and political stability; companies can demonstrate the contribution they make to a country, and reduce reputational risks by addressing the concerns of shareholders; civil society can make use of the increasing amount of information available in the public domain about the revenues that governments manage on behalf on their citizens, and thereby help to hold governments more accountable²⁵.

In actuality, however, all these different actors have different interests, some of which are conflictual. Indigenous peoples, for example, that live on top of an oil field have fundamentally different interests to those of the large oil companies that want to start extraction. Ecologically, nobody, and especially not the local population, benefits from such resource extraction. In the sharing/distribution of rewards, the domestic population and local communities are also pitted against investing companies and perhaps even their own governments. The EITI obscures these conflicting interests by presenting the process as something where everyone can gain and where everyone is on equal standing. Further, there are huge power disparities among the different 'stakeholders' (for example, between local communities and a major oil company, or local communities and government authorities)²⁶. The EITI assumes that resource extraction is inevitable and that FDI in the extractive industries is as long as it is transparent always a good thing. It assumes that 'good governance' can be implemented top-down without excluding anyone's interests, ignoring that what is meant with 'good governance' is not in itself neutral, but is fully embedded in the neoliberal development paradigm that tends to serve the needs of capital and investors.

²⁴ See Human Rights Watch (2010)

²⁵ These claims are all taken directly from the EITI website. The key claims on the potential impacts of the EITI's transparency have been strongly criticized and disputed in the EITI's self-commissioned independent evaluation report (EITI Evaluation 2011). See Box 5 for a summary of this report.

²⁶ The question is whether the private sector should be considered "stakeholders" in the first place. The real stakeholders are government and the people who have a current stake in the land and resources. These stakeholders should be distinguished from corporations that are (often legally obliged by shareholders) merely seeking to increase their profit margins. Companies should instead be seen as profit-seeking candidates that are competing to serve the interests of the real stakeholders.

Civil society and the EITI

The EITI gives legitimacy to the ongoing practices of extractive industry. There is also the risk that representatives of communities affected by the extractive industry become co-opted in the EITI framework. When they start being involved in the EITI's Multi-Stakeholder Group, their understanding of the conflicts is potentially reshaped over time, as they become part of an environment associated with modernity and neoliberal governance norms and mechanisms - dominated by powerful international protagonists backed by donor power and resources²⁷. A critical issue here is whether civil society actors involved in the Multi-Stakeholder Group end up representing and defending their particular constituency's interests within the EITI, or whether they become committed to defending EITI principles and bringing the EITI agenda back to their constituency. There is a high risk of the latter, or a mix of both, when EITI involvement becomes one's job and/or defines one's social status.

In a Multi-Stakeholder Group, people from affected communities and critics of the industry may sit around the same table as major companies and the government in the EITI implementation and validation process. But sitting around the same table does not mean that they have equal standing, power or interests. Major oil, gas and mining companies are able to exert much more control over the situation in which resource extraction is conducted than local communities and no voluntary initiative promoting transparency is going to change that. As the sector is being discussed within the Multi-Stakeholder Group, the framework delineating the supposed "limits of the possible" has already been set up; it is a fact that resource extraction by private corporations will take place, the contracts between governments and companies will not be renegotiated, labour and environmental regulations are not on the table for discussion, and how government revenues will actually be spent is left undiscussed. The only issue that is actually open for discussion revolves around transparency of what companies pay and what governments receive. The CSOs involved in the EITI process cannot veto anything; the only power they have is the ability to frustrate the process of a country achieving compliance status within the EITI.

By focusing on transparency and excluding other issues related to extractive industries, the EITI reframes and changes people's understanding of the conflict issues between local communities, governments and corporations. In the EITI, the relationship between 'bad governance' and the failures of mineral-led development is emphasized. This then promotes the one-sided industry narrative in which the resource curse is blamed on poor government and corruption²⁸. The language employed by the EITI is particularly revealing. According to the EITI, the increase in transparency would allow citizens to hold their governments accountable by using the disclosed data of the EITI. This is not only absurd, considering the authoritarian nature of many EITI implementing countries, but this is also an example of how the EITI only faults governments in the South for corruption and the resource curse, despite the obvious need to hold the private sector more accountable.

²⁷ Bracking (2009)

²⁸ Bracking (2009) See for example the International Council on Mining and Metals (ICMM), an industry CSR group which includes most major mining companies and produces a particular type of knowledge on resource extraction that does not threaten the industry's interests. It seeks the industry's sustainable development performance by promoting 'good practice standards'. See its similarity with the EITI: <http://www.icmm.com/page/1549/extractive-industries-transparency-initiative> (21-2-2012)

There is also the issue of how CSOs are selected to participate in the EITI process. The WB's EITI DGF has been active supporting CSOs (even in countries that have not yet signed up as EITI-candidate countries) as a way of supporting EITI implementation, so that the pressure to join the EITI not only comes from top international institutions and rich donor countries, but also from CSOs and grassroots actors. One of the guidelines of the WB's DGF funding is that CSO grantees must be independent of the WB, and a WB report on EITI engagement with civil society notes that "...indeed some of CSOs involved even had a clear record of having been critical of the Bank's previous engagement in the extractive industries"²⁹. However, some of the CSOs involved in the EITI have been sponsored in order to fulfil their monitoring and evaluation functions in the Multi-Stakeholder Group, while supposedly representing the citizens and local communities that may have never heard of these CSOs (or even the EITI for that matter). In a casestudy on EITI implementation in Gabon, which was part of a recent independent evaluation report on the EITI, one of the problems observed was the questionable representativeness of the CSOs in the Multi-Stakeholder Group, as almost all representatives came from the capital with no apparent links to communities that bear the brunt of the social and environmental impacts of oil, gas and mining activities³⁰. The focus on civil society involvement in the EITI is similar to the WB's general strategy towards civil society participation. Economic issues are separated from democratic participation and accountability, while democratic participation is restricted to civil society involvement in safely channelled areas where fundamental issues are excluded. Central questions on economic governance (property rights, fiscal and monetary policy, trade and labour policy) are put outside democratic control. As the WB argued in the 1997 World Development Report on the state in a globalized world, "the technical and often sensitive areas of economic management [...] some insulation of decision-making from the pressure of political lobbies is desirable"³¹. Similarly, in the EITI framework, civil society engagement is restricted to consultation on the issue of payment transparency, while key decision-making on the resource extraction and operation of the industries is closed off.

Furthermore, the annual EITI reports are highly technical and require outside expertise (hiring Western consultancy companies). For a layperson, these EITI reports are often hard to comprehend and the technical expertise required helps to depoliticize intrinsically political issues, such as the division of rewards. There is also a high discrepancy in quality between the 50 EITI reports in different countries that have been published so far. Some reports are relatively easily comprehensible to a lay person, while others are not. Some reports disaggregate financial data by individual companies, revenue streams, projects and commodities, but others do not. Some reports investigate the discrepancies between corporate payments and government revenues, and others do

²⁹ World Bank (2009: 8)

³⁰ EITI Evaluation (2011: 14)

³¹ World Bank (1997: 117) For more on this topic, see Stephen Gill's writing (1998) on what he calls the "new constitutionalism", which describes how new global political-economic structures (for example, by the WB, IMF and WTO) let states be disciplined by the market, while investors become the central dominant political subjects. Investors also assume a prominent role in the EITI. The EITI website, for example, highlights how transparency leads to greater political stability, which would then lead to a higher certainty of a return from the investment. Furthermore, the EITI has received the explicit support of over 80 global investment institutions that collectively manage over US\$ 16 trillion. Azerbaijan has already reaped the benefits of compliance with the EITI, as the international credit rating agency, Fitch Ratings, upgraded its investment rating of the country. The agency "[drew] comfort from the transparency of the SOFAZ [the State Oil Fund that leads on EITI], underlined by Azerbaijan being the first country to be fully compliant with the International Extractive Industries Transparency Initiative" (Nasdaq 2010).

not. Timeliness is another important issue. Of the 29 EITI implementing country reports published to date, only 8 reports give an account of the fiscal data of the year preceding the report's publication. The rest of the reports lag 2 or more years behind³².

Keeping natural resources in the ground

The EITI has also served to marginalize one of the most potentially powerful ideas in the extractive industries. The simple idea -- that people may be better off if resources are non-extracted or left in the ground -- is disastrous to the interests of the extractive industries and capital, but several groups have been propagating exactly this idea³³. If one does not look at GDP increase due to natural resource extraction as a solely positive process, but takes the corresponding debt to a country's natural wealth into account, then on-going resource extraction has made many resource-rich developing countries progressively poorer. Natural resource extraction is often promoted as a solely positive process, as it leads to increased economic activity and thereby growth in GDP, which is still used as the main indicator of a country's well-being. But one can argue against resource extraction on the basis of not just the detrimental effects of the 'resource curse' (as in how it is usually understood: poor economic performance, authoritarianism, conflict³⁴), or because of the dispossession of local communities' and indigenous peoples' rights and resources, or the environmental costs (biodiversity loss, oil spills, gas flares, deforestation and emission of greenhouse gases), but also by pointing out the depletion of a country's natural resource wealth.

For example, when a country is unable to significantly utilize extractive industry revenues for the benefit of the population, rejecting or delaying resource extraction are options to be considered. A country like Nigeria has had nearly \$400 billion in oil revenues since the 1960s, but because the government was unable to properly utilize these revenues for various reasons, more than half of the population still lives under extreme poverty. Nigeria is an extreme example of a resource cursed country not only due to conflict, corruption, authoritarianism (in the past), dispossession of peoples, oil spills and gas flares, but also, it has lost many of its natural "savings" through relentless resource extraction. Its natural wealth has never been properly put to use for the benefit of its population. Nigeria would have been better off if it had kept its oil in the ground. Considering the demand for raw material is unlikely to disappear in the future, countries could choose to hold off exploitation until they are ready to fully benefit from resource extraction.

A wide range of actors such as human and environmental rights activists, the EIR committee members, and prominent economists, including Joseph Stiglitz, have argued that until domestic institutions are in place to ensure the people benefit, resource extraction should not be supported³⁵. This idea has taken hold in some Latin American countries where struggles over resource extraction have been fierce. In Peru, Argentina

³² The Revenue Watch Institute provides useful tools to analyze the different EITI reports on its website: <http://data.revenuewatch.org/eiti/> (21-2-2012).

³³ See Oilwatch's 'leave new oil in the soil' campaign (2010); Friends of the Earth (2009); Acción Ecológica (<http://www.accionecologica.org/>) (21-2-2012); and the work of Martinez-Alier (2007) and Boedt & Martinez (2007).

³⁴ The mainstream literature on the resource curse is restricted to only these three things, excluding the various social and environmental consequences of resource extraction. See Table I.

³⁵ EIR (2003: 46); Joseph Stiglitz (2007: 39-40)

and Guatemala, citizens have organized referenda to stop mining. In Ecuador, debates surrounding the resource curse and relationships between mining, the environment and social conflicts were integral in the process of writing a new constitution, with proposals that the Constitution should ban open-cast mining and significantly limit the potential for expanding mineral exploitation³⁶.

An unprecedented proposal has been put forward by Ecuador's President Rafael Correa, who has signed an agreement in cooperation with the United Nations Development Program to save the Yasuni rainforest from exploitation of the oil that lies underneath. In this deal, Ecuador would receive US\$ 3.6 billion, about half the expected revenue if the oil was extracted and sold at current prices, which is to be invested in renewable energy developments. By doing so, Ecuador, a country for which oil accounts for over 60 per cent of its exports, will, if the deal is paid for, lock up a fifth of its oil reserves indefinitely³⁷.

Corruption in the South?

Initiatives such as the EITI have greatly contributed to fostering widespread belief in predominantly one-sided causal links between bad governance and the resource curse, which serves the extractive industry's interests well. The language about corruption adopted by the EITI puts the blame squarely on the governments and other actors of the South. Corporations are portrayed as complicit in corruption only in as far as the environments in which they operate require them to be so. But it is, in the first place, the immense demand for natural resources from the North that leads to corruption in the South. Furthermore, there is much more than corruption (as in how it is usually understood) that explains the low economic performance in many resource abundant developing countries. One should look at the neoliberal governance in the previous decades that took place in most developing countries that are affected by the resource curse (see Box 4). Structural adjustment programs and new fiscal and regulatory frameworks promoted by the WB and other multilateral institutions, in order to create a more favourable environment for FDI, drove down social, economic and environmental standards and norms in many developing countries³⁸.

³⁶ Bebbington et al. (2008: 905-907)

³⁷ Independent (2010, 8 August)

³⁸ Bebbington et al (2008); Campbell (2006)

Box 4: Neoliberal governance in the African mining sector

The WB has been central in governance reforms in the South and instrumental in promoting the exploitation of natural resources as the road towards development in resource-rich countries. In the 1980s and 1990s, the WB was central in promoting neoliberal development policies, which included a redefinition of the roles and responsibilities of public and private sector actors. The government's primary role in the extractive industries sector became creating an investment friendly environment for the private sector. A WB paper in 1992 that outlined its strategy for the African mining sector unambiguously called for "...a clearly articulated mining sector policy that emphasizes the role of the private sector as owner and operator and of government as regulator and promoter"³⁹. Under the WB reform package, it was no longer the State's role "...to pursue social and political goals through its operational involvement in the mining industry...", instead the State was to become "...an efficient and 'apolitical' regulator focused upon the facilitation of private investment and the technical aspects of permitting and regulation"⁴⁰. The reforms under the WB's guidance recommended the privatization of state companies, reduction of tax and royalty rates, the elimination of restrictions on foreign ownership, facilitating the repatriation of profits, more flexible labour laws, less environmental regulation, and the removal of requirements that enforce local hiring and sourcing. These reforms were also linked to the need for governments to earn the foreign currency to pay back their expensive loans from the WB. Aid conditions were one of the means used by the WB to persuade governments into privatizing their mining industries⁴¹. According to David Szablowski, these reforms were explicitly presented as a regulatory race to attract investment; especially a low level of taxation was portrayed as being of critical importance. The idea that early reformers would be ahead of their rivals was strongly emphasized⁴².

These new fiscal and regulatory frameworks have led to driving down norms and standards in critically important areas for social and economic development, and in the protection of the environment and human rights. Furthermore, in some countries the question is whether governments are able to enforce regulations after years of structural adjustment led to considerable budgetary reductions. It has been noted that duties, which in the past were considered public functions, have been increasingly delegated to private operators, these functions not only include service delivery, but also standard-setting, rule implementation and enforcement⁴³.

Despite record prices of raw materials, the question is to what extent the populations of the South have been able to benefit from resource extraction. Several African governments noted that government revenues barely increased due to mining reforms and have been trying to renegotiate contracts with companies⁴⁴. As Bonnie Campbell concludes, "... the extractive sector provides a particularly striking illustration of the way in which multilateral financial institutions, notably the World Bank, are, in view of their overall mission to reduce poverty and promote sustainable development, at times caught between contradictory and sometimes incompatible logics – promoting foreign private investment as opposed to promoting the social and economic development of countries and their populations"⁴⁵.

³⁹ World Bank (1992: 53)

⁴⁰ Szablowski (2007: 34–5)

⁴¹ Campbell (2009)

⁴² Szablowski (2007: 34–5)

⁴³ Campbell (2009)

⁴⁴ Open Society Institute of Southern Africa et al. (2009: 11-14)

⁴⁵ Campbell (2004)

There is also the issue of what corruption actually means. The definition commonly used by IFIs, donor governments, private foundations and international CSOs, explains corruption as "the abuse of public office for private gain". As Sarah Bracking argues "...corruption is largely understood in a neo-liberal, economic anti-state paradigm, which emphasizes politics as a source of rents, such that anti-corruption policy unduly blames the public sector...", while the private sector's responsibility is left out⁴⁶. Some of the WB's own researchers have however recognized that the widely-used definition of corruption is too narrow, places blame solely on the public sector, and leaves out much of what should be considered corruption (for example, by private firms) and may have a much bigger detrimental impact⁴⁷. Daniel Kaufmann, the former director of the Global Governance & Anti-Corruption program of the World Bank Institute, for example, writes of how powerful private firms "capture states" and shape public policy to benefit their own interests. Legal lobbying (e.g., campaign contributions, private favours to decision makers, etc.) by the private sector in order to pass particular legislation that benefits their interests may be regarded as a type of corruption, which Kaufmann terms "legal corruption"⁴⁸. Legal corruption is, for example, a case in which General Electric spends US\$40 million on lobbying, avoids having to pay US\$1.7 billion and receives a US\$3.2 billion tax benefit instead⁴⁹. Legal corruption therefore not only happens in developing countries, but also in industrialized countries, where "state capture" is simply more sophisticated and subtle. Kaufmann also makes the argument that corruption and "state capture" in the USA was an important cause of the financial crisis of 2008⁵⁰. As for the resource curse and corruption, perhaps a question that ought to be asked is whether the WB's 'assistance' for neoliberal pro-investment reforms (which facilitate the transfer of profits out of the country, lower environmental regulation, and reduce and fix tax and royalty rates) in developing countries is a form of "state capture", on behalf of Western transnational corporations and investors, and thereby constitutes a form of "legal corruption".

⁴⁶ Bracking (2009: 17-18)

⁴⁷ See the WB's research program and its papers on corruption: <http://go.worldbank.org/CKBGFF26J0> (21-2-2012).

⁴⁸ See Kaufmann (2005); Kaufmann & Vicente (2005)

⁴⁹ See the New York Times (24-3-2011).

⁵⁰ See Kaufmann (2009) in Forbes. Also Jeffrey Sachs (5-5-2011), who helped to popularise the idea of a "resource curse", turned his attention to US corporate corruption and argues that developed countries first better take a look at themselves before pointing fingers at poor countries.

Box 5: The EITI Evaluation Report

The EITI was recently evaluated for the first time in an independent study commissioned by the international Board of the EITI in 2011⁵¹. This evaluation, executed by the Norwegian consultancy firm ScanTeam, complemented the EITI on its impressive growth in the number of countries that signed up, the high level of endorsement that it has received and its governance structures. ScanTeam however also directed considerable criticism towards the EITI, in particular on its lack of societal impact. It argues that the EITI has not contributed significantly to improved accountability. While the EITI claims that its transparency can lead to political, legal and institutional accountability, these linkages are unclear or do not appear to exist. Although the report argues that it would be unlikely to expect significant changes as the EITI is such a recent phenomenon, it concludes that, with the EITI's limited focus on transparency, it cannot lead to the wider societal impact that would include significant improvements towards reduced corruption, increased tax compliance, improved revenue management and resource allocation. Furthermore, empirical testing in 12 different indicators covering growth, poverty reduction, investment climate and governance did not show any meaningful differences between resource rich countries in terms of whether or not they were implementing the EITI. The statistical analysis shows nothing that implies EITI influence⁵². A key assumption underlying the EITI, and mentioned in its Articles of Association⁵³, is that strengthened transparency of natural resource revenues can reduce corruption and thereby lead to poverty reduction. In the report however the current standard is seen as "necessary but not sufficient". ScanTeam argues that very little of the full economic value chain is examined as part of the EITI implementation, and suggests that for effective prevention of corruption, deeper tracking of sector performance along the entire process of revenue generation and revenue utilization is required⁵⁴. It is the EITI's idea that civil society can make governments more accountable by using the publicly disclosed data of the EITI, but according to the report, the outreach strategies for EITI report findings seem to be more focused on conveying EITI messages than on empowering CSOs with information relevant for holding governments accountable⁵⁵.

The main conclusion in the evaluation is that the EITI lacks a theory of change that makes clear how it contributes to societal transformations. It states that "...the EITI's claims that it may be contributing to better governance, economic growth, poverty reduction, no matter how vaguely stated or nuanced, have so far no basis in concept or evidence"⁵⁶. A problem noted is that the EITI functions as a consensus-based body and subsequently, standards and agreements easily fall to the level of least common denominator⁵⁷. Furthermore, the report argues that there appear to be examples of governments cynically using the EITI's claims to justify their performance by noting they achieved EITI compliant status, despite having serious inadequacies in important governance areas⁵⁸. Finally, it suggests the EITI should instead focus more on documentable achievements and be more careful "...about providing what can be seen

⁵¹ The announcement and the EITI's requirements of the evaluation can be found here: <http://eiti.org/news-events/invitation-apply-evaluation-eiti> (21-2-2012)

⁵² EITI Evaluation (2011: 26, 30-22, 35, 39)

⁵³ EITI's Articles of Association: <http://eiti.org/articles> (21-2-2012)

⁵⁴ EITI Evaluation (2011: 25, 35)

⁵⁵ Ibid (24)

⁵⁶ Ibid (35)

⁵⁷ Ibid (48)

⁵⁸ Ibid (35-36)

as fairly sweeping statements of impacts – as is done in a considerable share of EITI information material – as this may over time create a credibility gap”⁵⁹. The main recommendation of ScanTeam to the EITI is to move towards a more open, broader certification process, with a more flexible sliding scale from “Best” to “Unacceptable” values, rather than the existing binary (“Compliant/Not Compliant”) scoring⁶⁰.

So far, no official reply from the EITI Board to the evaluation has been made, except for an invitation to key stakeholders to send comments. To date, the only response to be published on the EITI website is that of Anthony Hodge, President of the industry group, International Council on Mining and Metals, and a member of the EITI Board. In his words: “ScanTeam’s sense that EITI is a ‘least common denominator’ organization is of significant concern to me. It reflects a very old (out-dated) attitude that suggests that multi-interest activity inevitably results in a poor quality result. It is certainly not my personal experience. [...] An equally strong argument can be made that EITI’s very effectiveness is because of its limited focus on revenue transparency”⁶¹.

Corporate tax avoidance and the type of transparency

If we stick to the limited focus of the EITI for a moment however, the question is still to what extent, and in which way, transparency in line with the EITI actually makes the management of resource revenues more transparent. There are several issues with the EITI’s model of transparency. Firstly, the EITI can be seen as the most politically safe way to introduce transparency, given its voluntary nature. It does not threaten the interests of the extractive industry as it puts the burden of transparency on the host-countries’ governments, which have to implement national legislation to make companies publish what they pay. And as the EITI evaluation study suggested, the consensus-based approach of the EITI leads to a transparency standard that easily falls towards the least common denominator (see Box 5).

Secondly, the EITI system does not shine light on the tricks that corporations undertake to avoid paying taxes. Another form of what could be called “legal corruption” (see above) is what is known as transfer mispricing. While pricing, in theory, is determined by the market, in practice, subsidiaries of the same company often trade with one another at below market prices. Profits are then relocated towards tax havens that have low or no taxation, and which can be used for banking secrecy, zero disclosure accountancy and a high level of client confidentiality. All this is entirely legal. As more than 60% of the world trade is within multinational enterprises, transfer mispricing can have enormous consequences⁶². According to a Christian Aid report, bilateral transfer mispricing into the EU and US from non-EU countries between 2005 and 2007--in a conservative estimate--amounts to US\$ 1.1 trillion. If this had been properly taxed, then non-EU countries could have raised US\$ 365.4 billion on this capital⁶³. Of course, most of this is not from low-income countries. Middle and high-income countries (including EU countries and the US) miss out on tax revenue due to transfer mispricing as well, but the poorest countries are less able to challenge multinational corporations even though the proportion of potential income from corporate tax would be much higher, especially

⁵⁹ Ibid (49)

⁶⁰ Ibid (72-73)

⁶¹ <http://eiti.org/blog/comment-eiti-evaluation> (21-2-2012)

⁶² OECD Observer (2002)

⁶³ ChristianAid (2009)

in resource-rich countries. Therefore, corporate tax avoidance has a proportionally greater impact on poorer countries.

Raw materials have seen record high prices in the previous decade as Chinese demand and China's need to fuel her economy, has led to a frenzy of speculative buying. Prices of oil went from US \$17 per barrel in the beginning of 1999 to over US\$140 in July 2008. Copper went from US\$1500 a tonne in 2002 to US\$9000 a tonne in July 2008. Commodity prices were in free-fall following the global economic crisis in 2008, but have steadily recovered since then. Together with neoliberal reforms (see Box 4), corporate tax avoidance explains why many developing countries have been unable to benefit appropriately from these record high prices. In Zambia, where copper and cobalt account for more than 60% of the total exports, mining companies generated just 2.2% of the government revenue. The EITI does not concern itself with this kind of revenue leakage, as it only focuses on what companies paid to governments (and what governments have received), but does not investigate what companies ought to have paid and the methods they have used to avoid taxation. This is because the EITI is limited to national boundaries despite the international nature of the extractive industries. Furthermore, the EITI system gives those national governments that want to adopt the EITI several options on what kind of accounting policies are employed. Under the EITI system and with the current global accounting practices, it is very difficult, if not impossible, to detect tax avoidance strategies used by companies⁶⁴. As Khadija Sharife recently wrote in an opinion article on Al Jazeera:

“Aggregated templates used by multinationals - and even the EITI system, prevent scrutiny, for example, of where problems are arising, where they are replicated, how they are realised - whether it has been identified, if problems are being sorted out, and how. The EITI system would easily allow another subsidiary of the same mining company, based in another jurisdiction, to make a corrupt payment to a politician in Zambia. ... Thin capitalisation would allow for one subsidiary of the same parent company to make high interest loans to the host country subsidiary, diminishing taxable profits. The possibilities are endless - and often utilised”⁶⁵.

One of the possible solutions to corporate tax-avoidance is corporate country-by-country reporting. This has been promoted by the Tax Justice Network and also by the Publish What You Pay coalition. This would make companies report on which countries it operates in; under what names; its financial performance in each country; its sales, purchases and financing costs between parent and subsidiary companies and outside; labour costs and employee numbers; pre-tax profit; and the actual tax payments to the country's governments⁶⁶. This corporate reporting could make tax avoidance much more difficult to conceal. This would be one area of transparency from which developing (and developed) countries could truly benefit.

⁶⁴ Open Society Institute of Southern Africa et al (2009). Also, Murphy and Shaxson in the Financial Times (2007, 1 June 2007)

⁶⁵ Al Jazeera (18-6-2011)

⁶⁶ Tax Justice Network (2008)

Mandatory country-by-country corporate reporting has caught up with the EITI recently despite the lobbying efforts of extractive industry companies⁶⁷. In the Dodd-Frank Wall Street Reform Act (Section 1504), which was signed into law in the USA in July 2010, all the oil, gas and mining companies listed under the US Securities and Exchange Commission (which includes the vast majority of international oil, gas and mining companies, including non-Western and state-owned companies) will have to disclose the payments they make to governments in exchange for natural resources. The UK, Germany and France have promised to implement similar legislation in the EU. This form of country-by-country reporting is limited however as, similar to the EITI, it only requires disclosure of what companies have actually paid to government, rather than disclosing the information that would show what companies ought to have paid. To make transfer mispricing and other tax avoidance strategies genuinely more difficult, it would be important to disclose further information such as: under which names companies operate and in which countries; their financial performance in each of these countries; the sales, purchases and financing costs between parent and subsidiary companies and outside; labour costs and employee numbers; and their pre-tax profits⁶⁸.

Conclusion

The EITI deflects criticisms away from the WB and extractive industry actors and towards the governments of resource-rich countries. The EITI -- together with the broader Northern donor-driven anti-corruption agenda -- emphasizes the relationship between bad governance or corruption and failures of resource-led development, ignoring the transnational element of corruption and poor governance, and other explanations of underdevelopment, that may point towards the neoliberal reforms imposed by the WB. Furthermore, implicit in the EITI is the assumption that transparency could resolve poor governance while resource extraction continues unabated, which goes against one of the key recommendations of the EIR. While the EITI may claim to be mitigating the negative impacts of the resource curse on local populations, its primary function is mitigating negative impacts on the legitimacy of the WB's projects and the extractive industry.

There are serious issues with the EITI's presentation of 'win-win' scenarios, where the introduction of transparency in the extractive industries is projected as a sufficient condition to foster long-term 'win-win' for all stakeholders. This completely ignores the fundamentally conflicting interests between some of the actors involved in resource extraction situations and the differences in their respective capacities to exercise power. Often, local peoples' entire livelihoods are threatened by the interests of oil, gas and mining companies, resulting in conflicts that cannot be resolved no matter how transparent resource extraction is conducted. There are security arrangements between resource extraction companies and governments or private security companies that are regularly implicated in human rights violations. These and other key issues such as the

⁶⁷ See the Wall Street Journal (2010) and an angry ExxonMobil perspective claiming it would undermine the EITI: <http://www.exxonmobilperspectives.com/2010/07/14/a-less-than-transparent-approach-to-transparency-in-congress/> (21-2-2012). And more recently, the American Petroleum Institute, an industry group, argued that the new regulation offers the "very real potential for tens of billions of dollars of existing, profitable capital investments to be placed at risk" (Bloomberg 2011, 25 August).

⁶⁸ The Stop Tax Haven Abuse Act, recently introduced in US Senate, would create greater powers to combat tax avoidance if enacted into law. See <http://levin.senate.gov/newsroom/press/release/summary-of-the-stop-tax-haven-abuse-act-of-2011/> (21-2-2012)

dislocation of peoples, the distribution of resource revenues (including the share taken by private companies), environmental degradation and carbon emissions, ought to be considered as contributing to the resource curse, but are completely ignored in the EITI. The only issue on the table in the EITI system is transparency of what companies pay and what governments receive. Ongoing resource extraction is assumed as inevitable and FDI in the extractive industries is seen--as long as it is transparent—as always a good thing, despite the sometimes reasonable option of keeping natural resources in the ground or holding off exploitation until a country is ready to fully benefit from resource extraction. Moreover, the language used by the EITI on stakeholders and its Multi-Stakeholder Group ignores the immense power imbalances of the involved actors when it comes to oil, gas and mining operations in the South. The CSOs (that in theory represent the people affected by the extractive industries) involved in the EITI Multi-Stakeholder Group have no power other than the ability to make it difficult for a country to gain 'compliance' status under the EITI. They are merely consulted on the issue of transparency.

Moreover, the effects of the transparency achieved by the EITI have been consistently over-exaggerated. In the EITI's information material, transparency limited to reporting government revenue and reconciliation with company payments, has been routinely linked to reduced corruption, better governance, economic growth and poverty reduction. The recent evaluation of the EITI has questioned all of these claims and the evaluation team was unable to establish any meaningful causal link between transparency brought about by the EITI and improved accountability. In fact, the evaluation report urged the EITI to be more careful about making sweeping statements of its potential societal impacts, as failure to achieve these promises could threaten the EITI's credibility.

This is not to say that nothing good could ever come from the EITI. The transparency offered by the EITI is perhaps not the type of transparency that is truly needed in the extractive industry, but has still brought about some transparency where there was none in the past. It can be a useful tool for well-intentioned policy-makers who want to make corruption in their government more difficult. The annual EITI report might reveal important information, as in Tanzania recently, where the EITI Coordinator learned that earlier mining reforms to attract foreign investment set corporate tax rates at such a low level, that mining employees actually pay far more in taxes than the huge mining companies⁶⁹. Some have argued that the EITI could be seen as a starting point for wider reform processes beyond the extractive industries, for example, by having companies report country-by-country information that would shine light upon tax avoidance⁷⁰. However, it seems unlikely that this sort of change will come from within the EITI, as in none of the interviews with EITI Board members, nor in any of the hundreds of public articles and reports, have such broader reforms been mentioned. In line with the EITI's one-sided focus that locates resource curse culpability in the South, tax avoidance by the private sector has not even been mentioned as an issue anywhere in the EITI's information material.

⁶⁹ See Bubulwa Kaiza's blog post on the EITI website on his experiences with Tanzania EITI: <http://eiti.org/blog/blog-first-tanzania-eiti-report-what-it-tells-us-what-it-doesnt> (21-2-2012)

⁷⁰ Tax Justice Network (2007: 3, 6)

The fact that the EITI Multi-Stakeholder Group brought local and national civil society actors with concerns about the extractive industries to the same table with big companies and the government is, in some countries, considered to be revolutionary. But one should never be satisfied with such marginal results. Under the EITI some CSOs may be consulted, but fundamental questions, such as whether or not local peoples consent to extractive industry operations, is irrelevant to the EITI framework. The powerful interests in the extractive industry will push resource extraction ahead anyway. The EITI has helped the WB to deflect criticisms of their continuing support for controversial extractive industry projects. Additionally, it has provided major oil, gas and mining corporations with a safe alternative to a mandatory regulatory approach that would involve country-by-country reporting to show the full scale of their profits. The primary function of the EITI has been to support the ongoing practices of the extractive industries rather than tackling the main impacts of resource extraction on local populations, local and national economies, and environments.

Bibliography

Al Jazeera (2011, 18 June) 'Transparency' hides Zambia's lost billions', *Al Jazeera*. At: <http://english.aljazeera.net/indepth/opinion/2011/06/20116188244589715.html> (21-2-2012)

Bebbington, A., L. Hinojosa, D.H. Bebbington, M.L. Burneo and X. Warnaars (2008) 'Contention and Ambiguity: Mining and the Possibilities of Development', *Development and Change*, 39(6): 887-914.

Benner, T. and R. Soares de Oliveira (2010) 'The Good/Bad Nexus in Global Energy Governance'. In A. Goldthau and J.M. Witte (eds.) *Global Energy Governance: The New Rules of the Game*. Washington, DC: Brookings Institution Press: 287-314.

Bloomberg (2011, 25 August) 'Dodd-Frank Targets Petrodollars Flowing Into Despots' Pockets', *Bloomberg*. At: http://www.bgov.com/news_item/12VnV9HF6za2UDu0Cu9JPQ (21-2-2012)

Boedt, P. & E. Martinez (2007) *Keep oil underground – the only way to fight climate change*. Oil Watch. At: http://www.oilwatch.org/index.php?option=com_content&task=view&id=597&Itemid=225&lang=en (21-2-2012)

Bracking, S. (2009) 'Hiding Conflict over Industry Returns: A Stakeholder Analysis of the Extractive Industries Transparency Initiative', *BWPI Working Paper 91*. Manchester: BWPI: 1-27.

Campbell, B. (2006) 'Good Governance, Security and Mining in Africa', *Minerals & Energy*, 21(1): 31-44.

Campbell, B. (2009), 'Conclusion: What Development Model? What Governance Agenda?'. In: B. Campbell (ed.), *Mining in Africa: Regulation and Development*. International Development Research Centre, Nordiska Afrikainstitutet. Pluto Press: New York. Available at: <http://web.idrc.ca/openebooks/450-5/> (21-2-2012)

Campbell, B. (ed.) (2004) *Regulating Mining in Africa: For whose benefit?*. Discussion Paper 26. Nordiska Afrikainstitutet: Uppsala (Sweden).

Caroll, T. (2010) 'New approaches to opening markets: The Baku-Tbilisi-Ceyhan pipeline and the deployment of social and environmental mitigation', Political Studies Association, 1-22. At: http://www.psa.ac.uk/2010/UploadedPaperPDFs/1157_1007.pdf (21-2-2012)

ChristianAid (2009, March) *False profits: robbing the poor to keep the rich tax-free*. At: <http://www.christianaid.org.uk/Images/false-profits.pdf> (21-2-2012)

Collier, P. and Hoeffler, A (1998) 'On Economic Causes of Civil War', *Oxford Economic Papers*, No 50: 563–73.

EIR (2003) *Striking a better balance: the final report of the extractive industries review*. Jakarta, Indonesia: Extractive Industries Review. At: <http://go.worldbank.org/T1VB5JCV61> (21-2-2012)

EITI Evaluation (2011) *Achievements and Strategic Options: Evaluation of the Extractive Industries Transparency Initiative*. Scanteam: Oslo (Norway). At: <http://eiti.org/blog/eiti-working-have-your-say-eiti-evaluation> (21-2-2012)

ExxonMobil Perspectives (2010, July 14) 'A less than transparent approach to transparency in Congress', *ExxonMobil*. At: <http://www.exxonmobilperspectives.com/2010/07/14/a-less-than-transparent-approach-to-transparency-in-congress/> (21-2-2012)

Financial Times, the (2007, 1 June) 'African graft is a global responsibility', *The Financial Times*. At: <http://www.taxresearch.org.uk/Documents/FT2-6-07MurphyShaxson.pdf> (21-2-2012)

Friends of the Earth International (2009, 3 July) *Keep the oil in the soil*. At: <http://www.foei.org/en/blog/keep-the-oil-in-the-soil> (21-2-2012)

Gill, S. (2005[1998]), 'The new constitutionalism, democratisation and global political economy'. In R. Wilkinson (ed.), *The Global Governance Reader*. London: Routledge: 174-186.

Gillies, A. (2010) 'Reputational Concerns and the Emergence of Oil Sector Transparency as an International Norm', *International Studies Quarterly*, 54: 103–126.

Guardian, the (2005, 15 June) 'Casualties of the oil stampede', *The Guardian*. At: <http://www.guardian.co.uk/business/2005/jun/15/oil.politics> (21-2-2012)

Guardian, the (2010, 15 September) 'World Bank invest record sums in coal', *The Guardian* At: <http://www.guardian.co.uk/environment/2011/apr/04/world-bank-funding-coal-power> (21-2-2012)

Guardian, the (2011, 15 September) 'World Bank to limit funding for coal-fired power stations', *The Guardian*. At: <http://www.guardian.co.uk/environment/2010/sep/15/world-bank-coal> (21-2-2012)

Guttal, S. and W. Bello (2005, 26 April) 'The limits of reform: The Wolfensohn era at the World Bank'. *Focus on the Global South*. At: <http://www.focusweb.org/node/604> (21-2-2012)

Human Rights Watch (2010, 26 October), *Beaten blacklisted and behind bars*. New York: Human Rights Watch. At: <http://www.hrw.org/en/reports/2010/10/26/beaten-blacklisted-and-behind-bars> (21-2-2012)

Independent, the (2010, 8 August) 'The world's first really green oil deal', *The Independent*. At: <http://www.independent.co.uk/environment/climate-change/the-worlds-first-really-green-oil-deal-2046512.html> (21-2-2012)

Kaufmann, D. & P.C. Vicente (2005) *Legal Corruption*. Washington, DC: World Bank Institute. At: <http://go.worldbank.org/G11TYS0BO0> (21-2-2012)

Kaufmann, D. (2005) *Myths and Realities of Corruption and Governance*. DC: World Bank Institute. At: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=829244 (21-2-2012)

Kaufmann, D. (2009, 27 January) 'Corruption and the Global Financial Crisis', *Forbes*. At: http://www.forbes.com/2009/01/27/corruption-financial-crisis-business-corruption09_0127corruption.html (21-2-2012)

Krasner, S. (2004) 'Sharing Sovereignty: New Institutions for Collapsed and Failing States', *International Security*, 29(2): 142-167.

Martinez-Alier, J. (2007) 'Keep Oil in the Ground: Yasuni in Ecuador', *Economic and Political Weekly*, 42(42).

Nasdaq (2010) *PRESS RELEASE: Fitch Upgrades Azerbaijan to Investment Grade*. New York: Nasdaq Stock Exchange. At: <http://www.nasdaq.com/aspx/stock-market-news-story.aspx?storyid=201005201035dowjonesdjonline000522&title=press-release-fitch-upgrades-azerbaijan-to-investment-grade> (21-2-2012)

New York Times (1994, 21 November) 'Leverage for a Caspian Peace', *The New York Times*. At: <http://www.nytimes.com/1994/11/21/opinion/21ihtedcox.html?pagewanted=all> (15-2-2012)

New York Times (2011, 24 March) 'G.E.'s Strategies Let It Avoid Taxes Altogether', *New York Times*. At: http://www.nytimes.com/2011/03/25/business/economy/25tax.html?_r=2 (21-2-2012)

Nore, P, A. Grant, D. O'Neill and D. Moorecroft (2003) *Reactions to EIR Report from representatives of the oil industry*. Submitted to the Extractive Industries Review. OECD Observer (2002) 'Transfer pricing: Keeping it arm's length', *OECD Observer*, 230 (January). At: http://www.oecdobserver.org/news/fullstory.php/aid/670/Transfer_pricing:_Keeping_it_at_arms_length.html (21-2-2012)

Oilwatch (2010) *The Gulf of Mexico Spill and the Campaign To Leave New Oil in the Soil in Africa*. At: <http://www.oilwatchafrica.org/content/the-gulf-of-mexico-spill-and-the-campaign-to-leave-new-oil-in-the-soil-in-africa> (21-2-2012)

Open Society Institute of Southern Africa, Third World Network Africa, Tax Justice Network Africa, Action Aid International (2009) *Breaking the Curse: How Transparent*

Taxation and Fair Taxes can Turn Africa's Mineral Wealth into Development. At: <http://www.sarwatch.org/sarwadoocs/BreakingTheCurse.pdf> (21-2-2012)

Peet, R. (2003) *Unholy Trinity: The IMF, World Bank and WTO*. London: Zed Books.

Pegg, S. (2006a) 'Mining and poverty reduction: Transforming rhetoric into reality', *Journal of Cleaner Production*, 14: 376-387.

Pegg, S. (2006b) 'Can policy intervention beat the resource curse? Evidence from the Chad-Cameroon pipeline project', *African Affairs*, 105 (418): 1-25.

Revenue Watch Institute (2011, 18 April) 'Dodd-Frank: The Facts About Disclosure Requirements', *Revenue Watch Institute*. At: <http://www.revenuewatch.org/news/publications/dodd-frank-facts-about-disclosure-requirements> (21-2-2012)

Rosser, A. (2006) *The Political Economy of the Resource Curse*. Sussex: Institute of Development Studies.

Sachs, J. (2011, 5 May) 'The global economy's corporate crime wave', *Al Jazeera*. At: <http://english.aljazeera.net/indepth/opinion/2011/05/201151114933102548.html> (21-2-2012)

Stiglitz, J.E. (2007) 'What is the Role of the State?'. In: M. Humphreys, J. Sachs and J.E.

Stiglitz (eds.), *Escaping the resource curse*. New York: Columbia University Press: 23-52.

Szablowski, D. (2007) *Transnational Law and Local Struggles: Mining, communities and the World Bank*, Hart Monographs in Transnational and International Law. Oxford/Portland: Hart Publishing.

Tax Justice Network (2007) *Tax Justice Focus*, 2007 (3): 2. At: http://www.taxjustice.net/cms/upload/pdf/TJF_3-2_Final.pdf (21-2-2012)

Tax Justice Network (2008) 'Country-by-country reporting: How to make multinational companies more transparent', *Tax Justice Network*, Briefing paper. At: http://www.taxjustice.net/cms/upload/pdf/Country-by-country_reporting_-_080322.pdf (21-2-2012)

Wall Street Journal (2010, August 21) 'Oil Industry gets Disclosure Jolt'. At: <http://online.wsj.com/article/SB10001424052748703435104575421402413325446.html> (21-2-2012)

Weber-Fahr, M. (2002). *Treasure or Trouble? Mining in Developing Countries*.

Washington, DC: World Bank Group and International Finance Corporation.

World Bank (1992) *Strategy for African Mining*. At: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/1999/10/21/000178830_98101904142281/Rendered/PDF/multi_page.pdf (21-2-2012)

World Bank (1997) *World Development Report: The State in a Changing World*. At: http://econ.worldbank.org/external/default/main?pagePK=64165259&theSitePK=475520&piPK=64165421&menuPK=64166093&entityID=000009265_3980217141148

World Bank (2004) *The Final Report of the Extractive Industries Review*. Washington DC: World Bank. At: <http://www.ifc.org/eir> (14-6-2011) (June 2010).

World Bank (2009) *Engagement with Civil Society: An EITI implementation study*. At: http://siteresources.worldbank.org/INTOGMC/Resources/csos_eiti.pdf (21-2-2012)

World Bank (2010) *World Bank Group Activities in the Extractive Industries Annual Review*. At: http://siteresources.worldbank.org/EXTOGMC/Resources/336929-1233337886428/WBG_Extractive_Industries_Annual_Review_2010.pdf (21-2-2012)

World Bank (2011a) *About the EITI Multi-Donor Trust Fund*. At: <http://go.worldbank.org/155CQ1CCG0> (21-2-2012)

World Bank (2011b) *Voices of Transparency*. At: http://siteresources.worldbank.org/INTOGMC/Resources/EITI_Final_Brochure.pdf (21-2-2012)