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What's the Point of Transparency?

The Extractive Industries Transparency Initiative and the governance of natural resources in Liberia, Timor Leste and other countries

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Introduction

The Extractive Industries Transparency Initiative (EITI) is a global effort to apply the theory that providing citizens with information about the workings of powerful institutions – in this case, the payment of revenues to governments by oil, gas and mining companies – can empower them to better influence the actions of these institutions in the public interest.

In the last decade, the EITI has become a fairly prominent part of the international community's answer to the "Resource Curse", a much-studied set of economic and political problems associated with entrenched poverty, corruption and instability in countries which depend economically on the production of natural resources.

I worked on the EITI on and off from September 2003 for the non-governmental organisation Global Witness and represented the latter on the EITI Board between February 2009 and March 2012 as an alternate, then a full Member. As time went on, I began to wonder what the EITI achieves on the ground and what kinds of information might contribute to improvements in the governance of natural resources in EITI countries, in what manner and under what conditions.

Thanks to the generous support of the Open Society Fellowship programme, I have been able to spend the best part of a year researching this question. I spent a total of ten weeks interviewing people in two EITI countries, Liberia and Timor Leste, and talked to various people elsewhere. No two countries could hope to stand for the nearly 40 implementing the EITI, which include such diverse countries as Norway, Kazakhstan and Mali. Yet Liberia and Timor Leste have some general similarities, described in Chapter Three, which justify a comparison that enables some broad suggestions about the influence of transparency on the governance of natural resources.

This report is intended to contribute to discussions within and around the EITI and I hope that, by delving into this one topic, I can offer some useful insights for wider debates about the relationship between information and power. Although the report is based on more than a hundred interviews and conversations, it does not claim the rigour of social science. The text blends an interpretation of my findings with a reading of the research literature and my own experience of the EITI: it should be read as a personal essay by someone who knows the subject well, but as a practitioner rather than a trained researcher. There is no executive summary but readers who prefer to skip the main text could turn to the Conclusion.

"Natural resource governance" is used here to mean the manner in which power is exercised over the exploitation of natural resources. This report follows the EITI's emphasis on governments in resource-dependent countries and does not attempt to review the effects of transparency on extractive companies, which should be done once new disclosure rules for these companies in the United States and elsewhere have been in effect for a while.

I am deeply grateful to the dozens of people around the world who generously gave me their time: any errors or unpopular opinions in this report are mine alone. I would particularly like to thank the Open Society Fellowship programme for enabling me to carry out this research, and for the friendly and efficient support of its staff. I would like to offer special thanks to the staff of the Open Society Institute for West Africa in Monrovia, who made me feel instantly at home.

Diarmid O'Sullivan, London, April 2013

CHAPTER ONE

How the EITI works

A short history of the EITI

The EITI aims to provide the public in countries which depend economically on exports of oil, gas and minerals with reports on the revenues paid to the state by extractive companies. This report sets out to assess what the effects of EITI reporting might be on the governance of natural resources, noting that the initiative was due to adopt new rules in May 2013.¹

The EITI was announced in 2002 in response to a civil society coalition, Publish What You Pay (PWYP). The coalition, set up earlier that year, had called for greater transparency as a response to those problems of weak governance, corruption and political instability in many resource-dependent countries which are commonly grouped together under the label of the "Resource Curse".² The assumption shared by PWYP and the EITI is that concerned citizens, often (but not exclusively) meaning civil society activists, can use this information to hold governments and companies to account for the generation and use of the revenues, as a way of mitigating such problems.

PWYP put the onus of disclosure on multinational extractive companies. The EITI, which was midwifed by the British government, focussed instead on the governments of resource-dependent countries.³ The wheel has since turned full circle: transparency rules for extractive companies were enacted into law in the United States in 2010 in the form of Section

1504 of the Dodd Frank Wall Street Reform and Consumer Protection Act, with the European Union following suit.⁴

The reports are one of the EITI's two defining features. The other is that in each country, reporting is overseen by a Multi-Stakeholder Group (MSG) of representatives from the government, extractive companies and civil society groups. The EITI is overseen by a global board chosen by the same constituencies which designs and applies its rules with the help of a secretariat based in Norway.

The EITI is not a mechanical process for generating data but an institution whose rules, history and self-presentation have been shaped by continuous negotiation amongst participants with diverse worldviews and sometimes conflicting interests (for example, civil society groups and oil companies). A 2007 study of 18 transparency initiatives, most of them in the United States, found that: "transparency policies were always limited by politics. They represented compromises forged from conflict, as people and organisations with diverging interests and values battled over how much information should be made public and in what forms." This has been the case with the EITI too.

The multi-stakeholder format assumes that the best way to make progress on intractable problems is to search for consensus amongst diverse interests. The fact that the EITI has endured as long as it has is an indication that the

¹ This chapter rests mainly on the author's own experience as an Alternate Member and Member of the EITI Board, representing Global Witness and the civil society constituency, from February 2009 until March 2012. The new EITI rules are discussed in more detail in Chapter Four.

² A detailed summary of the Resource Curse can be found in Curse or Blessing - Development or Misery. Scrambling to the Bottom or Scrambling to the Top. Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH. 2011.

³ See Department for International Development (UK). Extractive Industries Transparency Initiative Discussion Paper for International Stakeholders Meeting 11-12 February 2003.

⁴ The European rule is part of the revised Accounting and Transparency Directives. It tracks Section 1504 of Dodd Frank but adds logging companies and large unlisted companies, whereas the US law only covers listed oil, gas and mining companies.

⁵ Archon Fung, Mary Graham and David Weil. Full Disclosure. The Perils and Promise of Transparency. Cambridge University Press. 2007. Page xii.

format is useful to its participants. The format has its sceptics, however. Some activists have suspected the EITI to be reputation-laundering for powerful institutions which want to be seen to be "doing something" about the Resource Curse without changing their behaviour. Some people from industry have given an impression of fearing that they are being yoked into a civil society crusade for the broader promotion of human rights.

If the EITI has an overarching aim, it is the first of 12 EITI Principles which states that: "... the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts." (The other principles are really subsidiaries or elaborations of the first one).

The EITI's Articles of Association put it that: "... strengthened transparency of natural resource revenues can reduce corruption, and the revenue from extractive industries can transform economies, reduce poverty, and raise the living standards of entire populations in resource-rich countries." The extent to which the EITI should be seen as an anti-corruption initiative, rather than a response to various problems (including corruption), seems to vary depending on who is speaking.

The initiative has steadily widened its geographical reach in the decade since it was launched, with nearly 40 countries following its rules as of 2013. Its reporting categories have been adopted into law in the United States, with Europe to follow, and several countries (including Liberia) have passed national EITI laws. The EITI has been cited as a model for other industries.⁸ In other words, it seems to have had significant normative effects which are distinct from the direct effects of its reporting.

The EITI's growth did not come about because it was following a tried and tested model of change – as an innovation in the extractive sector at the time, it could not have been expected to – but because its focus on disclosure of revenue flows has been acceptable to diverse supporters. The ever-rising speed with which data can be communicated, when set against habits of official secrecy in many countries, has made an information-based approach to governance reform seem compelling.

And transparency is a technocratic and seemingly neutral idiom, appealing to governments and companies that wish to respond to corruption and other problems of governance, or that wish to be seen to be doing so, without fear of triggering an angry reaction. The idiom has also been attractive to civil society activists, particularly in more repressive states, as a possible way to couch hard questions about power and accountability within a conceptual framework tolerated by their rulers.

EITI reports are designed to show how much revenue has been paid to the state, on the basis that this answer can open the way to other questions and end up influencing the ways that revenues are earned and used. Knowing how much has been paid can shed light on the scale of fluctuations in a state's income as world commodity prices rise and fall (which has big repercussions for budget planning), or the types of revenue which provide most income to the state. A common complaint, however, is that the reporting does not directly address other pressing questions.

The reports may signal that companies are paying low levels of tax but cannot currently show what tax should be paid, nor stop companies from playing around with their corporate structures and cost estimates in order to reduce their tax liabilities. The reports cannot reveal forms of corruption in the extractive sector which do not directly involve the misappropriation of

⁶ See EITI Rules, 2011 edition. Page 11.

⁷ EITI Articles of Association. Article 2, Point 2

⁸ After the EITI, Britain initiated global transparency processes in the construction and pharmaceutical sectors.

revenues, such as the manipulation of asset sales. Nor, most of all, can the reports offer any insight into the uses of revenues by governments. Thus it is possible for a country to be deemed compliant with the EITI's rules, based on reporting of revenues, while other serious problems are untouched.

From its early days, the EITI has attracted various criticisms. One has been that it lays responsibility on the governments of poorer countries for problems in which multinational companies are equally complicit. Another has been that its voluntary nature – governments choose to join – has left some badly misruled countries outside the net. Some critiques question the ability of civil society groups, armed only with information, to challenge corruption amongst entrenched elites, or note that many governance problems concern public spending which the EITI does not cover.

With twenty countries having met its reporting rules, the EITI is facing existential questions about its effect on the problems that led to its creation. It commissioned its first evaluation in 2008 and, finding it insufficient, ordered another from the Norwegian consultancy Scanteam. Scanteam's report in May 2011 found: "... few indications that EITI programmes are so far having impact on dimensions such as governance, corruption, poverty reduction or other objectives stated in EITI's Articles of Association." It added: "The gap between the core EITI consensus [for reporting of revenues] and its aspiration constitutes a fundamental reputation risk for the EITI." 13

Scanteam found some useful effects within the extractive sectors of three sample countries

(Nigeria, Gabon and Mongolia): for example, in improving trust between civil society activists and officials working on the EITI, or in prompting governments to improve their management of revenue inflows. But the accountability of governments had not improved, in part because "necessary political, legal and institutional improvements" were not put in place, despite the availability of more information.¹⁴

Scanteam noted that the EITI had based its interventions on what its participants could agree on, not on those activities which were most likely to contribute to societal changes, and added that: "most EITI outreach is simply dissemination activities and not support for social actors to empower them to apply EITI data for increased accountability purposes." ¹⁵

This evaluation prompted an internal debate which is leading to changes in the EITI's rules, to be adopted at its biannual conference in Australia in May 2013. More types of data will be included in the reports: for example on the structure of the extractive industries and the flow of revenues between different state agencies. And MSGs will be required to link their work to broader national objectives. The possible effect of these changes is discussed in the last chapter of this report.

The global backdrop of the initiative has changed greatly since 2002. A long commodities boom saw the price of oil, then around US\$25 a barrel, pass the US\$100 mark in 2008. ¹⁶ Companies from China and other non-Western economies have joined Western firms to compete for resources in poorer countries, whose governments now expect a larger share of the returns. Fears of scarcity mingle with optimism about new

⁹ For example, see Nicholas Shaxson. Poisoned Wells. The Dirty Politics of African Oil. Palgrave Macmillan. 2007. Page 218.

¹⁰ This concern has often been raised by Publish What You Pay, which has supported the EITI while pushing for mandatory disclosures by oil, gas and mining companies of the kind now adopted into law in the United States.

¹¹ For example, Gavin Hilson and Roy Maconachie. "Good Governance" and the extractive industries in sub-Saharan Africa. Mineral Processing and Extractive Metallurgy Review. 30: 52-100. 2009. Another example is Carbonnier, Brugge and Krause. Global and Local Policy Responses to the Resource Trap. Global Governance 17, 247-262. 2011.

¹² Ivar Kolstad, Arne Wiig and Aled Williams. Tackling Corruption in Oil-Rich Countries. The Role of Transparency. U4 Brief. Christian Mikkelsen Institute. February 2008. No.3

¹³ Scanteam. Achievements and Strategic Options. Evaluation of the Extractive Industries Transparency Initiative. May 2011. Page 3.

¹⁴ Ibid.

¹⁵ Ibid

¹⁶ The U.S. Energy Information Administration (www.eia.gov) records that spot prices for two benchmark crude oils, Brent and West Texas Intermediate (WTI), averaged US\$24.99 and US\$26.18 a barrel respectively in 2002. The spot prices for both crudes passed the US\$100 mark in March 2008. In 2011 Brent averaged US\$111.26 and WTI US\$94.88.

sources of resource supply such as shale oil and gas in the United States.¹⁷

Some unspoken assumptions about superior Western notions of governance, which flavoured the EITI in its earlier years, have taken a knock from the epic growth of China's brand of authoritarian capitalism and the financial-sector crisis of the late 2000s which began in the West. In Africa, where more than half of EITI-implementing countries are located, an established pessimism about misrule and poverty now jostles with a more optimistic narrative of rapid growth and self-confidence.

These changes have unsettled old assumptions about who is entitled to set standards for whom. The EITI originally framed the governance of natural resources as a problem for poor and middle-income countries, with Western governments and companies presented as "supporters" of their efforts at reform. This ingrained double standard, which put certain middle-income countries off the EITI, finally started to dissolve when Norway became an implementing country in 2009, with the United States now following suit. So the initiative exists in a very different context from that of its creation, and in the wake of an evaluation which finds that its effects have been more limited than hoped.

The architecture of the EITI

By a traditional understanding of politics or diplomacy, the EITI is a strange creature. In legal terms it is a non-profit association under Norwegian law, whose members are the personal representatives of states, companies or civil society organisations. It is part reporting standard, part members' club, and also provides spaces for people interested in natural resources to network and exchange ideas at its conferences and meetings around the world.

The EITI rests on the power of reputation and is voluntary for countries to join.¹⁹ To be precise, governments apply for their countries to be accepted as EITI Candidates. Then an MSG is set up to oversee reporting, which undergoes a third-party assessment called Validation. Countries found to have met all the rules are designated as EITI Compliant. Compliance specifically means that an MSG has produced an EITI report to an acceptable standard: this status is meant to improve a country's reputation and make it more attractive to investors by signalling a broader commitment to openness and "good governance". As well as the carrot of Compliance, the EITI has a stick: it can suspend or delist countries whose MSGs do not meet its rules. In practice, countries are very rarely delisted.

The current system is the result of a long evolution since 2002, as it became clear that formal rules and mechanisms were needed, and as each set of decisions exposed gaps or unintended consequences which needed new decisions to address them. The Principles, agreed in 2003, were followed in 2005 by the Minimum Criteria and a Source Book. A small group of people, most but not all of them from Western countries, were instrumental in these discussions. Some are still active in the EITI, so there has been a strain of continuity running through its years of discussions.

The year 2006 saw the creation of the Board to oversee the initiative. Its secretariat, which had been provided by the British government, became a separate entity in Norway and the quality-control mechanism of Validation followed. A set of rules was published in 2009 and revised in 2011 in the light of experience from the first round of Validations, which became contentious after numerous countries failed to meet their allotted deadlines. The rules were being revised again as this report was being written in early 2013.²⁰

¹⁷ See Bernice Lee, Felix Preston, Jaakko Kooroshy, Rob Bailey and Glada Lahn. Resources Futures. Chatham House. December 2012. See also Reuters. Once Prized African Oil Struggles to Find New Markets. 26th February 2013.

¹⁸ EITI Rules, 2011 Edition. Page 72.

¹⁹ When the EITI says "country", it usually means "government" (see the EITI's Articles of Association, Article 5).

²⁰ The author has fed into this revision of the rules as an EITI Board member and later as a consultant to Global Witness.

Each of these stages has seen contestation about what should be disclosed and how, and what the consequences should be for failures to disclose. Perhaps the most visible pole of contestation is between civil society groups and international extractive companies, particularly oil companies. The former usually push for the EITI to be wider, deeper and more forceful, while the latter tend to prefer the opposite. (In fact the initiative was championed by some oil companies on the grounds that it made transparency laws in the West unnecessary, although this argument has ultimately failed.)

The positions of governments are as diverse as the governments themselves and can be hard to predict, though there is often an inclination towards diplomatic caution. Within each constituency there can be nuances or even stark differences of position, though these are usually kept out of sight. Some issues within the EITI provoke little controversy and not all contestation is along constituency lines. Still, there are deep differences of aim and worldview on the Board which can sometimes inflect what may seem to an observer like minor decisions.

How the EITI Board works

The Board has a Chair and 19 other Members, divided up amongst the three constituencies.²¹ The rules provide for decisions to be taken by qualified majority voting when consensus is not possible. This means that the vote of a Member who is a community organiser from a small African country would have the same weight as, for example, that of ExxonMobil or the government of Iraq or Canada. A sceptic might suggest that such a system can only exist because the EITI, in reality, is of peripheral importance to most of its supporters. But if so, then the long contestation between oil companies and activists over transparency laws in the West, in which both sides have cited the EITI to support their positions, implies this is not always and completely the case.

The Board is wary of voting and prefers to seek consensus. This means that debate often proceeds slowly and contentious decisions can be long delayed, as the Board only meets three times a year or so. But it also means that one constituency cannot be steamrollered by the others, an advantage for civil society groups which, in the outside world, are much less influential than the others. Developing countries often send ministers to the Board, although no Western government has yet done so. Some corporate representatives are senior people in their own industries, while others seem not to be. This diversity conveys a general uncertainty about how important the initiative actually is.

The Chair has the task of drawing consensus from the views of Board members and does much diplomatic and public relations work for the initiative. The Secretariat is the hub of a network of MSGs and other associated entities and provides the analysis which the Board draws on to make its decisions. The Secretariat has a good deal of influence on the EITI, being both a moderator of its internal debates and an active participant in them, and contributes many ideas about how it should operate. Another important influence is the World Bank, which does not sit on the Board but promotes the EITI in many countries and runs a donor trust fund to support its implementation.

There has long been a divide within the initiative, which is partly philosophical and partly political, about how strict it should be in upholding its rules. One view would prefer a global standard which requires a high quality of reporting, in terms of accuracy and timeliness, and which rigorously assesses the progress of each country, delisting those which fall short. In this model, Compliance should be a club which confers greater reputational benefits on governments because it is exclusive.

The other view is that the EITI should include and encourage, rather than judge and exclude. In this view, reform is incremental by nature

²¹ Each Member, excepting the Chair, has an Alternate who can deputise for them and take part in committee work. The author was an Alternate for two years and sat on the Validation Committee, then became a full Member for a year.

and small and limited steps are better than no progress at all, particularly in very poor countries with weak states. In this view, it is better to include as many countries as possible, even at the expense of lower average standards. Extractive companies usually incline towards this position, as do some governments and civil society groups.

Supporters of a more flexible approach are more numerous than those who have favoured a stricter approach (notably Global Witness). Only three countries have been delisted so far - Equatorial Guinea and Sao Tome and Principe in April 2010 and Gabon in February 2013 - and for very particular reasons in each case.²² Only one country (Ethiopia) has not been accepted for Candidacy by the Board, on the basis that its laws are overly restrictive of civil society groups.

Generally speaking, most Board members (and the Secretariat) are reluctant to delist any country and will often take a favourable view of the causes of missed deadlines or revise earlier decisions to make their outcomes less strict. So some rules have been policed fairly rigorously – the comprehensiveness of reports, for example, or the freedom from coercion of civil society groups – but the deadlines less so. A recent trend is to use suspension, rather than delisting, as a sanction for late reporting, so that a government and MSG are put on notice but given time to come up to speed.

The rules on timeliness and data quality have been relatively weak. The information in the reports can be two years old at the point of publication and, due to various adjustments to the rules and deadlines, reporting has sometimes been much more belated. A Board member who is a Congolese civil society activist recalled in an article in 2012: "the 2007 EITI Report of the Democratic Republic of Congo was distributed in 2010. On that occasion, a woman told us:

"Your EITI is no use. It's like the doctor who arrives after the patient has died. What good is it?"²³

A country which reports unverified data, particularly from state agencies, could still be Compliant if its MSG agrees to work on raising these standards in future. The original rules, which expected all data to meet international standards, have turned out to be over-optimistic given the poor state of official accounting in many countries. At least the EITI may act as a spur to improvement in this area.

Some countries proceed fairly smoothly towards Compliance. In others, governments have had to be lobbied to ensure that deadlines are met. It has been common for implementation to slow down because of disputes within the MSG, or because funding from aid donors is delayed, or because an election or a reshuffle has led to the officials who steered the MSG being moved somewhere else. Sometimes a pattern of inactivity suggests that the government is just not that interested in the EITI.

The EITI can offer strong enough incentives to ensure that most Candidate countries eventually reach Compliance, although this sometimes means taking a flexible approach to deadlines, but the incentives largely fall away at this point. Compliance has long been treated as an end-state and a country only has to continue publishing EITI reports, as well as an annual report by the MSG on its activities. The biggest challenge for the EITI is the creation of incentives which prompt governments and MSGs to go further, given that Compliance in itself does not necessarily equate to wider reform.

The following chapters set out to show how the reporting process has been applied on the ground in two very poor, post-conflict countries which have been seen as EITI success stories.

²² In April 2010 the author was representing Global Witness on the EITI Board and called for Equatorial Guinea and Sao Tome and Principe (and several other countries) to be delisted. He left the Board before Gabon was delisted.

²³ Asadho. Le nouveau défi de l'ITIE: devenir un outil d'amélioration des conditions de vie des populations pauvres. Accessible at www. publishwhatyoupay.org.

CHAPTER TWO

The EITI in Liberia

A short history of the EITI in Liberia

The recent history of Liberia, the second country in the world to become EITI Compliant, is bound up with natural resources. Founded in 1847 by African-American settlers, the state was long a coastal enclave around the capital, Monrovia. The spread of its authority across the hinterland was helped from the 1920s onwards by revenues from the rubber plantations of the Firestone Company.²⁴

Liberia's economy grew rapidly after the Second World War as its iron ore exports expanded. The dominance of a coastal elite unravelled in the 1980s into a long and terrible period of civil war and dictatorship in which tens of thousands of people died. President Ellen Johnson Sirleaf took office in 2006 with a mandate to end the abuses of the past. Liberia committed itself to the EITI that year with support from aid donors and a strong incentive in the form of debt relief under the Highly Indebted Poor Countries (HIPC) initiative, for which EITI Compliance was a condition.²⁵

Liberia made quite rapid progress and the first EITI report was published in February 2009. Five months later the Liberian EITI (LEITI) was enacted into a law which included logging and plantation agriculture in its scope, as well as mining and oil, and conferred the right to review the allocation of licences and concessions. When Liberia became Compliant in October 2009, the country was seen within the EITI as a success story. Neighbouring Sierra Leone, by contrast, also made a commitment to the EITI in 2006 but was still not Compliant more than six years later.

After Compliance, LEITI gradually began to lose momentum. Public awareness has been low, government interest faded and NGO support has been very thin at times. This decline can be qualified by the fact that revenues reported to LEITI in the year to June 2010 amounted to less than 20 per cent of Liberia's national budget of US\$371 million.²⁶ The scale of such income is expected to grow as iron ore exports expand, with oil revenue possible around the end of this decade.²⁷ Recently there have been signs of revival at LEITI, which has secured a bigger budget and embarked on new activities to raise its profile. The extent to which a revitalised LEITI could contribute to governance of Liberia's natural resources is a complicated question which this chapter will attempt to frame.

Interviewees' views of LEITI reports

This chapter is based on interviews in June and July 2012 in Monrovia and Bong County, an inland region, and a second round of interviews in Monrovia in January 2013. About half the interviewees had a direct connection to LEITI and others mostly worked for the government, NGOs, the media and foreign donors. There were two group discussions, one with the members of a men's social club in Gbarnga, the administrative centre of Bong County, and another with elders in a nearby rural district.

Most interviewees who have worked with LEITI saw it as providing a useful service by publishing lists of extractive companies and their payments to the state in a country where

²⁴ Stephen Elllis. The Mask of Anarchy. The Destruction of Liberia and the Religious Dimension of an African Civil War. Hurst & Company, London. 2007. Page 44.

²⁵ African Development Bank. Liberia: Completion Point Document under Enhanced HPIC Initiative. October 2010. Page 5.

²⁶ The LEITI Third Reconciliation Report puts total receipts for 2009/10 at US\$71.9 million. For the budget, see Government of Liberia. Fiscal Year 2009-2010 National Budget Signed Into Law. Press release. 10th July 2009.

²⁷ This estimate comes from an interviewee who is a government official working on oil issues.

public knowledge about natural resource extraction starts from a generally low base. However, no interviewee made the case that LEITI had exerted any systemic influence over the way that natural resources are managed and the proceeds spent. One activist remarked that: "I haven't heard any conversations outside NGO circles where EITI reports, or figures from the reports, are mentioned".

LEITI reports do not seem to have been used by the government in any systematic way, although certain officials and legislators have referred to them. The reports' untimeliness is a barrier to their use in financial planning or monitoring: the latest figures, as of early 2013, were from mid-2010. This problem is common in the EITI, which allows revenue figures to be published two years in arrears or sometimes more.

Some interviewees credited LEITI with improving dialogue between the government and civil society groups, which have often been mutually suspicious, or said that it may have deterred some mishandling of revenues that would otherwise have occurred. The latter point seems plausible, though hard to test. The reporting is known to have picked up one fraud. The 2009 report revealed that roughly \$100,000 in revenues from a local mining company had not been collected by the state and the receipt turned out to have been falsified.²⁸

There is little doubt that corruption is endemic in Liberia. But when people talked about LEITI in this context, it was as an aspect of wider efforts to increase oversight of the public finances, rather than as an important anti-corruption mechanism in its own right. No-one argued that corruption had decreased under the Johnson Sirleaf presidency, although some suggested the creation of oversight institutions (see below) was forcing the corrupt to become more subtle and covert in their activities.

The interviews conveyed a strong impression that so far, LEITI has been held back by various obstacles, some arising from the limitations of the EITI itself and others which reflect broader conditions of governance and society in Liberia over which LEITI has little influence. A detailed look at these obstacles will help to suggest what the potential for a revitalised LEITI might be.

Declining momentum after EITI Compliance

When Liberia underwent Validation in 2009, the Validator praised the "strong leadership and will of government; a dynamic and organised Secretariat and an engaged and consensual multi-stakeholder steering group."²⁹ Attaining Compliance helped Liberia to secure debt relief and boosted the government's reputation.³⁰ But afterwards there was a gradual loss of momentum and interest, reflected in the fact that President Johnson Sirleaf mentioned LEITI in her addresses to the Liberian parliament at the start of every year from 2007 to 2011, but stopped doing so from 2012 onwards.³¹

January 2010 saw the departure of the respected and dynamic first head of the LEITI Secretariat. The second LEITI report came out in February 2010 but the third was not published until December 2011. There were internal disputes within the MSG and the Publish What You Pay civil society coalition, whose representative did not attend MSG meetings for more than a year (although civil society representatives from youth and labour groups continued to attend).

Attendance by the two ministers who co-chair the MSG (Finance and Land, Mines and Energy) tailed off in late 2011, with deputies or proxies being sent instead. The United Nations' Panel of Experts on Liberia raised concern about this absence, noting: "Given the hierarchical nature of Liberian Government, it sends a strong signal

²⁸ Oxford Policy Management in association with the Emerging Markets Group and the UK National Audit Office. Validation of the Extractive Industries Transparency Initiative in Liberia. July 2009. Page 25.

³⁰ The author was a member of the EITI Board's Validation Committee, which recommended to the Board that Liberia be deemed Compliant.

³¹ President Johnson Sirleaf's annual addresses are given in the first or second month of each year and sum up the government's achievements of the previous year. They can be found at www.emansion.gov.lr.

when a minister attends – or does not attend – a meeting."³²

LEITI's loss of momentum seems to have sapped energy from its outreach programme and may have delayed the execution of an important mandate: its power to review the allocation of natural resource contracts and concessions.33 That said, long delays between the adoption and implementation of laws seem common in Liberia. The significance of this review, due to report during 2013, is that such contracts will increasingly supply Liberia with its public revenues and their allocation has long been controversial. In 2012, for example, rivalry between Russian and American companies for an offshore oil block sparked a public row between the state-owned National Oil Company of Liberia (NOCAL) and a senior legislator who had championed the Russian bid.

In another controversy in 2012, NGO campaigning and whistleblowing by a government insider led to revelations that a quarter of the land area of Liberia, which has some of the largest remaining forests in West Africa, had been allocated to logging companies via what a later investigation described as wilful violations of the law. The president later suspended these licences, known as Private Use Permits, and banned the issue of new ones.³⁴ So the outcome of LEITI's review will test its influence as an impartial voice on a sensitive area of government policy.

Overall, LEITI has been weakly integrated into government activities despite its status as a statutory body and its smooth running depends on a few key people in the MSG and LEITI Secretariat. As in other EITI countries, implementation can stall if the people who play these roles move on, or if there is a breakdown in the will to consensus.³⁵

LEITI's public outreach: strong at first, then fading

The EITI Rules require that reports be made available to citizens in ways which encourage public debate. In Liberia, the dissemination of reports has been quite extensive. LEITI organised public events or "town hall meetings" in all 15 counties of Liberia, at which its staff would introduce and explain the reports. There was also media coverage, billboards on major roads and reports or musical jingles played on the radio. (Radio is the most widely used medium in Liberia, where a high proportion of the population is illiterate and newspapers have a circulation in the low thousands.)

The "town hall meeting" follows the common worldwide format in which speakers on a podium give information to an audience which listens, then asks questions. LEITI's meetings could last several hours and attract audiences of 300 people or more, who were assembled by writing to local officials and asking networks of women's groups, youth groups and other NGOs to bring people along. They were attended by officials from local government and sometimes from ministries in Monrovia. These discussions, though brief, could range widely beyond the reports themselves. People might ask about the plans of foreign companies to employ local workers or complain about corruption or illegal mining. A general theme was that communities have not adequately benefited from natural resource extraction in their areas. There were no suggestions that meetings were stacked with government loyalists: in fact, there could be robust questions about corruption or abuse of office.

There are limitations to this method of communication, however. The meetings have tended to take place in cities and larger towns,

³² United Nations. Letter dated 12 November 2012 from the Panel of Experts on Liberia addressed to the Chair of the Security Council Committee established pursuant to resolution 1521 (2003) concerning Liberia.

³³ Section 3.2.g of the LEITI Act of 2009 empowers LEITI to review the award of "public concessions, contracts, licenses, permits and any other rights concerning the exploitation of diamond, gold, oil, timber, agriculture, any other forest and mineral resources of Liberia" to check their compliance with the law

³⁴ President of the Republic of Liberia. Executive Order No. 44. Protecting Liberian Forests by a Temporary Moratorium on Private Use Permits. 4th January 2013. Accessible at www.emansion.gov.lr.

³⁵ As a member of the EITI Board from 2009 to 2012, the author had access to regular updates from the EITI Secretariat which charted the progress of each country in detail.

which may be out of easy reach for poor rural people, and they can only reach a small percentage of the population. Those who attend may well belong to local networks of power and use their knowledge, or not use it, in the light of their existing interests.

The level of awareness of the audience also matters. A succinct guide by the Liberian NGO Naymote underlines that for such meetings to be useful to community groups, they need to come prepared with questions and requests for the speakers.³⁶ This requires that attendees be organised, for example by NGOs, which may not be the case in every area. It also requires that the information being presented by speakers should be explained in a way that makes sense to audience members, which is a challenge for the EITI with its long reports full of financial data.

LEITI's outreach did enable people at these meetings to air their concerns about natural resource extraction in the presence of officials and legislators. These concerns were discussed by the MSG which, as noted above, is co-chaired by two ministers. The LEITI Secretariat would also write to officials to flag concerns raised at the meetings: for example, complaints about companies failing to make promised payments to local communities or instances of illicit mining.

Such cases show LEITI trying to act as a channel of communication between the public and the government. But there is a sense that the outreach was not nearly broad or prolonged enough to have a chance of generating sustained pressure on government thinking. A survey carried out in 2011 by LEITI and a local media NGO found that only 42 per cent of respondents had heard of LEITI and most of them had only a hazy idea of how it works.³⁷ Those who did know were mostly students, civil servants or men working in the extractive industries. Women in general, traditional leaders and farmers were much less likely to have heard of it. The survey suggested LEITI had put too much emphasis on

newspapers and billboards and not enough on radio, which has a broader reach.

The survey found that outreach had tailed off after 2009.³⁸ This picture was backed by several interviewees for this report who had attended outreach events in the past. A journalist in the Bong Mines area, where a Chinese firm is mining iron ore, remarked: "whether LEITI's still in existence, we don't know. We're not feeling their presence on the ground." One person who took part in outreach events described it as "quite an ad-hoc system … You go there, you say something, they go away."

LEITI is now working on fresher formats for communication, not only via radio but via representatives around the country, organising discussion clubs in Monrovia high schools and setting up its own radio show. One idea is to break down the reports by region. There are also plans for mechanisms for citizens to feed their views back to the MSG, which would publish these responses as a spur to public debate. It will be important to ensure that such techniques are planned and funded to continue for some years, given that the influence of outreach activities can fade quite quickly.

In practice it is hard for citizens – particularly in a very poor country where most people are preoccupied with living from day to day – to exert collective pressure on such a complex and arcane topic as the governance of natural resources. The EITI model assumes that civil society groups will play this part on their behalf. In Liberia, this assumption has turned out to have limitations.

LEITI and civil society: a problematic relationship

The LEITI Act of 2009 defines "civil society" as "the entire segment of the Liberian population that is not in government."³⁹ In EITI practice,

³⁶ Eddie D. Jarwolo. How to Organise a Legislative Town Hall Meeting. Naymote. July 2012.

³⁷ Liberian Media Center/LEITI. Bridging the Disconnect. Why Communication is Crucial to Promoting Extractive Transparency. November 2011. The survey was conducted in six of Liberia's 15 counties.

the term tends to mean non-governmental organisations (NGOs) which do advocacy or development work (though it can include other groups such as youth organisations or trade unions). In developing countries, NGOs often work in precarious conditions. They are small in size and usually depend on external funding. In some countries they can face harassment from officials. Liberia is a fairly open society and activists can face threats of legal action, but no interviewee suggested any systematic attempt to hinder their work.

Most civil society activism around LEITI seems to have tailed off after Compliance in 2009. This was not always the case. Green Advocates, a Liberian NGO active within the EITI, states that activists campaigned for the LEITI Act to be extensive in scope and persuaded legislators to include plantation agriculture, one of the biggest sectors of the economy. 40 But Green Advocates noted in 2011 that:

"Resource constraints and the limited number of civil society groups focused on the EITI ... has put a strain on the ability of civil society to organize such activities. There are also concerns that too few civil society actors have the capacity to conduct campaigns holding the private sector and government to account by using the results of the LEITI Reports. Additionally, stakeholders have noted that efforts to support these groups [by aid donors] are appreciated but insufficient."⁴¹

In Liberia as elsewhere, the NGO sector has some of the characteristics of an industry. There was a widespread view amongst interviewees that certain NGOs are strongly-motivated but that many people go into the sector purely in search of employment. One veteran activist complained that: "People who work in the NGO sector see it largely as a job. You come and do what you have to because you are paid." The responsibility for such attitudes would seem to lie not only with a shortage of good jobs for Liberian university

graduates, but with the influx since the end of the civil war of well-funded donor agencies which needed local NGOs as counterparts.

People in rich countries who make a good living from development work should probably hesitate before chastising people in poor countries who aspire to do the same. Nonetheless, several Liberian interviewees raised this concern: that some people have set up NGOs just to attract funding or to criticise the government in the hope of being bought off. One interviewee, a senior government official, remarked that: "Once you talk, everyone knows you'll be offered a job to shut up."

Local NGOs have to spend a lot of time seeking funding from foreign donors and risk losing their best staff to higher-paying international agencies. There is a sense of what might be called "participation fatigue": one senior activist complained of "too many town hall meetings, too many trainings". Internal politics can also be a factor: several interviewees said the involvement of the local Publish What You Pay coalition in LEITI had been undermined for a long period by internal disputes.

Despite such difficulties, certain groups have been quite effective (often in tandem with aid donors or international NGOs) in pressing for various laws on various issues, including the LEITI Act, and in exposing scandals. An indication of their prestige is that when a governance problem becomes a scandal, the government may invite a senior activist onto the committee tasked with tackling it, as a way of adding credibility to the official response.

It would be presumptuous to suggest that Liberian activists are too weak and divided to regroup around a revitalised LEITI. But it would also be unwise to ignore the deeper point that given these kinds of constraints, which exist in many countries, the EITI's assumptions about the ability of NGOs to turn information into

³⁹ LEITI Act of 2009. Page 4.

⁴⁰ Green Advocates. The Good, the Bad and the Ugly. Lessons Learned from the Implementation of the Extractive Industries Transparency Initiative in Liberia. 2006-2011. Page 32.

⁴¹ Ibid. Page 23

sustained political pressure may be resting on fairly thin ice. Even if LEITI could count on a cadre of committed activists to help communicate its messages, another basic question would be: how compelling for the Liberian public is the information in EITI reports?

The EITI was designed to answer a simple question: how much revenue has a government received from extractive companies? The scope of LEITI is more expansive than the global requirements: it also requires that contracts between the state and extractive, timber and plantation companies are published. A total of 113 such contracts were available on its website in early 2013. The MSG has agreed that reports should include taxes due from companies, as well as taxes paid. LEITI has considered reporting on each region of Liberia and trying to follow the flow of funds.

Such expansions would be important because it is not clear that the reports are very useful to an important potential audience: people living in areas where extraction takes place. In Liberia, as in other countries, there is a high expectation amongst these people that companies should provide them with development benefits. There is also serious concern about the effect of the rapid expansion of plantation agriculture on the land used by local communities. How far the EITI should try to cover all these issues is another question. But much effort has gone into disseminating reports in parts of Liberia where there are major problems surrounding the exploitation of natural resources (including land, in this case) which these reports cannot directly address at the moment. This is not the fault of LEITI, which has been following the international model of the EITI.

Connecting with local communities

Although Liberia is a small country, the centralisation of political power in Monrovia and the poor state of many roads can give the visitor an impression of a partial dislocation between the capital and much of the country. The government was too weak to exercise control over much of the hinterland until the middle of the last century and its authority there remains entangled with that of the "traditional societies" and with chiefs and communal groupings such as clans and villages.⁴²

Without delving into the workings of communities in Liberia, which would be a job for a social scientist, it can be said that people living near sites of resource extraction in Liberia expect to share the benefits of this extraction and want to know what companies will provide for them. LEITI does not currently provide this information or create channels for dialogue between communities, companies and the state, other than the brief opportunities provided by outreach events.

Other channels to the central government appear quite weak. Interviewees complained that many legislators rarely visit their constituencies, other than at election time. Members of a social club for young men in Gbarnga said President Johnson Sirleaf herself had visited the tea shop where they meet, in order to canvass for a local politician, but there had been no follow-up since. (These social clubs, known as haitai from the strong tea drunk by their members, are a form of civil society whose opinions are significant to politicians but which lie outside the sphere of donor-funded activity).

For every development project run by the government in Liberia, there seems to be another run by a foreign donor. So it is unsurprising that people expect mining companies operating on "their" land to provide them with benefits in the form of payments for local development (which are reported to LEITI) and jobs and infrastructure such as road improvements and health clinics (which are not).

At present, LEITI reports enable people to confirm that the companies operating in their

⁴² The "traditional societies" are membership bodies overseen by priests, which are at the same time religious, social and political. For a recent assessment, see Stephen Ellis. The Mask of Anarchy. Hurst & Company. 2007.

midst are legitimate and do in fact pay taxes. This information may have value in itself: a common theme of interviews was that companies sign contracts in Monrovia and may have little or no prior contact with communities, which leads to a good deal of suspicion. This appears to be more true for the many small mining companies in Liberia than for the large Western mining firms, which have learned the need to talk to communities from experiences of protest and disruption in other countries.

If LEITI reports provided an assessment of companies' contributions to each district (in kind as well as cash), then they might become more relevant to local communities. Illiteracy rates are high in rural Liberia and local languages may not have synonyms for concepts expressed in English. One grassroots activist said, however, that complex messages can be communicated to rural audiences if it is done with care and an imaginative use of techniques such as drama and music. However, the availability of relevant information is only the first of many steps towards ensuring that communities feel some lasting benefit from extraction, as the next section will show.

Mining revenues and local development

Mining companies are a major source of income for Bong County, a region of several hundred thousand people.⁴³ The county's own budget in 2012 was US\$4.6 million and 72 per cent of this sum came from revenue payments made by mining companies to the central government and spent on development projects in the county.⁴⁴ In other words, there is very little money to spend in Bong County, in relation to the size of the population, and much of it has come from mining. Specifically, it has come from a Chinese company which is mining iron ore and two Western companies, one of which

was exploring at the time and another which uses a railway line running through the county.

These county social development funds are a cause of long-running controversy in Liberia. The funds are controlled by a ministerial committee which approves disbursements based on requests from the counties where the companies operate. A 2011 study by the Sustainable Development Institute, a Liberian NGO, found that officials from cabinet level downwards had ignored the guidelines, disbursed money for projects which had not yet been approved, switched funding priorities and failed to ensure evaluation and audits. Some project costs appeared to have been inflated. In one case, public toilets were built at an estimated cost of US\$70,000 – a very large sum in rural Liberia – but without a water supply, meaning that they could not be used.45

Reports by the General Auditing Commission, Liberia's supreme audit institution, noted that the same officials and legislators were proposing, approving, using and overseeing the funds. ⁴⁶ As a result of the controversy, disbursements for new projects were at a stop as of early 2013 pending an independent review of the process. The controversy has had repercussions in Bong County. In early 2013, local media reported that legislators had dissolved the committee managing the projects for which the funds are intended, prompting its head to take them to court. ⁴⁷

Such issues make clear that the spending of these funds is a fraught business in a country where public money is so scarce. Activists complain that local officials have a preference for spending on capital equipment such as road-building vehicles (or "yellow machines", as people call them) without planning for their sustainable use. Bong County spent tens of thousands of dollars on two generators which ended up largely idle because their fuel cost more than

^{43 .}The 2008/12 Bong County Development Agenda estimates the population at 520,000 people but county officials put it, in a discussion with the author in June 2012, at around 330,000 people. The reason for this discrepancy is not clear.

⁴⁴ Liberian Ministry of Finance. Republic of Liberia County Report 2012/13. Bong. This percentage was forecast to fall to 43 per cent of the county budget in the 2012/13 financial year

⁴⁵ Sustainable Development Institute. Where is the Money? March 2012.

⁴⁶ Report of the Auditor-General. Bong County ArcelorMittal Social Development Fund for 1 April-30 September 2009.

⁴⁷ New Dawn. Liberia: Supreme Court's Advice - Bong Caucus Must Negotiate. 18th January 2013.

could be raised from consumers of the electricity. In Liberia's counties, public assets may be used for private purposes or large sums spent by local officials in "administrative expenses" which are not accounted for. Such practices give rise to suspicions of corruption, in a country known to be endemically corrupt.

Local administrations may actually carry out consultations before deciding how to use public funds. In one case described to the author, the people who attended the consultation were all nominated by local officials and unanimously decided to approve the administration's preference for buying more capital equipment, to the disquiet of local civil society activists who felt, in the wake of previous problems like that of the generators, that there had not been proper planning for its use. A senior local official, irked by this criticism, told the author: "These are people who know what is happening in their localities. No-one compelled them to vote for equipment."

Questions about how mining revenues can be turned into development benefits for local populations, through state institutions with their own interests and confusions, must recur in hundreds of places across EITI countries. Knowing the value of revenues paid by companies is only the first of many steps towards ensuring that local people see some durable benefit from them.

Public funds for development are scarce to start with and the inherent difficulty of using them well, given the vast scale of public need, is compounded by poor planning and implementation and failure to properly account for the money that is spent. It is not always clear whether problems arise from the patronage system which pervades Liberian politics, and which leads to the capture of public resources for private ends, or from lack of competence at key points in the bureaucracy, or from notions of development which are ill-suited to rural

Liberia. (This is not meant to imply that all local officials are corrupt or incompetent, or that all public investments fail.)

For transparency to address such problems at a local level, there would need to be various kinds of reporting, covering decision-making and the implementation of projects as well as the flow of money. Some of these could be provided by LEITI, or by equivalent mechanisms. There would also need to be better planning and execution on the part of local officials and regular monitoring by state auditors and NGOs, as well as a realistic understanding amongst citizens of what the state can actually deliver. Crucially, there would need to be a degree of accountability when things go wrong.

Drag factors on financial accountability in Liberia

The state's ability to manage and account for Liberia's public finances has improved since 2007, according to a 2012 IMF report, though it remains low by world standards. This slow improvement has its parallel in the growth of oversight agencies, amongst which some people count LEITI. But reform is hampered by organisational problems within the state and by corruption, which is generally seen as a very serious problem, although its influence can be hard to disentangle from other factors such as poor planning.

Oversight is also limited by long gaps between the creation of policy and its coming into practical effect. The Freedom of Information Act, passed in mid-2010, was described by the president in 2011 as an "essential aspect of the fight against corruption".⁴⁹ Yet in early 2013, the Information Commission still only had two officials without the funds to fulfil their mandate. Precedents will have to be set for the use of the law, which has various exemptions, so

⁴⁸ International Monetary Fund. Liberia. Public Expenditure and Financial Accountability (PEFA) Assessment. IMF Country Report No 12/273. September 2012. Out of 30 PEFA indicators measured in Liberia, 12 showed improvements since 2007. But 16 of the 30 were scored "D" or "D+", the lowest two grades.

⁴⁹ President Johnson Sirleaf. Annual message to the Sixth Session of the 52nd National Legislature of the Republic of Liberia. Delivered 24th January 2011. Accessible from www.emansion.gov.lr.

it may be some years before it can be expected to influence the behaviour of officials in any detail.

Two donor officials suggested that after years of training programmes, Liberia has enough trained civil servants, barring skills shortages in a few areas. However, there is not yet a system for placing officials in positions where they can make the best use of their skills. Liberia lacks a cadre of senior civil servants to run the day-to-day business of the state (although there are plans to create one): this leads to co-ordination problems and ministers handling many issues that could be delegated.

There also seems to be a problem, familiar to many countries, that politicians can come into office and replace civil servants with people from their own patronage networks. One interviewee with a good knowledge of the bureaucracy noted a need for rules to stop ministers from getting rid of officials who work on public procurement – a high-risk area for corruption - and putting in their own people. Another problem, highlighted in past audit reports, has been the existence of "ghost employees" – non-existent officials whose salaries are fraudulently collected by others.

Corruption is not the only problem of governance in Liberia but given its high public profile as an issue, the state's ability to curb corruption could be seen as a proxy for broader improvements in financial management. Corruption is best seen as a manifestation of patronage politics. Politicians and officials may use money to get into public office (by buying votes, for example) and once there, misappropriate public funds or sell their influence in order to make a profit on their investment. These practices are hard to challenge, partly because many in Liberian society go along with them: one interviewee, a government official, complained of pressures to be corrupt which can come from "your family, even your pastor".

The government is keenly aware that it needs to be seen to be fighting corruption, both by foreign donors and by its own people. The extent to which it has actually done so is hard to tell: the World Bank's Worldwide Governance Indicators suggest no improvements in the control of corruption in Liberia between 2006 and 2011.⁵⁰

Of the oversight institutions tasked with reining in corruption, the General Auditing Commission (GAC) has the highest profile. Liberia's supreme audit institution predates the civil war but had to be rebuilt more or less from scratch after 2006 with support from aid donors. Existing staff were replaced by new employees untainted by the past, mostly recruited straight from university.

The GAC earned a reputation for being blunt and assertive, identifying senior officials by name and recommending that they face prosecution or pay back unaccounted-for public funds. Yet the IMF noted in its 2012 report that the Liberian legislature had not considered any of the 72 reports by the GAC and "it is unclear if any of this audit work has resulted in remedial actions." The IMF added: "This lack of action ultimately discourages the auditors, who remain powerless to enforce their recommendations." A senior official told the author that the Finance Ministry did adopt recommendations from the GAC, so perhaps there has not been a complete failure to heed its reports.

The GAC's assertive approach led to accusations of politicisation under its outspoken first chief whose contract was not renewed in April 2011. A new controversy arose in late 2012 after a new auditor-general made numerous staff redundant. These events prompted a flood of allegations and counter-allegations in the Liberian print media, which often seems cavalier in its reporting and sometimes seems blatantly biased. It is likely that the GAC will be closely scrutinised in future for any suggestion that it might have been hobbled by vested interests.

The agency charged with pursuing corruption, the Liberian Anti-Corruption Commission

⁵⁰ This chart was accessed in early 2013 via http://info.worldbank.org/governance/wgi/sc_chart.asp

⁵¹ IMF. Liberia: Public Expenditure and Financial Accountability (PEFA) Assessment. IMF Country Report No. 12/273. 5th September 2012. Page 10. 52 Ibid. Page 75.

(LACC), is much smaller than the GAC and seems to have struggled with the expectations placed on it. The LACC has complained that its powers of prosecution are too weak. As of mid-2012 the agency only had one trial lawyer, though a single prosecution may require several. If a corruption case does reach the courts, it encounters what one interviewee described as "the brick wall of the judicial system."

Liberia's courts are greatly overstretched and said to be very corrupt. It is said to be common for jurors, many of whom live in dire poverty, to sell their votes to one or another party in a case. Against this background, it becomes less surprising that as of mid-2012, no serving public official had successfully been prosecuted for corruption. The president announced in early 2013 that the government would try to get round this problem by creating a special anticorruption court.⁵³

Several interviewees said the government does respond to pressure from the media or civil society groups, but this response is usually ad-hoc and comes in the aftermath of a scandal. Sometimes officials are suspended from their posts, only to reappear in other positions. It is not easy to say whether this is because the government rests on a system of patronage which tacitly accepts a degree of corruption, or because prosecutions are impossible given the state of the legal system, or possibly both. The effect is that a systemic response to corruption seems very difficult to mount.

The strongest oversight entity in Liberia should be the legislature, but legislators have a generally poor reputation for serving the public interest. A perceptions survey by the LACC and civil society organisations suggested that the legislature and the police were considered to be among the most corrupt of public institutions.⁵⁴ One official at a public agency remarked that the legislature "has become a lucrative place because power comes with money and access. Everyone wants to be a legislator, if they're not in government. It's a money-making machine."⁵⁵ Several interviewees cited the failure of the legislature to pass a long-delayed Code of Conduct for public officials as evidence of a desire amongst legislators to protect their private financial interests.

Those interviewees who talked about the legislature portrayed it as a patronage system of a kind common in poor countries. Legislators may win support by promising benefits to their constituents, such as scholarships for local students or projects from the community development funds, or just bags of rice. These benefits are presented as emanating from the legislators themselves, rather than from the state. In other words, legislators offer private or group goods rather than public goods (and may then be unable to provide them, causing further disillusionment for voters). Critics accuse legislators of using the expectation that they provide such benefits as an excuse to make money, for example by taking payments from government agencies in return for ratifying their decisions.⁵⁶

Like other institutions of governance, the legislature is not fixed in time. Some legislators lost their seats in the 2011 elections, suggesting that some voters may have woken up to their power to topple incumbents. The picture will change again with the passing of a decentralisation law which would lead to the creation of assemblies at the county level. One interviewee said the old political establishment of Liberia was broken down by the civil war and the elite remains in flux, with factions forming and reforming: this creates some space for civil society activists to ally with legislators.

⁵³ President Johnson Sirleaf. Annual message to the Sixth Session of the 52nd National Legislature of the Republic of Liberia. Delivered 24th January 2011. Accessible from www.emansion.gov.lr.

⁵⁴ LACC Newsletter. October 2012. Third edition. Page 3.

⁵⁵ The author was only able to talk to two former legislators so this discussion is largely about how legislators are seen by others, rather than how they see themselves.

⁵⁶ For an instance of legislators being paid to authorise an oil contract, see Global Witness/Liberian Oil and Gas Initiative. Curse or Cure? How oil can boost or break Liberia's post-war recovery. September 2011.

The EITI and governance of natural resources in Liberia

The EITI started strongly in Liberia but its momentum gradually faded after Compliance, when there were no longer any strong external incentives for the government to focus on it. This points to a simple truth about the 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.

LEITI is not the only driver of reforms to natural resource governance in Liberia. For example, the state oil company NOCAL has adopted a new oil sector policy which places a heavy stress on transparency⁵⁷ and the government has suspended the issue of logging licences which had clearly got out of control. These reforms have arisen from a desire for reform within the government, the encouragement of foreign donors and advisers and, most visibly from the outside, the impact of scandals generated by NGO activism on the government's desire for a good reputation.⁵⁸

The availability of relevant public information, in itself, is only one influence on the potential for natural resource revenues to contribute to higher living standards for the population. As this chapter has shown, there are limitations on planning and execution of policy throughout the state. There are problems of corruption and vested interest. There are pressures on civil

society groups, from without and within, which can constrain their effectiveness. And the public institutions designed to oversee the government are part of, and constrained by, the system they are designed to police.

Liberia's capacity to manage public revenues has slightly improved from a low base and its society remains open enough that critical voices can be heard. The big question is how far slow and uneven improvements in governance will be able to curb the risks of policy failure, elite contestation and disappointed public expectations that are likely to grow in tandem with mining and oil revenues.

In this context, LEITI could still play an expanded role by exercising its oversight powers over the allocation of licences (as it is currently working to do) and by gradually extending the scope of its reports to follow revenues down to the county level. Given the resources, it could in due course start reporting on other impacts of natural resource extraction, for instance on land use. These are all contentious areas where an independent body which reports reliable data could help to better define exactly where problems lie and how they might be addressed. To do this, however, LEITI is likely to run up against vested interests and official inertia which it will need continuous high-level support to overcome. Given that the Liberian government is known to be concerned about its reputation, the EITI and its international supporters ought to use their own voices to back LEITI up.

⁵⁷ See National Oil Company of Liberia. Liberia's Oil and Gas Sector Briefing. July 2012.

⁵⁸ Ibid. Nocal has referred more than once to the fact that Global Witness has praised the oil sector reforms, as evidence that these reforms are on track. (The author played no meaningful part in Global Witness' work on Liberia).

CHAPTER THREE

The EITI in Timor Leste

The Timorese context of the EITI

Timor Leste is a country of just over a million people which occupies half an island near the eastern end of the Indonesian archipelago. Colonisation by Portugal ensured a separate history from the rest of the archipelago, which was colonised by the Dutch. As the Portuguese left in 1975, Indonesia began a harsh military occupation of the country which cost huge numbers of lives and ended in 1999 with the malicious destruction of much of its housing stock and infrastructure.

Timor Leste is a small, very poor country which nestles between two giant neighbours, Indonesia and Australia. The state earns 90 per cent of its income from natural gas and condensate and the money passes through what a World Bank report has described as "one of the world's best natural resource revenue management regimes." The non-agricultural economy is driven by public spending so the manner in which this revenue is used, until the likely depletion of known reserves in the middle of this century, will shape the country's future for years to come.

The question of how to spend petroleum revenues was one that came up repeatedly during two visits by the author to the Timorese capital Dili, one in October 2012 and another in March 2013. Those interviewed were civil society activists and officials from several government agencies and the Timorese EITI Secretariat, as well as Timorese and foreign officials at donor agencies.

There are some similarities in the development problems facing Timor Leste and Liberia. In

both countries, most people eke out a living from small-scale farming. In both, a youthful population has huge needs for health, education, jobs and infrastructure such as roads and electricity. The two governments are freely elected and highly centralised and state bureaucracies have had to be rebuilt, more or less from scratch, in the wake of violent conflict. Like Liberia, Timor Leste has relied on a U.N. security presence which wound down in 2012. Both countries have grappled with questions of justice and impunity and there is lingering concern at the risk of instability, particularly in Timor Leste where violent unrest in 2006 cost more than 200 lives and seriously disrupted the economy.

The scale of corruption in Timor Leste is hard to tell but it seems to present a significant risk to the quality of governance, particularly in the area of public procurement. Several interviewees pointed to rising affluence amongst the elite, taking the form of new houses and expensive cars. Compared to Liberia, there is a more determined effort to investigate high-level corruption: a former minister has been jailed and other senior officials are facing investigation.

The government's economic strategy since 2007 has rested on heavy spending on infrastructure and cash transfers to certain social groups, notably veterans of the independence struggle (and smaller programmes for vulnerable groups like the elderly). This strategy has been enabled by large inflows of petroleum revenue and its aim is to jump-start the domestic economy. It also seems intended to preserve social peace by spreading revenues around parts of society. There have been big improvements in certain

⁵⁹ World Bank. International Development Association. International Finance Corporation. Interim Strategy Note for the Democratic Republic of Timor Leste. FY 2010-2011. 12th August 2009. Page 1

aspects of human development (for example, on child mortality),⁶⁰ although there are concerns about how far poverty has actually decreased since 2007. Thus the question of how petroleum revenue is earned and spent is central to Timor Leste's hopes of escaping poverty.

The Petroleum Fund and the principle of transparency

Successive Timorese governments have adopted the principle of transparency, which has become part of the country's self-presentation to the world. The first post-independence government committed Timor Leste to implementing the EITI in June 2003. It went on to create a Petroleum Fund in 2005, into which all petroleum revenues (with some small exceptions) are paid. This fund publishes regular reports on its activities, including a company-by-company breakdown of receipts.

The Petroleum Fund's creation predates the introduction of detailed requirements into the EITI itself. Although the government took advice from outside parties like Norway and the International Monetary Fund, the policy was its own. A donor agency official remarked in 2004 that having spent 24 years struggling for freedom from the corrupt dictatorship of Soeharto's Indonesia, Timorese leaders were determined their country should not turn into a copy of what they had fought against.⁶¹

The Petroleum Fund is often seen as a model of good practice in transparency with its annual and quarterly reports, independent audits and consultative council which advises the Timorese parliament. The Fund has at least three positive effects, all very important. The first is to channel a proliferation of payments by companies into a single place where they are subject to public disclosure and audit, thus reducing the risk of corruption and making inflows easier to keep track of.

A second effect is that public debate on how to spend the revenues can be based on reliable information about how much money there is. Anyone with access to the Petroleum Fund reports can find out the balance of the fund, what the money has been invested in, how much has been withdrawn and whether the fund is receiving enough new income to replenish what is withdrawn.

A third effect is that the existence of the Fund also decouples income from spending, since revenues must be transferred to the budget first. The amount of money that can be withdrawn is meant to be limited to the Estimated Sustainable Income (ESI), a formula whose name is selfexplanatory.⁶² In fact the law entitles the government to take out more than this amount, as long as it provides a detailed justification to parliament, and withdrawals have significantly exceeded the ESI for several years until 2013. But by requiring parliamentary consent for withdrawals, the Fund may impose some degree of constraint on public spending which might not exist at all if revenues flowed straight into the budget.

Timor Leste went on to implement the EITI as well. December 2009 saw the first of its EITI reports, which amount to a double-check on the existing reports of the Petroleum Fund. Timor Leste became EITI Compliant in July 2010 and published a second EITI report in March 2011. Then, as in Liberia, the pace of reporting slowed down and the next report, with two years' data, was not published until the end of 2012. The difference with Liberia is that the Petroleum Fund reports offer another source of information on revenue inflows and have continued to be regularly published. Interviewees had varying views on whether or not the EITI reports are more useful than the reports from the Petroleum Fund. The latter are more timely than the former and include quarterly summaries as well as annual reports, while the EITI reports provide more detail on types of revenue.

⁶⁰ UNDP. Timor Leste Human Development Report 2011. Page 6.

⁶¹ Conversation with the author and a colleague from Global Witness. 2004.

⁶² The ESI is not fixed: assumptions about future oil prices are part of the formula and can be revised.

Interviews in Timor Leste suggested that the EITI's immediate goal – the publication of a trustworthy picture of revenue flows from extractive companies to the state – has been achieved. In fact, no interviewee raised concerns about corruption in the collection of these revenues. This is significant when set against the fact that in some countries (including Liberia), this trustworthy picture still does not exist because of uncertainties about the quality of the data in EITI reports. It may help that reporting of revenue flows in Timor Leste is relatively simple to maintain: there are only two fields in production and industry interest in exploration is more limited than in West Africa.

The reliable reporting of revenue inflows does not directly address concerns about whether oil companies are paying their fair share of taxes. The government reviewed the companies' contracts and concluded that they were not paying enough revenue: it says it has collected several hundred million dollars which the companies should have paid (though the companies are challenging these decisions in court). Another vital issue in the petroleum sector, on which the EITI has no bearing, is the fraught relationship between Timor Leste and Australia over the seabed boundary between the two countries which determines ownership of offshore gas reserves.⁶⁴ Nonetheless, the process for collecting revenues and reporting on them is seen to be robust and debate has moved down the "value chain" to questions about how much to spend and on what.

The government seems to have been consistent in its support for the EITI and speeches by ministers at home and abroad will often refer to the fact that the country was the third in the world to become EITI Compliant.⁶⁵ Timor Leste's government has even provided funding to two other former Portuguese colonies, Mozambique and Sao

Tome and Principe, to implement the EITI.66 The EITI is seen by the Timorese government as part of a wider commitment to the principle of transparency. In 2011 it launched the Timor Leste Transparency Portal, a set of websites which provides information on the budget and public spending, the use of foreign aid, public procurement and "government results", or the progress of various projects funded by public spending. These websites require internet access, which is very limited in Timor Leste, but they seem to provide quite detailed information. This information is not always complete or up to date, however, and it is not clear that disclosure of procurement contracts on the website has meant an end to the apparently common practice of awarding contracts on a single-sourcing basis with little due diligence.⁶⁷

Despite the Portal, Timor Leste scores quite poorly on the International Budget Partnership's Open Budget Index for 2012. The country's score in 2012 was only 36 compared to a global average of 43 (which was also Liberia's score). The IBP, an advocacy group, says the reason for this "minimal" score is that Timor Leste does not publish a prebudget statement, a citizens' budget in simplified language or any mid-year or end-year reviews or audit reports, and that there are limited opportunities for the public to participate in the budget process, other than via the legislature.⁶⁸ Timor Leste is not unusual, however: thirty-three countries were given a lower score.

"If we've got all this oil money, why aren't we feeling the benefits?"

Once information has been collated, it has to be distributed and used. In Timor Leste, as in Liberia, internet access is limited and most parts of the country have high rates of illiteracy

⁶³ In Liberia, the General Auditing Commission was unable to confirm the accuracy of the government figures.

⁶⁴ For a summary of this topic, see Hamish McDonald. Timor Leste. It's Tiny, Poor, And Very Possibly Not Going To Take It Anymore. The Global Mail. 28th March 2013.

⁶⁵ See, for example, the statements by Finance Minister Emilia Pires at the annual meetings of the World Bank and International Monetary Fund in 2011 and 2012. Prime Minister Gusmao frequently mentions Timor Leste's EITI Compliance, for example in his speech to the Timorese parliament in February 2013. Officials also like to say that their country was the "first in Asia" to become Compliant, although this depends on whether or not Azerbaijan is considered an Asian country.

⁶⁶ Minutes of the 22nd EITI Board Meeting. Oslo, 26-27 February 2013. Page 6. Accessed at www.eiti.org.

⁶⁷ See letter to Finance Minister Emilia Pires from Lao Hamutuk. 2nd May 2012, for concerns about partial transparency. Accessible at http://www.laohamutuk.org/Oil/EITI/2012/LHMoF2May2012En.pdf.

⁶⁸ International Budget Partnership. Open Budget Survey 2012. Timor Leste.

and intermittent access to electricity, while the circulation of newspapers is in the low thousands. This puts a premium on dissemination by other media (such as radio and television) and face-to-face meetings.

In Timor Leste, the dissemination of EITI reports has resembled that in Liberia. There have been public meetings in the country's four regions, with invitees from the 13 districts that make up these regions. The Timorese EITI Secretariat says that invitees are drawn from local government officials, community leaders, women's groups, NGOs, representatives of the Catholic Church and other groups, and are selected in consultation with them. The format is similar to Liberia presentations from the podium followed by questions from the floor. As in Liberia, there was no suggestion that these discussions are circumscribed in any way by the government.

These meetings usually attract "more or less a hundred people", according to the Timorese EITI secretariat, implying that official outreach directly reaches a few hundred people in a population of more than a million. The assumption is that the people who attend these meetings will pass on the information to their communities, though one activist suggested that some do and some don't. A senior official talked of the need to reach below the regional level into the districts.

That said, some NGOs carry out regular outreach in the districts using EITI reports and budget data and have started to co-ordinate this work with the Timorese EITI Secretariat, so communication may be more extensive and continuous than the official schedule suggests. One of these NGOs, Luta Hamutuk, carried out an on-the-spot evaluation of EITI dissemination: village chiefs said the reports were hard to understand, which is unsurprising given that the reports are full of numbers and few people in rural Timor Leste are likely to have much schooling in mathematics. But there were cases where community members had been able to use the reports to make rhetorical points to visiting

politicians or journalists about the need for more effective public spending.

In reaching out to audiences beyond the educated elite, the EITI in Timor Leste faces the same question as in Liberia: what is the relevance of its specialised information to citizens who are mostly living on or close to the poverty line and whose attention is focussed on their daily needs? Numerous interviewees said that people who attend EITI meetings appear reassured that the collection and management of hydrocarbon receipts is being carried out correctly, or are unconcerned by this issue.

The impression is that the Timorese public sees development in concrete terms: more reliable electricity and clean water, more and better health clinics, better schools, access roads and other tangible public goods. So when people are presented with information about petroleum revenue inflows, the response is to ask the country's public infrastructure and services remain so poor. Or as one interviewee put it, the view is: "If we've got all this oil money, why aren't we feeling the benefits?" The Timorese EITI is aware of this view and aims to involve Finance Ministry officials in the dissemination process, so they can answer questions about public spending.

This question of infrastructure has great importance in a country where despite major improvements since independence, as of 2009 a third of the population did not yet have access to improved water sources and half needed improved sanitation,⁶⁹ where electricity is available for a few hours a day if at all, and where poor roads through steep terrain can make travel laborious. Large infrastructure projects have been typically awarded to foreign firms, notably from Indonesia, while smaller projects have been awarded to Timorese companies with the aim of building up the local private sector and spreading revenues to key constituencies around the country.

One estimate cited to the author is that threequarters of these smaller projects (such as clean water pipes or public buildings) were of good or useable quality. However, the public perception seems to be that the work of these contractors is often poor. Activists complain of some companies escaping accountability for shoddy work because of political connections, or allege that the actual owners of companies are politicians. There may be other reasons: one interviewee noted that local companies are short of capital and skills and may not win enough projects to be able to learn by experience.

It has been common for some contracts, including some very large ones, to be awarded on a single-source basis under emergency rules, which is much more expensive to the state and lessens the requirements for due diligence.⁷⁰ The capacity of the state bureaucracy to carry out cost-benefit evaluations of large projects, and to oversee their implementation, appears weak. Public procurement in general, which accounts for four-fifths of public spending, has been a problem area: a 2012 audit of the Ministry of Infrastructure by the international firm Deloitte, which was commissioned by the Finance Ministry, found so many documents missing as to suggest "a near complete absence of due process in the procurement environment."71

The government is aware of criticism of its handling of contractors and infrastructure projects and is attempting to address it. There are efforts to centralise larger procurement tenders in a single agency and in 2011 a National Development Agency was set up to improve planning and coordination of infrastructure projects. Reform and reorganisation of the bureaucracy does not seem to have been given much priority until the late 2000s: ministries ran their activities in their own way (including the recruitment, training and promotion of staff) and a culture of short-termism and poor planning appears to have been widespread. Several interviewees referred to a "big brother" culture, meaning a tendency for those in power to give themselves a lot of discretionary authority, and those below not to challenge them. This has clear implications for the risk of corruption (see below).

As in Liberia, there is a tendency for public spending to pool in the capital rather than flowing to the regions. President Taur Matan Ruak said in a public speech in August 2012 that: "Our centralized public administration has large, heavy structures in the capital, often providing poor quality services, and is almost absent from the districts where most of the population lives and social and economic deprivation is greatest. The state is not serving the vast majority of the Timorese people as yet."⁷² His views are influential because like Prime Minister (and former president) Ray Kala "Xanana" Gusmao, he was one of a small group of independence leaders who remain central to Timorese politics.⁷³

The bureaucracy has relied heavily on foreign advisers who have had much less success than hoped in passing on their skills to Timorese officials, a point noted in a self-evaluation by the World Bank in 2011 which found its own work in Timor Leste to be "moderately unsatisfactory."⁷⁴ Aid donors now seem to be rowing back from ambitious and expensive schemes to rebuild public institutions towards more targeted programmes aligned with the government's own priorities.

The role of NGOs in Timor Leste

In Timor Leste non-governmental organisations are a significant feature of the political landscape, although it is difficult to pin down how extensive their influence is. It seems that NGOs can be quite effective in helping to shape the public debate that surrounds government policy on certain issues, but their ability to influence policy itself may be limited to moments when political conditions support it: for example, because of shifts in position within the country's parliament.

⁷⁰ For detailed analysis of official procurement data, see http://www.laohamutuk.org/econ/portal/ProcIndex.htm

⁷¹ See http://www.laohamutuk.org/econ/portal/DeloitteMinInfraJuly2012.pdf.

⁷² Address by President Taur Matan Ruak on the Inauguration of the Fifth Constitutional Government. 8th August 2012. English text taken from East Timor Law and Justice Bulletin (http://easttimorlegal.blogspot.com).

⁷³ Gusmao led the independence movement in the 1990s, mostly from jail in Indonesia. Taur Matan Ruak is a former guerrilla commander and ex-head of the Timorese armed forces.

⁷⁴ World Bank. Independent Evaluation Group. Timor Leste Country Program Evaluation, 2000-2010. Page i.

There were nearly five hundred registered NGOs in Timor Leste in mid-2012 although the sector is shrinking as aid donors reduce their funding. Many are said to be small and donor-driven, though some give an impression of being well-organised and influential in their fields of work. In a country with many remote communities, poor transport connections, low levels of education and a thin presence of the state, there is certainly a role for NGOs in collating and representing public concerns.

Civil society activism has its roots in resistance to the Indonesian occupation, an experience shared by some of the people who are now NGO activists or government officials. A visitor to Timor Leste encounters a sense of patriotism which is shared by activists and officials alike, although it is not easy for an outsider to weigh the influence of this shared patriotism against political differences, and a mutual wariness, which are also very evident.

Interviewees pointed to two NGOs which work on the extractive sector and are prominent in public debate in Dili: Lao Hamutuk and Luta Hamutuk. Lao Hamutuk bases its advocacy on detailed analysis of documents from numerous sources, including the Petroleum Fund and the EITI, which is published on its website. Most of this analysis is produced by a very small number of people, however. Luta Hamutuk has a network of more than 180 local volunteers around the country who act as points of communication with local communities. It also produces analytical work.

Lao Hamutuk's analysis is said to be influential with parliamentarians (although plenary votes tend to follow party lines) and is widely read at donor agencies, foreign embassies and, on the rare occasions that it covers Timor Leste, the Western media. Lao Hamutuk has been very critical of the government's record of rapid increases in public spending, which it sees as unsustainable. (This concern was shared privately by some other interviewees, including one government official.)

In March 2013 Petroleum Economist magazine published an article about Timor Leste which reflected some of Lao Hamutuk's views about public spending. The article triggered a government rebuttal which called the NGO's analysis "oversimplified and sensationalist." These events reveal a tetchiness which is sometimes evident in the government's relations with NGOs. The government seems particularly sensitive to suggestions that poverty has not declined in Timor Leste: its rebuttal referred to an unpublished World Bank report which is said to show that more than half of Timorese still live in poverty (although the government disputes the statistical basis for this finding).

Lao Hamutuk was previously a member of the Timorese EITI MSG but has stepped back since. Luta Hamutuk sits on the MSG and, as of 2012, its director was a member of the international EITI Board. Three other Timorese NGOs are represented on the MSG as part of an NGO coalition that works on transparency issues. All NGOs are expected to belong to an umbrella group, the NGO Forum of Timor Leste (FONGTIL) which presents collective messages to the government and donors, including messages about petroleum revenues. In this sense, the work of a small number of people may be amplified by becoming the message of the coalition.

The government is keen to be seen as open to views from civil society. Activists can point to laws or policies in various sectors which they feel their advocacy has influenced. This influence depends on the issue and the minister concerned, with some being more open than others. One senior activist, asked how many ministers were open to NGO views, suggested: "about 30 per cent." In the oil and gas sector, some activists and senior officials are on first-name terms and it is clear from talking to the latter that they study the critiques of the former, even if they do not necessarily agree with them.

Being heard by the government is not the same thing, however, as persuading it to change its

⁷⁵ Minister of State and of the Presidency of the Council of Ministers and Official Spokesperson for the Government of Timor-Leste. Correction of Inconsistencies in International Media Regarding Oil and Gas. 21st March 2013. See Petroleum Economist. Going for Broke. March 2013.

⁷⁶ It should be noted, however, that defamation can be a criminal offence in Timor Leste. See Amnesty International. East Timor: Journalists at risk of imprisonment for exposing corruption. 13th March 2013

position. For example, a major component of the government's economic strategy is a corridor of small industrial zones, built along the south coast of the country and linked to the oil industry. The use of land for the first of these zones requires consultation with local landowners. Initially the government tended to consult its own loyalists, who might not be the owners of the land that it intended to use for the project, but has widened out local consultations after criticism from NGOs. Officials referred to these consultations as evidence of their willingness to listen to NGOs on some issues. But the government has no intention of dropping the project, which is a major part of its national economic platform, despite quite widespread concerns about its cost-effectiveness.

A visit to a village about an hour's drive from Dili, and interviews with activists and foreign donors, suggested to the author that NGOs have a potentially important role to play in reaching local communities which may have few connections to national decision-makers. Legislators are chosen from national party lists while civil servants in the communities are at the bottom of the state hierarchy. An NGO can therefore provide communities with information and collate their concerns for advocacy at the national level. The extent to which NGOs actually play this role may be limited, however: only a small number have networks outside Dili and a survey of 1,040 people across the country, carried out by Timor Leste's Anti-Corruption Commission, found that 41 per cent of respondents did not know what an NGO was.77

Extractive transparency and Timor Leste's future

The EITI seems to have inspired successive governments in Timor Leste to create and maintain a transparent system of accounting for oil and gas revenues which is embedded in the Petroleum Fund. The principle of transparency is now being applied (albeit unevenly) to other areas of the public finances and forms an important part of Timor Leste's international image.

Although most of the population has low levels of education and little or no access to the internet, there are a few NGO activists with the skills to use this kind of information for analysis and they form part of a civil society movement which seems to have some influence with the government, although the extent of this influence is hard to determine. The government itself was generally portrayed by interviewees as committed to the country's development and it wishes to be seen as receptive to NGO views, although relations between the two can be irritable and mutually suspicious at times.

As in Liberia, the electoral system is competitive and the government is aware of public demand for higher living standards. It is interesting that the Ministry of Finance has published its own "fragility assessment", an effort to assess the country's progress which gives its political leaders good marks for political stability and social peace but raises concerns about, amongst other things, a lack of economic opportunities and access to the formal justice system for people outside Dili.⁷⁸

One interviewee, who is familiar with both the NGO and the state sector, said there is a common recognition of the problems that Timor Leste faces – for example, the pressing need for better public infrastructure. The disagreements are about how to meet this need. At the risk of pointing out the obvious, transparency of revenue inflows cannot resolve these debates or ensure that policies achieve the outcomes which the government intends for them. Nor can it prevent the growth of corruption as an unintended consequence of the government's economic strategy.

The government made a deliberate choice for several years after 2007 to spend more than the Estimated Sustainable Income (ESI) withdrawable from the Petroleum Fund, mostly on infrastructure projects, with the aim of stimulating the non-oil economy to the point where the use of gas revenues can be scaled back

⁷⁷ Democratic Republic of Timor Leste. Anti-Corruption Commission. Corruption Perception Survey 2011.

⁷⁸ Summary Report. Fragility Assessment in Timor Leste. 26th February 2013. Accessed on the Ministry of Finance website (www.mof.gov.tl).

and replaced with other sources of tax income. To preserve social peace (and to bolster the government's support base), funds have also been spread around to key constituencies such as war veterans and contractors. Although the government did not withdraw more than the ESI for the 2013 budget, this is only a pause to use up unspent funds from the previous year, before withdrawals start to increase again.⁷⁹

It is easy enough to understand the appeal of what one donor official described as a "big bang" economic strategy. Timor Leste experienced a baby boom after the Indonesian withdrawal and young people will be coming onto the job market over the next few years in large numbers. Unemployment is a problem of political stability, as well as of human wellbeing and the economy, because of the risk that jobless young men will drift into the kinds of urban gangs that took part in the violence of 2006.

Nonetheless, this strategy has risks for the Petroleum Fund if its assets are depleted faster than they can be replenished, and if other sources of jobs and income do not grow to fill the gap created. Petroleum revenues are much larger than any other source of income available to Timor Leste. But despite the billions of dollars in the Petroleum Fund, the revenues are not a lasting fortune on a per-capita basis and on present estimates, will tail off in less than two generations.⁸⁰ Exploration is continuing and some officials are optimistic about the prospect of finding new reserves, but new discoveries would have to be very large to further extend the life of the petroleum sector by more than a few years.

There are also concerns that rapidly rising public spending will foment corruption, with wellconnected people getting rich from overpriced public contracts. Some interviewees said public concerns were rising, based partly on

the observation that some people in or close to the government are enjoying increasingly affluent lifestyles, and partly on suspicion of the high cost and poor performance of public infrastructure. 81 A 2009 study by USAID, the U.S. development agency, found that "while hard evidence of corruption is not available, public perceptions of corruption are widespread and growing."82 The risks arise from low capacity, gaps in institutional oversight and public attitudes: the USAID survey found that some officials did not understand the concept of conflicts of interest, while the 2011 survey by the Anti-Corruption Commission found that more than half of the 1,040 people surveyed did not understand the concept of corruption.83

So it is fair to say that, in a poor country with weak public oversight which is attempting to spend large sums quite quickly, there is a risk that money will end up in the hands of elites to an extent that ends up seriously undermining the provision of public goods which the population desperately needs. Although it might not be realistic to expect no corruption at all, a very poor country like Timor Leste arguably cannot cope with a great deal of corruption without experiencing serious retarding effects on its development. The Anti-Corruption Commission in Timor Leste is more active than its Liberian equivalent and several senior officials are facing possible investigation.

It is quite right that people in Timor Leste should take pride in having constructed a robust system for collecting gas revenues and informing the public about what has been collected, even if only a small number of people outside the government are able to use the information at the moment. That said, officials, NGO activists and foreign donors all seem to recognise that it will not be remotely easy to convert hydrocarbon revenues into big and lasting improvements in living standards.

⁷⁹ See 2013 State Budget Book 1. Table 2.1.1.2. Fiscal Table with Memorandum Items.

⁸⁰ At the end of 2011 the Estimated Sustainable Income (ESI) from the Petroleum Fund was US\$734 million, or just over US\$600 per person in a population of around 1.2 million. The total assets of the fund at the end of 2011 amounted to US\$9.31 billion. So in the purely hypothetical event that the Fund were to be liquidated and divided up amongst the population, each person would get a one-off payment of roughly US\$7,800.

⁸¹ Transparency International's 2011 Corruption Perceptions Index found Timor that Leste was perceived to be as corrupt as Nigeria. For anyone who has looked at corruption in both countries, this seems counter-intuitive.

⁸² USAID. Corruption Assessment: Timor Leste. 15th September 2009. Page v.

⁸³ Democratic Republic of Timor Leste. Anti-Corruption Commission. Corruption Perception Survey 2011.

CHAPTER FOUR

The limitations and potential of the EITI

Less impact than hoped, so far

The EITI has ensured the public reporting of extractive revenue flows in more than thirty countries (even if the reports vary in quality). Yet despite its growing international footprint, the EITI seems to be quite a thin and fragile process on the ground. The reports do not seem to be widely used at the moment and reporting can become snarled if the government of a country loses interest in it.

Scanteam found that the EITI had only had limited effects so far on the problems of natural resource governance which called it into being. Two studies by civil society groups reach similar conclusions. A 2011 study on Central Africa found that "so far, EITI has not encouraged any significant reforms." A 2012 report on Peru found that it has "yet to make any discernible impact in promoting transparency, public debate and accountability" for extractive revenues. 85

The EITI has more potential than these findings suggest, once the new rules (discussed below) are adopted in May 2013, but this potential may be quite modest and specific. The EITI could be a useful catalyst for improvements in governance in some countries, but only if its Board and supporters are willing to be more open and exact about what its reporting is and is not contributing to wider reforms. In other countries, its work may have little effect in the short term.

The effect of transparency seems inherently hard to assess. A 2011 study by two analysts from the Revenue Watch Institute, a non-profit group active within the EITI, found that such assessments usually "come up with quite inconclusive results or express disappointment with transparency's apparent inability to deliver as promised". Reproblems of assessment arise from the fact that transparency is likely to act over long periods and works in an indirect and little-studied fashion, in combination with other factors which make it hard to attribute change to transparency alone.

There are cases where EITI reports do seem to have had significant effects. In the Democratic Republic of Congo, it was reported in April 2013 that the national EITI had identified US\$88 million in mining revenues – nearly ten per cent of all revenues received by the government in 2010 - which had not been accounted for by the tax authorities. EITI reporting may reinforce a global trend for governments to seek higher returns from natural resources. Ghana's government has said that the reports informed its decision to review royalty rates paid by mining companies. The Nigerian EITI (see box, page 34) says it helped state agencies to recover US\$442.6 million in unpaid oil revenues. EITI

The EITI is more noticed than before. A database search of English-language news and public statements reveals that between 2006 and 2008, it was mentioned in about 500 items a year. By 2012

⁸⁴ Misereor/Global Policy Forum Europe/Brot für die Welt. We Talk About Petrol. Interim Assessment of the Extractive Industries Transparency Initiative in the Central African Region. March 2011.

⁸⁵ Revenue Watch Institute/Paz y Esperanza/Tearfund. Dissemination and Impact of EITI National Reports in Peru. Summary Report. February 2013.

⁸⁶ Alexandra Gillies and Antoine Heuty. Does Transparency Work? The Challenges of Measurement and Effectiveness in Resource Rich Countries. Yale Journal of Internaitonal Affairs. Spring Summer 2011. Vol 6.

⁸⁷ Reuters. Watchdog says \$88 million missing in Congolese mining taxes. 15th April 2013. Total government receipts for 2010 were US\$875.9 million. See http://eiti.org/report/democratic-republic-congo/2010

⁸⁸ Government of Ghana. Ghana to play host to regional conference on EITI. 28th September 2012. Accessed at http://www.ghana.gov.gh.

⁸⁹ NEITI in 2012. Statement by Zainab Ahmed, NEITI's Executive Secretary. Accessed at www.neiti.org.ng.

this had reached 1,447, nearly a fifth of which relate to Nigeria. ⁹⁰ Visits to the EITI website reached 200,000 in the year to February 2013, up 30 per cent on the year. ⁹¹ Media attention does not equate to impact but raises the possibility that the EITI may have normative effects by helping to associate ideas of openness and accountability with the governance of natural resources.

Timor Leste's case suggests that prompt, rigorous reporting of revenue flows can dispel concerns about corruption in revenue collection and provide a factual base for debates about public spending. In Liberia, the government went beyond what the rules required and received the benefits of Compliance, then seems to have lost much of its interest. Liberia's case suggests that in countries with more complex extractive sectors and onshore operations in populated areas, the EITI needs to report on the allocation of extractive rights (as LEITI is doing) and the local impacts of extraction, as well as the flow of revenues to the central government, if it is to be relevant to the wider society.

In either case, what seems to matter most is the interest of the government. Reporting in Timor Leste is welded into a law with robust support across the political spectrum. LEITI moved fast when it had the government's active backing and might make headway if it had that backing again. But in a country where the government is not that interested, or not able to act on the implications of an EITI report because of weaknesses of planning, coordination and implementation amongst state institutions, then it cannot be assumed that the EITI will necessarily have significant effects.

Improvements in governance will usually depend on complex and unpredictable interactions between politics and institutional capacity in which the availability of information will be only one factor – sometimes a catalyst for change, at other times irrelevant. The EITI's

rules and decisions are not designed to reflect this reality, so Compliance seems to hang in a vacuum. Worse, the EITI can be presented as if it were sufficient in itself, even though it has never explicitly claimed to be such.

It would be irrational to write off the EITI, which has accumulated wide support and sits at the intersection of two big global phenomena: the trend towards "open data" and the competition amongst industrial powers to access the natural resources of poorer countries. But as the EITI itself has recognised, just pumping out more reports and hoping for the best is not a credible strategy. Its reporting seems to face three entwined problems. The first is that the contents of the reports are often too distant from the main concerns of their intended audiences. The second problem is that these audiences may be less influential than hoped. A third problem is that the incentives and political conditions which might lead a government to act on a report do not always exist.

Getting the right information ...

The reports are meant to answer one question: what does a country earn from oil, gas and mining? This question could not be reliably answered in many countries before 2002 and was not allowed to be asked in others, so the EITI has contributed to a step-change which opens up new possibilities for debate and action. If it were to shut up shop tomorrow, this would still be a significant achievement.

Although the full effects of Section 1504 and its equivalents will take some time to become clear, they will change the landscape around the EITI by generating revenue data which will be more timely, detailed and reliable than some EITI reports have been, and which covers corporate payments in countries the initiative has not reached. The EITI is now expanding into new areas: the new rules will provide more detail

⁹⁰ English-language news search for "extractive industries transparency initiative" for the years 2006 to 2012 on www.lexis.com, excluding duplicates with moderate similarity. Search within 20 12 results for "NEITI".

⁹¹ The international EITI Secretariat kindly provided the author with detailed figures on visits to www.eiti.org.

on the structure and economic contribution of the sector in each country, including state participation, lists of extractive licences and flows of revenues between state agencies. Some big items championed by civil society groups, notably disclosure of contracts and the ultimate owners of extractive companies, are only being "encouraged", at least for the moment.

These new items, combined with project-byproject reporting by companies, will provide a better account of where extractive revenues are generated within a country and how they are divided up amongst state institutions. Disclosure of contracts and the ultimate owners of companies, where reported, would also shed light on the terms of extraction and the identities of those who profit from it.92 Unfortunately the new rules include the loophole of "adapted implementation", which lets an MSG opt out of any aspect of the rules if the Board agrees there are "exceptional" circumstances. Such loopholes tend to widen with use, so this rule needs to be used very stringently by the Board (if at all) or it could open up big divergences between one country and another. And if sanctions for late reporting are not rigorously applied, then the current and widespread problem of reports being published years after the fact will continue.

... to the right audiences.

A 2007 study of transparency initiatives, most of them in the United States, found that these initiatives work best when users of information are able to react directly to it in ways that influence the decisions of the party doing the disclosing. An example would be reporting requirements on companies which list on securities markets. Investors who do not like what they read can sell their shares. If many investors do so, the company has to reconsider its business strategy.⁹³

However, the EITI does not offer such targeted transparency. The management of natural

resources by a state, encompassing everything from dealing with investors to spending the revenues, is a highly complex system. The EITI has aimed for greater transparency in one part of this system in the hope of creating a ripple effect, over time, which influences the workings of the whole. Since that ripple effect seems to have been fairly limited so far, some thought has to be given to who its intended audiences are and how far they are in a position to make use of the information.

EITI outreach sometimes seems to assume that each country has a single audience with the same information needs. In fact there are likely to be at least two sets of audiences. The first is for what might be called national-level questions: whether and when to extract, the nature of the regulatory and fiscal regime, the fairness of terms granted to companies, decisions about national spending priorities and the curbing of corruption and mismanagement at higher levels of government.

The members of this audience are likely to be people who work for the government or have a direct connection with it: officials, legislators, religious or community leaders, businesspeople, NGO activists, journalists and other formers of public opinion. It is possible, as Nick Shaxson found in Nigeria in 2009 (see box, page 34) that the main constituency for EITI reports will sometimes be the government itself, rather than civil society groups, journalists or other outsiders.

The second set of audiences is of citizens outside these elite circles, particularly those in areas affected by natural resource extraction who suffer its direct effects: pollution, loss of land, social disruptions and poor public services compared to the wealth being extracted. These citizens may well be interested in national-level debates but may have little access to them. In poor countries, their access to the internet and even to newspapers may be very limited. For this reason, the fact that an EITI report is

⁹² The Board has agreed that EITI reports should also break down company payments project by project, subject to the details of the U.S. and European rules. There is an intention that the disclosure of the ultimate beneficial ownership of extractive companies should become a requirement by 2016.

published on a website is not a useful indicator of its availability to the public.

If the EITI wants to become more relevant to this second set of audiences then its reports need to be combined with detailed data, broken down by area, on the spending of revenues. EITI outreach below the national level would need to strike a balance between those regions of a country which produce resources and those which do not, so as not to foment unnecessary feelings of disparity.

Outreach would need to take into account that there may be big geographical and political distances between provincial centres and rural communities, and that a badly-designed process might just reinforce the power of local elites. It would have to be recognised that financial reporting cannot address the initial decision to let extraction go ahead, nor confirm that communities have given their free, prior and informed consent to it. But if the EITI aspires to reach all citizens, rather than just small audiences in big cities, then it has to explore these kinds of connections.

It is possible that extractive transparency will find additional audiences, such as investment analysts and economists in developed countries, as long as the data is seen as reliable and up to date. Despite their protestations about Section 1504 of Dodd Frank, it seems reasonable to assume that international oil companies will end up being avid users of data published by their competitors.

Making political meanings out of information

The new EITI rules note that: "Regular disclosure of natural resource revenue streams and payments from extractives companies is of little practical use without public awareness and understanding of what the figures mean and public debate about how resource revenues can be put to better use."

Meanings have to be made from the reports. The EITI Secretariat, noting the paucity of analysis coming out of EITI countries, has started to produce its own in the last year or so.⁹⁵

It has been assumed that NGOs will do much of the work of analysing the reports, explaining their meaning and channelling the public's responses back to those in power. This assumption turns out to place a lot of expectation on a thin layer of people who will sometimes be able to live up to it, sometimes not. Activists can be harassed or coopted by governments, or just move on to more rewarding jobs elsewhere. The NGO sector often lacks specialised knowledge and information, depends on the oft-changing priorities of foreign funders and can be vulnerable to overstretch, in-fighting and rent-seeking by opportunists. In some countries, foreign aid seems to have inflated a bubble of civil society activism which can only last as long as donors are willing to sustain it.

To be clear, the EITI's assumptions about civil society activism are not wrong. In countries where the government is distant from its citizens, the press is weak or co-opted and legislatures are embedded in patronage politics, the non-profit advocacy group may be one of the few types of organisation that can speak up for universal values and make effective connections between political elites and the wider society. In Liberia and Timor Leste, and many other EITI countries in the author's experience, there are NGOs which produce good-quality analytical work, or carry out influential advocacy, based on official data. A national EITI process which can make more direct connections to issues of living standards - for example by matching EITI reports with budget reporting, or looking at the impacts of extraction on local communities – is likely to be useful to wider numbers of these activists.

Despite all the obstacles to effective intermediation, NGOs are starting to produce analyses based on EITI reports. ⁹⁶ In Nigeria, people with numerical

⁹⁴ Draft copy of the new EITI Rules seen by the author. April 2013.

⁹⁵ See for example: What EITI Reports Do and Don't Tell Us About Oil Deals (blog). 9th April 2013. Accessed at www.eiti.org

⁹⁶ See for example: Action Contre l'Impunité pour les Droits Humains (DRC). Transparence des Revenus Miniers en RDC. Cas de la Province du Katanga 2010-2011. Centro de Integridade P blica. Advances and stagnation of transparency in the extractive industry in Mozambique. May 2012. Caritas Zambia/Publish What You Pay Zambia. Analysis of the 2008 and 2009 Zambia EITI reconciliation reports. Initial reflections. February 2013.

skills and internet access have started to publish their own analyses of official financial data, including NEITI reports.⁹⁷ It would be premature to conclude that EITI reports will not be more widely analysed and used by civil society activists, particularly if they can be made relevant to more problems associated with natural resources.

The ability of NGOs to influence a government will vary widely between countries, being quite significant in some and barely existing in others. It may be stronger at certain moments, for instance when a government is feeling sensitive about its reputation or at moments of upheaval within the political class. In some countries, the status quo may be so entrenched that the only viable role for NGOs may be to keep ideas about public accountability alive until the political situation changes.

NGOs may seek to enhance their influence via alliances with officials, legislators or other civil society bodies like religious organisations, student groups or trade unions. Such alliances are likely to require a lot construction and maintenance and may be hard to keep in being. Institutions outside the executive may well be vulnerable to co-optation, or internal problems of autocracy and corruption.

This is particularly true of legislatures. The EITI has made some effort to reach out to legislators. But parliaments, by their nature, are dominated by the ruling party which controls the levers of reward and promotion for parliamentarians. In a system based on patronage, legislators often come into office by promising to dole out private or group benefits to their constituents, rather than working for public goods. This is not irrational: in a country with weak public institutions, it may be harder for politicians to ensure provision of public goods than to buy the votes of particular groups. But such a system is likely to be very inefficient and allows politicians to cream off money for personal gain.

So the legislature and institutions of civil society are not necessarily forces for governance reform, but another set of arenas in which contestation for reform has to take place. Many citizens, who are assumed to favour reforms, may in fact be complicit in the status quo by backing politicians in return for private or group benefits. This may be rational too: if citizens do not trust the state, it makes sense to give their votes to people who may bring back at least some benefits to the network or community which puts them in power. The result, however, may be a persistent vicious circle.

On a more positive note, public expectations of governments are not fixed, nor are governments' expectations of what the public requires. In Africa the phenomenon of "competitive clientelism" - whereby rival elites compete to bribe voters into supporting them at the ballot box, rather than competing on policy - is itself a reflection of the fact that out-and-out dictatorships have declined. In a sample of 40 African countries, 31 were autocracies in 1985 but only three in 2009, with the rest being classed as democracies or something in between. 99 Nonetheless, there is reason to be cautious about the influence that civil society groups can rapidly exert on patterns of governance.

The responsiveness of governments to the EITI

Governments seem to apply for EITI Candidacy for various reasons. Officials may be aware of the Resource Curse and buy into the idea that revenue transparency can help to address it. There may be a desire to please aid donors, or to attract more investment on better terms. A more cynical motive would be the intention to improve a poor reputation while avoiding wider reforms.

The EITI has had more appeal in some regions than others. As of early 2013, its global map showed a belt of countries running across Africa from Mauritania in the northwest to Madagascar

⁹⁷ An impressive use of simple graphics to explain EITI data can be found at www.yourbudgit.com/index.php/neiti.

⁹⁸ For an impassioned first-hand account of the rise and fall of a broad civil society coalition in Kenya (not an EITI country), see John Githongo. Whither civil society? The Star (Kenya). 6th April 2013.

⁹⁹ See Shantayanan Devarajan, Stuti Khemani and Michael Walton. Civil Society, Public Action and Accountability in Africa. World Bank Development Research Group. July 2011. Pages 12 and 13.

The Nigerian EITI and the limits of more information

The case of Nigeria suggests that widening the scope of EITI reports, in itself, will not overcome deep-rooted obstacles to governance reform which are essentially political. Africa's most populous country, often seen as a poster child for the Resource Curse, was committed to the EITI in 2003 by then-President Olusegun Obasanjo as part of reforms intended to secure international debt relief. The scope of the Nigerian EITI (NEITI) was much wider than in other countries, covering physical flows of oil and institutional processes within the oil sector, as well as the flow of revenues. As in Liberia, but unlike in many other EITI countries, NEITI is a statutory body. 100

A 2009 critique by the author Nicholas Shaxson concluded that NEITI's reporting was an achievement in itself, in a country with a convoluted oil sector and poor record-keeping, but had no wider effects on governance. This critique, one of the few really thorough case studies of the EITI on the ground, found that NEITI arose from the government's domestic agenda, not because of external pressure. Around 2006 Obasanjo's interest shifted to shoring up his position at home, rather than impressing foreign creditors and donors. The reform period ended and NEITI's momentum began to decline. 101 Shaxson argues that NEITI did not drive reform but may have provided tools and rhetorical cover to reformist officials who have been the main users of the reports, rather than civil society groups.

NEITI seems to have regained momentum in recent years and has not only published a detailed picture of the oil sector but also says that it has helped state agencies to recover US\$442.6 million in unpaid taxes out of a total of US\$2.6 billion which it says has been accrued since 1999. 102

In early 2012, the Nigerian government cut fuel subsidies for the population. The cuts triggered demonstrations and strikes which turned into mass protests against corruption. The government's response was the classic answer of politicians under pressure: it set up committees to examine the problem. One of them, chaired by former anti-corruption chief Nuhu Ribadu, produced a report late in 2012 which pointed to mispricing and fraud in the oil sector on a gigantic scale. 103

NEITI issued a response which noted the various problems identified in its reports and added: "... had the remedial issues identified by the NEITI audit reports been dealt with or had NEITI the necessary enabling enforcement powers, some of the issues necessitating and identified by these probes would have since been dealt with."104 This chain of events suggest it was thousands of people protesting on the streets, rather than the NEITI reports, which compelled the government to go through the motions of responding to public concern about corruption.

Even if NEITI has not been able to secure systemic reforms of governance, the agency is becoming quite a loud and combative voice in favour of reform, as evidenced by its public argument with the state oil company about the latter's debts to the government. 105 A database search finds 157 newspaper stories in 2012 which mentioned NEITI, compared to 112 stories in 2011 and 78 stories in 2010.106 In this sense, NEITI is meeting the EITI's goal of producing reports which contribute to public debate. The more troubling question is how far even a betterinformed public debate will contribute to reform of a system which seems to be organised around theft of public money on a huge scale.

¹⁰⁰ The author did not visit Nigeria to research this current report but made three trips there for Global Witness in 2007 and 2008 and talked extensively with officials, civil society activists, donors and businesspeople.

¹⁰¹ Nicholas Shaxson. Nigeria's Extractive Industries Transparency Initiative. Just a Glorious Audit? Chatham House. November 2009.
102 Nigerian Extractive Industries Transparency Initiative. Ten Years of NEITI. What Have We Learned? 2012.
103 Reuters. Nigeria president under pressure to act on oil graft report. 5th November 2012.
104 NEITI. Press Statement: RIBADU REPORT ON PETROLEUM REVENUE - OUR STAND. 8th November 2012.

¹⁰⁵ See for example: Punch (Nigeria). NEITI report: NNPC denies owing govt. 5th February 2013.

¹⁰⁶ Search on the term "NEITI" on www.nexis.com in December 2012.

in the southeast, but none in North Africa and only Zambia and Mozambique in the south. There was another cluster around Central Asia but in southeast Asia there were only Indonesia and Timor Leste and in Latin America only Peru and Guatemala. In Europe the only two were Norway and Albania.

The reasons why the EITI has taken off in some places more than others would be worth further study. The influence of aid donors and the discourse of "good governance" in Africa is certainly one factor. Patterns of industry investment might be another. The character of this map will slowly change, however, as new governments join the EITI for their own reasons. For example, the United States may set an example for other large and rich economies when it becomes an EITI Candidate.

It has been noted already that EITI Compliance does not necessarily lead to systemic reforms of governance (although such reforms may happen for other reasons). Once Compliance has been awarded, the only additional reputational benefit on offer is the Chair's Award, a small and ad-hoc signal that an MSG has done something exemplary. Unfortunately, the new EITI rules do not provide a new and compelling set of incentives for Compliant countries. There were suggestions for scoring and grading systems to encourage innovation, but these had not been taken up by the Board so far.

There are various reasons why EITI reporting, in itself, might not induce governments to undertake wider reforms. Some governments only do what the EITI rules require, or may publish this kind of data already. It may be that the reports do not strongly signal what reforms a governments should adopt, other than the need to collect and record revenues more efficiently (and in some cases, the need to collect more revenue full stop). If so, then the widening of the reports after May 2013 may make them more useful as pointers for reform.

An obvious reason why some governments have not built on EITI reporting is that senior officials are complicit in the problems which the EITI is supposed to address. Where corruption is endemic, the EITI is gambling that its implementation will compel governments to reform, whether or not they had intended to. This was once described to the author by a person from an extractive company as the "Trojan Horse" theory of change. The problem with this theory is that even if disclosure alone could change official behaviour, the EITI does not cover most parts of the state where corruption can occur.

At the risk of stating the obvious, the mere fact that a government publishes information does not mean that fundamental changes in its workings are taking place. There have been big scandals in the natural resource sectors of several countries since they became EITI Candidates. Since these scandals have had no impact on the production of EITI reports, these countries' EITI status is not affected.¹⁰⁷

Uncertainties about governance reform

The EITI is an intellectual product of a concern with the quality of governance and public institutions in poorer countries which arose in development circles in the West in the 1990s. Amongst aid donors there has been a "supplyled" approach to governance, which assumes that governments genuinely want to maximise public goods and need to be helped to do so, for example by support for reform of their public institutions. More recently, there has been an inclination towards a "demand-led" approach which assumes that governments are reluctant to carry out reforms on their own and tries to empower citizens to hold them to account. In practice, the EITI has elements of both approaches.

A recent critique of these supply and demand theories from Britain's Overseas Development Institute, which is based on extensive research in Africa, argues that both theories are flawed because they assume the existence of actors, inside or outside a government, with an uncomplicated motivation to provide public goods. In truth, both citizens and elites face coordination and collective action problems which make it hard for them to organise in pursuit of public goods.¹⁰⁸

For example, citizens may find it hard to organise because of geographical distance or communal differences. Reformers in the elite cannot go too far ahead of their peers without being undermined and may not be able to deliver their reforms anyway through weak or conflicted state institutions. This critique concludes: "Governance challenges in Africa are not fundamentally about one set of people getting another set of people to behave better. They are fundamentally about both sets of people finding ways to act collectively in their own best interests." ¹⁰⁹

There seems to be an inclination in Western development thinking away from big-picture

reforms of governance and towards approaches which are more experimental, focussed and attuned to local context. There is debate, for example, about how different kinds of information, used by different institutions, might have particular effects on governance. ¹¹⁰This uncertainty leads to a preference for the country-specific and the incremental which the EITI tries to reflect in its stress on "country ownership".

That said, the EITI is founded on an assertion that exploitation of natural resources should contribute to sustainable development and the reduction of poverty: this assertion is universal and essentially moral. The EITI is trying to respond to problems of governance which arise not just from the local context, but from the gigantic pressure of demand for energy and raw materials from the industrialised world. The extractive industries themselves, despite great internal diversity, are ultimately driven by risk-reward calculations and ways of working which come from global head offices in industrialised countries. So the EITI has local manifestations, but can never be truly local.

¹⁰⁸ David Booth. Development as a Collective Action Problem. Addressing the Real Challenges of African Governance. Synthesis Report of the Africa Power and Politics Programme. Overseas Development Institute. 2012.109 Ibid. Page viii

¹¹⁰ See, for example, Does Budget Transparency Lead to Stronger Human Development Outcomes and Commitments to Economic and Social Rights? Sakiko Fukuda-Parr, Patrick Guyer and Terra Lawson-Rember. International Budget Partnership Working Paper No 4. December 2011. Review of Impact and Effectiveness of Transparency and Accountability Initiatives: Synthesis Report. Rosemary McGee & John Gaventa with others. Institute of Development Studies. October 2010.

Conclusion: So what next?

In the face of entangled problems of governance, there is a case for jumping in from a new angle and trying to open up new possibilities for action. This is what the international push for extractive transparency (including the EITI) has done in the last decade. This effort is still a work in progress and the new U.S. and European laws will take some time to show their effects. But the EITI has been around long enough that some conclusions can be suggested about what might happen next.

Efforts to curb serious problems of governance in resource-dependent countries will be lengthy and not guaranteed to succeed because revenue inflows may reinforce such problems, even as reforms are proceeding. The economist Paul Collier notes that failure is not inevitable for poor countries with natural resources but: "the default option is that the history of plunder will repeat itself: this will be a missed opportunity with attendant downside risks of social decay."111 Transparency should help, but it will help more in some cases than others and is never enough by itself. It is not a substitute for actions which supporters of the EITI could take in other areas - for example, cracking down on corporate bribery and tax avoidance, and on the crossborder laundering of stolen funds by banks.

In addition to its direct effects – for example, in drawing attention to gaps in the public finances and making it harder for companies to get away with bribes or tax avoidance – extractive transparency may turn out to have slow-acting normative effects on the ways that citizens see governments and corporations, and on the ways that the latter see themselves. This possibility would be a useful area for more research as

time goes on and transparency's effects in EITI countries can be studied over much longer periods. But although the trend towards "open government" seems irreversible at the moment, it would be unwise to act as if better financial reporting will enable some kind of automatic and linear progression from worse to better governance in these countries.

At this point, the EITI should probably be seen as a potentially useful catalyst for governance reforms, not a transformative one. This is not meant to damn with faint praise – the author has spent several thousand hours working on the initiative and is keen for it to mean as much as it can. But because transparency can only achieve so much on its own, the EITI has to maximise its influence by enabling its reports to be used more widely as tools for locating and delineating governance problems, and by using its own institutional voice in support of reforms of these problems.

Seven tentative conclusions follow:

1. More and better information should increase the EITI's potential for influence...

Good information creates a potential for action but cannot be expected to influence problems that lie outside the scope of disclosure. For this reason, the EITI is right to widen its reports after May 2013. Their quality and timeliness should also be improved: in an era of copious real-time data, financial reports that are two years old will look dated, so Compliant countries should be required to publish data from the most recent accounting period. If the Board is not rigorous

¹¹¹ Paul Collier. Small Countries and Big Resources: Harnessing Natural Resources for Development in the g7+ Countries. Paper prepared for the g7+ high level ministerial retreat Nov 13-14, 2012. Port-au-Prince, Haiti. (The g7+ is a group of governments from very poor countries which includes Liberia and Timor Leste.)

about enforcing reporting deadlines, then the common problem of years-long gaps between reports will continue.

If the EITI wants to come closer to the concerns of most citizens, then it needs to venture into the spending of revenues or combine with other reporting processes which do so. In countries where extractive projects are onshore and enmeshed with communities, the EITI may be useful for verifying the local impacts of extraction, including local-level payments by companies, disbursements of funds from central government and non-financial benefits like infrastructure or jobs. Where the extractive sector is small or less relevant to the availability of public funds in the regions, it might make more sense to combine existing information from the EITI with other reporting mechanisms.

2. ... but transparency is not enough by itself

The public availability of information is not a sufficient condition for governance reform, any more than wiping the grime from the window of a factory, in order to look in from the outside, is the same thing as having a say in how the machinery is operated (or stopping the managers of the factory from leaving with boxloads of stolen products, if that is what they are doing).

The ability of civil society groups and other concerned citizens (including government officials) to make use of EITI reports will vary greatly from one country to another and may turn out to be insignificant in certain countries. The reports do need to be able to contribute to public debate but even the existence of a vigorous public debate, as in Nigeria, does not necessarily ensure reform.

In the extractive industries, transparency can only be a precursor to, not a substitute for, prolonged and sometimes painful contestation about how and when (or whether) natural resources should be exploited. Institutional supporters of extractive transparency, notably aid donors and grant-making organisations, will need to plan for the long term – that is, for five to ten years rather than two or three – and should consider concentrating their scarce resources on building up civil society in EITI countries over time. This might mean more support being directed to fewer recipients for longer periods (and fewer ad-hoc workshops and flown-in foreign consultants who never return).

It would be important to widen the pool of citizens in EITI countries with an understanding of natural resource governance by mainstreaming this topic into the curricula of universities and high schools, and to try and ensure that journalists, activists or legislators who receive specialised training on the subject have the incentives and the political space to use that training. The biggest problem may turn out to be one of scale – the need for external support for reform in some EITI countries is large, but the resources to provide it are limited, so there has to be consistency, patience and realism.

Because governance is dynamic unpredictable, there is no black-and-white divide between countries where systemic reforms are possible and those where they are not. But if a government has been in the EITI for some years and shows few signs of sustained effort at reform, then there is no point in labouring to keep it aboard. Nor is there much point in labouring to extend the EITI to highly repressive regimes or countries with small extractive sectors, which will further strain the resources of the initiative without being likely to have much effect in the countries concerned.

3. Transparency is a way of finding out where the problems are

Transparency will usually be a "diagnostic tool" which helps to delineate governance problems and create some public pressure for them to be addressed. ¹¹² In fact EITI reports already play this

role, but only within a narrow area. For example, reporting of revenue flows has revealed that record-keeping in some state agencies is poor and sometimes finds big discrepancies between what companies pay and what governments receive, though less often than had been expected. The wider the scope of the reports, the more problems they can diagnose. For example:

- The disclosure of contracts and production data might show that a government receives a low percentage of the value of the country's output of minerals, compared to other countries. This might reflect design faults in the contractual regime or in the assessment of companies' tax liabilities which are costing the country a lot of revenue.
- Reporting on the ultimate beneficial ownership of companies which bid for extractive licences might show that auctions are skewed towards the interests of people connected to the government (or in the government), rather than towards the best deal for the state.
- Reporting on the movement of revenues between state agencies may reveal that stateowned extractive companies are sitting on more revenue than they need for their own operations, thus depriving the government of the use of that money via the budget. (This is what the Nigerian EITI has reported the country's state oil company to be doing).
- Reporting on transfers of extractive revenues from central to subnational governments might show that the latter are not receiving their allotments on time or in full, which hampers their potential to provide public services and thus to improve living standards in their regions.

Although expanded EITI reporting might help to delineate such problems (and many others), their solutions will depend on other factors, notably the will and capacity of the government concerned.

4. The EITI's biggest problem is one of incentives

The only incentive for governments which the EITI itself controls is that of reputation. This incentive is currently tied to Compliance, which in itself is not a powerful catalyst for other reforms. So Compliance should be downgraded to "compliance with the minimum requirements" (with Candidacy becoming just "candidacy"). This would clear the way for new reputational incentives which might encourage governments to build on Compliance, as Liberia has done for example by giving LEITI the power to review the allocation of extractive contracts.

Such incentives would have to be based on common criteria which can be applied to diverse reforms in different countries. Innovations could be judged on the basis of criteria such as clarity of aim, the comprehensiveness of the practice in relation to the aim, the quality and inclusiveness of its implementation and, crucially, evidence of significant impact. If money could be attached to these incentives, in the form of donor support or private investment, then they would be more compelling.

The passing of extractive transparency laws in various countries suggests that part of the EITI's effect may turn out to be as a testbed for new ways of reporting on natural resource extraction and its implications for society, which are then mainstreamed into government and industry practice by other means. This would be a useful role and would fit with a diagnostic view of transparency.

5. The voice of the EITI Board is itself a source of incentives

To close more gap between what it achieves and the high aspiration of its first Principle, the EITI needs to make the most of the tools it has. Its tools are not only its reporting rules and deadlines, but its voice. The Board is a manifestation of the international community, entitled to judge dozens of countries within the parameters of the Principles. This gives it a voice which can be used to bolster the reputations of

governments or apply moral pressure where necessary.

This voice has been used in the past with some effect, not only to pronounce on countries' EITI status but to speak out in defence of threatened civil society activists. Since a desire for reputation is what draws many governments to the EITI, this voice should be used more widely in support of reforms whose necessity is made clear by the reports. The voice of the Board may not be decisive but it might prove significant, at least in some cases where reforms are hanging in the balance.

The new rules make it easier for the Board to use its voice in this way without being seen to be arbitrary. The independent bodies which put together EITI reports on behalf of MSGs are already entitled to make recommendations, and Validators will now be required to assess the impact of the EITI in each country against national objectives determined by its MSG in consultation with "key stakeholders". The Board itself may make recommendations for improving the impact of the EITI.

So if an EITI report or Validation reveals a particular problem of governance, then the Board can and should call on the government concerned to respond to this problem, or congratulate it for having already done so. The Board should encourage more use of reports in public debate and the creation of channels for the wider society to feed back responses to policymakers. The Board should be using its voice to support innovations, like the review of concession allocations in Liberia, and to lend moral support to the work of national EITI agencies like Nigeria's NEITI. This approach does not have to be confrontational: it can be expressed in a fashion which is temperate and based on evidence. But if there is strong evidence that a reform needs to be implemented, and the government persistently declines to do so, then that country should ultimately be delisted from the EITI.

To protect itself against charges that it brings no real benefits to the people of resource-dependent countries, the EITI should adopt the suggestion of a Board member and Congolese civil society activist that it regularly assess its own contribution towards living standards in EITI countries. At the moment, only a small part of Board meetings (typically an hour or so) is spent discussing the EITI's progress on the ground, except in contentious cases such as where a deadline has been missed. As the rules become more complex and the question of wider impact becomes more pressing, the Board ought to spend more time discussing individual countries. 114

6. "Country ownership" in the EITI needs to mean something different

The EITI stresses "country ownership" but in practice its rules and decisions are centralised on the Board which is a global entity, albeit one that includes governments and civil society groups from some implementing countries. There is not that much space for MSGs to make variations to a template which is set internationally. This is as it should be: if its work is not comparable between countries, then the EITI cannot claim to be a global standard. Actually there needs to be more standardisation and probably will be, not least because extractive companies covered by the U.S. and European regulations, as well by as the EITI, are keen not to have to prepare data in multiple formats.

"Country ownership" should reside in innovations which deepen implementation and increase its effects, rather than in variations in the basic reports which reduce their comparability. New incentives, as suggested above, might achieve this effect. There may end up being a fast stream of countries whose governments (like Timor Leste, or Liberia in 2009) would like to be recognised for going beyond the minimum. Then there might be another group where not much happens unless required by the rules. If

¹¹³ Jean Claude Katende. A tool for improving living conditions of poor populations. Published at eiti.org/blog on 25th January 2013.

¹¹⁴ Two simple steps would be for the regular Implementation Reports from the Secretariat to the Board to start relating the EITI to the wider context of governance in each country - for example, to other ongoing reforms and controversies - and to widen the mandate of the Board's Validation Committee to look at ongoing implementation and its wider effects.

so, then Board seats for governments should be reserved for the first group, to give them an extra incentive and ensure the EITI's pace is set by its most active participants.

It might be time to reconsider the makeup of the Board. In a multi-polar world, the practice of giving seats to Western governments which do not implement the EITI themselves might become hard to justify. It might be time to ask what obligations Board membership should place on extractive companies which hold (and use) what amounts to a blocking vote over the EITI's decisions but have few other responsibilities towards the initiative, other than to provide some funding. The civil society constituency can also expect to face more questions about how effectively it is using EITI reports.

7. The EITI's future is in the hands of its supporters

There will never be complete consensus amongst the EITI's various supporters about exactly what it should be trying to achieve. What an NGO from Latin America might want, to give a hypothetical example, is very different from what a state oil company from Asia might buy into. So the EITI cannot escape a degree of fuzziness what about the fulfilment of its mission ought to look like. But if the EITI is to show its value in any systematic way, then it needs to identify a cluster of outcomes which its supporters can agree to be desirable: for example, improvements in the capacity of governments to manage revenues, or evidence of reduced corruption, or of improved relations between mining companies and local communities. Validation can be used to assess progress towards such outcomes. The Board would need to use its voice to praise governments which meet them, or to nudge governments towards outcomes which are shown to be needed. It is a reputational risk to the EITI, for example, if it gives unqualified praise to a government which has improved the technical quality of its financial management without becoming any less corrupt.

There is no guarantee that such ideas will attract a consensus amongst the EITI's supporters: some would no doubt feel very uncomfortable about them. But if a more conservative view prevails, then the EITI may end up as an essentially technical process for collating and disclosing data, one of the many such around the world, and some of its supporters might start to peel away in search of new action. Given how far the EITI has come in the last decade, it would be a shame for it to be allowed to wither into irrelevance before its potential can be fully explored.

A final thought: are "resource-rich" countries really rich?

The most profound limitation of EITI reporting is arguably not that it fails to report on this or that item, but that it implies a "business-as-usual" model of natural resource extraction. The EITI is unable to take account, for example, for the mining industry's copious needs for land and water or the environmental costs of oil pollution, nor has it anything to say about the harm that poorer countries will suffer from climate change driven by the burning of fossil fuels elsewhere.

The disclosure of extractive revenue flows cannot touch directly on these looming problems. What it can aspire to do, for the first time in many cases, is to present a credible account of what a country earns financially from the exploitation of its oil, gas and minerals. This means that a truer picture of the costs and benefits to the societies of these countries can start to emerge.

EITI reporting suggests that the income earned by most EITI countries from oil, gas and minerals is not large enough on a per-capita basis to justify the heedless use by many people (including the author, in the past) of the tag "resource-rich". Based on the most recent reports at the end of 2011, only seven countries out of 29 reported revenues larger than US\$1,000 per person, per year. These were Norway, Timor Leste, Azerbaijan, Kazakhstan, Gabon, Iraq and the Republic of Congo. With the exception of Norway, all earned less than US\$2,500 per person per year.¹¹⁵

For the other 22 countries including Nigeria, Africa's most populous country, earnings per citizen from natural resources were less than US\$500 a year. The World Bank considers a lower middle-income country to be one where

Gross National Income per capita is above US\$1,026 and a high-income country to be one where GNI per capita is US\$12,476 or more. 116 So based on their extractive revenues alone, most EITI countries are poor and would still be considered poor, even if they were able to double these revenues. Nigeria would have to increase its oil and gas income more than thirty times to be considered rich on the basis of this income alone.

Of course this is a simplistic interpretation, since all these countries have other sources of national income and new oil or mineral deposits may significantly increase the value of their resource revenues in future. Yet the numbers make the point that in many countries, the money itself may never be enough to lift most citizens out of poverty. What matters is how resource extraction complements or undermines other kinds of economic activity. This point is probably well-understood in EITI circles. Still, it would be risky to assume that because the drivers of the Resource Curse are well-known, they can necessarily be contained by governance reforms (including the EITI) whose long-term effects are still uncertain.

It would be unrealistic to suggest that poor countries with few other assets should turn down offers for their natural resources, unless the rich world is prepared to compensate them. Yet the EITI's numbers may be suggesting that resource-dependent countries should choose to be slow and cautious about the pace at which they exploit their resources, being wary of any economic strategy which emphasises these resources to the point that it inadvertently drowns out other paths to development.

¹¹⁵ EITI. Extracting Data. An overview of EITI reports published 2005-2011. The number for Azerbaijan (US\$2,197.4) is an underestimate because the government receives significant revenue from in-kind sales of hydrocarbons which are not included in its EITI Report.

¹¹⁶ See http://data.worldbank.org/about/country-classifications

