

# Abuja: New horizons for the EITI

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During the second week of September, more than 140 representatives from civil society groups in 20 African countries met in Abuja (Nigeria). The 4th Publish What You Pay (PWYP) African Annual Meeting focused on an analysis of the progress made in monitoring the implementation of the Extractive Industries Transparency Initiative (or EITI) in respective African countries, and the challenges this controversial industry faces beyond the disclosure of company payments and government revenue (the main scope of the EITI).<sup>1</sup> This regional meeting of civil society organisations was followed by another event of great importance for the African region, the **First EITI Conference in West Africa**,<sup>2</sup> hosted by the Nigerian government and the EITI International Secretariat.

The African organisations which are members of the PWYP campaign have a variety of origins (human rights, environment protection, development and democracy promotion) and share a common goal: to reverse the so-called resource curse and succeed in converting natural resources (gas, oils, minerals and timber) into a source of human and economic development.

As on previous occasions, African civil society was joined at the Annual Regional Meeting by international organisations that support PWYP, whose work focuses on advocating the European Union, the United States (government, parliaments and companies) and international financial institutions, and also on supporting processes of citizen participation in Africa. Organisations such as Oxfam International, Revenue Watch Institute, Global Witness, Open Society Institute and Catholic Relief Services have been participating in regional PWYP meetings since 2004, acting as technical and financial facilitators. Some academic centres and think tanks that carry out research on the governance of extractive industries were also invited to the 2008 edition, such as Columbia Law School, the Cambridge University Centre for International Studies, the African Studies Group of the Universidad Autónoma de Madrid and FRIDE.

Both forums provided an ideal space for the parties involved in the initiative - companies, governments and civil society - to share and, in some cases, contrast positions and experiences related to the challenges posed by resource exploitation. Beyond the EITI validation process, the deadline for which is March 9th 2010, the most sensitive points discussed were the following:

1. **Transparency of payments is necessary but insufficient in itself, as if the extractive industry is to be reformed, transparency must be established throughout the whole chain governing the exploitation and transformation of natural resources in development:** in both forums, civil society argued that it would be appropriate to broaden the EITI both in terms of its goals (to ensure the transparency of contracts and conditions of licence concessions, payments at the local and regional level and monitoring of public spending) and its scope (making it

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<sup>1</sup> For more information on the EITI and PWYP, see Nils Sjärd-Schulz: "Transparency as a cure for the 'resource curse': global consensus and tasks pending for Spain", FRIDE Backgrounder, May 2007

<sup>2</sup> <http://www.eitransparency.org/node/424>

applicable to other sectors such as the timber trade). Once again, organisations from civil society insisted on the need for the EITI framework to be incorporated into national legislations (following the precedent of Nigeria), thereby eliminating its voluntary status which currently poses a considerable obstacle to the development of transparency in the extraction industry.<sup>3</sup>

2. **The need for rich countries to commit more decisively** to reforming the hydrocarbon and mineral industries, working with producer countries, international organisations and civil society in the fight against corruption, capital flights and fraud. Likewise, the home countries of multinationals must promote best practices so that their companies carry out the production process in a transparent way.<sup>4</sup> During the Conference, a greater commitment was asked of countries supporting the EITI to collaborate in the task of identifying and tracking “blood oil”.<sup>5</sup>

3. **The limited involvement and lack of commitment by regional organisations**, especially the African Union, the Economic Community of West African States (or ECOWAS) and the African Peer Review Mechanism (or APRM). These organisations ought to be leading a regional political economy agenda with proposals and juridical mechanisms designed to contribute actively to reversing the resource curse. In this regard, during the Conference, EITI stakeholders called for regional efforts to be strengthened by establishing both a resource monitoring centre (or a resource watch centre) and direct financial aid to bolster the technical training of the actors involved.

4. **Synergies between actors and institutions at the national, local and regional levels** (parliaments, ministries, regional governments and town councils, national auditors, companies and their affiliates, donor countries and consumers of oil/gas/minerals, the media and universities and research centres) should be promoted so these parties can contribute in their respective roles to the process of transforming natural resources into effective development in the countries concerned.

5. **Insufficient safeguards of basic rights and freedoms** in some EITI candidate countries such as Congo Brazzaville and Equatorial Guinea<sup>6</sup> hinder the development of the real EITI spirit of participation and dialogue inherent in the mechanism.

The majority of these actors expressed prudent optimism regarding the advances made against corruption in the extractive industry sector. They recognised the increasing importance this fight has taken on in the international context, as shown in the recent United Nations General Assembly Resolution of September 11th in support of transparency in extractive industries (and more specifically of the EITI<sup>7</sup>), the Energy Partnership between the European Commission and the African Union Commission (September 8th 2008<sup>8</sup>) and the commitment shown by wealthy nations to supporting the EITI as an increasing number become members (Spain signed up in December 2007). More specifically, there was a positive perception of civil society’s increased capacity to make its voice heard, driving forward strategic processes to reform the industry, primarily by trying to establish specific mandatory standards (in contrast to the current voluntary nature of the EITI) in the exploitation of extractive resources, some examples being:

<sup>3</sup> “Eye on the EITI”, *Revenue Watch Institute*, October 2006

<sup>4</sup> PWYP and EITI representatives debated some specific proposals with the Spanish Congress during a meeting facilitated by FRIDE on 28th May 2008. For more information, see Nils-Sjard Schulz: “Transparency in the Extractive Sector: Perspectives for Deepening Spain’s Commitment with the EITI”, FRIDE Activity Brief, June 2008

<sup>5</sup> Nigerian President Umaru Yar’Adua used this expression in the inaugural EITI conference speech, thus making a parallel with blood diamonds and oil in Nigeria as a source of conflict.

<sup>6</sup> See Edward Burke: “Spain and Equatorial Guinea: A Triumph of Energy Realism?”, FRIDE comment, July 2008; and Iñaki Gorozpe, “La situación en Guinea Ecuatorial tras la parodia de elecciones legislativas y municipales: Recomendaciones para España”, Memorando Opex N°90/ 2008

<sup>7</sup> <http://www.un.org/News/Press/docs/2008/ga10740.doc.htm>

<sup>8</sup> <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/555>

- **The ECOWAS mining code:** common standards for the exploitation of mineral resources in the West African region are established in this code; Oxfam and PWYP were actively involved in the process.

- **The Nigerian EITI Act:** this is a more developed and mandatory version of the EITI and includes sanction measures in the event of non-compliance with payment disclosure.

- **The US Extractive Industries Transparency Disclosure Act:** a legislative process led by the American PWYP Coalition, pending approval by US congress, which calls for all companies listed on the US stock market to be obliged to publish a country-by-country breakdown of all payments made to governments.<sup>9</sup>

The PWYP campaign has thus shown that it has developed a considerable capacity to take part in high level political decision-making, based on informed and solid arguments that favour the improved governance of this complex sector, which is very clearly indebted to human development in Africa.

Two dimensions of the progress made by African civil society groups that are members of the African campaign are worth highlighting in particular:

- **Technical training and the acquirement of know-how in complex, technical matters which span the whole chain of the extractive industry sector, from its basic workings (including the right to public disclosure of information on bidding processes) to the follow up of the public management of revenues so as to benefit poverty reduction policies:** oil/mining contracts and confidentiality clauses, the procurement of licences for exploration and exploitation, the extractive industries' value chain, flows of revenue and payments between companies and governments, fiscal regimes for extracting companies, international accountant standards, African governments' allocation of revenues from this industry in the framework of poverty reduction policies, budget tracking, etc. The PWYP campaign has established a series of strategic partnerships with specialised training centres for each phase of the extractive industry chain (the International Budget Partnership, the Institut Français du Pétrole, the "Oil for Development" program of the Norwegian aid agency NORAD, etc.). The campaign itself is divided into task forces, each of which leads a thematic area. These groups receive technical training in each of the modules and then replicate the training to new groups within civil society at the national and sub-national levels, until grassroots organisations in production areas are reached, thus creating a ripple effect which maximises the impact of the training. Bolstering the know-how of civil society organisations has become an utmost priority for the PWYP, which considers it especially important to link training goals to political lobbying goals at the national level. Besides, the campaign is far from lacking in creativity when it comes to devising and carrying out training, offering on-line programmes to ensure that organisations within civil society have greater access to it.

- **The increased capacity of groups in civil society to organise themselves and work in a strategic way at a pan-African level, acting as key interlocutors with expertise in the processes of implementation of the EITI and beyond it.** PWYP Africa is determined to see the reform of the extractive industry in the continent, and in order to succeed in this aim,

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<sup>9</sup> Likewise, the Parliamentary recommendation passed unanimously by the Spanish Congress on 5th December 2007 proposes an amendment to the "Ley de la Comisión Nacional de Mercados y Valores" (Law on the National Commission of Markets and Values) in order to oblige Spanish companies to publish a country-by-country disclosure of payments made to governments. The PWYP campaign is lobbying intensively to make this mandatory for all European and North American multinationals.

important efforts are being made to influence processes and lobby regional actors who must lead the way in the fight against corruption and in the governance of extractive industries. Some of the common objectives shared by this large international coalition, which it is to focus its work on, are the following:

- **The role of African Development Bank:** Civil society groups are advocating that the AfDB should incorporate revenue transparency provisions into the framework of its partnerships with companies that request finance, insurance or guarantees from the Bank.
- **The role of the African Union and the African Peer Review Mechanism (APRM):** Civil society organisations are pushing for both bodies to include transparency in the exploitation of natural resources as a criterion of good governance and to assume specific commitments to promote transparency (financial and technical).
- **Debt relief within the framework of the global initiative in favour of highly indebted poor countries (or HIPC):** Lobbying is underway to see that EITI principles and standards are taken into consideration so that the debt of countries rich in extractive resources can be cancelled.

In addition, the three days of intense debate and interventions in Abuja, and at the EITI African Conference held after the PWYP gathering, highlighted some of the main challenges beyond the EITI which, according to the PWYP, must be addressed if the resource curse in Africa is to be reversed in the medium term. Throughout the week, representatives of the OSC and African governments discussed the need for commitments beyond the EITI, because while the EITI is a necessary and promising mechanism, in its current form it cannot guarantee by itself that the extractive industry sector will be reformed, as it does not consider the need for transparency in areas beyond the payment of taxes and royalties to central governments, such as:

- **Transparency in industry-related social and environmental costs, contract disclosure, public bidding processes for the concession of exploitation licences, and transparency in the public expenditure of extractive industry revenues (Publish What You Spend).** Global Witness reminded once again that wealthy nations, as the main consumers of energy resources and minerals, must also acknowledge their role in the complex chain of corruption and embezzlement which flows from the industry in Africa to financial markets and international banking. A joint effort is required to fight this curse, and such a commitment goes beyond the EITI, starting with the way in which rich countries support the internationalisation of multinational companies through their Export Credit Agencies.

- **Implications of the EITI at the subnational level:** EITI processes are focused on central governments and the demand for transparency is applied only at that level. However, a large part of the payments that companies make throughout the value chain take place at subnational levels (regional and local). It is here that the highest level of resistance and conflict is often to be found, owing to the industry's negative impact in environmental and socio-economic terms. Consequently, it is at the local level that the greatest demands and legitimate expectations arise, with local populations seeking verification that "their" abundant wealth is being transformed into local development. These populations are the core constituency of civil society groups and the extraction industry is indebted first and foremost to them. To address this issue, the EITI must integrate transparency in payments made at the non-national level and so allow the populations most affected by the industry to be able to ascertain how much is being invested in their community / region in exchange for the extraction of resources and the corresponding transformation of local eco-systems.

- **Challenges:** Angola, Congo Brazzaville and Equatorial Guinea are some examples of countries where progress in terms of transparency and the governance of extractive industries is thin on the ground or simply non-existent. Despite the advent of the EITI in Congo Brazzaville and Equatorial Guinea, repression and flagrant shortcomings in terms of human rights protection are a serious obstacle that reduces citizen and civil society participation. There is no doubt that the current performance of these countries in the EITI process calls its credibility into question and reinforces civil society's petition to apply sanction measures to countries that, far from committing themselves to fighting corruption, use the voluntary regime of the EITI as a form of self-promotion and a dimension of their political image. Governments of EITI candidate countries must urgently commit to protecting the civil and political rights of activists and citizens. In addition, if the coherence and legitimacy of the EITI mechanism as a whole is to be preserved and safeguarded, the international community and the EITI Secretariat must work with these governments to come up with incentives that facilitate a reinforced agenda for EITI candidate countries to protect basic rights and liberties.

It is evident that the EITI by itself, as an isolated mechanism, does not have the capacity to generate the profound changes which need to be made to the complex chain of corruption which has characterised mineral and hydrocarbon exploitation in Africa. However, the great potential of the EITI is undeniable, as it facilitates an inclusive dialogue process between the parties most strategically affected by the exploitation of resources. It is this potential that particularly stood out during the second week of September in Abuja - a potential that is ever more present and is likely to guide the possible evolution of the EITI in its bid to make a real impact. At the national level, the EITI can serve as a catalyst, for example, by opening new spaces and promoting transparency. It can also exert an indirect influence, for example, by creating incentives for the improvement of the administration of public finances. At the same time, the EITI transparency regime can potentially interact with the development agenda (which is increasingly committed to the improvement of state accountability and the strengthening of civil society groups). A clear example can be found in the international community's efforts to strengthen monitoring groups on the budgetary cycle or to improve public financial management within the framework of the Paris Declaration on Aid Efficiency (March 2005).

In the face of all these challenges, the countdown for candidate countries to "pass" the EITI exam is about to begin: 9th March 2010 is the deadline by which they must pass the EITI validation phase. The first EITI conference held in West Africa, which was welcomed by the highest levels of the Nigerian government and a significant representation of international partners,<sup>10</sup> emphasises the special relevance the African region has for the EITI, where the potential for transparency to reverse the resource curse is probably greater than in other regions. However, grandiose political declarations notwithstanding, only a few African candidate countries appear to have taken the race against the clock seriously and assumed sufficient commitments, albeit political ones, for their countries to become transparent - in the limited sense of the EITI. Against the backdrop of a ticking clock which allows for no extra time, Guinea Equatorial or Congo Brazzaville appear to be complex cases which require new creative strategies and incentives to make progress in a realistic way.

During the next 18 months, in order to face up to some fundamental decisions, the EITI will most probably have to reflect on not only its more formal progress, but also the results being produced in participating countries. One priority of these considerations would seem to be to ensure that the formal support given by rich countries to the EITI is translated into concrete

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<sup>10</sup>The event was attended by the Nigerian President, Umaru Yar'Adua, the Nigerian Vice-President, Goodluck Jonathan, the EU Energy Commissioner Andris Piebalgs, the UK Africa Minister, Lord Malloch Brown, the country Director of the World Bank, Onno Ruhl, and the ambassadors of the Netherlands and Norway, Arie Van der Wiel and Tore Nedrebo respectively, among other leading political figures.

policies and practices which demonstrate that they have assumed a serious and coherent political commitment. Without this, many countries in the south will continue to perceive the EITI as a western international policy initiative intimately linked to its interest in accessing natural resources. The political support that the EITI enjoys - thanks to the fact that more than 20 African governments endorse the mechanism - runs the risk of ending up looking like simply another political conditionality imposed by international financial institutions.

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