

# **What needs to change for the EITI remains relevant?**

## **Submission by PWYP Africa**

*A discussion paper adopted by Africa Steering Committee during its first meeting in Accra on the 4<sup>th</sup> and 5<sup>th</sup> of October 2011*

### **I. Introduction**

2012 marks ten years since the birth of the Extractive Industries Transparency Initiative (EITI). This calls for reflection on how far the initiative has succeeded in realising its goals.

It is gratifying to note that this reflection has already begun, as the EITI Secretariat has commissioned an evaluation of the initiative. Furthermore, a recent review led to clarified EITI rules, strengthened by their transition from indicators to requirements. It is the hope of Publish What You Pay Africa that this evaluation, which will continue at the EITI board meeting in Jakarta, will result in fundamental changes to the initiative's criteria. Such changes will enhance the credibility of EITI and eliminate free-rider tendencies among some candidate states.

As part of this evaluation the EITI Secretariat invited submissions on the EITI's future strategic and how – or whether – the initiative was meeting its mandate. The EITI Board Paper 18-X-X, prepared by the Strategy Working Group (SWG), examines these submissions and will be discussed at the 18<sup>th</sup> EITI International Board Meeting in Jakarta. The document notes that several respondents emphasised the need to improve the quality of EITI Reports and increase the extent to which these can be used to engage with a wide range of audiences. The paper highlights another category of submissions, in which respondents, “offered proposals that would fundamentally alter the objectives and scope of the EITI.”

These latter submissions, which include those from Publish What You Pay members and the Revenue Watch Institute, argue that the EITI should have a firmer legal basis on the national level and widen its remit to include disaggregated EITI reporting, contract transparency and coverage of licensing, in-kind payments, and transit revenues.

These two categories of submissions were united in their opinion that the EITI cannot, and should not, continue to be implemented in exactly the same way as ten years ago. The question then is how far we want to (and are able to) go with reforms, bearing in mind the need to maintain the initiative's relevance without decreasing its global appeal.

## II. PWYP-Africa's perspective on the future of EITI

The EITI was a direct response to growing activism by Publish What You Pay and other civil society groups for transparency and accountability in natural resource-related payments and receipts. This movement was sparked off by the Global Witness report *The Crude Awakening*, a startling revelation of the greed and corruption in the Angolan oil and gas industry which fuelled the civil war. It was therefore natural for PWYP Africa to examine the continued relevance of EITI, its global appeal, and how the initiative could be further improved in order to consolidate the successes realised since its birth.

At the 2011 PWYP Africa Regional meeting delegates debated the necessary key changes to the criteria of EITI for the initiative to remain relevant and become increasingly responsive to national aspirations. The imperative for creating the EITI stemmed from the urgent need to combat resource curse and ensure that resource exploitation contributes to economic growth and poverty reduction. These twin objectives are the benchmark to which the EITI's performance must be evaluated. They could be measured through the economic impact of the initiative or through policy changes which have come about as a result of the initiative.

The World Bank notes that:

The EITI... does not cover all the challenges that the extractive industries bring to resource- rich countries. Public reporting of extractive industries revenue, though extremely valuable, represents only one step in improving sector governance and maximizing development outcomes throughout the extractive industries value chain. How these resources are actually developed and how the revenue generated is ultimately spent will determine a country's success in achieving long-term growth and sustainable development.

The evaluation commissioned by the EITI board also makes a similar point:

The EITI Criteria as the basis for verifying compliance fall short of the EITI Principles. They make the current EITI implementation too limited for reaching the objective expressed in the *Articles of Association* and agreed in the EITI principles. Gradually narrowing the gap between the Principles and the operational Criteria / "Global Standard" is probably fundamental for continued EITI relevance and future impact (page 4).

Although countries are encouraged to go beyond core EITI standard and focus their implementation of the EITI on aspects important to them, it will be important for standardization purposes to identify common trends or best practices and build these into the criteria.

### **III. The call from Kinshasa**

The 2011 PWYP Africa Regional Meeting set up three working groups which explored ways in which the EITI could improve and become more responsive to the needs and aspirations of the citizens in individual countries

The themes were the following:

#### **1. Transparency and accountability.**

Transparency alone is not enough to reverse the resource curse. There is a crucial need to go beyond transparency and ensure that EITI disclosures lead to improvements in the financial management of extractive revenues by:

- a) Encouraging citizen engagement to promote the accountability of governments in their use of revenues derived from extractive industries;
- b) Ensuring budget monitoring and the tracking of public expenditures;
- c) Having the African states, regional and sub-regional bodies adopt minimum standards for a responsible, sustainable and transparent management of extractive industries.

#### **2. Entrenching financial transparency in the extractive industries**

The delegates recognized the need to encourage complimentary financial sector reforms and legislations such as Dodd-Frank 1504 in the United States. This legislation obliges all extractive companies listed in the US to report their payments in every country in which they operate. Such data will be useful to citizens of non EITI implementing countries such as Angola, Equatorial Guinea, South Africa, Uganda, etc.

In order to track whether countries are receiving what they are owed by companies and whether these amounts are fair, the following information is needed from companies for every country in which they operate:

- a) **Profits, production volumes and sales**, so that e.g. royalties payments can be understood.
- b) **Intra-group trade between subsidiaries and the parent company**, to expose usage of tax havens.
- c) **Assets and staffing information**, to throw light on the use of ‘mailbox’ companies in tax havens.

The EITI should include these payments in the reporting requirements of the initiative.

### **3. Protection for Civil Society activists**

In order to encourage citizens' engagement around EITI reports, the group wishes that the EITI International Board consider adopting a protection mechanism for activists who may come under persecution from their governments.

### **IV. Contract transparency**

PWYP Africa holds that including contract transparency in the remit of the EITI provides one of the best chances for the initiative to become both more relevant and meaningful in improving the development outcomes of natural resource exploitation.

It is just as important for citizens to know the details of the contract terms companies sign with host countries as it is to know how much they pay. After all, the amounts paid are usually a function of the fiscal terms contained in these contracts.

An oft-cited argument against introducing contract disclosure to the EITI framework has been that this would undermine corporate interests. However contract disclosure does not hurt the commercial interests of oil and mining companies. Most of the commercially sensitive information such as patented technology, trade secrets and other proprietary information are rarely included in primary contracts or concession agreements.

In this regard, PWYP Africa agrees with the World Bank submission that the EITI Criteria be expanded so that EITI reports go beyond reconciling payments and revenues and assess that the payments and revenues are what they should be. This will not be possible if we do not know what the fiscal terms in the contracts are and therefore what the companies are required to pay.

### **V. Test of commitment**

The EITI International Board has voiced its belief that there will be resistance from some of the initiative's stakeholders to making any fundamental changes to the criteria. Yet these changes are necessary if the EITI is to fulfil its goal of making natural resources work for the poor. Furthermore, most of the proposals from the Kinshasa meeting can be met without too radical a change to EITI. The topic of contract disclosure is expected to meet with some resistance but it is absolutely critical that it be included if the EITI is to honour the commitment it made ten years ago.

## **VI. Conclusion**

In short, PWYP Africa believes that in order to remain relevant and fulfil its stated objective, the EITI should:

- Encourage member countries to give EITI a firm legal basis on the national level.
- Make disaggregated EITI reporting obligatory.
- Broaden the scope of its report to cover:
  - Profits, production volumes and sales.
  - Intra-group trade between subsidiaries and the parent company.
  - Assets and staffing information.
  - Licensing.
  - In-kind payments.
  - Transit revenues.
- Broaden its remit to include contract transparency.
- Consider adopting a protection mechanism for activists who may be persecuted by their governments.
- Identify common trends or best practices in the various implementations of EITI across the member countries and build these into initiative's criteria and principles.