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# PERSPECTIVES

Political analysis and commentary from Africa



## THE CHALLENGES OF CHANGE

IMPROVING RESOURCE  
GOVERNANCE IN AFRICA

 HEINRICH  
BÖLL  
STIFTUNG

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# Editorial

When diamonds were discovered in the remote Chiadzwa area of the Marange district, Zimbabwe in 2006, many in the local community considered this as a blessing that would lessen their hardships in tough economic times. Indeed, if prudently managed the Chiadzwa diamonds could significantly boost state revenue. However, instead of funding the country's reconstruction after years of economic collapse, the diamond rush made the people of Chiadzwa one of the latest victims of the so called "resource curse". The discovery plunged the area into chaos and brought with it armed security forces, violence, human rights abuses, increased social instability and environmental degradation.

Against the background of similar experiences in resource-rich countries across Africa, various multi-stakeholder initiatives were established in the early 2000s. Although different in their approach and scope, all initiatives aimed at contributing to a transparent, sustainable, fair, and just governance of natural resources. Almost one decade later, the situation in Zimbabwe gives rise to the question of how successful these initiatives have been in practice and what the main challenges in implementing them are. This issue of *Perspectives* sheds light on these and related questions in the context of three different case studies: Zimbabwe and the Kimberly Process Certification Scheme (KPCS), the Nigerian Extractive Industries Initiative (NEITI), and the Publish What You Pay (PWYP) Coalition in Tanzania.

Rough diamonds have been an important source of funding in violent conflicts across Africa. Subsequently the KPCS was set up in 2003 as an initiative to prevent the trade in "conflict diamonds". Despite some progress, the scheme has repeatedly come under criticism. Most recently, its handling of the situation in Zimbabwe has fuelled doubts about the scheme's credibility and effectiveness in practice. Amidst allegations of human rights abuses and reports of diamond smuggling the KPCS has failed to take decisive action. Claude Kabemba sheds light on the reasons for the KPCS' inability to act and concludes that a failure in Zimbabwe

will send a negative signal about the relevance of the KPCS and capacity for self-regulation of the diamond industry as a whole.

In spite of several hundred billion dollars in revenues from the oil sector over the past decades, the existing system of governance and resource management in Nigeria has failed to ensure basic living standards for broader society. In 2003, the establishment of NEITI became a prominent feature in an economic reform process that was to ensure a more transparent and effective governance of revenues from the country's extractive industries sector and would serve as a basis for successful economic growth and poverty reduction. In his analysis, Uwafiokun Idemudia has a critical look at the assumptions that underpin the NEITI initiative and the extent to which the rhetoric of transparency has delivered on its promise on the ground.

Over the last decade, Tanzania has been experiencing a rapid expansion of exploration and mining activities for minerals, gas and oil alike. The mineral export boom provides for developmental opportunities in a hitherto mainly agricultural economy, but also has begun to re-shape Tanzania's politics and society – not always positively. In the meantime, international and local initiatives directed at improving the governance of extractive resources in Tanzania are taking off. Bubelwa Kaizer, Coordinator of PWYP Tanzania, provides some insights into the genesis of the campaign and its challenges ahead.

The articles in this issue of *Perspectives* demonstrate that while present local and international efforts to address the resource governance issues have yielded some benefits, they continue to face serious challenges. We therefore hope that this issue will provide a platform for further deliberations on solutions to overcome the problems associated with natural resource extraction in Africa.

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# The Kimberley Process and the Chiadzwa Diamonds in Zimbabwe:

## Challenges and effectiveness

### Introduction

The diamond boom in Chiadzwa, Marange district that occurred in 2006 coincided with the total collapse of state institutions in Zimbabwe.<sup>1</sup> This discovery is said to be the largest in the last 20 years. The Chiadzwa diamond rush should be understood in the broader context of the governance problems afflicting Zimbabwe. People from many countries and all walks of life descended on the diamond fields to informally mine and trade in the alluvial diamonds. Initially, politicians in the area encouraged the villagers to dig for the diamonds. However, the government

It seems the KP is failing to adapt and become proactive in dealing with illegal diamonds coming out of countries not at war (such as Zimbabwe). The KP was conceptualised as a reactive and not as a preventive mechanism.

later deployed security forces in Chiadzwa to chase away informal miners. The security forces themselves became involved in diamond panning and trade, forming syndicates to pillage and smuggle diamonds. The state was unable to control and protect the resources. Chiadzwa quickly became a free-for-all and a paradise for illegal diamond smuggling on a scale never seen before in a country not at war. The security involvement militarised and politicised both the extraction and the trade. Reports of serious violations of human rights in Chiadzwa attracted the attention of the Kimberley Process (KP).

The KP has played a significant role in reducing the trade in illegal diamonds, especially from war torn countries but it has not stopped it completely. It is estimated that at the time of the launch of the KP, 4% of all traded diamonds came from conflict ravaged countries such as Angola, DRC and Sierra Leone. Since the KP was introduced in 2003, the level of illicit diamonds entering the international market is said to have been reduced to only 1%.<sup>4</sup>

### Kimberley Process intervention in Zimbabwe

With the end of wars in Angola, Sierra Leone and the DRC, the KP seems to have lost its momentum, and the trade in illegal diamonds is increasing again. The KP was put in place to deal with conflict diamonds, and it was designed to deal with diamonds originating in war situations. It seems the KP is failing to adapt and become proactive in dealing with illegal diamonds coming out of countries not at war (such as Zimbabwe). The KP was conceptualised as a reactive and not as a preventive mechanism. The situation in Zimbabwe caught the KP by surprise, and it only intervened late when the situation was already out of hand. The KP sent a monitoring team to Zimbabwe on a fact-finding mission. An interim report recommended a six month suspension of importing and exporting of Zimbabwean rough diamonds.<sup>5</sup> In general, despite assertions in the KP annual reports and responses to review visits in 2007 and 2008 that internal controls and security measures were to be strengthened, the production and export processes remain largely unchanged in Zimbabwe. The KP plenary meeting in 2009 in Swakopmund, Namibia, on November 5 which focused on the situation in Zimbabwe refused to vote on the case. This was not surprising considering the fact that the KP chair was Namibia and the plenary was being chaired by Bernhard Esau, Namibia's deputy Minister of Mines.<sup>6</sup>



Claude Kabemba

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Instead the KP gave the Zimbabwean government until June 2010 to regularise operations in line with the KP requirements. A joint plan was adopted to resolve the issues of the Chiadzwa diamonds. In February 2010, the South African businessman Abby Chikane was appointed as a KP monitor. His final report to the KP found that Zimbabwe has met minimum KP standards and should be allowed to sell its diamonds which

The difficulty in the Zimbabwean case is that the KP is faced with a government that insists that it is in control of the diamond trade, despite the fact that information on the revenue being generated from the diamonds is not available and illegal trading continues.

were extracted from November 2009 by the two companies Candile and Mbada. However, with regard to goods produced before November 2009 the KP report argues that there is a need to wait for the auditor's report. At the KP inter-sessional meeting from June 21-23 2010 in Israel, Chikane's report divided the members into two. The first group constituted by Western countries (Canada, USA and Australia) and civil society rejected the conclusion of the report. Most African countries, especially SADC countries together with China and India endorsed the report and requested the KP to abide by the KP monitor's recommendations. Because decisions in the KP are taken by consensus, Zimbabwean Minister of Mines Obert Mpofu returned home empty handed. The KP refused to allow Zimbabwe to sell its diamonds. However, the Zimbabwean government has since decided, following a ministerial meeting, to go ahead with the selling of the diamonds. It is estimated that Zimbabwe has a stockpile of approximately 4 million carats of diamonds extracted between November 2009 and June 2010.

The difficulty in the Zimbabwean case is that the KP is faced with a government that insists that it is

in control of the diamond trade, despite the fact that information on the revenue being generated from the diamonds is not available and illegal trading continues. The question is how the KP should deal with Zimbabwe?

### The situation in Chiadzwa

The ownership of some of the diamond mining claims in Chiadzwa is contested between the government of Zimbabwe and African Consolidated Resources (ACR). The United Kingdom based mineral exploration company obtained the right to mine diamonds in 2006. However, the government of Zimbabwe cancelled ACR's diamond mining licence, arguing that it has lacked capacity to extract, and has accused ACR of pegging. ACR has appealed the sentence. In the meantime the government has offered mining concessions to two private companies (Mbada and Canadile) even though the case has not yet been finalised in the courts. The issuing of mining concessions to the two companies whose ownership structures are not very clear has raised questions as to whether correct and transparent tender procedures were followed, and whether the companies have the capacity and experience to mine diamonds. It has been revealed that one of the foreign investors involved in the two companies, Grandwell Holdings, does not have previous experience in diamond mining, but is involved in waste reclamation in South Africa.

The contracts signed by government with

#### THE KIMBERLEY PROCESS CERTIFICATION SCHEME

In May 2000 in Kimberley, governments, international diamond industries and a range of civil society stakeholders met to discuss how to track illegal diamonds and stop them from entering the international market. The initiative was officially launched in January 2003. Under the KP, participants are required to export rough diamonds in tamper-resistant containers and provide certificates validating that their diamond exports are conflict-free. The certificate is defined as a forgery-resistant document with a particular format that identifies a shipment of rough diamonds as being in compliance with the requirements of the Kimberley Process Certification Scheme. Its overall objective is to ensure that conflict diamonds do not enter the legal diamond trade.<sup>2</sup> The initial target was to stop the sale and trade of diamonds that were used to bolster the coffers of rebel armies and rogue states, but more broadly it has come to be seen as an important tool that seeks to reduce smuggled diamonds as well.<sup>3</sup>

Mbada Investments and Canadile Miners are questionable as they seem to benefit the foreign investors more than the country in terms of profits and revenue distribution. This situation indicates possible corruption, underhand dealings, and political manoeuvring as well as a general lack of transparency and accountability. The Zimbabwean Minister of Mines Obert Mpofu has admitted that he didn't follow proper procedures when he allowed the two mining firms to operate at Chiadzwa, confirming reports that the mining permits were issued fraudulently. Mpofu was giving evidence at a parliamentary committee hearing set up to investigate operations at Chiadzwa.

Surprisingly, in all this confusion, the KP has been discussing possibilities of granting Mbada Investments permission to sell 2.5 million carats of diamonds mined from Chiadzwa. The confusion which continues to exist as to who has the mining rights in Chiadzwa is also creating an environment for illegal extraction. In the current situation, it seems that no one is in control of the area.

In the meantime, while we are not seeing open conflict in Zimbabwe, a silent violence is taking place in the Marange district. Societal violence is on the increase and it is consuming communities through environmental degradation, water and air pollution, HIV and AIDS and forced relocation which are all causes and consequences of the absence of

If the KP is to curb the illegal trade in Zimbabwe diamonds, it must be able to trace Zimbabwe diamonds entering another exporting country.

a responsible government. There have been many deaths in Marange, especially during the operation coded "Hakudzokwi" ("no return"), which was led by Zimbabwean security forces and aimed at the removal of unlicensed local miners in 2008. Other deaths have been caused by the collapse of mines. The discovery of diamonds also brought with it commercial sex workers. According to information obtained by Southern Africa Resource Watch (SARW) during research in Marange in 2009, at Marange Hospital HIV infection has increased

since the discovery of diamonds. In May 2010, Chiadzwa's villagers were under threat of relocation without compensation from the Zimbabwean government. The government, through the District Administrator of Mutare Rural District Council, gave a verbal two-week notice to more than 10 families of Chiadzwa to start preparing for relocation to Arda Transau farm.<sup>7</sup>

In addition, the silencing of human rights activists working in the diamond sector is a serious concern. For example, the Director of the Centre for Research and Development Trust, Farai Maguwu, was arrested because he exposed some of the human rights atrocities at the Chiadzwa diamond fields. The arrest of Maguwu has demonstrated the vulnerability of the KP and the need for it to evolve and meet new challenges.<sup>8</sup>

### Kimberley Process effectiveness in Zimbabwe

Critical questions are now being asked: Are the scheme's hands bound or is it just unwilling to act? What are the reasons for the hesitant behaviour? The effectiveness of the KP varies from country to country, but as a rule it is easier to implement in democratic and functional states. These states have the capacity to regulate, monitor and protect the extraction and commercialisation of diamonds. However, it is virtually impossible to implement in countries where state machinery is dysfunctional and resource spoliation is part of an elite culture.

The KP has developed a number of tools that have been designed to facilitate compliance. These tools include regular statistical reporting, annual reports and other verification measures, including review missions to participant countries and ad hoc missions where credible indications of significant non-compliance are detected. From the above, it is evident that what is lacking in the mining sector in Zimbabwe is transparency and accountability, as the majority of the people are not aware of the contents of the mining contracts and agreements signed with foreign investors. The government does not give people information on revenue generated and how it is distributed. Neither do the companies reveal the money they pay to government in royalties and resource depletion fees. Of late, it has been revealed through media reports and parliamentary hearings that for 20 years the government-owned companies have not been declaring dividends to government from mining operations around the country.

Revenue from natural resources like diamonds risk being misappropriated and spent on projects that do not positively change people's livelihoods and spur economic recovery. There is urgent need to improve transparency in the management of natural resources wealth.

Unless Zimbabwe makes a swift transformation to an orderly state, it will be difficult to implement the KP. Corruption is on the increase in Zimbabwe. The absence of the rule of law compromises the implementation of the KP. The systems are so

**An effective implementation of the KP is only possible in countries where the state has minimum capacity to enforce regulation, and where the political will exists.**

weak that illegal diamonds find their way into Mozambique, South Africa, and Dubai on a daily basis. The Zimbabwean state is not able to produce reliable statistics on which to base an accurate conclusion about the state of the diamond trade. If the KP is to curb the illegal trade in Zimbabwe diamonds, it must be able to trace Zimbabwe diamonds entering another exporting country, but currently the precious stones exit a massive and largely uncontrolled territory. The lack of official statistics reflects the fact that the figures are likely to be so distorted that the government is not prepared to publish production and revenue figures. As a result, it is not clear how much revenue government receives from legal diamond sales. According to the Reserve Bank of Zimbabwe the state loses out on US\$1.2 billion worth of diamond revenues per month<sup>9</sup>, money that could be used to fund the country's reconstruction after eight years of economic collapse. While most observers agree the amount is exaggerated – given that global production hovers around an average of less than US\$ 1 billion a month – it reflects the lack of government control at the Chiadzwa diamond fields.

### **Limitations of the Kimberley Process**

There are six interlinked limitations of the KP in general, and they all apply in Zimbabwe.

*The first limitation is linked to the KP's voluntary nature.* The KP is a voluntary mechanism, which can only be effective with the support and determination of the implementing country. Because of this, its effectiveness is dependent on the goodwill of member states. It seems the KP has no capacity to stop illegal trade if the relevant government is not committed. The illegal trade continues, not because it is difficult to stop it but because officials in the Zimbabwe government are themselves involved in the illegal trade. The KP's sanction (which is to suspend a member-state) is not punitive as far as officials are concerned, because of the enormous financial return that illegal diamonds give them, it matters little to them whether they are part of the KP or not. In fact the Zimbabwean government has threatened to withdraw from the KP if demonised.

*The second limitation is linked to weak state capacity.* An effective implementation of the KP is only possible in countries where the state has minimum capacity to enforce regulation, and where the political will exists. It is important to note, however, that the capacity of the state is not determined by peace and democracy alone. The implementation of the KP requires commitment from governments. The political will to enforce the law must be present in order for a government to devote sufficient energy and resources to the initiative. This political will does not exist in Zimbabwe.

*The third limitation is linked to the existence of a powerful network of government officials involved in the illegal trade.* In a situation where the state is unable to protect resources, foreign and local players use the opportunity to extract resources. The formal diamond trade is being replaced by an informal diamond trade. Despite the state's efforts to curb the informal diamond trade, it is in fact becoming increasingly sophisticated. The problem of the informal diamond trade in Zimbabwe is exacerbated by the existence of a network of powerful political figures in whose interests it is to maintain the illicit trade. It is impossible for the KP to produce positive results in countries where government officials are themselves preying on the mineral wealth of their countries. This situation challenges the design of a system that focuses on the diamond trade and not on governance within countries.

*The fourth limitation is unequal redistribution of resources.* The trade exists in this informal form in order to maximise profit by evading taxes that

would otherwise be due to the state. Situations such as that which has developed in Chadzwa arise because of deep-seated divisions in societies. One of these divisions is the unequal distribution of resources. The problem of the illicit diamond trade in Zimbabwe is fundamentally the problem of a dysfunctional state. To assume that only illicit diamonds fuel conflict is simplistic. The possibility also exists for legal diamonds to fuel conflict, especially when diamond revenues are not equitably shared among the population, but instead are used to strengthen and enrich a few who are close to the regime. The Chiadzwa diamond rush in Zimbabwe has benefited senior ZANU-PF officials and those close to them. Systematic corruption, economic mismanagement and patrimonial rule (often associated with resource abundance) may fuel political and economic grievances by undermining the state's legitimacy and by weakening its capacity to perform core functions. The state's failure to put

The KP has a serious challenge in countries where there are wide and entrenched artisanal mining operations, as in Zimbabwe.

in place natural resource management systems strongly influences the opportunities for non-compliance. This is why governance of natural resources needs to be made a central element of the KP if it is to remain relevant. The KP macro approach - certification and verification - is insignificant in the case of Zimbabwe, when the issues of illegal diamonds are so intertwined with socio-economic conditions. The KP does not deal with issues related to human rights abuses and poverty. But this is the Achilles' heel. The absence in its mandate to look into issues of distribution of revenues and local socio-economic conditions create difficulties of definitions and scale that have important implications for its efficiency. It is not the presence of diamonds in a country that create conditions for war but unequal distribution of resources and poor socio-economic conditions.

*The fifth limitation is linked to the existence of the market of the illegal diamonds.* The existence of

markets especially in neighbouring countries which are not members of the KP poses a limitation to the effectiveness of the KP. Diamonds are a fungible commodity, which means that they are a particularly attractive means of moving value across borders – i.e. money laundering. As Tim Hughes has argued in the early years of the Chiadzwa rush, “reports of conflict and illicit diamonds seeping into South Africa from the DRC via Zimbabwe are a timely reminder that, despite significant victories, the war on conflict diamonds has not yet been won. In the situation of lawlessness, it is possible that fraudulent KP certificates are being used. The government does not have a system to carefully examine the authenticity of certificates”.<sup>10</sup>

*The sixth limitation of the Kimberley Process is linked to the structure of diamond production.*

The KP has a serious challenge in countries where there are wide and entrenched artisanal mining operations, as in Zimbabwe. In the past three years, most diamond production was by artisanal labourers using simple tools and equipment, and living in conditions of insecurity and poverty. The problem with artisanal mining is not that it is bad, but rather that it is unregulated and disorganised. The absence of any form of organised structure for these miners poses multiple challenges to the KP. Artisanal miners are largely unregistered, and they operate in conditions that make them vulnerable to buyers. They tend to have few livelihood options, which means that they will often sell their stones to whoever comes first. In addition, the distribution channels of diamonds from this sector are not always clear, making it difficult to monitor diamond transactions. The weakness of the KP has been that it focuses more on the trade and export end of the industry, and less on the production of diamonds. The fact that the government in Zimbabwe is incapable of producing reliable statistics is in part a consequence of the high number of under-regulated artisanal miners who are involved in the industry. It is reasonable to assume that plenty of diamonds from the artisanal mining sector go unrecorded through an informal network. The tracking process can only be effective if it begins at the sites of mining activities, including those where artisanal mining is happening under tight security control. However, the situation in Marange does not permit a proper securing of the area for two reasons: first, the area that is supposed to be monitored is extremely large at approximately 70,000 hectares

(18% has proven deposits). Second, the area is controlled by security forces which are suspected of trading in diamonds themselves. Also, people are being prevented from accessing the area. For example in early April 2010, police barred a group of 18 lawmakers from the parliamentary committee on mining from visiting the controversial Marange diamond field on a fact-finding tour.<sup>11</sup> The KP can not be implemented in such a situation of lawlessness.

### **Resolving the Chiadzwa situation: what role could South Africa and SADC play?**

The human rights abuses that are taking place in relation to the Chiadzwa diamonds are not necessarily because of illegal diamond diggers. In Zimbabwe, due to the collapse of governance structures and unprecedented levels of human suffering, it is difficult (if not impossible) to bring normalcy to the Chiadzwa diamond fields. Only when there are strong governance structures and when citizens are paid reasonable wages that can carry them to the next pay day, will Chiadzwa cease to be a hotspot. For as long as there is no accountability over who is benefitting from the diamonds and the increase in poverty the illegal activities surrounding the diamonds in the area

Civil society organisations in Southern Africa and around the world must mobilise to name and shame what is happening in Zimbabwe.

will continue because someone will be benefitting from the confusion. South Africa and the Southern African Development Community (SADC) should pressure the government of national unity to become functional. South Africa and SADC must continue to put pressure on all parties to the Global Political Agreement (GPA) to work towards a stable government that is able to discharge its duties without hindrances, including ending illegal trade in diamonds. Equally, SADC should encourage Zimbabwe's direct neighbours, especially South Africa and Mozambique to put in place a mechanism to prevent illegal diamonds from

Zimbabwe entering and transiting their territories.

Certain SADC countries with expertise have to come forward to help Zimbabwe. Namibia sent one expert to Zimbabwe to work with the KP monitor in order to set up a system that is compliant with the requirements of the KP. South Africa is also ready to provide support. One area where Zimbabwe needs immediate assistance is putting in place a system for small scale miners which will include their identification, registration and monitoring of their activities including production and commercialisation. There is a need to develop a strategy that will convince illegal diggers to join the mainstream. While diggers have difficulties engaging with police and the army this would be an opportunity for the Zimbabwean government to work with civil society. Because of the number that is expected to register, it would be strategic to allow small scale miners to form cooperatives which would ease the control burden, especially in production and commercialisation.

Further, civil society organisations working with the KP in Southern Africa and around the world must mobilise to name and shame what is happening in Zimbabwe with the only objective of ending the scourge of conflict diamonds.

### **Resolving the Chiadzwa situation: what role for the Zimbabwean government?**

The cause of the illicit trade is bad governance in the management of diamond revenues. Smuggling and human rights abuses are simply the all-too-familiar consequences of poor management of resource revenues and distribution. The only way Zimbabwe will be able to stabilise the diamond industry again is through government ownership and control of a domestic resource management system that can be reinforced by the KP mechanism.<sup>12</sup> In this situation - as in Angola and the DRC - the KP should play a supportive rather than primary role.

The illicit diamond trade will not end unless Zimbabwe introduces fundamental reforms to the structures of resource management. The reform must aim to enhance accountability and transparency in resource management systems. Perhaps this is where the KP's biggest weaknesses reside: one cannot rely on externally driven mechanisms to deal with a problem which is mainly caused by internal structural weaknesses. In Zimbabwe the system of resource management

(including the management of diamonds) are not clear. The Ministry of Mines and Mining Development is responsible for the overall KP implementation and related policy. The Minerals Marketing Corporation of Zimbabwe (MMCZ) remains the KP exporting authority and, in addition, is mandated by statute to sell and coordinate the export of all rough diamonds (and other minerals). In most instances, MMCZ acts as a seller on behalf of a producer or related company, for which it receives a small commission; in some cases, however, MMCZ may also purchase rough diamonds from a domestic producer outright and sell on its own behalf. MMCZ controls the export process for all rough diamonds. MMCZ is responsible for the evaluation of all diamonds prior to export, which results in the breaking of the seals of their original containers. Production from Marange is transported to the Zimbabwe Mining Development Corporation (ZMDC) offices in Harare, where it is sorted and evaluated prior to export. Security measures for the sorting and movement of this production do not appear to be reliable.

**Zimbabwe has demonstrated by its actions that it does not respect the KP and cannot meet its minimum standards for internal controls and exports.**

Tenders are held periodically in Harare for Marange production, with domestic and international buyers participating.

There are five licensed cutters and polishers in Zimbabwe, however, because of certain legal issues, they are not yet permitted to manufacture rough production from Zimbabwe. The MMCZ is not entirely in control. For example, it appears the new mining companies have obtained exclusive marketing and selling rights of the diamonds from Chiadzwa through the contracts they signed with government, and this is contrary to regulations. According to Global Witness the Minister of Mines has led efforts to block oversight of companies, Canadile Miners and Mdaba Investments, by imposing his allies as board members, and sidelining the state mining company, ZMDC.<sup>13</sup>

Another huge challenge is to demilitarise the Chiadzwa diamond fields. There is a call for all security forces to vacate the area. However this approach is risky. A quick withdraw of security forces could lead to a new diamond rush. Others from the KP have asked the Zimbabwean government to bring in new investors as a security mechanism. However, Zimbabwe, or any other country, should not be forced to sell mining rights without having in place a transparent system for contract negotiations and the capacity to monitor the activities of companies.

### Conclusion

In recent years the KP has been accused of losing its vitality and focus. Many people are now asking what does the future hold for the scheme if it fails in Zimbabwe. Zimbabwe has demonstrated by its actions that it does not respect the KP and cannot meet its minimum standards for internal controls and exports. This opposes Chikane's report, which concluded that Zimbabwe has demonstrated its commitment to meet the minimum requirements of the KP.

Now, more than ever before, the KP must seriously consider introducing new dimensions to deal with emerging situations. For this to happen the KP is in need of decisive and credible leadership from government, companies and civil society which was not apparent at its inter-sessional meeting in Israel in June 2010.

Equally, the KP should clarify its position on how to deal with human rights abuses linked to the extraction of diamonds. At the KP meeting in Israel the question was raised whether the KP should consider human rights in its work or leave it to other international forums specialised in human rights. It is important to conclude by celebrating the position of civil society that human rights have always been the core of the KP.

Zimbabwe presents a real test to the KP. But it is not the only country posing serious challenges to the KP. Other countries such as Venezuela and Guinea, which are experiencing diamond smuggling and fraud respectively, pose equal challenges. However, failure in Zimbabwe will send a negative signal about the relevance of the KP and capacity for self-regulation of the diamond industry.

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## Endnotes

- 1 Out of the 14 countries that are part of the Southern Africa Development Community (SADC), eight are diamond producers: Angola, Botswana, DRC, Lesotho, Namibia, Tanzania, South Africa, and Zimbabwe. One member, Mauritius, is an important diamond-cutting centre. Botswana is the world's largest producer of rough diamonds by value.
- 2 Kimberley Process (2007). *Liberia enters the diamonds trade*, IP/07/612, Brussels.
- 3 Diamond Development Initiative (2005). *Accra Conference Background Note*, Ottawa.
- 4 See: [http://www.diamondfacts.org/facts/fact\\_02.html](http://www.diamondfacts.org/facts/fact_02.html)
- 5 IRIN (2009). *Zimbabwe: Kimberly Process recommends suspension of diamond trade*, Johannesburg.
- 6 The Namibian ruling party Swapo (South West Africa People's Organisation) is knowingly a close ally to Mugabe's Zanu-PF (Zimbabwe African National Union - Patriotic Front). Both parties maintain a blind solidarity even in the face of serious human right abuses.
- 7 Zimbabwe Environmental Law Association (2010). *Press statement*, 26 May 2010, Harare.
- 8 Maguwu was released on bail on 13 July 2010.
- 9 APA News (2008). *Zimbabwe loses over US\$1.2 billion a month to diamond smuggles*, Harare.
- 10 Tim Hughes (2007). *Conflict Diamonds and the Kimberly Process: a briefing*, South African Institute of International Affairs, Johannesburg.
- 11 See: <http://www.zimonline.co.za/>
- 12 Tim Hughes (2007).
- 13 See: Guardian News (2010). *Zimbabwe rulers running diamond trade with corruption and violence*, 14 June 2010.

# The Extractive Industries Transparency Initiative (EITI) in Nigeria:

## Sifting rhetoric from reality

### Introduction

The centrality of oil in the Nigerian economy is reflected in the fact that oil accounts for 40% of its GDP, 95% of exports and 83% of government revenue and this has effectively transformed Nigeria from an agricultural based economy into a rentier state. Nigeria's society has been marred by social, political and economic dysfunctions frequently attributed to the resource curse. Indeed, the debate today is no longer whether or not Nigeria suffers from the resource curse i.e., economic underdevelopment, limited democratic progress and social conflict; rather, the issue now is what to do about it. At the heart of this policy response debate is the question of how revenue from natural resource extraction can be efficiently and effectively utilised for sustainable development in Africa. The emergence of this question as key to addressing the resource curse in Nigeria and other resource rich African countries is based on a particular reductionist conception of the nature of the problem that also depoliticises it. In this case, governmental failure in Africa and insatiable greed among African elites manifested in endemic corruption and persistent mismanagement of natural resource revenues is seen to be chiefly responsible for the negative political, economic and social problems associated with resource extraction.

Hence, in Nigeria, some have suggested that resource revenue should first be distributed to the citizens and then taxed back by the state as a means of reducing the mismanagement of natural resource revenue and introducing accountability into state-society relations.<sup>1</sup>

For others, it is the supposedly not-too-radical strategy which links transparency with accountability that seems to be the better solution. For example, some have suggested that the main reason for persistent widespread poverty in Nigeria is lack of transparency and accountability and therefore, revenue transparency and accountability will contribute to poverty reduction and its eventual

eradication.<sup>2</sup> It is therefore not surprising that transparency is viewed as the cornerstone for reducing corruption and addressing other resource curse related dysfunctions. The strategy linking transparency with accountability is based on the simple assumption that the greater the transparency around natural resources revenue earned by African states, the greater the possibility for these governments to be held more accountable for the use of such revenue. This assumption informed the creation and promotion of the Extractive Industry Transparency Initiative (EITI) by Western governments, some governments of developing countries, and multinational corporations (MNC) in Nigeria. However,

Some have suggested that the main reason for persistent widespread poverty in Nigeria is lack of transparency and accountability.

what has so far being lacking is a critical look at the assumptions that underpin the Nigerian Extractive Industry Transparency Initiative (NEITI) and the extent to which the rhetoric of transparency has delivered on its promise on the ground. Unfortunately, the failure to address these questions does not only undermine the effectiveness of NEITI, but also puts the daily lives and future of the poor and marginalised in jeopardy by diverting attention away from the real political and economic structures that create the conditions that allow for poverty and other social injustices and inequalities to persist in Nigeria.

### The Nigerian Extractive Industries Initiative

Nigeria in 2007 became the first candidate country with a statutory backing for the implementation of



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EITI. The willingness of the Nigerian government to commit to EITI in 2003 and then subsequently launch NEITI in 2004 can be attributed to internal and external factors.

The external factors include global actors and discourses that pushed transparency issues to the forefront of global policy response to the resource curse by highlighting the negative impact of corruption on social, economic and political development in Africa. For example, Transparency International's consistent ranking of Nigeria as one of the most corrupt countries in the world presented the new civilian regime in 1999 with both an opportunity and a challenge. The challenge was the need to address the negative international reputation of Nigeria, and the opportunity was the 'war on corruption' that provided a useful mobilisation tool for the new administration to gain legitimacy. For instance, the war on corruption was instrumental to the ability of the Obasanjo's regime to secure some \$18 billion debt relief from Paris Club creditors as well as gain some local support given that the election that brought the regime to power was also marked with fraud.

The internal factors were largely driven by populist disenchantment with decades of military rule that saw not only the embezzlement and mismanagement of public resources but also the institutionalisation of corruption to the detriment of national development goals.

The interaction of these two factors is reflected in a background paper on NEITI which noted that, "The federal government has recognised that improvements in the transparency of petroleum revenue data are needed for the effective management of public resources and to improve the image of Nigeria at home and abroad."<sup>4</sup>

The NEITI Act was passed into law in 2007 and its governing body is the National Stakeholder Working Group (NSWG) that consists of representatives from civil society, government, oil companies, representatives of communities from the six geo-political zones, and the media. The primary objectives of NEITI<sup>5</sup> are:

1. To ensure due process and transparency in the payments made by extractive industry companies to the federal government and its agencies;
2. To ensure accountability in the revenue receipts of the federal government from extractive industry companies;
3. To eliminate all forms of corrupt practices in the determination, payments, receipts and posting of

revenue accruing to the federal government from extractive companies.

In view of these objectives, NEITI undertook the first financial, physical, and process audit for the period between 1999 and 2004<sup>6</sup> in the country. While the initial report suggested that the discrepancies between revenues paid by oil companies and those received by government agencies amount to \$300 million, subsequent auditing suggests that only about \$6 million is unaccounted for. The director of communications of NEITI attributed the initial discrepancies to sloppy book-keeping, improper labelling and inadequate communication between companies and various governmental agencies.<sup>7</sup> In addition, NEITI has also been able to boost governmental oil revenue earnings by ensuring that proper payments are made by oil companies. For example, the Chairman of NEITI, Dr Siyan Malomo noted in 2007 that NEITI was about to recover over NGN 130 billion from oil companies in the country between 2004 and 2006 by identifying lapses that traditionally lead to loss of oil revenue for the government.<sup>8</sup>

However, while Nigeria has until the 9th of September 2010 to undertake validation<sup>9</sup>, Human

#### THE EXTRACTIVE INDUSTRY TRANSPARENCY INITIATIVE

The emergence of EITI in 2002 and the voluntary form it took can best be understood as the outcome of the reinvigorated old tension between capitalism and regulation driven by the process of globalisation. The dialectic nature of globalisation exposed the fact that while MNCs now enjoy new rights, powers and freedoms, their corresponding obligations and responsibilities to society have diminished with negative consequences for especially developing countries. It is the attempt to address this imbalance of power and responsibility with its associated negative consequences that EITI has emerged as the preferred policy response in the international community and has subsequently been promoted and adopted in developing countries like Nigeria.

The central tenet of the EITI is the idea that the opacity that marks the business-government relationship in the extractive industry facilitates greed, the mismanagement of natural resource revenue and the inability to hold government accountable. Hence, EITI is an attempt to sever the nexus of revenue opacity, corruption, poverty and the propensity for violence in resource dependent countries.<sup>3</sup>

Rights Watch notes that the government has failed to push through key pieces of legislation that would have complemented its participation in EITI by making government expenditure at all levels more transparent.<sup>10</sup> For example, the government is yet to pass into law the fiscal responsibility bill that would introduce new measures of integrity, transparency and uniformity of budget-making and government expenditure at all levels. At any rate, there is no doubt that the present local and international efforts to address the resource curse via emphasis on transparency and accountability have yielded some benefits, and continue to face serious challenges. However, the real danger lies in the fact that the present approach seems to also be diverting attention away from real political, economic and social constraints enabling the manifestation of the resource curse in Nigeria. Unfortunately, it is these underlying political, economic and social structures that inform the 'governance failure complex' driving the full manifestation of the resource curse in Nigeria and other resource rich African countries.

### NEITI: Deconstructing its assumptions and sifting rhetoric from reality

While there is no doubt that EITI in Nigeria has opened a new space of engagement among different stakeholders, and offers new possibilities for the demand for accountability, it suffers from some inherent shortcomings that undermine its effectiveness as a vehicle for making accountability work for sustainable development. These shortcomings are largely rooted in the misdiagnosis of the 'governance failure complex' in Africa that is manifested in the fact that:

- a. EITI is often treated as ideologically neutral, and as if it is devoid of power relations. For example, while transparency is called for with regard to payment made by oil MNCs to the government of Nigeria, the fact that the government cannot independently determine outside figures presented by the oil MNCs on the amount of crude oil pumped per day from their territory is not covered in the initiative. Surely, addressing this problem is just as important as oil MNCs' payment disclosure to the government.
- b. The historical nature in which EITI is often presented is yet another problem. It is as if with the adoption of EITI, all the underlining reasons behind the demand by the Publish What You

Pay (PWYP) campaign as well as its concern about the effectiveness of a voluntary initiative like EITI have all simply disappeared.

- c. The tendency for EITI to emphasise government revenue earning with limited focus on governmental expenditure. For example, NEITI has so far identified and published discrepancy between government accounts of oil revenue earning and oil MNCs' record of payment. However, the monitoring of actual governmental expenditure of oil revenue has so far been absent.
- d. EITI places enormous faith on civil society to be able to demand for accountability, yet little attention is paid to the nature, character, and capacity of civil society in Africa.
- e. EITI is essentially a top-down process with a narrow scope. For example, NEITI does not extend to state and local government in Nigeria and the voices of the poor and marginalised is hardly adequately represented.

These shortcomings have inevitably made EITI and by extension NEITI, more of an attempt to create accountability for accountability's sake, as opposed to an attempt to create accountability for sustainable development in Nigeria. This is because, while greater transparency and less corruption could increase government revenue, the crucial question with regard to sustainable development in Nigeria is how government spends oil revenue. Hence, any effort to connect accountability to sustainable

While greater transparency and less corruption could increase government revenue, the crucial question with regard to sustainable development in Nigeria is how government spends oil revenue.

development in Africa requires a more critical and holistic diagnosis of the 'governance failure complex' in Africa. Such an approach will reveal that the problem of inefficient utilisation of natural resources revenue is not rooted in the lack of accountability per se; rather, the mismanagement of resource

revenue and the lack of accountability are in fact emblematic of the 'governance failure complex' in Africa. This 'governance failure complex' is a result of Africa's unique colonial history, its weak position in international political economy, poor leadership, its heterogeneous society and its overdependence on natural resources. These factors interact in different ways to ensure the lack of an enabling environment for the equitable redistribution and efficient utilisation of natural resource revenue in Nigeria. For example, Nigeria as a state-nation rather than a nation-state<sup>11</sup> meant that from its creation it faced a legitimacy crisis.

In addition, given its multi-ethnic constituents and religious diversity essentially reified during the colonial era, also meant nationalism had to be enforced top-down. According to Rejia and Enloe<sup>12</sup> this process of top-down cultivation of nationalism is due in part to the pre-existence of a state, which is trying to bolster its own legitimacy as well as deliberately quell upward development of nationalism out of fear of heterogeneity.<sup>13</sup> Similarly, given that Nigeria was predominantly under military rule that relied largely on coercion, the state has been essentially historically alienated from its citizens.<sup>14</sup> Furthermore, in the colonial and postcolonial state competitive communalism dominated national politics in which the three major ethnic groups were suspicious of one another as well as seeking to maximise their share of the 'national cake'. Hence, there was never a coalition of nationalist elites capable of developing and pursuing nationalist development goals that were free of politics.<sup>15</sup>

In the following years, pressure to adopt multi-party politics and structural adjustment programmes together with inept self-interested leadership effectively allowed for the total metamorphosis of competitive communalism<sup>16</sup> into a better structured and more exclusive neo-patrimonial relationship. Since emphasis was on feeding clients as opposed to pursuing the common good under the neo-patrimonial relationships that dominated national politics, institutions and traditional African norms of co-operation, co-existence, and accountability were effectively subjugated and those of corruption, inefficiency, and the so called 'Big Man syndrome' became dominant. For example, Awe's analysis of the history of governance structures suggests that while governance in pre-colonial Nigeria ensured participation and accommodation of common interest, governance structure in the post-colonial

This 'governance failure complex' is a result of Africa's unique colonial history, its weak position in international political economy, poor leadership, its heterogeneous society and its overdependence on natural resources.

Nigerian state does not provide room for the same.<sup>17</sup>

To make matters worse, the forced integration of a pre-capitalist Nigeria into the world capitalist system and its eventual overdependence on oil that essentially made Nigeria a mono-commodity rentier state further undermined the state-society relationship. This is because as a rentier state, the average Nigerian citizen increasingly became irrelevant to the state and its ability to continue to reproduce itself. On the other hand, decades of governmental disappointment meant the average Nigerian either displayed apathy towards the state or saw the state as merely a tool for primitive accumulation by the elite. These structural and systemic factors effectively ensured that a developmental state capable of equitably redistributing and efficiently utilising natural resource revenue never existed in Nigeria.

It is these structural and systemic inadequacies inherent in African states and their societies that inform the 'governance failure complex' in Nigeria and is manifested in the lack of accountability, bottleneck bureaucracies, ineffective government and the paradox of poverty amid plenty.

### **Beyond NEITI: the possibilities of linking natural resource revenues to sustainable development in Nigeria**

The foregoing critical analysis suggests that NEITI's efforts taken alone cannot transform the politico-economic and socio-cultural structures that create the conditions in which poverty and mismanagement of natural resource revenue persist. Hence, to effectively address the question of how natural resource revenue can be efficiently utilised for sustainable development in Nigeria and elsewhere in Africa, there is the need to go beyond tackling

the symptoms of 'governance failure complex' via a piecemeal approach as is the case with NEITI, to paying attention to the structural deficiencies inherent in the African state (the root cause of the problem) and the associated systemic inadequacies in its societies (the proximate cause of the problem). Efforts to address the structural dimension of the 'governance failure complex' in Africa would require resource rich African states like Nigeria to pursue a compatible cultural democracy as opposed to blind emulation of Western multi-party political forms of liberal democracy. Indeed, Ake points out that for democracy to be relevant and sustainable in Africa, it must not only be radically different from liberal democracy, but must also reflect the values and

**A core problem that continues to undermine the effective use of resource revenue in Africa is weak institutional and technical capacities.**

interests of its social base i.e., the ordinary African.<sup>18</sup> This is because the appropriateness of a political system is dependent on the history of the people and their cultural environment. In the absence of such an appropriate political system, sustainable development goals, human rights objectives and the capacity to aspire are likely to remain an illusion.

A compatible cultural democracy form of government in Africa would entail among other things, a co-societal arrangement i.e., the use of ethnic groups, nationalities and communities as the constituencies for representation. It would be both centralised and decentralised with equal emphasis on individual and communal rights.<sup>19</sup> The underpinning logic here is that Africa is still largely a communal society and it is this communalism which defines the people's perception of self-interest, their freedom and their location in the social whole. Nevertheless, it is important to point out that the argument here is not another attempt at cultural determinism or an attempt to romanticise African cultures. Rather, what is being suggested is that culture i.e., the context of meaning and social practice through which Africans encountered, interpreted and responded to the institutional and

cultural intrusion of colonialism and postcolonial development, plays an important role in shaping the developmental outcomes associated with the abundance of natural resources in Africa. As such, any suggestions with regard to the appropriate governance structures needed to address the resource curse need to fit well with both the social realities and cultural contexts in Africa. The merit of this position also arises from the fact that it is now common knowledge that culture and development are intricately intertwined. Indeed, the exception of Botswana within Africa is often cited given that the state has defied the resource curse thesis. However, what is often not mentioned, as pointed out by Maundeni, is that the success of Botswana is rooted in its indigenous state initiator culture.<sup>20</sup> The argument here is not that the Botswana political structure of democracy should be blindly replicated in all other African countries or that the model has no deficiency. Rather, what is being suggested is that resource rich African countries stand a better chance to generate the missing enabling environment for transparency, accountability, and active citizens' participation in affairs of the state if they were to integrate indigenous culture into their political structure in a manner consistent with the African philosophy of Ubuntu<sup>21</sup>. Indeed, the pursuit of compatible cultural democracy must be underpinned by institutional reforms like electoral reform that would allow for legitimate elections and encourage active grassroots participation in governance in Nigeria.

Furthermore, a core problem that continues to undermine the effective use of resource revenue in Africa is the weak institutional and technical capacities of the agencies that are supposed to provide checks and balances within the African state. Hence, efforts directed at technical and institutional capacity building at all levels of government, i.e. federal, state and local government institutions, is essential. For example, the present focus of NEITI on the federal government alone without a similar focus on state and local governments means that transparency at the federal level will not necessarily translate into sustainable development in local communities. This is because oil revenues that are not mismanaged at the federal level are effectively being misused at the state or local government levels. For example, despite significant increases in oil revenue to the state and local governments in the Niger Delta, there has been

no tangible gain either with regard to community development or poverty reduction in the Niger Delta. Instead, the region now faces an increase in the scale and intensity of violence.

In addition, issue specific partnerships to compensate for institutional weakness can be encouraged. For example, to deal with corruption associated with contracts that undermine effective delivery of services, Transparency International (TI) Canada is facilitating a partnership between TI-Nigeria and the Niger Delta Development Commission (NDDC) to adopt Integrity Pacts (IP) in contracting for NDDC economic development projects. The integrity pact concept refers to independent monitoring of the contracting process at every stage from preparing specifications, to competitive bidding, to selecting a contractor, to implementing the contract, to preparing a final audit. If successful, the partnership between TI-Nigeria and the NDDC would facilitate the institutionalisation of integrity pacts and help reduce corruption associated with project implementation in the Niger Delta.

Crucial also is the need to strengthen the institutional and technical capacities of civil society

Unfortunately, at present, there is a tendency among oil MNCs in the country to focus almost exclusively on micro-level corporate citizenship issues such as social investment in roads.

groups in Africa as well as encourage them to diversify their strategy for engagement with the state. For instance, limited institutional capacity and a dearth of material resources among civil society organisations in Nigeria mean they rely solely on activism as a strategy for achieving their objectives. While this strategy might be effective on some issues, there is the need for civil society groups to expand their tools of engagement to include active lobbying of governmental institutions and agencies for sustainable development goals.<sup>22</sup>

Similarly, civil society organisations in Nigeria tend to have a diversified portfolio in which they

focus on a wide range of issues such as the environment, democracy, conflict resolution and human rights. There is no doubt that these issues in an African context are intricately related, which therefore explains the tendency for one civil society group to focus on all of these issues. However, this broad issue focus often means that in the face of limited resources, these civil society groups are often over-stretched, leading to internal fragmentation and the inability to serve as an effective countervailing force for the public good. Hence, there is the need for civil society groups to engage in the process of specialisation i.e. a focus on one issue area, and collaboration in the form of partnerships with other non-governmental organisations as both a strategy to mitigate the impact of limited resources, consolidate their competence, facilitate inter-organisational learning and build solidarity. The point here is not that this strategy of specialisation-collaboration does not presently exist; rather, it is that it needs to increasingly become the norm.

Additionally, the centrality of oil to the Nigerian economy means that oil MNCs have an important role to play as well as a significant leverage to support the efficient use of natural resource revenue via their corporate citizenship initiatives. Unfortunately, at present, there is a tendency among oil MNCs in the country to focus almost exclusively on micro-level corporate citizenship issues such as social investment in roads, schools and clinics in local communities to the detriment of macro-level corporate citizenship issues such as corruption, accountability, and a decline in the agricultural and manufacturing sectors due to the Nigerian state overdependence on oil. However, while attention to micro-level corporate citizenship issues might address some aspects of local grievances, it is unable to deal with the root causes of grievances. This is because events at the micro-level i.e., host communities, are often consequences of activities, action or inaction, at both state and national levels. Hence, an emphasis on both micro and macro issues is critical if oil MNCs wish to contribute to sustainable development via their corporate citizenship initiatives.

Addressing macro-level corporate citizenship is bound to increasingly become critical to the long term viability of the oil industry, given that the federal government now plans to abound the Joint Venture Contract (JVC) model.<sup>23</sup> This is because the present blame culture in which the oil MNCs are able to hide behind governmental failure and claim that their

community development spending is restricted by their JVC partners will no longer suffice. To avoid collective action problems and issues of free riding in the oil industry, rather than have individual oil MNCs pursue macro-level corporate citizenship issues, oil MNCs can collectively actively support the Oil Producers Trade Section (OPTS) of the Lagos Chambers of Commerce to work with NEITI and TI Nigeria to deal with the issue of transparency and accountability at federal, state, and local government levels. This kind of strategy will go a long way in ensuring that transparency in the oil industry would yield some sustainable development benefits in host communities as well as ensure that no one oil MNC is put at a competitive disadvantageous position in Nigeria due to its involvement with macro-level corporate citizenship issues.

The point here is not to reiterate the voluntary initiative versus mandatory initiative debate; instead, the argument here is that the rentier status of the Nigerian state means it lacks the most basic incentive to pursue sustainable development goals.

Finally, the overdependence of the Nigerian state on oil and its weak position in the global capitalist system means that the state lacks both the capacity and incentive to effectively regulate the activities of oil MNCs. For example, the Department of Petroleum Resources (DPR) that is supposed to regulate the oil MNCs depends on oil MNCs to provide it with information regarding the nature, volume, and extent of environmental damage with regard to oil spills. In addition, based on the JVC contract between the government and oil MNCs, the Nigerian government is the senior partner as it owns a majority share in the partnership. However, the fact that it is only oil MNCs that have the technical capacity to extract oil and they essentially control the running cost of the JVC, they are in practice effectively the senior partners. Under these circumstances there is the need for internationally binding laws to regulate the activities

of oil MNCs in Nigeria if oil extraction is to translate into sustainable development.

The point here is not to reiterate the voluntary initiative versus mandatory initiative debate; instead, the argument here is that the rentier status of the Nigerian state means it lacks the most basic incentive to pursue sustainable development goals when these are not perfectly aligned with the goal of oil extraction. As a result, a significant driver of voluntary initiatives does not exist in Nigeria as in most other African countries. This partly explains why the absence of sanctions in NEITI for both government and oil MNCs has been a major stumbling block in the fight against corruption in Nigeria and therefore has been unable to deliver on its touted promise by its advocates. International binding laws with clear sanctioning mechanisms are therefore a necessity, which can complement a voluntary initiative like NEITI, in the quest for a cure for the resource curse in Nigeria.

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- 2 Juliana Taiwo (2007). NEITI Audits: *Oil Revenue Discrepancies Down to \$6m*, This Day Newspaper, 14 August 2007.
- 3 Gavin Hayman & Corene Crossin (2005). Revenue Transparency and Publish What You Pay, in: *Profiting From Peace: Managing the Resource Dimension of Civil War*, edited by K. Ballentine, H. Nitzschke & L. Boulder, Rienner Publishers.
- 4 See: <http://www.neiti.org.ng/files-pdf/BACKGROUND%20PAPER%20ON%20THE%20NEITI.pdf>
- 5 See: <http://www.neiti.org.ng/files-pdf/NEITI%20BILL.pdf>
- 6 A second audit was undertaken in 2005 and its findings are similar to the previous audit, but no audit has been undertaken since 2006; a situation due partly to governmental insincerity and limited institutional capacity of NEITI. The inability to undertake audit consistently is therefore also a major shortcoming of the initiative
- 7 See: Taiwo (2007).
- 8 See: Luka Binniyat (2007). *NEITI Saves Govt N125b in Three Years-Malomo*, Nigerian Vanguard, <http://allafrica.com/stories/printable/200708300257>
- 9 A quality assurance mechanism designed to foster dialogue and learning at country level as well as maintain the EITI brand. (See: <http://eiti.org/Validation>). In February this year, Nigeria applied to extend the deadline to complete the validation process and was granted until the 9<sup>th</sup> of September 2010 to complete the process.
- 10 Human Rights Watch (HRW) (2007). *Chop Fine: The Human Rights Impact of Local Government Corruption and Mismanagement in River State, Nigeria*, New York.
- 11 According to Rejia and Enloe (1969) given the process of state formation in Europe and America, African states are state-nations as opposed to nation-states. This is because in 19th century Europe, the nation preceded and created the state, whereas in Africa this relationship is reversed, so that the state is creating the nation.
- 12 Mostafa Rejia & Cynthia Enloe (1969). Nation-state and state-nations, in: *International Studies Quarterly*, 13: 140-158.
- 13 In this case the experience of a Nigerian civil war essentially along ethnic lines represents one of such fear of heterogeneity.
- 14 Ake (1993) points out that the cycle of coercion and alienation worsened the prospect of development that led to yet more coercion and alienation.
- 15 The politicisation of national development goals often meant that effective and efficient development planning and implementation were often sacrificed for political expediency. For example, while oil extraction takes place mainly in the Niger Delta in Southern Nigeria, a major oil refinery was located in Northern Nigeria for reasons not associated with economic efficiency but rooted in ethnicity politics.
- 16 Ake (1993) indeed described the state as a contested terrain on which contending primary groups fight for the appropriation of what is suppose to be the common wealth.
- 17 Bolanle Awe (1999). Conflict and Divergence: Government and Society in Nigeria, in: *African Studies Review*, 42:1-20.
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- 21 Ubuntu is a value system which governs societies across the African continent that emphasizes cooperation, co-existence and consensus. For details of see: Kwamwagamlu (1999) & Bhengu (1996).
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# Tanzania's Mining Boom:

## Initiatives for increased transparency and accountability in the starting holes

Over the last decade, East Africa – and especially Tanzania – has been experiencing a rapid expansion of exploration and extraction activities for minerals, oil and gas alike.

Without the wider world taking much notice, by 2008 Tanzania had become Africa's third-largest exporter of gold; accounting for as much as 44% of the country's value of exports.<sup>1</sup> An export drop to 50 tones in 2009 now places Tanzania at the fourth position after South Africa, Ghana and Mali.<sup>2</sup> Other export minerals that significantly contribute to the country's foreign earnings are tanzanite (a semi-precious stone unique to the country) and diamonds. Titanium, nickel and iron ore are available in plenty but not extracted yet, mainly due to insufficient electric energy supply. Uranium estimated at 53.9 million pounds, worth US\$ 2.2 billion, is the latest discovery in central and southern Tanzania that is scheduled for extraction in early 2012.<sup>3</sup>

Tanzania is also witnessing an increase in oil and gas exploration activities. Currently more than twenty foreign companies are involved in petroleum exploration alone. Some of the natural gas deposits are already being exploited in the Songo-Songo gas field and used to generate electricity for local consumption.

The commodity boom in Tanzania provides for broader developmental opportunities in a hitherto mainly agricultural economy, in which more than 85% of its 40 million population lives below the poverty line.<sup>4</sup> Despite its relatively short existence, the extractive industries sector has already begun to re-shape the country's politics and society – though not always positively.

### Governance issues in Tanzanian extractive industries sector

The growth of commodity exploration and extraction in Tanzania has resulted in a range of governance challenges, provoking increasing public concern and debate.

There is a widespread perception that corruption relating to the extractive industries sector is on the increase. In fact, Tanzania's rating in Transparency International's Corruption Perception Index (CPI), that had shown some improvements until 2007, fell remarkably over the last couple of years to levels closer to its East African neighbours, Uganda and Kenya.<sup>5</sup> While it is important to note that the CPI does not necessarily imply corruption associated to extractive industries alone – public procurement, for instance, is regarded as an incubator of grand and political corruption in Tanzania – poor performance in terms of transparency is a well known phenomena in resource-rich countries across Africa.

A major reason for public distrust is the lack of transparency around the so called Mining Development Agreements (MDAs) that government signed with global mining companies. The MDAs are strictly confidential agreements that give mining companies preferential rights. The 1998 Mining Act, generally believed to have facilitated shoddy MDAs, gives the Minister for Energy and Minerals the power to enter into these agreements without being bound by the advice of the Mining Advisory Committee and unchecked by public scrutiny, which makes them a breeding ground for corruption. The fact that in 2007 the then minister signed a MDA that had been declared unbeneficial by the Advisory Committee outside the country fuelled further suspicion.<sup>6</sup>

Public sentiment is that the MDAs contain unnecessary tax incentives and stabilisation clauses and are silent on crucial aspects such as transfer pricing, ring fencing, windfall taxes, and time limits for tax exemptions, all of which deprive the country of its fair share from the exploitation of mineral resources. Royalties, their rate and how they are calculated, have been another controversial point in this context. Currently, MDAs provide for a mere 3% (gold) royalty based on the net instead of gross revenue of the mining companies. This means that government only receives revenue from



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royalties after subtracting costs on transportation and processing instead from the amount that the minerals are sold for in the market. Understandably, such negatively skewed fiscal regime remains detrimental to the erstwhile expected economic and social gains from extractive industries.

In addition, the disproportionately small contribution of the mining boom to Tanzania's economic growth of between 2.8% and 3.2% shows that the sector is not integrated into the national economy.<sup>7</sup> It points to a lack of investments into the type of infrastructure that is necessary to develop "value added" economic activities such as the local transformation of raw products before export. Therefore, a clear strategy with plans on how the extractive industries sector can promote wider industrial development is needed.

However, even the recently passed new Mining Bill, despite its attempt to address anomalies in the earlier legislation through, for example, higher royalties, MDA reviews after five years and restricting gemstone mining to local ownership, lacks this 'bigger picture'. Furthermore, the new law is not clear on compensations for communities that have been evicted from their home areas to allow mining activities to take place. Nor is there a policy or law to guide and regulate Corporate Social Responsibility (CSR) in the country.

Meanwhile, tensions between foreign mining companies and local communities are growing, with serious environmental, labour and human rights concerns being raised. The Tanzania Mineral Workers Association (TAMICO), for instance, has constantly engaged the Canadian-based mining house Barrick Gold Corporation on their alleged poor treatment of local employees.<sup>8</sup> Moreover, in 2009 at the company's North Mara gold mine, heavy metals and toxic chemicals have reportedly leaked into the river Thigite. The incident has since become a bone of contention and source of conflict between locals and the mining business.<sup>9</sup> While humans and animals using the river have been seriously affected by its contamination, Barrick Gold has denied any wrongdoing and government remains inactive. Remarkably however, the government chemist has since not published the report on river Thigite's water contamination levels.

It is against this background that various local and international initiatives, aiming at improved transparency and accountability in Tanzania's extractive industries sector, have been launched in the country.

## EITI in Tanzania

Tanzania declared its commitment to join the EITI process in February 2009. The government's decision to join EITI can be partly attributed to the recommendations of the Presidential Mining Review Committee, which among other things, recommended Tanzania to join the initiative in order

### APPROACHES TOWARDS IMPROVING GOVERNANCE OF NATURAL RESOURCES

Since the late 1990s, governance issues around extractive resources have received increasing international attention. This was based on the growing recognition that, especially in countries with an overall poor governance record and weak institutions, mineral wealth frequently did not translate into development. Instead, sudden mineral export booms in many cases led to severe economic imbalances and rising corruption. In some cases, they even fuelled violence and armed conflict. These and related phenomena are collectively known as the "resource curse".<sup>10</sup>

Various measures have been designed to address these problems. With regards to problems of corruption and misuse of revenues resulting so frequently from the extractive sector, two major international initiatives have emerged: the Publish What You Pay (PWYP) campaign and the Extractive Industries Transparency Initiative (EITI). Both initiatives aim to increase transparency and accountability, but pursue these objectives in different ways.

Launched in June 2002, PWYP is an international campaign and global civil society movement / coalition. PWYP calls for mandatory disclosure of tax, fee and royalty payments made by oil, gas and mining companies to governments for the extraction of natural resources on a country-by-country basis, as a necessary first step towards a more accountable system for the management of revenues in resource-rich developing countries, and for the reduction of poverty and corruption in these places.<sup>11</sup>

EITI, on the other hand, is a voluntary multi-stakeholder initiative involving multinational and state-owned extractive companies, host governments, home governments, business and industry associations, international financial institutions, investors and civil society groups. EITI is a complex, formalised process, involving several steps of auditing and reporting revenue flows. By April 2010, 31 countries worldwide were recognised as "candidate" or "compliant", 20 of them in Africa.<sup>12</sup>

In practice, both initiatives – while operating separately – share similar objectives and overlap to some extent, especially with regard to civil society actors who participate in national EITI processes. Tanzania, being one of the "latecomers" in the area of extractive industries, has been one of the most recent and the first East African country joining EITI.

to lift transparency around mining contracts to international standards. The Committee, headed by former Attorney General, Hon. Mark Bomani, was formed by President Jakaya Kikwete towards the end of 2007. After being presented to the president in June 2008, the “Bomani” report was made public through the local media.

However, EITI implementation in Tanzania is moving at a snail's pace, and the government's political will to implement EITI seems to be dwindling. It took almost one year for the president to appoint Hon. Mark Bomani as Chairperson of the Multi-Stakeholder Working Group (MSG), which is tasked with overseeing the EITI implementation process. The MSG's 15 member seats are equally distributed between government, private sector and civil society representatives. Trade Unions and the PWYP coalition are among those representing civil society. Business is notably represented by Chamber of Mine and Energy (TCME) and small scale miners. Government has put forward some of the key institutions involved including the Ministry of Minerals and Energy and the Petroleum Development Corporation (TPDC).

While government had by December 2009 not allocated funds from the national budget for the implementation of the EITI process, other stakeholders have played their part. In March 2010, the MSG signed a Memorandum of Understanding (MoU) with government that defines the roles and cooperation principles between the two.<sup>13</sup> In the same month, the World Bank's Multi-Donor Trust Fund (MDTF) approved US\$ 425,000 to support the EITI process in Tanzania, which is budgeted at a total amount of US\$ 1,387,756. Despite the preparedness of the African Development Bank (AfDB) and other development partners to support the Tanzanian EITI process, there are significant doubts that the country will be able to publish the required validation report before the deadline of February 2011. A huge workload remains to be done while the Tanzanian EITI timeframe has reached past midpoint.

Tanzania's attainment of EITI compliance status could ensure a reformed, transparent and stable fiscal, legal and regulatory regime governing the extractive industries sector and open up the country to genuine and credible foreign investors. It could also reinstate public confidence in extractive industries projects and provide a stable political environment that contains conflicts between large businesses

and small scale miners. It would enable government to realise the erstwhile forgone 30% corporate tax, customs duties, windfall, withholding and other taxes. Consistent with increasing export earnings, balance of payments and local ownership of extractive industries projects the contribution of the extractive industries sector to the country's economic growth would be likely to rise from the current 3% to well over 10%. Overall, attaining EITI compliance status offers Tanzania the opportunity to build a strong economy which would allow government to provide quality public and social services.

**Tanzania's attainment of EITI compliance status could ensure a reformed, transparent and stable fiscal, legal and regulatory regime governing the extractive industries sector.**

#### **PWYP in Tanzania**

Following months of preparation, the Tanzanian Publish What You Pay (PWYP-T) campaign was launched on 16 April 2010, with 21 institutional and three individual founding members signing a formal commitment to declare the coalition established. As members elected the coalition's steering committee, approved the work-plan and the coalition's governance instruments, PWYP-T defined its core mandate as improving transparency in the country's oil, gas, minerals, forestry (including wildlife) and fishing industry.

The steering committee was charged to form three technical working groups, which will execute training and capacity building, research and advocacy, strategy development and campaign coordination as well as monitoring and evaluation. Furthermore, the steering committee will provide the overall strategic direction and oversee the coalition's campaigning activities. Members to the committee include the Concern for Development Initiatives in Africa (ForDIA), the Legal and Human Rights Centre (LHRC), and the Tanzania Chamber of Commerce, Industry and Agriculture (TCCIA).

The coalition's activities such as strengthening

the knowledge-base, skills and experience of PWYP-T members, conducting studies and disseminate information on oil and natural gas resource availability in Tanzania as well as assessing the impact of mining on Tanzania's economic growth have commenced with momentum and clear focus.

As part of the focus on improving transparency in the mining sector PWYP-T plans to aggressively campaign around and engage with mining giants such as Barrick Gold, AngloGold-Ashanti, Petra Diamond and Tanzanite One, all of which have shown a lack of commitment to transparency in their operations in the country.

Taking the campaign beyond PWYP-T members to ensure public ownership of the campaign is certainly another challenge. Very few Tanzanians are aware of the issues related to the extractive industries sector; thus most citizens cannot engage in the discourse on, for example, the legal and regulatory framework. Similarly, PWYP, as it is the case with EITI, and its mission is not well known in Tanzania, across both the government and the public at large. Therefore PWYP-T will embark on an awareness campaign using brochures, newspapers, radio, television and websites to reach out to all stakeholders. Moreover, the campaign, in pursuit of PWYP-T role as an independent monitoring mechanism, will be useful to stimulate public debate around the contentious issues that are likely to hamper EITI implementation efforts. While this will be a challenging task, PWYP-T can benefit from its good access to EITI information.

PWYP-T is set to learn from the experiences of its Liberian counterpart. Liberia, despite having just emerged from civil war, achieved EITI compliant status in August 2009. This can mainly be attributed to the commitment of President Ellen Johnson-Sirleaf and her government to promote transparency in the extractive industries sector, and their unconditional cooperation with PWYP. Conscious of the role of corruption, mismanagement and distrust in fuelling the war, the country has made a special effort to turn its extractive industries into a sector that yields prosperity and political stability. Liberia is the second country to reach the prestigious EITI status after Azerbaijan. Other African countries requesting EITI validation include Nigeria, Ghana, Sierra Leone, and Cameroon, though all of them failed to meet the March 2010 validation deadline. Equatorial Guinea and Sao Tome e Principe have lost their status as candidates to become EITI

countries after an EITI board meeting in April 2010. In both countries a lack of political will had been the main obstacle to progress.<sup>14</sup>

Finally, in order to conduct an effective campaign PWYP-T will have to rely on the support from its International Secretariat as well as on the online resources that are channelled through the PWYP-Africa network.

## Outlook

If successful, the combined efforts of PWYP-T, EITI, the private sector and government will, by means of establishing an appropriate policy, legal and regulatory framework in the extractive industries sector, ensure that Tanzania is achieving the vision of being a country where transparency and accountability is institutionalised and natural resources are a driver of social and economic development. The combined total impact of Tanzania's resource sector, including the oil, gas, minerals, forestry (including wildlife) and fishing industry may change the country's economy into a new power engine on the African continent, parallel to South Africa and Nigeria.

This will surely not happen over night and may take longer than people expect. Unfortunately, as both PWYP and EITI are both less than a decade old initiatives, no success stories that could be used as benchmarks are available yet.

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## Endnotes

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- 7 PWYP Tanzania (2010). *Tanzania Launches the Publish What You Pay Coalition and Campaign*, Press Release, 9th of May 2010, Tanzania.
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- 9 The African (2009). *Tarime residents issue ultimatum over miners river water poisoning*, 18 May 2009, Dar es Salaam.
- 10 For a more detailed analysis see: Collier, P. (2007). *The Bottom Billion. Why the poorest countries are failing and what can be done about it*, Oxford.
- 11 For details, see: <http://www.publishwhatyoupay.org/>
- 12 For details, see: <http://www.eiti.org/>
- 13 The memorandum is available at: <http://eiti.org/files/TEIT1%20press%20release.pdf>
- 14 For further details, see: <http://www.eiti.org>



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