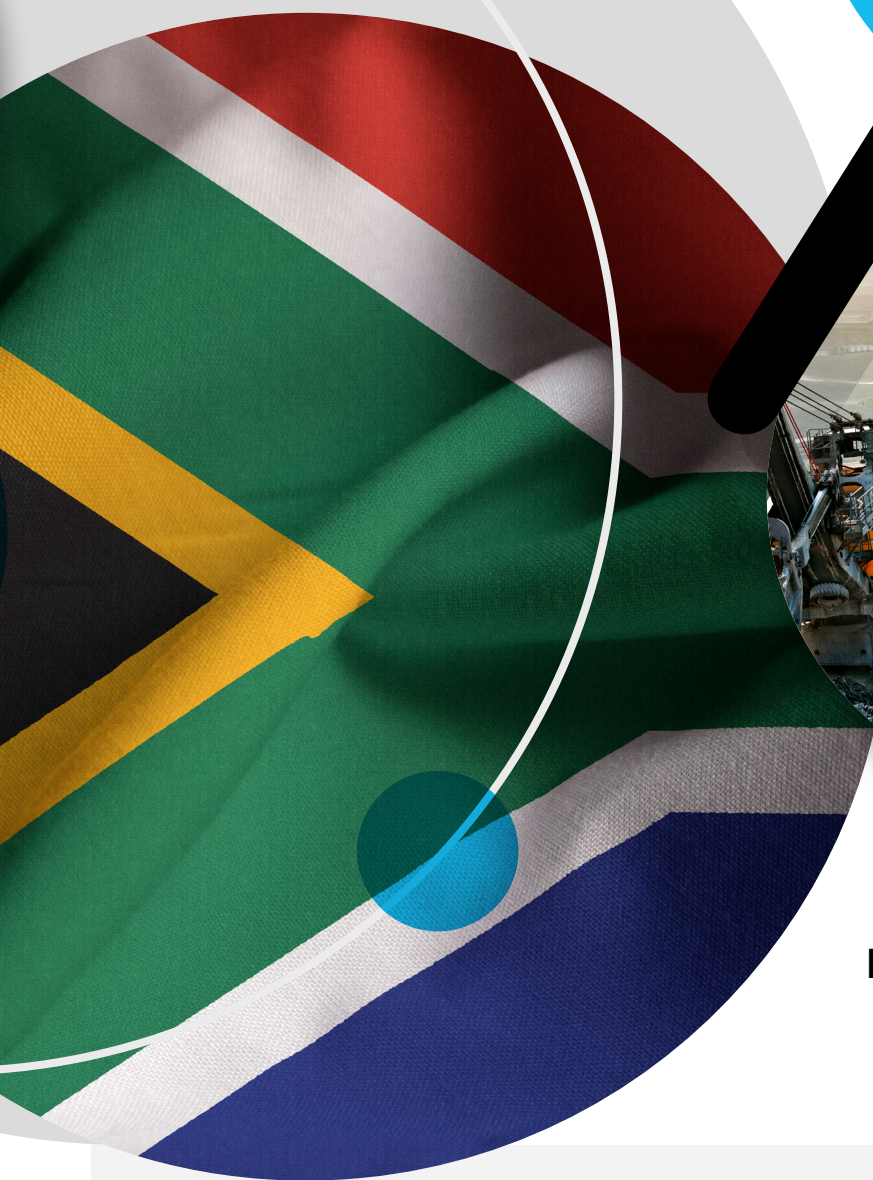


EITI

The Extractive Industries
Transparency Initiative and

SOUTH AFRICA



A Paper for Corruption Watch
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ABBREVIATIONS ACRONYMS



BBBEE	Broad-based Black Economic Empowerment
BO	Beneficial ownership
BODS	Beneficial Ownership Data Standard
BOT	Beneficial ownership transparency
CIPC	Companies and Intellectual Property Commission
CSO	Civil society organisation
DMRE	Department of Mineral Resources and Energy
DTI	Department of Trade and Industry
EITI	Extractive Industries Transparency Initiative
MSG	Multi stakeholder group
NRGI	Natural Resources Governance Institute
OGP	Open Government Partnership
OO	Open Ownership
PRI	Principles for Responsible Investment
SARS	South African Revenue Service
SME	Small and Medium Sized Entities
SOE	State-owned enterprise



EXECUTIVE SUMMARY

South Africa has always been a compelling target for EITI membership, and there have been regular attempts by the EITI international secretariat to encourage South Africa to become a candidate country. These efforts have included specific calls by successive chairpersons.

There have been a variety of reasons given for South Africa not joining. Some of these were always somewhat misguided. Others have become less relevant as the EITI Standard has evolved and South Africa's position has changed too. There are good domestic reasons, and equally compelling regional reasons for South Africa to join EITI, as an influential leading nation in Africa. South Africa joining EITI could be the catalyst for other African countries, including South Africa's neighbours to join too, thereby raising the level of transparency and governance in the extractives sector in Africa more generally.

There is sufficient support for South Africa to join EITI to make a compelling case to government. The first step should be the development of a detailed gap analysis between the EITI Standard 2019 and the current state of governance and transparency in the mining sector in South Africa.

Efforts should include a detailed stakeholder mapping exercise, engagement plan and coordinated campaign, should be coordinated independently from the South African government and the EITI International Secretariat, and should harness support from all stakeholder groups.

The Consultants make 10 recommendations in total aimed at Corruption Watch, the EITI board and international secretariat, the government of South Africa, extractive companies operating in South Africa, and South African CSOs.



INTRODUCTION

Independent consultants Tim Law and Michael Barron (the Consultants) are pleased to present this report on research into the implications of the Extractive Industries Transparency Initiative (EITI) for the country.

This report sets out:

- A brief history of EITI, what it might mean for South Africa, and why South Africa has not joined in the past; and
- Recommendations for ways in which the EITI agenda can be moved forward.

STAKEHOLDER ENGAGEMENT

Stakeholder engagement formed an important part of the research in preparing this paper. A list of the stakeholder organisations interviewed can be found in Appendix 1.

There was constructive engagement from the private sector, civil society organisations, and government agencies including CIPC and National Treasury. Further engagement, including with the Department of Mineral Resources and Energy (DMRE), the Financial Intelligence Centre of South Africa (FIC), and the Department of Trade and Industry (DTI), is an important next step.

MINING CORRUPTION

SOUTH AFRICA'S MINING SECTOR AND CORRUPTION

Much has been written on historic corruption in South Africa, particularly during the recent period when state capture was prevalent.

The examples of unethical business practices linked to those in the highest offices in the country do not need to be expanded upon here. The significance of mining to the South African economy, and the value attached to natural resources and the companies licenced to exploit them, mean that the mining sector always has been one of the main vehicles used for that corruption.

So the focus here is on the hallmarks of that corruption which are most relevant to EITI.

SECRECY

Most financial crime, including corruption, requires a certain degree of secrecy and opacity, and corporate structures are a way in which criminals disguise their activities. Historically it has been difficult to ascertain who ultimately really controls or benefits from a particular company, making it difficult to spot and tackle corruption. Undisclosed businesses interests of those in positions of political influence are frequently associated with corruption.

COMPLEXITY

One of the other weapons in the criminal's armoury is complexity. By using complicated multi-layer company structures which cross multiple jurisdictions, the criminal will aim to:

- Hide their identity
- Disguise the corrupt transactions to make them look innocent

Traditional forms of corporate transparency have focused on the activities of the company itself and its legal owners, without looking further.

EITI also tackles secrecy and complexity, by requiring a wide range of public disclosures which could help tackle corruption. For example, disclosure of beneficial ownership of companies active in the extractive sector, contracts/licences which can uncover conflicts of interest, uncommercial terms or preferential treatment which could be a hallmark of corruption.

Both of these topics are rooted in transparency, which is recognised as one of the tools to tackle corruption in many forms. It empowers people to identify unethical behaviour and hold those responsible to account.

As President Cyril Ramaphosa put it at the 2019 Mining Indaba:



We live in a world where people no longer want to have things happen around them without their knowledge and involvement. They want to have their views heeded.

Corruption may sometimes be seen as those in positions of influence securing personal wealth through the illegal use of that influence. However, the other side of that coin is that corruption is about directing wealth away from those to whom it should justly accrue, who in many cases may be the poorest in society and those historically disenfranchised. Beneficial ownership transparency (BOT) and EITI also have a role to play in preventing and identifying these forms of corruption.



EITI

THE EXTRACTIVE INDUSTRIES TRANSPARENCY



Since its launch in 2003, EITI has become a benchmark for transparency in the extractives sector, and the EITI Standard has provided a clear framework for that transparency. The Extractive Industries Transparency Initiative (EITI) is an organisation set up to administer a global standard of openness and accountability in the management of oil, gas, and mineral resources in countries choosing to adopt that standard.

EITI is led at a global level by a board, representing governments, civil society, and the private sector, and this multi-stakeholder approach is core to the EITI model. Implementing countries, of which there are 56¹, put in place their own local structure to implement the standard, but at the core of that is the same multi-stakeholder principle.

The EITI Standard sets minimum requirements for transparency and reporting relating to the extractives sector. These originally focused on transparency of tax payments, but now require transparency beyond payments from companies to governments. The latest version of the Standard was issued in June 2019, and includes disclosure of licences/contracts, information about state-owned companies and significant social payments, beneficial ownership, environmental issues and gender.

¹ See <https://eiti.org/countries>



In recent years the focus has moved towards embedding these principles into legislation in implementing countries, and transitioning to information being systematically disclosed, rather than through a formal annual EITI report.

But just as importantly, EITI implementation is about how that information is used, how it is made available in an accessible form to the broadest range of stakeholders. The audience for EITI is not governments and it is not companies. It is the communities who are impacted by extractive activities, who rely on them for employment or socio-economic resilience, and who will have to live with the lasting impacts, positive and negative, of the sector.



BACKGROUND TO EITI

EITI's launch might be expected to be the start of any background or history, but this is not the case for two reasons. Firstly, the launch of EITI in September 2002 did not happen as planned. Secondly, the seeds of EITI were sown before that date.

The history of corruption and opacity in the extractives sector probably goes back to when mankind first started deriving value from minerals. But it was in the 1990s that these issues were brought to the forefront though significant studies into the reasons why countries rich in natural resources remained economically impoverished. Prior to that, it was well understood that some countries with oil, gas, and minerals became wealthier than others, but the causes were often lumped together as being a consequence of corruption and poor financial management in developing countries.

Those studies in the 1990s highlighted that the real drivers of that chasm in wealth were indeed corruption and poor financial management, but also a complex mix of governance, licencing and fiscal regimes, procurement, extraction and processing, and webs of opaque ownership. It became clear that stakeholder engagement and transparency were going to be key in addressing these multiple factors. As US Supreme Court Justice Louis Brandeis put it in 1914, "sunlight is the best disinfectant".

Civil society organisations (CSOs) had long campaigned for better governance in the extractives sector, but this research provided the catalyst for campaigns by CSOs such as Oxfam and Global Witness, including the highly influential report *A Crude Awakening* by Global Witness about the oil sector in Angola. This report coined the phrase "publish what you pay", which went on to be adopted as the name of a growing coalition of CSOs seeking transparency in the tax affairs of the extractives sector.

Initial efforts at unilateral tax transparency by companies like BP met with resistance and the then chief executive of BP, Lord Browne, was influential in bringing this issue to the attention of the UK government.

TRANSPARENCY, HAS ALWAYS BEEN AT THE HEART OF EITI

Coming back to the launch of EITI, the UK government took the experiences of BP and others and looked for ways to address these issues. It was planned that the then prime minister Tony Blair would announce the idea of EITI in September 2002 at the World Summit on Sustainable Development which took place in Johannesburg. However, that speech was never delivered, and EITI might have been forgotten before it even began. Fortunately, Blair's undelivered speech was later published, and work on developing the EITI concept commenced.

FORMATION OF EITI

Transparency has always been at the heart of EITI, and the initial framing of EITI was as a reporting standard, rooted in collaboration between civil society, governments, and the private sector. And building on the support of Tony Blair and Lord Browne, the EITI principles were developed. These principles, first agreed at a conference held at Lancaster House in London in 2003 remain part of the EITI Standard 2019 and are core to what EITI is seeking to achieve.

The principles had the support of a group of companies and civil society, who were soon joined by interested countries. The first countries to move towards EITI were Azerbaijan, Nigeria, Ghana, and the Kyrgyz Republic, with each undertaking a pilot. But it is notable that South Africa was not on that list, despite being the host for what would have been the launch speech by Tony Blair.

EITI received endorsement from the G8 in 2004 and in 2006 the international EITI board was formed and Oslo was selected as the location for the EITI international secretariat. This was undoubtedly an important step in EITI gaining funding, including from the World Bank. However, it secured the roots of EITI in the developed world, which may still be making some countries hesitant to join.

Clearly a unilateral approach, where one company or one country was under pressure to 'publish what you pay' was not workable.



Lord Browne: CEO of BP

The reporting requirements under EITI have been through a series of developments, each time fine tuning what needs to be disclosed, but also expanding into new areas. EITI is no longer just about tax payments. It covers a much broader range of topics, and most recently added contract transparency, beneficial ownership, environmental impacts, and gender diversity.



EITI principles:

1. We share a belief that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts.
2. We affirm that management of natural resource wealth for the benefit of a country's citizens is in the domain of sovereign governments to be exercised in the interests of their national development.
3. We recognise that the benefits of resource extraction occur as revenue streams over many years and can be highly price dependent.
4. We recognise that a public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development.
5. We underline the importance of transparency by governments and companies in the extractive industries and the need to enhance public financial management and accountability.
6. We recognise that achievement of greater transparency must be set in the context of respect for contracts and laws.



7. We recognise the enhanced environment for domestic and foreign direct investment that financial transparency may bring.
8. We believe in the principle and practice of accountability by government to all citizens for the stewardship of revenue streams and public expenditure.
9. We are committed to encouraging high standards of transparency and accountability in public life, government operations and in business.
10. We believe that a broadly consistent and workable approach to the disclosure of payments and revenues is required, which is simple to undertake and to use.
11. We believe that payments' disclosure in a given country should involve all extractive industry companies operating in that country.
12. In seeking solutions, we believe that all stakeholders have important and relevant contributions to make - including governments and their agencies, extractive industry companies, service companies, multilateral organisations, financial organisations, investors and non-governmental organisations.

EITI AND ANTI-CORRUPTION

While concerns about corruption were one of the drivers for setting up EITI, the initiative has not historically focused specifically on anti-corruption measures or perceived itself as an anti-corruption organisation. The EITI principles do not mention corruption (or anti-corruption) directly. However, the concept of combating corruption is implicit in the principles, and the EITI Standard and its implementation. There is a strong emphasis on transparency and accountability.

EITI, as an organisation, has only taken a more overt anti-corruption position since 2020 when the board recognised the need to take such an approach. In December 2021, EITI published its first guidance note for multi-stakeholder groups (MSGs) in implementing countries on how to address corruption risks.² The guidance note provides practical measures that MSGs can take to assess corruption risks in their country and use EITI implementation and reporting to address those risks and contribute to wider national anti-corruption measures. The guidance note also contains links to useful resources from third parties.

Pressure from civil society is a key driver of EITI's more overt approach to anti-corruption. This pressure has come both from individual implementing countries and global organisations such as the Natural Resources Governance Institute (NRGI). Concerns that EITI reporting was not exposing potential corruption and was possibly missing opportunities to do so was behind this civil society pressure.

² Addressing Corruption Risks Through EITI Implementation, <https://eiti.org/document/guidance-note-addressing-corruption-risks>

For example, in June 2019 in a BBC Panorama programme, allegations were made in Senegal about how a licence to explore for gas offshore was initially acquired some years previously with reports of suspicious payments made to a relative of the president.³ EITI issued a statement about the matter on 13 June 2019.⁴ Anger at EITI's perceived failure to uncover this corruption prompted a demonstration outside the EITI global conference in late June 2019. However, the events that were the subject of the Panorama programme occurred before Senegal had joined EITI. More generally, EITI reports have revealed very few cases of corrupt payments since its launch.

The original intent of EITI was to focus on revenues and the specific transfers by companies of legitimate tax payments to government, and reconcile this with the funds received by government. The reconciliation of payments and receipts on its own is unlikely to identify potential corruption. While it can, and does, find discrepancies and the reasons behind these, it does not look at illegitimate payments. Also, it does not include sufficient supporting information to determine whether a payment is suspicious.

Furthermore, the scope of EITI does not include aspects of the extractives value chain that can also give rise to corrupt payments. In particular, the EITI Sstandard does not include the supply chain to the extractive industries.

However, other parts of the EITI reporting and implementation process can contribute to identifying gaps that could be exploited for corruption purposes. These include providing an assessment of the legal and regulatory framework, the licensing process, and the role of SOEs. The expansion of EITI's remit also contains elements that can be used to deter and detect potential corruption.

Some of the newer aspects of the EITI Sstandard, such as those related to beneficial ownership and contract transparency, can make a contribution to deterring and detecting corruption. Disclosures about the real owners of companies participating in a country's extractive industries can reveal potential conflicts of interest, the involvement of PEPs in ownership structures, and provide comfort that the companies are fit and proper to undertake exploration and exploitation activities.

Many of these newer elements have yet to be implemented fully in many EITI countries and combined with the recent focus on anti-corruption means that EITI's ability to act as an effective anti-corruption process has yet to be assessed.

EITI AND THE PRIVATE SECTOR

Private sector companies play a critical role in EITI and these companies can derive considerable benefits from the initiative. The tripartite multi-stakeholder concept that brings together governments, civil society, and private sector companies lies at the heart of EITI, its governance, and its implementation.

Private sector companies have equal representation on the EITI board.⁵ This includes major companies representing both the hydrocarbons and mining sectors, as well as those representing institutional investors. At a country level, private sector companies also have equal representation on the multi-stakeholder group that governs the EITI process in each country. Private sector representatives may be from individual companies or from industry associations such as a chamber of mines.

Private sector companies are integral to the EITI implementation process. At the heart of the process is the reconciliation between company tax payments to government and government receipts from companies. Private sector companies are therefore one of the key providers of data on payments and other factors (such as production) that are publicly disclosed under the EITI process and therefore contribute to transparency and accountability.

In each country, all the companies that are active in the extractive sector⁶ are in scope for reporting relevant data. In practice, the MSG in a country may set a materiality threshold and so some smaller, non-material companies are exempt from the process e.g. in a country where hundreds of small mining companies represent a small fraction of total revenue and production.

EITI offers the following benefits to private sector companies:

- Making a contribution to the sector's and individual company's licence to operate in each country through provision of accurate and reliable information on the extractive sector that can play a role in overcoming myths and misconceptions about the sector's socio-economic contribution,
- Providing a forum to discuss potentially sensitive issues with government and civil society stakeholders in a neutral setting and within an agreed framework,
- A means for a company to demonstrate its commitment to the country and the level of its socio-economic contribution to the country's development,
- A channel for influencing the government's and civil society's approach to the extractive sector as well as propose reforms.

⁵ <https://eiti.org/about/board>

⁶ That is all companies that hold a licence to explore or extract oil, gas and minerals in the country.



³ See, <https://www.bbc.co.uk/programmes/m0005q26>

⁴ <https://eiti.org/news/eiti-issues-statement-on-senegals-validation>

CURRENT STATUS OF EITI

The EITI has evolved from its beginnings as a narrow set of rules focused on revenue collection into an international standard covering a far wider set of governance issues relevant to the extractives sector. It now encompasses BO disclosure, contract transparency, the integration of the EITI into government systems, and transparency in commodity trading.

The focus of EITI reports has moved from compiling data to building systems for open data and making recommendations for reforms to improve the extractive sector governance more generally.

THE EITI REPORTING PROCESS IS NOT JUST ABOUT PUBLISHING DATA.

It also captures the way in which the sector is governed, and most importantly provides recommendations on potential improvements. The impact of the EITI is most evident when governments decide to implement these recommendations.

In some countries, EITI reports have been a useful tool for highlighting weaknesses in government systems and promoting options for improving sector management, thus making an important contribution to policy reform and change.

EITI continues to grow, both in terms of the number of implementing countries, and the scope of reporting being introduced in those countries. The 56 active implementing countries span the globe, from Mexico in the west to Papua New Guinea in the east, from Norway in the north to Argentina in the south, and an unbroken band of countries in mainland Africa reaching from Mauritania to Mozambique.

Ten of those countries are currently deemed to have made “satisfactory progress” against the EITI Standard 2019, which is the highest level attainable. A further 33 have made “meaningful progress” and eight are still to be assessed against the latest requirements. This range of achievements reflects the challenges posed to implementing countries.

EITI AND BENEFICIAL OWNERSHIP TRANSPARENCY (BOT)

BOT first became a part of the EITI Standard in 2013 and an obligatory part in 2016. That update of the standard required implementing countries to develop a BO roadmap by 1 January 2017 and move to disclosure of the BO of all companies operating or bidding for extractive activities by 1 January 2020.

However, effective implementation of the BO requirements has proved to be challenging, and many EITI countries are still implementing their roadmap, with varying degrees of success.

Two of the main stumbling blocks have been:

- Where EITI reporting is not embedded into legislation, BOT remains voluntary and so compliance levels are low; and
- There remains a low level of understanding of BO among private sector companies, resulting in low quality or incomplete BO data being provided.

EITI has recently started working with Open Ownership (OO), a not-for-profit organisation which has developed the beneficial ownership data standard, a model for the technological solution to capturing and sharing machine-readable BO data. Together EITI and OO have launched the Opening Extractives Programme which is providing support to nine countries in capturing BO data for their extractives sectors.

Although the quality and quantity of BO data made public through EITI may not yet have matched the ambitions in 2016, EITI has proved an important stepping stone or template for efforts to put in place economy-wide BOT.



SOUTH AFRICA AND EITI GAP ANALYSIS

Although South Africa is not an EITI implementing country, that does not necessarily mean that none of the EITI requirements are already being met. Indeed, some non-EITI countries are further ahead in some areas than longstanding EITI members.

A thorough, detailed gap analysis between the EITI Standard 2019 and the current state of governance and transparency in the mining sector in South Africa is beyond the scope of this paper. However, there are some key elements of the EITI Standard where high-level observations can be made.

TRANSPARENCY IN TAXES PAID AND RECEIVED, NATIONALLY AND SUB-NATIONALLY

Some major mining companies in South Africa publish their tax payments as part of their annual reporting cycle. Anglo American⁷ is an example here. However, not all companies do this, and very few if any small-scale miners. This transparency does not necessarily extend to separating out sub-national payments.

On the government side, although South Africa is seen as a proponent of fiscal transparency, South Africa's latest Open Government Partnership (OGP) national action plan⁸ highlighted the weak link between transparency and accountability. There is more to be done to ensure accessibility, inclusion, and support for the scrutiny and use of tax data.



PRODUCTION AND EXPORT DATA

Statistics South Africa, the government department responsible for the publication of data, publishes significant amounts of data about the mining sector.⁹ However, this data is not necessarily presented in a way which is accessible to communities and those most directly impacted by mining activities.



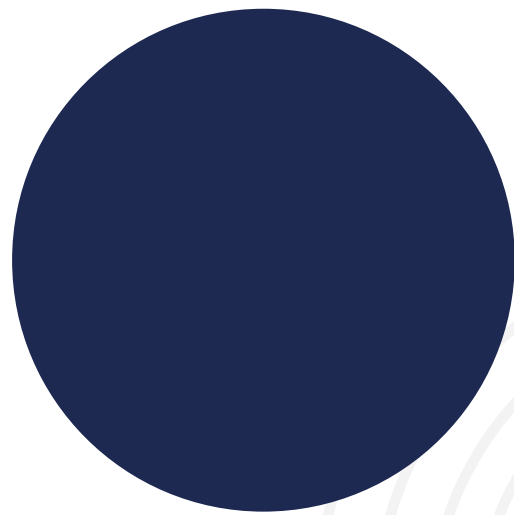
CONTRACT TRANSPARENCY

South Africa has also made commitments on contract transparency as part of the OGP national action plan.

⁷ <https://www.angloamerican.com/-/media/Files/A/Anglo-American-Group/PLC/investors/annual-reporting/2021/tax-and-economic-contribution-report-2020.pdf>

⁸ https://www.opengovpartnership.org/wp-content/uploads/2021/01/South-Africa_Action-Plan_2020-2022.pdf

⁹ <http://www.statssa.gov.za/?cat=41>



BENEFICIAL OWNERSHIP

Detailed analysis of the position on BO can be found in a separate paper produced by the Consultants for Corruption Watch and to be published in the near future. However, it is clear that the current level of BOT falls short of that expected under the EITI Standard.

Specifying the advantages for South Africa of adopting the EITI Standard would be assisted by a more detailed gap analysis.





SOUTH AFRICA'S ENGAGEMENT WITH EITI

It is somewhat ironic that Tony Blair's speech in 2002 was due to be delivered in South Africa, and 20 years later South Africa is not one of the 56 countries implementing the EITI Standard. It is reasonable to assume that at the time South Africa would have been seen as one of the key countries which might have been an early adopter, and it remains a question as to why that did not happen back then, and has not happened since.

The EITI international secretariat has tried on a number of occasions to bring South Africa to the table, and South Africa has engaged. Then finance minister Pravin Gordhan spoke at the EITI Global Conference in Paris 2011, and there was a rumour that Jacob Zuma, who was in Paris for other meetings, was going to visit the conference to make an announcement. But no such visit happened, and no announcement was made.

Other than approaches from the EITI international secretariat, and a flurry of news reports around the statements made in 2011, there has not been much push for South Africa to join. The secretariat has not been lobbying the current government. Equally, those private sector companies who have long been supporters of EITI and who are operating in South Africa have not actively promoted EITI membership.

So it is unclear as to whether there really is still resistance from the South African leadership, or whether the question just has not been explored fully.

Indeed, it is unclear now as to exactly where opposition to EITI might come from. There is a groundswell of support from civil society, as one would expect. The large private sector businesses are generally supportive, and some will already be reporting under EITI in other countries. So resistance must have either come from government, or those with influence over the government.

Why, then, has South Africa not joined EITI? There are several reasons, some of which are linked to what EITI was when it was first founded, and might be outdated. Other concerns remain valid and need to be taken into account.



PERCEPTIONS OF EITI

EITI WAS VERY SUCCESSFUL IN ITS EARLY YEARS IN ENCOURAGING COUNTRIES TO IMPLEMENT THE STANDARD AS PART OF EFFORTS TO IMPROVE TRANSPARENCY AND TACKLE FINANCIAL CRIME.

As a result, EITI was seen by some as a tool to tackle problems endemic in countries with poor governance. It was sometimes referred to as an initiative suited to countries with real problems in their extractives sector.

This resulted in some countries not wanting to be associated with that demographic, citing that they have well-constructed legislation, effective government agencies, and robust enforcement.

EITI was unnecessary, and might even undermine confidence, by raising the questions as to why it was needed. EITI was seen by some as a “bad boys’ club” and something relevant to countries with poor governance.

On a slightly more challenging front, some have suggested that EITI is an initiative developed by the global north and imposed on the global south, perhaps reflecting some form of neo-imperialist attitude to the developing world.

EITI recognised these issues, and as a result some of the countries who had been supportive of EITI but not adopters (such as the UK) made that move and started implementing the standard. One stated aim was to demonstrate that EITI has value in any country with natural resources and extractives activities, and does not need to be associated with an extractive sector plagued by crime and opacity. The UK signed up to EITI in 2013. The US also committed to join (although it has since withdrawn) and was followed by Germany in 2016 and the Netherlands in 2018. Norway joined in 2009.

However, EITI continues to face these challenges, and any attempts to encourage South Africa to join EITI will need to take these concerns into account, and bring South Africa to a point where it willingly embraces EITI for domestic and regional reasons, rather than feeling an obligation imposed from Europe.

SOUTH AFRICA'S PEERS

South Africa is among the leading mining jurisdictions, and one of the largest producers of a range of commodities traded around the globe. The South African extractives sector sits comfortably alongside those of Australia, Brazil, Canada, Chile, and the US, and some might consider these countries to be South Africa's peers. Stakeholders from all sides have said that South Africa sees itself as part of that list, and this ties into its inclusion in BRICS (Brazil, Russia, India, China, South Africa). Economically South Africa feels more connection to these countries than, say, the resource-rich countries of central Africa.

But Australia, Brazil, Canada, and Chile have not joined EITI. Even the US only briefly joined but left in 2016 when President Trump entered the White House. Indeed, of the top 10 mining countries worldwide in 2018, based on mineral production value¹⁰, only two (Indonesia and Peru) are EITI members.



Figure 1 – EITI membership among top 10 mining countries

¹⁰ <https://www.statista.com/statistics/1114898/leading-mining-countries-worldwide-based-mineral-production-value/>



By implementing EITI South Africa might be seen to be leaving this group. Or this might perhaps be seen as South Africa admitting that it does not have the same level of governance as those countries.

However, this argument may be flawed. South Africa's role and influence on the Africa continent is fundamentally different from the place held by those other countries in their regions. Even if South Africa may see itself as part of mining's global top table, it is the only member of that top 10 on the African continent, and cannot fail to have a role in how Africa addresses corruption.

Furthermore, there is no evidence developing countries would see South Africa adopting EITI as in any way diminishing its place as a leading extractives country. Indeed, it would probably have the opposite effect and be seen as a logical step on the road away from state capture.

Of course, it is also possible for South Africa to see its peers as other middle income resource rich countries such as Indonesia, Mexico, and the Philippines, all of whom are EITI members.

EXISTING GOVERNANCE AND TRANSPARENCY

One of the most prevalent arguments against South Africa joining EITI is that the levels of governance and transparency in South Africa are such that there is no need for EITI reporting. The South African government and more specifically the DMRE and the South African Revenue Service already collect and hold all the data necessary to administer and tax the mining sector. This information has been further extended by access to country-by-country data submitted by large companies in their home jurisdictions and shared with other governments.

Although these assertions may be correct, using them as an argument against the potential benefits of EITI shows a misunderstanding of what EITI is and what it seeks to achieve.

The primary purpose of EITI is not to empower weak government agencies to collect more tax.

It is worth noting how EITI is now described on its own website:

Our mission is to promote understanding of natural resource management, strengthen public and corporate governance and provide the data to inform greater transparency and accountability in the extractives sector.

It is clear that EITI has brought communication and stakeholder engagement to the front, which is particularly relevant in the South African context.

One of the main benefits of EITI is broad transparency, and a drive to make that transparency relevant and accessible to all stakeholders.

Inequality is a major challenge for South Africa in a post-apartheid and post-state capture era. Addressing inequalities in wealth and opportunity is key, and part of that is addressing inequalities in access to information.



POLITICAL WILL

While the tax transparency aspects of EITI might not have attracted great support in political circles under previous administrations, neither was it likely to pose a great concern. The tax payments made by companies and received by government were not the prime vehicle for corrupt activity.

However, the EITI Standard includes other transparency requirements which might have exposed fact patterns which would not have reflected well on some of those in positions of power. Transparency in contracts, beneficial ownership, and the processes under which the extractives sector is governed might have been of most concern.

It is very likely that there have been periods in South Africa's recent history where some of those in positions to influence a move towards or away from EITI were those same people who potentially stood to be exposed by the transparency EITI would bring.

And even if it was not those individuals themselves who had a vested interest in not adopting EITI, those outside of government but with significant influence over those in power may also have been opposed.

It remains to be seen whether there has been a sufficient change in political will under the current government, but vocal support at a presidential and cabinet level for BOT could signal that

**SUPPORT FOR GREATER
TRANSPARENCY NOW
OUT-WEIGHS VESTED
INTERESTS.**





OPPORTUNITIES

FOR SOUTH AFRICA

REGIONAL LEADERSHIP

Setting aside the potential benefits to South Africa itself from EITI, there is perhaps significant opportunity stemming from South Africa's position of regional leadership. Almost all of South Africa's neighbouring countries are outside of the EITI net, including Botswana, Namibia, and Zimbabwe. South Africa joining EITI could have an influence on these countries, tipping the balance when they might consider joining too.

South Africa has, since the end of the apartheid era, sought to establish a position of regional leadership. Successive presidents from Nelson Mandela onwards have taken influential positions at home and abroad, including through the Organisation of African Unity, and the African Union and its pan-African parliament and its peace and security council.

South Africa is also an influential nation though its membership of BRICS, has served three terms as a non-permanent member of the United Nations Security Council, was one of the five countries invited to participate in G8 meetings from 2005 until 2008, and is a member of the G20.

This all demonstrates that South Africa has a leading and influential role globally (particularly in the global south), but very much so in southern Africa and the continent as a whole.

Resource governance and mobilisation, transparency, and tackling corruption are pan-African challenges, and a platform where South Africa can and does show leadership.

EITI is being implemented in over 20 African countries, but that equates to approximately 50% of the whole (see figure 2). With natural resources being such an important part of the economies of many of those countries who are not implementing EITI, South Africa's implementation of EITI could constitute a major win in the battle against corruption.

As well as political leadership, South Africa is also pivotal as the hook for supply chains across Africa, in the extractives sector but also across economies. The public transparency afforded by EITI could be valuable to those doing business with South African extractives companies as it would give them more comfort that they know who they are doing business with, and can mitigate commercial and reputational risks.

COMMUNICATION AND ENGAGEMENT

EITI is not just about collecting and reconciling data. Neither is it just about making tax data transparent. It is a powerful vehicle for communicating the scope, scale, activities, and value of the extractives to a very broad stakeholder audience. EITI is built on the multi-stakeholder principle, with community representation (through CSOs) being a prerequisite. But beyond that, EITI outreach, workshops, and community engagement can bring the complex commercial and economic issues related to the extractives sector to local communities in a relevant and accessible manner.

So in assessing the merits of EITI for South Africa, it is important to consider the benefits to communities and those impacted by the sector, not just companies and the government.

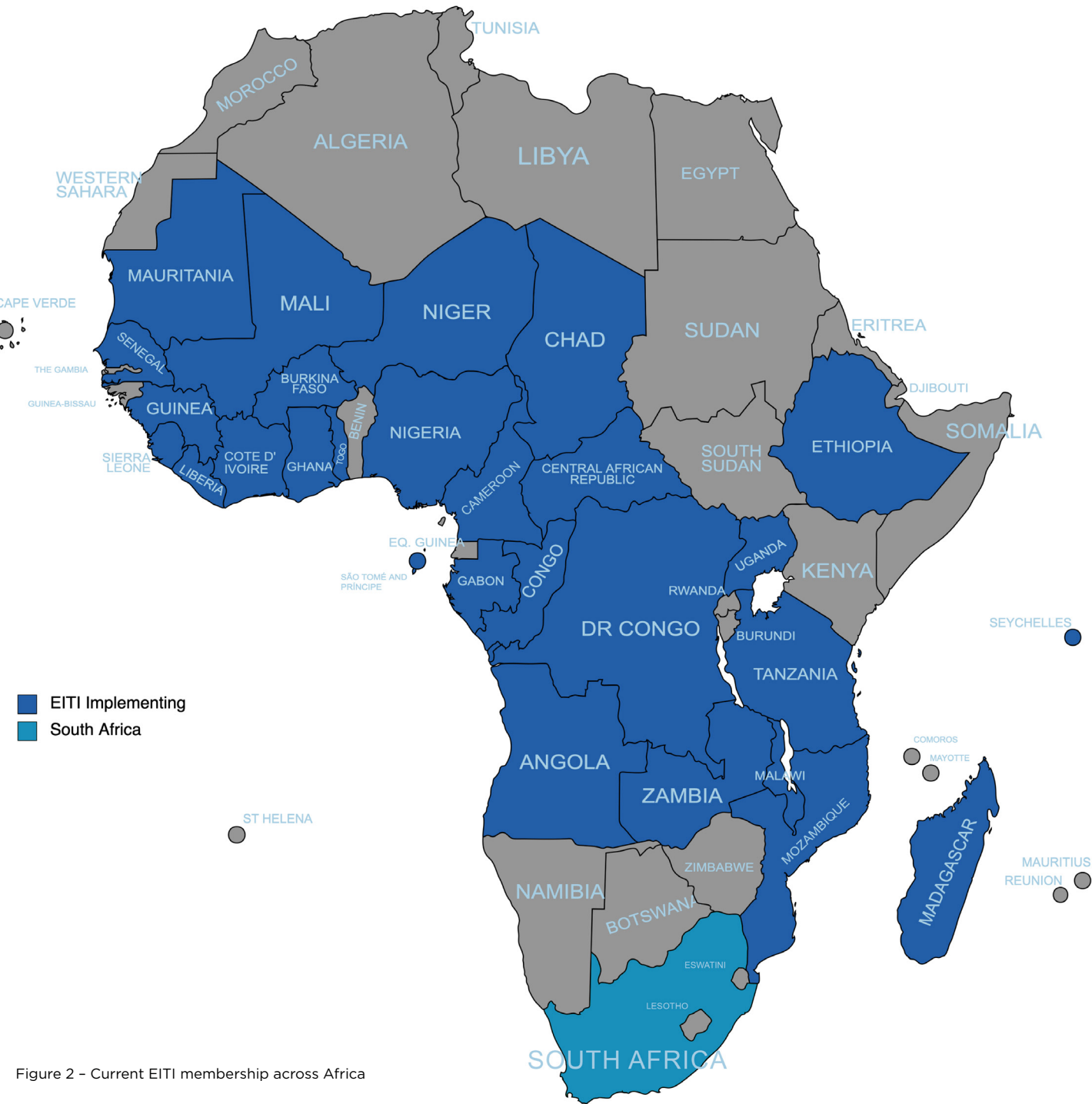


Figure 2 – Current EITI membership across Africa

MARKET EXPECTATIONS AND CREDIT RATINGS

Resource governance is an important consideration for all those investing in the extractives sector, and probably second only to concerns around climate and energy transition.

In a case study published on the website of Principles for Responsible Investment (PRI)¹¹, asset management company Union Investment provides a case study on its approach to assessing corruption and the impact on its decision making and the assessment of creditworthiness, which states:

“We have developed our own rating system for government bond issuers which also includes corruption data from Transparency International and the World Bank. This aims at assessing the countries’ willingness to pay and the overall rating generates research signals that are being used by Union Investment’s portfolio managers. While the more traditional fundamental research process is capturing the mere issuers’ ability to pay back debt, the adjusted rating adds the aspect of corruption and its impact on sovereign creditworthiness. We therefore combine data from our economic analyses and with our findings from the corruption indices. In doing so we refine our sovereign rating and provide additional insight for our portfolio managers. The research signals are primarily used by fixed income teams in order to enhance their investment decisions with additional analytic data. However, the data is taken into consideration by equity portfolio managers just as well as country risks may pose severe risk to commercial enterprises, too.”¹²

¹¹ www.unpri.org
¹² <https://www.unpri.org/fixed-income/corruption-as-an-indicator-of-creditworthiness/56.article>



More specifically, PRI has also published a case study on EITI¹³ which considers the direct link between EITI implementation and country credit ratings. One example cited is the Philippines:

EITI is a concrete step towards enshrining transparency in governance. While it may only be for the extractive industry, the number of government agencies involved is substantial and includes the major revenue and licensing agencies of government. It is a statement as to how committed government is about up-scaling transparency in government operations and procedures. This can only be a positive as far as credit ratings is concerned, since a more transparent government bureaucracy lends itself to greater efficiency and effectiveness.



Maria Teresa S. Habitan, assistant secretary of finance, the Philippines

This would suggest that EITI implementation could have a wider economic impact on South Africa if it were to enhance the credit rating of the country as a whole.

¹³ <https://www.unpri.org/credit-risk-and-ratings/using-the-extractive-industries-transparency-initiative-eiti-to-enhance-credit-ratings-assessments/69.article>

SIGNALLING A MOVE FROM ERA OF STATE CAPTURE

There is clear support at a presidential level for South Africa to have demonstrably left the era of state capture behind, and although not all of the issues of the past have been resolved, the political will to place South Africa on a par with other major mining jurisdictions is very evident.

Joining EITI would be a very clear and public way for the South African government to show that the ways of the past are changing, and that South Africa wants to be seen as part of the solution. South Africa’s vehement independence has sometimes manifested itself in being non-conformist, but where there is a good reason to join international initiatives, South Africa has done just that.





RECOMMENDATIONS

FOR CORRUPTION WATCH

1. Implement a strategy to raise awareness amongst relevant stakeholders of the benefits of South Africa implementing EITI to build support for the country's candidature.
2. Disseminate this report to stakeholders in South Africa including relevant government departments (e.g. Department of Mineral Resources and Energy, National Treasury, and the Department of Trade and Industry), extractive sector companies operating in the country, especially those who support EITI, business organisations such as Minerals Council South Africa and Business Leadership South Africa, civil society organisations, and business journalists as part of the strategy to build awareness and support for implementing EITI in South Africa.
3. Monitor developments and continue to advocate for South Africa joining EITI.

FOR THE EITI BOARD AND INTERNATIONAL SECRETARIAT

1. Commission a detailed scoping study, including a gap analysis between the EITI Standard 2019 and the current state of governance and transparency in the mining sector in South Africa, which identifies areas where EITI implementation would add value and strengthen transparency and accountability in the country's extractive industries.
2. Undertake a strategic engagement campaign in South Africa to build support for EITI implementation.



FOR THE GOVERNMENT OF SOUTH AFRICA

1. Convene a taskforce to examine the opportunities and challenges that EITI implementation brings for South Africa and to make a recommendation on whether to apply for candidature.



CONCLUSION

SECURING THE BENEFITS OF GOVERNANCE REFORMS

South Africa has in the past faced significant challenges from state capture, corruption and other financial crime. But South Africa is on a path to address these issues. There have been meaningful steps forward and these continue to have support at a presidential and cabinet level. However, governance and transparency does not always move in one direction. For example, in the US in 2016 we saw extractives transparency provisions being reversed.

EITI does not automatically bring with it any legal obligations. Countries are not obliged to remain a member by any treaty, and there is no automatic obligation on companies or the government to publish information. Increasingly, however, EITI implementing countries are embedding EITI reporting into legislation, thereby creating a mandatory requirement for the information to be collected and made public.

In his submission to the Zondo Commission on 31 October 2019, Lord Peter Hain specifically called upon South Africa to:



Join the EITI so that there is greater transparency and accountability around the operation of the extractive industries; historically an area at higher risk of corruption.¹⁴

¹⁴ https://www.statecapture.org.za/site/files/documents/364/Day_189_18_November_2019_QQ_a__b_Hain_Peter_Lord_-_Statement.pdf#production-value/

FOR EITI SUPPORTING COMPANIES OPERATING IN SOUTH AFRICA

1. In engagements with relevant stakeholders in the government of South Africa, advocate for South Africa to implement EITI.
2. Make public statements in support of South Africa implementing EITI.

FOR CSOS IN SOUTH AFRICA

1. Support Corruption Watch's awareness-raising efforts, including drawing attention of relevant stakeholders to this report and advocating for South Africa's implementation of EITI.
2. Make public statements in support of South Africa implementing EITI.



In its case study on EITI¹⁵, PRI also referenced the upgrading of the Philippines credit rating by ratings agency S&P in 2014, which was supported by the “strong reputational lock-in effects” of EITI, securing recent governance reforms against the impact of changes in political power:

Even though a change of administration after the presidential elections in 2016 represents some uncertainty for reforms, the risks have shifted toward maintaining the impetus and direction of the process, away from a potential reversal or abandonment of advances achieved to date.

In the South African context, EITI could be a route to further securing recent progress in transparency and governance on two fronts:

- Potential for EITI transparency enshrined in legislation; and
- Reputational cost of any future administration cutting back on something as public as EITI membership.

EITI would bring benefits to South Africa in terms of further strengthening transparency and accountability in a vital economic sector, enhancing public awareness of the socio-economic contribution of the extractive sector, and reinforcing government, civil society and private sector efforts to move away from the era of state capture and secure the country’s future prosperity.

¹⁵ <https://www.unpri.org/credit-risk-and-ratings/using-the-extractive-industries-transparency-initiative-eiti-to-enhance-credit-ratings-assessments/69.article>



LIST OF STAKEHOLDER ORGANISATIONS INTERVIEWED

1. Anglo American plc
2. Association of anglophone Africa Auditors General
3. Business Leadership South Africa
4. CIPC
5. EITI International Secretariat
6. Herbert Smith Freehills
7. Minerals Council South Africa
8. National Treasury
9. NRGi
10. Open Government Partnership
11. Open Ownership
12. Oxfam
13. Tax Justice Network
14. Who Owns Whom

HOW TO BECOME AN EITI IMPLEMENTING COUNTRY



Guidance note 1
May 2018

This note has been issued by the EITI International Secretariat to provide guidance to implementing countries on meeting the requirements in the EITI Standard. Readers are advised to refer to the EITI Standard directly, and to contact the International Secretariat to seek further clarification. Contact details can be found at www.eiti.org.

How to become an EITI implementing country

Steps for becoming an EITI implementing country

A country intending to implement the EITI is required to undertake a number of steps before making an application to the EITI Board. The EITI Standard sets out the steps:

- The government should issue a public statement of its intention to implement the EITI. The statement must be made by the head of state or government, or an appropriately delegated government representative (Requirement 1.1.a).
- The government should appoint a senior individual to lead the implementation of the EITI (Requirement 1.1.b).
- The government should commit to work with civil society (requirement 1.3) and companies (requirement 1.2), and establish a multi-stakeholder group to oversee the implementation of the EITI (Requirement 1.4.a).
- The multi-stakeholder group should agree a costed work plan that sets out the objectives for EITI implementation linked to national reform and development priorities. (Requirement 1.5).

The “sign-up” steps are set out in more detail in the Requirements 1.1 – 1.5 of the EITI Standard.

Applying to become an implementing country

When a country has completed the “sign-up” steps and wishes to be recognized as an EITI implementing country, the government should submit an EITI application¹, endorsed by the multi-stakeholder group, to the EITI Board. The application should describe the activities undertaken to date and provide evidence demonstrating that each of the sign-up steps has been completed. The application should include contact details for government, civil society and private sector stakeholders involved in the preparations for implementing the EITI.

¹ A standardised application form is available from the International Secretariat.

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