

**TRANSPARENCY AS TRANSFORMATION?
GHANA AND THE EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE.**

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Introduction

A crucial dilemma facing mineral-rich countries is how public revenues, often cynically designated as rents, could be harnessed for equitable and effective development. Conceptually, this issue has become important due to various analyses that have underscored the corrosive effects of mineral rents on state institutions, policy processes and economic output. While the underlying prognosis of the scepticism associated with mineral-driven development continues to be interrogated, different academics and policy activists tend to agree that the real challenges of mineral-led growth, in particular, and resource-rich countries, in general, do not pertain to the presence of resource-rents per se, but how they are managed and used (eg. Acemoglu et al., 2003; Leite & Weidmann, 1999; Morrison, 2012). Consequently, significant weight has been placed on various mitigation strategies that have sought to deploy democratic oversight and effective governance as a way of securing optimum developmental transformation from the mining sector. As the number of these technocratic interventions continues to grow, the main research and policy agenda has been dictated by the need to track and interrogate compliance by actors ranging from governments to extractive firms (cf. Barma, 2011; Gaventa & McGee, 2013; Gillies & Heuty, 2011). However, the interest in tracking compliance, often based on pre-determined notions of effective extractive sector governance, has not come with the same enthusiasm in exploring how these interventions interact with the deep vectors of power, politics, and contestations that constitute the pre-conditions for optimum transformation in implementing countries (cf. Bourgoignie & Haarstad, 2013:102). This paper takes on this issue by exploring Ghana's experience with the Extractive Industries Transparency Initiative (EITI) and its interaction with domestic institutions and political economy drivers to shape the institutional landscape of the mining industry.

The EITI is one of the instruments that have gained much traction, especially in the global architecture for the management of extractive resources. The Initiative, which was introduced in 2002, generally prescribes public disclosure of payments, revenues, and receipts from resource extraction, overseen by multi-stakeholder deliberations. Currently, 23 countries, ranging from Senegal to Ethiopia, have added to the impressive list of EITI implementing states in Africa, often because of pressure from international donors and domestic civil society activists. The EITI's attraction has been further fuelled by its promise to generate "win-win" outcomes that would address poverty, prevent violent conflicts, and secure economic transformation through enhanced investments (see EITI International Secretariat, 2015). However, EITI opponents have not only voiced concerns about the empirical basis of these assertions. They have also pointed to its pseudo-reformism, especially when squared with other mandatory global national-level initiatives like the Dodd-Frank

Act, 2008, in the United States. Across several African countries, EITI has also run against a sizeable level of opposition among activists who have rallied around alternative regional instruments, such as the African Mining Vision, as the most effective mechanism for ensuring beneficial ownership and value-added economic transformation. A key weakness of these debates is that they lack adequate empirical information (see McGee & Gaventa, 2011).

Ghana is often cited as an important signpost for not only what the EITI has accomplished, but also how it could be. Since 2003, when Ghana pioneered the Initiative in the mining industry, the country has recorded significant progress in terms of institutionalising various EITI mechanisms, in the shape of a multi-stakeholder National Steering Committee (NSC), and produced eight audit reports (see EITI International Secretariat, 2014b). Ghana has also been associated with a number of national-level innovation schemes in the form of sub-national reporting, disclosure of disaggregated data, and process auditing (Aguilar et al., 2011; Manteaw, 2010; Nguyen-Thanh & Schnell, 2009). Hence, whereas the most ardent supporters of the EITI are often happy to admit to its focus on revenues and payments, claims about the structures and impact of the EITI in Ghana are often uncharacteristically bold. For instance, the 2010 validation report, presented Ghana as having “gone considerably beyond the basic requirements” of the EITI (IDL Group & Synergy Global, 2010:40).¹ As the paper demonstrates soon, within the global EITI community, Ghana’s impressive profile and a number of domestic reforms linked to the Initiative has been well documented and articulated. However, while the EITI is often framed in transformational language, beyond various policy evaluations, there has been no attempt to demonstrate how its adoption in Ghana has worked to alter the adverse institutional environment around which resources are extracted and utilised. This paper combines insights from field data drawn through over hundred interviews, as part of PhD study, with various stakeholders – including public officials, community activists, extractive firms, and external development agencies – and documentary sources to explore how Ghana’s compliance with the EITI has transformed the institutional and political economy landscape of the mining industry. The evidence in this paper suggests that whereas the Initiative has facilitated the transfer of market-oriented norms and minimal policy access, its impact on altering the institutional landscape has been rather limited.

¹ Within the lexicon of the EITI, validation refers to an “external, independent evaluation mechanism, undertaken by a Validator procured by the International Secretariat.” (See EITI International Secretariat, 2014a).

The Making of the EITI “Model”

Historically, the EITI is credited with the former British Prime Minister, Tony Blair, in an address at the 2002 World Summit on Sustainable Development. Its broader appeal pivoted on a response to a groundswell of support for revenue transparency from resource extraction that was forged through academic debates and private sector-led interventions as well as activism by various civil society groups at the turn of the 21st century (see Acosta, 2013; Benner et al., 2010; Corrigan, 2014).

As outlined in Figure 1 below, the institutional structures of the EITI mainly encapsulates three procedures: Firstly, implementing countries ensure that all relevant companies (foreign and domestic) declare to the government, payments for extracting natural resources (usually through persuasion and voluntary agreements and, in few cases, legal regulations). Secondly, these figures are compared against the government’s own declaration of revenues received. Thirdly, after the data has been checked and verified by independent bodies they are made public based on recommendations by the EITI International Board (Weidner, 2011).

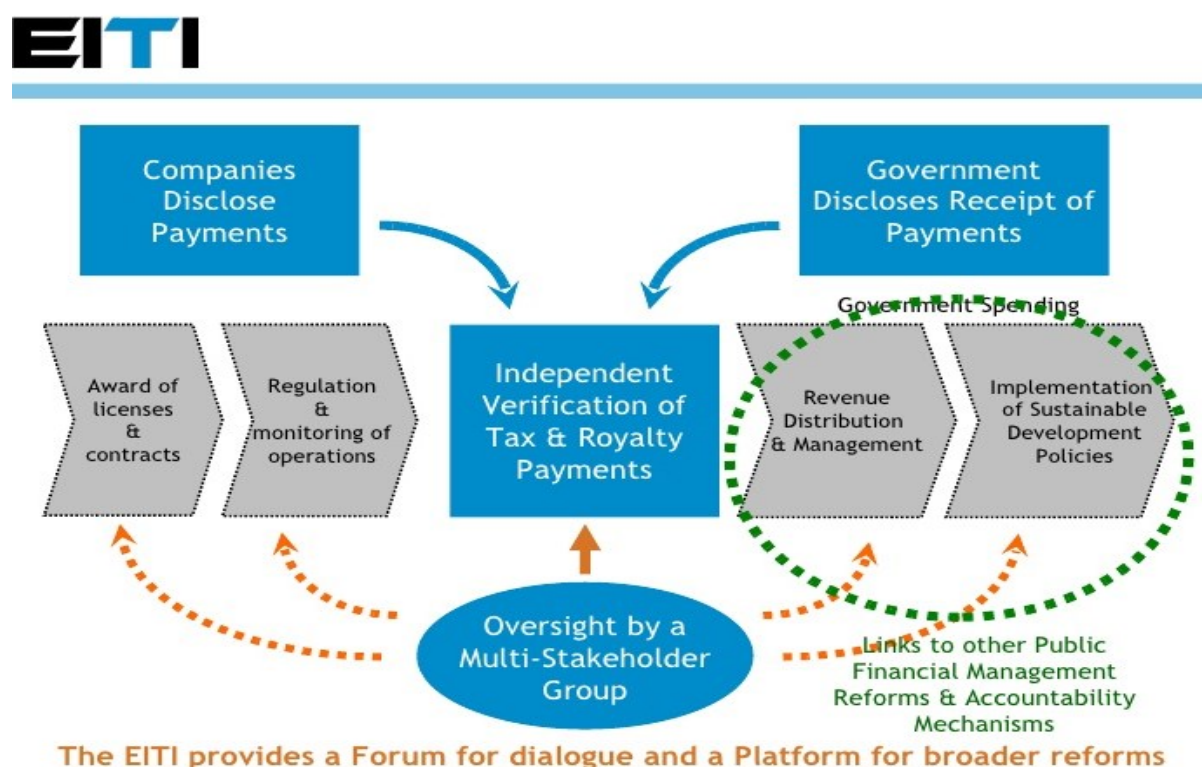


Figure 1. Structure of EITI (Source, EITI Secretariat)

Over the past decade, compliance with the EITI continues to grow globally with developing countries, including Norway, adding to new entrants of EITI implementers. Despite the impressive level of compliance, as well as notable revisions to the EITI Standard over the past

decade, debates about its prospects in altering the institutional landscape of the extractive sector continue to attract polarising perspectives.

Leading EITI activists, donor agencies, and policy makers who hold benign viewpoints about the EITI have pointed to its prospects engendering “win-win” outcomes for all stakeholders in the extractive industry. For international donors, the EITI has become a convenient strategy for addressing extractive industry governance concerns (Gillies, 2010). As demonstrated in the case of Ghana, officials within EITI implementing countries often consider the EITI as an integral part of national strategies meant to meet donor “conditionalities” and send signals for attracting foreign direct investments. Among extractive companies, public support for the Initiative, even at the rhetorical level, is considered key in pursuing reputational agendas and gaining credibility in the face of mounting pressure from “norm entrepreneurs” (ibid). Many domestic non-governmental and community-based organisations who support the initiative, have sought to employ various EITI multi-stakeholder platforms to demand social accountability from resource extraction. Consequently, a key narrative that has sustained the EITI agenda pointed to its relevance in building a strong global alliance for the effective management of natural resources based on the principles of transparency, accountability and public participation (Eigen, 2009). Weidner (2011), for instance, has noted that the EITI has made an impressive output in terms of the establishment of governance structures, procedural norms, and communication networks in participating countries. Garuba and Ikubaje (2010), in the case of Nigeria, have also pointed to EITI’s role in bolstering the extractive capacity of the state for revenues by exposing serious discrepancies in revenue agencies and irregularities in auditing standards. Finally, Aaronson (2011) has shown that there is positive correlation between EITI countries with enhanced accountability and improved business climate.

On the other hand, mounting malevolent perspectives have questioned the EITI’s viability, especially given its reliance on voluntary compliance, and propensity to empower social elites through exclusive deliberative platforms that undermine overall public participation (cf. Kolstad & Wiig, 2009; Smith et al., 2012). Here, there have been some doubts about the performance of EITI countries based on established “good governance” indices like anti-corruption (Haufler, 2010). For example, Ölcer (2009) examined EITI participating countries between 2002 and 2007, and pointed out that they do not demonstrate a marked distinction from non-EITI resource-rich countries, in terms of the Corruption Perception Index and World Governance Indicators. Other critics have also raised issues about the inability of the EITI to incorporate strategic global actors in the energy industry particularly, OPEC and China (Benner et al., 2010).

The middle of the spectrum is populated by more prudent standpoints that maintain that while the EITI remains an invaluable component of the extractive sector governance, it is solely inadequate in tackling the multiple and complex value-chain that underpins the exploration, extraction and utilisation of resources. Most importantly, this viewpoint argues that taking a revenue-centred approach, without looking at issues of expenditure, such as public procurement and award of contracts is overly simplistic (Barma, 2012; Schnell & Großmann, 2011). The prudent strand of the literature has also called for more convincing empirical insights in evaluating governance outcomes in participating countries. Specifically, there have been concerns that EITI, rather than providing critical and neutral analysis of its engagements in countries, often present vague statements about “learning processes” that are not generally helpful for empirical evaluation (Weidner, 2011).

This paper responds to the more prudent standpoints by interrogating the extent to which the EITI interact with the nested network of actors, institutions, and processes of Ghana’s mining sector. Among others, it explores some of the normative and empirical issues concerning how broad structures and processes associated with global governance, interact with domestic political economy dynamics to promote, or hinder, developmental outcomes in the mining sector. The presentation here is far from mainstream accounts that suggest a generally less contentious EITI implementation in Ghana, which has yielded notable impact in the mining sector. Rather, it underscores deep-seated contestations and elite instrumentalisation that have undermined the EITI process in the country.

A Conflictual Path towards Compliance in Ghana

Ghana formally began its participation in the EITI following an announcement at the first meeting on the Initiative on June 17, 2003 which was convened by the then British Prime Minister, Tony Blair, at Lancaster House in London. Following the announcement to participate in the EITI, the Kuffuor administration took immediate steps to institutionalise its implementation in Ghana. On June 17, 2004, after a series of stakeholder meetings in collaboration with the Ghana Chamber of Mines and with the support of UK’s Department of International Development (DFID), the Government officially launched the Ghana Extractive Industry Transparency Initiative (GHEITI) in Tarkwa, a mining town in the Western region (IDL Group & Synergy Ltd, 2010). The country’s pioneering role in the EITI is ingrained in the global normative environment for market-enhancing transparency and accountability. Within the Ghanaian context, as demonstrated by implementation challenges with various reforms, including the Financial Administration Act, 2003 (Act 654), the Public Procurement Act, 2004 (Act, 663), the Whistleblower Act, 2006 (Act 720), and the National Anti-Corruption Plan (2012), compliance with various transformative initiatives often fits into an effective elite strategy to secure rents from donors and foreign investors. However,

how the EITI has been internalised to effectively transform the institutional and incentive environment of the extractive industry reflected a more contested and conflictual pattern. The rationale for the country's decision to implement EITI in the mining sector was largely informed by various factors:

Prior to GHEITI, Ghana undertook various reforms in the mining sector, essentially to attract foreign investments to revamp the ailing mining sector, as part of the Economic Reform Programmes (ERPs). The impact of these reforms, in terms of heightened investments in exploration and extraction, which raised central government's revenues, equally evoked various questions about environmental costs, social and economic impact, as well as distribution of revenues accruing from mining (see Akabzaa et al., 2007; Aryee, 2001; Campbell, 2004). These questions were more evident in mining communities, most of whom maintained that increased mining activities had come at the cost of their livelihoods, without adequate compensation, which coupled with poor business practices and government neglect, exacerbated poverty. Various agitations took the form of sporadic violent confrontations and civil action by mining communities and other NGOs, which swayed public opinion against mining firms. Through initiatives, like the National Coalition on Mining, which was formed in 2001, various NGOs and community groups forged national, regional and global networks to demand reforms in the mining sector (see National Coalition on Mining, 2003). Mining firms, through the Ghana Chamber of Mines (GCM) responded to these calls by publishing details of public payments in the media. Similarly, the government started disclosing mining-sector receipts with explicit designations in various budget statements and press releases. As confirmed by various interviewees who were involved in the early stages of EITI implementation in Ghana, the Initiative offered a framework to "manage" the tension and cynicism in the sector and synchronise disclosure by government and companies.

Other political and economic factors shaped Ghana's accession to the EITI Framework. President Kuffour and the NPP Government took over the reins of government in 2001 on the back of severe economic difficulties largely due to rising oil prices, decline in export revenues from cocoa, gold and timber, as well as the loss of fiscal discipline owing to the 2000 general elections (CEPA, 2003:3 in Whitfield & Jones, 2009). As recalled by Whitfield and Jones (2009), the economic challenges were compounded by a severe strain in the relationship between Ghana and the IMF and various donors due to the previous NDC government's failure to comply with IMF conditions. This strain was all the more serious given the fact that decades of reliance on foreign aid and the proliferation of various donor programmes had permeated the state apparatus with donor finance estimated at 40-50% of government expenditure by 2001 (CDF, 2002; Whitfield & Jones, 2009:196). In 2000, these

factors culminated into rising inflation, depreciation in the Cedi, acute shortage of foreign currency and stalled economic growth, recorded at 3.7% (Government of Ghana, 2001). Within the extractive sector, there was a gaping hole in donor engagement especially when the World Bank withdrew its engagements following an unsuccessful implementation of the National Resource Management Project (1998–2003). According to the Bank, the decision to withdraw was due to a number of weaknesses that inhered in the mining sector. These included, “slow and uneven progress on policy reform,” absence of sustainable management practices, distorted incentive structures, lack of transparency, poor governance and a declining importance of “non-productive” environmental concerns to Government (IEG, 2008 in World Bank-IEG, 2014).

The newly elected NPP Government in 2001 committed to reversing trends in donor engagements based on a large-scale engagement with the good governance mantra. In his Second State of the Nation address, President John Kufour identified good governance as one of the “development priorities” of his government (Government of Ghana, 2002). The objective, as elucidated by the 2002 budget presentation of the Finance Minister, included restructuring of the civil service, promoting the rule of law and supporting the three arms of government, enhancing social order with support for the police service, and strengthening the office of the Attorney-General while boosting assistance to the judiciary. Hence, the NPP Government’s good governance priority was envisaged as part of broader measures to woo the private sector and serve as one of the triggers that would restore relations with external donor agencies. In the same budget, for instance, the Foreign Ministry and diplomatic missions abroad were specifically charged with the “promotion of Ghana as an important partner in good governance and a haven for private sector investment” (ibid.). This call was backed by numerous engagements, directly spearheaded by the President, such as participation in the Africa Peer Review Mechanism (APRM) and the Highly Indebted Poor Country Initiative (HIPC). The Government’s formal launch of the GHEITI in 2004, after going through EITI accession procedures became critical in the restoration of donor support and raising the country’s investment profile for the extractive industry. A high-ranking member of the NPP Government, at a National EITI Workshop in 2007 confirmed this point when he observed:

It is hoped that a transparent Extractive Industry in Ghana will bring about an improved investment climate by providing clear signal to investors and the international community, especially financial institutions that the Government of Ghana is committed to these reforms (for) greater transparency (Osei, 2007).

Hence, the EITI operated as part of various institutional mechanisms that were adopted under the “market-enhancing” good governance approach (see Kahn, 2012).

Predictably, the EITI adoption received mixed responses from various groups within the extractive sector. Mining companies, most of which had established some formalised channels of interaction with the Government, through the Chamber of Mines embraced the Initiative wholeheartedly. An interviewee from the Chamber even averred that it was the mining companies that “actually pushed” the Government to sign on to the EITI because, for the mining companies, “the Initiative is like getting a third-party person to tell a good story about you” (personal interview, July 31, 2013). Whereas other NGO respondents disputed this claim, the inclusion of the then CEO of the Chamber, Ms Joyce Wireko-Brobby, in Ghana’s delegation to the Lancaster Conference points to the active involvement of the mining companies in the Government’s decision to join the EITI.

Whereas mining companies embraced the EITI wholeheartedly, domestic NGOs linked to the extractive sector, were polarised mainly along two schools.

The first group, largely various organisations that had been active in campaigning for the abolition of mining, led by the Third World Network (TWN)-Ghana, conceived of the EITI as a “ploy” to diffuse what they considered a growing momentum for NGO activism in the mining sector (personal interview with NGO activist, August 7, 2013). At the heart of this criticism was that the EITI did not address the core problems of the extractive sector such as human rights abuses, environmental degradation, and social dislocation (*ibid.*). TWN-Ghana also raised questions about the structure of the EITI. During interviews with TWN-Ghana officials, they insisted that one has to be cynical about the fact that Government, an entity that was “not putting information out there,” was expected to host and drive the Initiative. They also argued that no amount of information disclosure would change lopsided fiscal terms in the extractive sector without addressing issues of equity and fairness. Furthermore, they averred that there are more expansive and progressive regional alternatives to the EITI, which Ghana has signed on to, but failed to implement largely because they fell in the pecking order of donor priorities. A case in point relates to the African Peer Review Mechanism (APRM) and the 2009 African Mining Vision that, in their view, contain elaborate mechanisms of governance and requirements for linking mineral extraction with development priorities, domestic capacity and local enterprise (see African Union, 2009).² Whereas Ghana was the

² The APRM was initiated by the African Union in 2002 as part of the framework for the implementation of the New Partnership for Africa’s Development (NEPAD) to monitor aspects of the governance and social development. In March 2003, Ghana signed the Memorandum of Understanding and became the first country to be peer reviewed under the APRM.

first country to subject itself to APRM review in 2003, critics within this NGO School insisted that the Government abandoned it for the “donor-fancied” EITI.

Another school of thought, largely shared by NGOs who had rallied around Publish What You Pay (PWYP)–Ghana, while sharing in the criticism that the EITI was limited in its scope, maintained that it provided an opportunity and platform. This was because despite its limitations, the Global EITI Sourcebook, which outlined the main principles of the EITI, encouraged countries to be ambitious and did not limit in-country variations. Hence, embracing the Initiative provided CSOs with another room to engage and push for the broadening of its scope and deepening of its content (personal interview with NGO activist, August 7, 2013).

Another contestation that dogged the EITI implementation was between the Government of Ghana and various donors, especially the World Bank. To develop this point, it is important to digress and recall a 2003 G-8 meeting in Evian that preceded the Lancaster meeting for the EITI. At the meeting, the G-8 adopted an Action Plan in which it agreed to push for an “intensified approach to transparency,” on “a voluntary basis.” The Evian Plan also encouraged “governments and companies, both private and state-owned, to disclose payments and receipts to the IMF or another agreed independent third party such as the World Bank or Multilateral Development Banks (G-8, 2003).” For the most part, the final EITI framework, which was adopted in Lancaster, remained less articulate about the role of various International Financial Institutions (IFIs), as suggested by the Evian Summit, especially concerning in-country implementation.

In the spirit of Evian, development agencies within advanced Western countries, envisaged a more assertive role for International Financial Institutions in the EITI. For them, the EITI was largely a global standard and were suspicious of attempts by domestic elites to tinker with its implementation. The World Bank’s centrality in driving EITI implementation in Ghana was bolstered by the fact that it was entrusted with managing the Multi-Donor Trust Fund (MDTF) through which technical and financial assistance to EITI implementing countries is provided (World Bank, 2014). On the contrary, officials of the Government of Ghana, with the support of the newly established NSC, underscored the need for country ownership and maintained that Ghana could take advantage of the EITI to build local capacity as alluded to by the EITI Source Book.³ They expressed a preference for procuring services from experts

³ The EITI Source Book maintain that the in the development and planning of the Initiative the “balance of responsibility for progress lies with the government. The Book continues that the government “will need to

“who had an understanding and appreciation of the challenges in the mining sector” in the country (personal interview with GHEITI representative, August 20, 2013).

These contrasting positions of donor agencies and domestic actors around the EITI came to a head when the Government contracted Boas and Associates, a domestic auditing firm, to conduct the first country aggregation covering the period between 2004 and 2006. The World Bank and some development agencies raised concern about the appointing process (IDL Group & Synergy Global, 2010:20). According to the 2010 Validation report, the Bank requested the Government to reappoint the aggregator, to bring it in line with “international requirements” instead of the Ghana’s Public Procurement Act of 2003 (ibid:26). However, public officials, NSC members and representatives of development agencies disclosed during interviews that the World Bank asked the Government to employ an Aggregator, from among seven “international consultants” that it recommended, instead of the domestic auditing firm as a requirement for the release of funds for GHEITI. When the Government insisted on maintaining Boas and Associates, the Bank refused to fund the first GHEITI aggregation. Consequently, apart from some limited support from the GIZ, the take-off of GHEITI was sponsored by the Government of Ghana.

The standoff between the Government and the donor community at the initial stage of the EITI process in Ghana added an impetus to national ownership of the EITI process, which, in turn, enhanced the leverage of domestic political elites over the programme. This also opened the way for less coherent donor engagements with GHEITI. Some development agencies, especially GIZ, have been more visible and offered funds for the publication and dissemination of various GHEITI reports. However, over the years, certain donor agencies, including the UK Government’s DFID and World Bank, have crafted parallel programmes alongside GHEITI. These parallel initiatives, including the Natural Resources and Environment Governance Programme (NREG), have also served as important routes by which various development agencies have attempted to carve out niche areas within the broader spectrum of Ghana’s growing field of extractive sector governance.

ensure that the governance structures and processes, staff and financing mechanisms are in place” (EITI International Secretariat, 2005).

“The EITI operates like this; I will not come to you with a policeman, but I will wash your dirty linen in public.”

The above description offered by an interviewee from GHEITI captures the institutional and operation make-up of the EITI in Ghana. GHEITI's structure is essentially an adaptation of the global EITI Standard, which was developed locally in consultation with various stakeholders in the industry. A year after launching GHEITI, the Government inaugurated a 16-member NSC as the principal governing body to oversee its implementation (Osei, 2007). Government representation on the NSC was structured along two main lines. At the political level, the Deputy Ministers from the Ministry of Finance and Economic Planning (MOFEP) and the Ministry of Lands, Forestry and Mines (MLFM) were nominated to provide political leadership to the NSC. Additional representatives were drawn from various Government Ministries, specifically MOFEP and MLFM, and other departments such as the Office of the Administrator of Stool Lands and the erstwhile Internal Revenue Service (IRS). Regarding the private sector, the Government received nomination from the Ghana Chamber of Mines.

The main challenge of representation, given the internal divisions and the difficulty in establishing its main constituency, came from the civil society. As recounted by a member of the PWYP-Ghana, the Government initially contacted the Ghana Association of Private Voluntary Organisations in Development (GAPVOD) to nominate a representative for civil society organisations in the country (personal interview, August 7, 2013). Under the auspices of the Integrated Social Development Centre (ISDOEC), GAPVOD organised a meeting of various NGOs who were engaged in the extractive sector at the Accra Teachers' Hall in 2004. At the meeting, ISODEC, which convenes the local chapter of the PWYP campaign, was tasked to represent domestic CSOs in GHEITI and “bring all interested groups into the PWYP umbrella” (ibid.). After initial recriminations about the number of CSO representation in the NSC, another representative was nominated from within the PWYP platform.

Members of the NSC were constituted into technical and sensitisation sub-committees. As revealed by various members of the NSC, these sub-committees provide an opportunity to draw from various expertise within and outside of the NSC. The Ministry of Finance and Economic Planning (MOFEP) is institutionally the Chair of the NSC and, through the GHEITI Secretariat, “coordinates” its activities (GHEITI Secretariat, 2011b). The Secretariat is charged with the day-to-day implementation, coordination, monitoring and evaluation of GHEITI's work plan. It is headed by an Executive Secretary, with the complement of about five officers, who are generally MOFEP officers that have been assigned to the GHEITI (personal interview with EITI official, 2013).

The inception of GHEITI was backed by initial attempts to drive various country-level variations. Apart from a desire to appease domestic cynicism, the in-country variations were informed by the fact that mining firms, through the GCM, and the government were already

disclosing payments and receipts respectively. This began with the government's insistence on procuring a local aggregator in defiance of the World Bank opposition. Other national variations included "process and financial audit" as well as "analysis of "historical documentation on production, exports and payment of royalties for minerals produced in the country" as spelt out in the Terms of Reference for the aggregator (Boas & Associates, 2006:4). Hence, successive GHEITI reports contained strong qualitative and contextual information beyond revenues and payments, and captured disbursement and expenditure patterns within local governments that receive mineral royalties.

Whereas the novelties in Ghana have been applauded, concerns have been equally raised that GHEITI have not been able to venture into noticeable areas of elite patronage. Regarding, sub-national reporting, for instance, there are criticisms that by not deeply interrogating disbursements to traditional authorities, which are usually not linked with formal scrutiny, GHEITI has failed to touch on traditional patronage networks that facilitate elite capture within extractive communities (see IDL Group and Synergy ltd, 2010: 30). EITI templates for reporting on disbursements to traditional authorities have, hitherto, not been accessed or verified by the aggregator (see Boas & Associates, 2007:39). Again, regarding companies, GHEITI targets what is refers to as "significant producers" in terms of royalty contribution. It excludes other strategic private operators in the mining sector, including exploration companies, service providers and small-scale miners.

Another recurring institutional anomaly, outlined in Table 1 below, relates to the dominance of government representatives (both political and technical) on the NSC. During interviews, various members of the NSC have been adamant that this lopsided representation for the government is "inevitable" given the wide-ranging cover of various public agencies over different aspects of the extractive sector. They also maintained that decisions of the NSC are made on consensus and not through voting. Whereas consensus building has been critical in holding the balance for various representatives on the NSC, it points to the EITI's de-institutionalised character. Without the benefit of various institutionalised mechanisms, and the voluntary nature of the EITI process, it is not surprising that domestic cynics question its independence to mediate competing claims and forces.

Table 6.1. GHEITI National Steering Committee (Inaugurated, 2010)

MINING AND MINERALS SECTOR (OLD GHEITI)		
Name	Position	Stakeholder
Franklin Ashiadey	Ministry of Finance and Economic Planning	Government
Roger Angsomwine	Office of the Vice President	Government
Victoria Bension	Ministry of Finance and Economic Planning	Government
Gad Akwensivie	Office of the Administrator of Stool Lands	Government
Sulemanu Koney	Ghana Chamber of Mines	Private
Sheila Naah	Ministry of Finance and Economic Planning	Government
B. C. D. Ocansey	Ghana Revenue Authority	Government
Steve Manteaw	Publish What You Pay-Ghana	Civil Society
Chris Afedo	Ghana Revenue Authority	Government
Amponsah Tawiah	Minerals Commission	Government
Ellis P. Atiglah	Ministry of Lands and Natural Resources	Government
OIL AND GAS (ADDED MEMBERS)		
Wayo Abubakari	Office of the President	Government
Philomena Johnson	National Catholic Secretariat	CSO
J.Y. A. Appiah	Ministry of Energy	Government
J. B. Okai	Ministry of Energy	Government
Kobina Pra Annan	Sekondi-Takoradi Metropolitan Assembly	Local Government
Sam Ado Nortey	Ghana National Petroleum Corporation	State Enterprise
Kevin Quinn Tullow	Tullow Oil Ghana	Private
Dela Klubi	Ghana Revenue Authority	Government
Frank Turkson	Ghana Manganese Company	Private-Public Enterprise
Duodu Acheampong	Jomoro District Assembly	Local Government
Hannah O. Koranteng	WACAM	CSO

Credit. GHEITI Secretariat, Accra.

There have been concerns that GHEITI operates largely on “goodwill” of its “stakeholders” and needs to be institutionalised, particularly through legislation. These calls have led to various commitments to promulgate an EITI law. The process for an EITI law formally began in August 2007 when a workshop organised by the Parliamentary Select Committee on Mines and Energy led to a call for legal review, especially those relating to revenue management, and extractive sector transparency and accountability, as a way of institutionalising the EITI process. In January 2008, the Government with the support of GIZ contracted a local firm, Reindorf Chambers to review domestic laws pertaining to extractive sector transparency and accountability (personal interview with GIZ representative, August 26, 2013). The study found that the country’s laws adequately supported various aspects of GHEITI engagements and that there was no need for a separate EITI legislation. ISODEC and other NGOs raised questions about the consultant’s conclusion and sponsored another review, which recommended a separate legislation (ibid.). Following, these contested findings, the GIZ put

together a team to incorporate the Reindorf and ISODEC reports, which led to a proposed EITI Bill. However, the Bill, which was concluded sometime in 2012, is yet to be presented to Parliament fuelling speculations about the poor commitment of government and other “stakeholders” who have a stake in maintaining GHEITI’s non-compliant status.

GHEITI also suffers from a great deal of representation crisis. At the nominal level, there are serious contentions, especially between “government” stakeholders and CSOs as to who best represents the “public.” Government officials, usually cited what they consider as their constitutional and legal mandate, and were adamant that their presence and dominance of the NSC is based on justifiable democratic principles. A senior public officer, for instance, accused CSO representatives of “struggling to find legitimacy” and “not having a constituency that they report to” (personal interview, July 31, 2013). On the other hand, CSOs faulted government officials for just paying lip service to transparency largely to satisfy external constituents without following through on various recommendations (also see Gary et al., 2009:48). These activists also insisted that most of the ground-breaking country variations of GHEITI were the outcomes of their vigilance and active engagements (see Manteaw, 2010:102-3). These contested claims have been designated here as nominal in the sense that there is no compelling evidence about their adverse impact on coherence within the NSC, perhaps, due to its emphasis on consensus decision making. Nonetheless, beyond internal NSC processes, the real crisis of representation of GHEITI is evident by its failure to establish meaningful linkages with other representational platforms at the national and community levels. For instance, the disjuncture between representatives on the NSC and the general CSO community is demonstrated by the absence of any meaningful feedback mechanism. The claims about poor representation among CSOs were echoed by a leading activist who averred that:

...our representatives do not report to us as they are supposed to be doing. There is no feedback mechanism. And so it is not just the [state] institutions that are not doing the consultations as they should, but even our representatives on these institutions [GHEITI and PIAC] that are representing interest groups are themselves not doing it (personal interview, October 1, 2013, insertion mine).

Beyond vague representation of “multi-stakeholders,” GHEITI does not have any formal linkage with enforceable channels offered by state institutions, such as the legislature and the Office of the Auditor-General. In fact, none of the GHEITI reports has been debated in parliament. They have also not been a subject of scrutiny by the Public Accounts Committee (PAC), the Mines and Energy Committee, and the Finance Committee.⁴ Respondents from the

⁴ In the case of the PAC, this is due to its legal requirement to consider only reports emanating from the Office of the Auditor-General.

GHEITI Secretariat and NSC admitted that GHEITI reports go to “no one,” except the “general public.” They also maintained that the multi-stakeholder NSC has operated with a lot of goodwill, which has been critical in following up on various GHEITI’s findings and recommendations. For them, the “threat of washing your dirty linen in public” has served as effective incentive for compliance with EITI.

An initiative that has shown some promise in linking the GHEITI with the broader populace are Dissemination Workshops which take the form of community forums and sensitisation meetings with parliamentarians. A member of the NSC maintained that the limited scope of the EITI framework means, “once government is declared compliant, it cuts off real community and citizen participation in the process.” Hence, these workshops represent a useful avenue to engage with, and receive feedback from, the public over some of its findings and activities (Koranteng, personal interview, August 20, 2013). Documented records of those meetings, personal interviews and participation in some these workshops, suggest that they represented the only tangible presence of GHEITI within the public domain. In areas such as Kenyasi and Kumasi, where recorded transcripts of the proceedings are available, various community actors raised a plethora of concerns that did not necessarily fall within the remit of GHEITI, like illegal mining activities (GHEITI Secretariat, 2011a; GHEITI Secretariat, 2011c). Nonetheless, some participants of these workshops, who were interviewed, averred that the NSC “rather than running around” with EITI reports, “should get into the media and disseminate information to the public.”



Figure 2. Public Forum on the 2012/13 GHEITI Reports at Obuasi (photo credit. GHEITI Secretariat)

Compliance vs. Transformation

Ghana's adoption of the EITI model in the mineral and oil sectors has not escaped questions about its role in transforming the incentive challenges and institutional weaknesses within the extractive sector. In a similar vein, those who offer compliments to the EITI in Ghana often offer different claims about its transformative effects (IDL Group & Synergy Global, 2010; Manteaw, 2010; Nguyen-Thanh & Schnell, 2009). Notably, they have advanced GHEITI's impact in providing deliberative platforms and ensuring transparency. Nonetheless, Ghana's experience of EITI points to the fact that compliance with pre-determined notions of "good governance" in the extractive sector is not a highway to optimal political and institutional reform.

Various proponents of the EITI model in Ghana, mostly in reference to the heightened opposition it initially received, often claim that they have been vindicated for supporting the Initiative. They support this claim by pointing to a host of institutional and policy reforms that have been witnessed in the extractive sector, which could be linked with GHEITI's processes over the past decade. Members of the National Steering Committee who were interviewed for this study recalled the cynicism and agitations that characterised the mining sector in the pre-EITI era and asserted that the Initiative has contributed towards stabilising the extractive sector and provided an invaluable avenue for constructive engagements by various stakeholders. In addition, they argued that prior to GHEITI there were no systematic processes of information disclosure, as well as, a forum where the stakeholders in the industry could interrogate such disclosures.

Supporters of GHEITI also maintained that the ensuing improvements in the relationship among CSOs, government and mining companies have led to an impressive compliance of the various stakeholders in the GHEITI programme. Indeed, with the exception of small-scale mining firms, the eight leading companies, constituting 99% of mineral royalty payments, report under the GHEITI (IDL Group & Synergy Global, 2010:40; World Bank, 2010:33). Likewise, despite its largely de-institutionalised mechanisms and voluntary processes, GHEITI has survived a political turnover between the two leading parties in Ghana – NPP and NDC – which points to an appreciable support among various political elites in the country. Additionally, various GHEITI reports are credited with increasing the level of transparency in the mining industry highlighting the flows of payments and receipts, as well as utilisation of mineral revenues at the national and sub-national levels. A senior official from the Ministry of Energy and Petroleum captured the importance of GHEITI's disclosures for both non-state and state actors:

The EITI reports received a lot of attention from civil society groups including trade unions, church groups, and faith-based groups. A lot of these reports

became Bibles for these groups in their advocacy work. To the government itself, some of the omissions and commissions that were exposed by the reports were quite informing... the outcome of the EITI reports became tools or justifications for government to undertake a number of reforms including reforms of the fiscal regime, reporting processes, monitoring of companies (interview, 2013).

As hinted by the above assertion, a number of noticeable institutional improvements have been linked to EITI implementation. In the mining sector, these improvements include the revision of mineral royalties from a previous range of 3–6%, to a fixed rate of 5%, under the Minerals and Mining Amendment Act, Act 794 in 2010, which amended the Minerals and Mining Act of 2006. Some respondents from GHEITI and some donor agencies told me that prior to the fixed rate, companies generally chose to pay the minimum rate of 3%, which adversely affected overall public revenues from the mining industry. They also maintain that various GHEITI reports have drawn public attention to a number of policy issues, such as capital gains tax, and inter-sectoral/agency collaboration over matters related to the extractive sector (also see Ghana Extractive Industry Transparency Initiative, 2012:22–28). For instance, GHEITI reports are credited with the consolidation of the country's revenue agencies into the Ghana Revenue Authority (GRA).⁵

Furthermore, members of the National Steering Committee highlighted various problems related to sub-national disbursement and expenditure of mineral royalties, which have become known through their reporting. In support of this position, they argued that GHEITI uncovered that within mining communities, royalty disbursements from the Office the Administrator of Stool Lands (OASL) to local governments were, often delayed and used to fund operational and administrative expenses rather than development projects (also see GHEITI Secretariat, 2011b:24). Consequently, GHEITI has developed guidelines on the use and reporting of mineral revenue by District/Municipal Assemblies.

Two main observations could be made from the reforms that are often linked with the GHEITI. The first and obvious point is that GHEITI-linked institutional and policy changes generally fall outside the remit of the EITI global standard. Consequently, it is not surprising that the EITI in Ghana often receive large-scale endorsements from the International Secretariat, and the wider EITI community. The second observation which is less obvious, but critical, relates to the difficulty in establishing linkages between these reforms and GHEITI. While lauding

⁵ The GRA was formed in 2009 following a merger of the country's four revenue collection agencies i.e. Excise and Preventive Service (CEPS), the Internal Revenue Service (IRS), the Value Added Tax Service (VATS) and the Revenue Agencies Governing Board (RAGB) Secretariat in accordance with Ghana Revenue Authority Act, Act 791.

notable improvements and reforms in the extractive sector, various factors suggest that their linkages with the EITI is somewhat exaggerated.

A case in point relates to the recorded increases in government revenue from the mining sector which, as reported by successive GHEITI reports, rose from \$27 million in 2004, through \$112 million in 2009, to \$1270 million in 2013 (EITI International Secretariat, 2015). Whereas GHEITI and the international EITI community have been quick to point to these increases as demonstration of EITI's contribution, there are compelling reasons to suggest that the surge in public revenues from the mining industry has been rather fuelled by enhanced commercial activities in response to various pro-market reforms. Most notably, during the same period, companies reporting under the EITI increased from eight to 21 (*ibid.*). From the perspectives of extractive firms, successive reports on the performance of the mining industry by the Ghana Chamber of Mines have underlined other intervening factors for revenue increases, including appreciation in output and increases in realised price of gold (see Ghana Chamber of Mines, 2008; 2009; 2013).

Within the broader ambit of various research of Ghana's mining sector, there is a critical body of literature that have linked the country's enhanced mineral revenues with several pro-investment policy incentives. These included the repeal of the Additional Profit Tax Law (1985), provisions for stability agreements for a period of about 15 years, as well as import duty exemptions, most of which were consolidated under the Minerals and Mining Act (Act 703), 2006 (see Akabzaa et al., 2007; Akabzaa, 2009; Aryeetey et al., 2004). Just like the critical voices of civil society activists, which were reported earlier in this chapter, these analysts attributed mineral revenue increases to commercial activities propped up by the reforms, and asked critical questions as to whether government's share and community benefits are fair. Whereas it is impossible to refute the linkages between EITI and enhanced commercial engagements in the mining sector in Ghana, similar ties cannot be easily established between the EITI and broader institutional changes that have altered the lop-sided distribution of political power and resources since reforms under the ERPs, especially around mining communities.

The difficulty in establishing linkages between successful reforms with EITI is further compounded by other parallel claims. A deeper examination of reports from other donor-funded programmes in Ghana's extractive sector reveals claims that are similar to those often cited for the EITI. Of significance is the NREG, which is a World Bank-led multi-donor parallel programme for the extractive sector. Domestically, NREG's relationship with GHEITI remains poorly defined. Nonetheless, both served as unique outlets through which the World Bank, and its allied donors, supported EITI implementation in Ghana, while driving other reforms in areas of the extractive industry that were not covered by the EITI. GHEITI framework, and

its much-touted innovative strategies, in many ways, reflects a strategy of state elites to win the benefit streams that came with both EITI and NREG. However, the point of interest here is that the parallel implementation of GHEITI and NREG has led to overlap of claims by both programmes for almost every positive development in the extractive industry. A scrutiny of the 2010 Validation Report of GHEITI and a 2014 evaluation of NREG by the World Bank elaborate this point in detail (see IDL Group & Synergy Ltd, 2010; World Bank-IEG, 2014). For instance, NREG claims its intervention accounted for the expansion of EITI reporting to cover sub-national payments (World Bank-IEG, *ibid.*: 28). The 2014 Evaluation also links NREG with the upward revision of royalty payments from 3-6% to a fixed 5% (*ibid.*: 27). On the matter of capital gains tax, NREG asserts that it developed financial models of 9 (of the 13) large mines in Ghana, which “indicated that capital gains taxes were largely being avoided by large mining companies, and led to efforts to address this problem and collect taxes (*ibid.*).

Beyond the issue of linkages, Ghana’s religious compliance of EITI requirements has failed to convince critics about its promise of promoting effective management of natural resources. In the past years, these criticisms have been voiced on various GHEITI’s platforms. A scrutiny of reports from various GHEITI dissemination workshops and other public engagements reveals a stark contrast between what GHEITI offers, and the expectations of its intended “beneficiaries.” A member of the NSC poignantly depicted this divergence:

From our dissemination workshops, the feedback is not only an interest in whether we got revenue or not but how the companies would address the legacy issues; the environmental pollution; the water stress in communities because of mining; the takeover of community lands... So you realise that yes we are doing A B C D. But is it what the people want us to do? That is the linkage that should be developed from the community, from the citizens, the national secretariat and international secretariat (interview, 2013).

The above viewpoint was supported by various field interviews with activists at the community and national level. In the Western Region, for instance, there were concerns that the revenue-centeredness of GHEITI has masked other aspects of the extractive sector in the region, specifically questions about environmental damages and costs, as well as threats to livelihoods.⁶ The absence of a complete account of “serious environmental and social concerns” was also raised at another Dissemination Workshop in the Northern Region (see GHEITI, 2013:11). Various participants at the Workshop, which was organised in the regional capital, Tamale, complained that GHEITI reports seems to “dwell more on revenues thereby reducing benefits to only cash” (*ibid.*). At the Ghana Trade Union Congress, senior officers criticised GHEITI for not probing questions concerning equity or asking whether

⁶ Field interviews with various members of Friends of the Nation, Western Region,

government receipts represent “what the country really deserve to get” (interviews, 2013). Within the mining sector, in particular, GHEITI was often faulted for not helping to reverse the lopsided market reforms dating back to the 1980s that strengthened mining companies against the state. Consequently, these critics tend to align EITI with other reforms in the mining sector, including the revised Minerals and Mining Act (2006), that have maintained pro-market status quo without addressing issues of public ownership, local capacity and even domestic entrepreneurial development (interviews with Third World Network Officers, 2013).

Conclusion

A critical interrogation of the contradictory and contested viewpoints about the impact of Ghana’s EITI experience points to the one thing. That, in the context of deep-seated structural and institutional limitations, external initiatives often pushed by a loose network of external development agencies based on questionable normative goals of “good governance” cannot serve as effective instruments of reform in the extractive industry. This observation reverberates with many accounts between pro-market reforms in the mining sector and poor outcomes in terms of readjustments of power and distributional patterns, especially within various mining communities (see Bebbington et al., 2008; Bridge, 2004; Campbell, 2006; Le Billon, 2005). Across Sub-Saharan Africa, substantial research has revealed that various reforms, which were often implemented by many mineral-rich countries as part of the SAPs and current “good governance,” have rather produced a “feast on super profits” (2009:5), while the burden of taxation has been comprehensively reduced. Most significantly, a comprehensive account offered by Hilson & Maconachie (2008) in countries like Mali and Tanzania, indicated that the “mining boom” in Africa came with low returns to the “sovereign owners of sub-soil resources.” They also noted that legislation is replete with enhanced incentives for companies in areas such as land ownerships and security of tenure, import and export tax regimes, ancillary services, and land access (see Bracking, 2009; Filho, 2002; Hilson & Maconachie, 2008). Hence, as noted by Bracking (ibid:8), for various actors with commercial interests in the mining sector, joining and supporting the EITI is a “small commitment” in the face of the benefits accruing from the current “neo-liberal” regulatory regime in Africa.

By emphasising rules and institutional practices that could address sub-optimal economic behaviour and outcomes, the fast-growing interest in governance has been pivotal in forging tripartite networks and platforms around issues of transparency and accountability in resource-rich countries. As demonstrated by the experience of the EITI in Ghana, these networks and platforms have been useful at not only drawing public attention to revenue transparency but also securing limited policy and institutional changes. For all its merits,

many EITI platforms have been less inclusive and effective than is often admitted. This sobering observation becomes more evident upon a closer examination of the normative undercurrents of the EITI, which reflect market-oriented, and apolitical governance fixes, and how they shape the institutional landscape of implementing countries. Given longstanding assumptions about the corrosive effects of natural resources on state institutions, various participatory and public accountability platforms that have been created under the EITI, and other governance initiatives, often attempt to either side-step the state or allow it to operate on the basis of a restricted partnership with private and non-governmental actors (see Ahrens, 2011; Falkner, 2003; Haufler, 2013; World Bank-IEG, 2008). Yet, this view beggars belief, especially given the enduring presence of state institutional structures and the “deep politics” of elite instrumentalities that work to either facilitate or subdue reform in resource-rich countries. This paper has demonstrated that whereas Ghana’s EITI has generated some important reforms, it has been unable to mediate the multiple logics and political fragmentations that combine to undermine any prospect for inclusive and effective reform in the extractive sector (see Andrews, 2013; Khan, 2012). Consequently, domestic political elites at various points of EITI implementation have managed to retain some residual controls to win external legitimacy and local political support. Contrary to general critiques of the EITI, this problem is not because it is enforced through voluntary compliance and goodwill, but, critically, the lack of stronger complementarities with established platforms and institutions of democratic accountability of the state, such as the legislature and other audit institutions.

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