

DEVELOPMENT CO-OPERATION DIRECTORATE

Governing through transparency

Corruption, accountability and illicit financial flows in oil trading

The scale of illicit financial flows (IFFs) originating from extractive economies across the Global South has grown dramatically over the last four decades. Focusing on the oil sector, and the unique challenges of addressing and regulating the oil commodity-trading sector, this paper examines the Extractive Industry Transparency Initiative (EITI), and the strengths and limits of the EITI Standard, through the lens of transparency as a wide-ranging, dominant form of liberal governance.

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Abstract

The scale of illicit financial flows (IFFs) originating from extractive economies across the Global South has grown dramatically over the last four decades. Focusing on the oil sector, and the unique challenges of addressing and regulating the oil commodity-trading sector, this paper examines the Extractive Industry Transparency Initiative (EITI), and the strengths and limits of the EITI Standard, through the lens of transparency as a wide-ranging, dominant form of liberal governance.

Foreword

Tackling illicit financial flows (IFFs) has gained prominence in recent years. The 2008-09 global financial crisis, the revelations of the Paradise and Panama Papers in 2016-17 and the Pandora Papers in 2021, and a number of high-profile scandals involving corporations in the extractives sector, collectively highlight the importance of understanding ties between transnational business, political elites, state functionaries, and illicit finance. The extractives sector figures centrally in debates over governance, dark money, and resource-dependent economies. Books like *Treasure Islands* (2011), *The Hidden Wealth of Nations* (2013), *Moneyland* (2018), *The World for Sale* (2021), and *Crude Intentions* (2020) illustrate the magnitude of IFFs and the need to understand and regulate relations between offshore financial centres and resource-rich developing countries.

The OECD Development Assistance Committee (DAC) has made substantive contributions to this field by *Measuring OECD Responses* (2014), tracing the efforts of member countries to increase investigation and repatriation of stolen assets (2014), and through its 2018 report on the *Economy of Illicit Trade in West Africa*, shifting focus away from IFFs as merely financial crimes and towards their economic, security, and developmental impacts.

New work launched by the DAC Anti-Corruption Task Team (ACTT) in March 2019 examines the vulnerability of oil-producer countries to IFFs in the oil sales process, reviews the efficacy of development agencies in mitigating these vulnerabilities to date, and suggests ways to enhance efforts.

This paper fits in the IFFs and Oil Commodity Trading Series and complements the Synthesis Report from this work programme, *Illicit Financial Flows in Oil and Gas Commodity Trade: Experience, lessons, and proposals* (Porter and Anderson, 2021^[1]). This paper grew out of a two-year project that documented the networks of actors, interests, and incentives in producer countries and offshore jurisdictions that shape and facilitate IFF risks in the oil and gas commodity trade. In examining responses to IFF commodity trading risks, EITI's experience offers an instructive case to illustrate and draw lessons from how transparency in the extractives sector arose: its efficacy as a regulatory approach, the intricate challenges of addressing a complex and often opaque oil and gas value chain populated by powerful actors operating across a range of regulatory jurisdictions, and the achievements and limits of implementing the EITI Standard.

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This paper was jointly co-authored by Doug Porter, Honorary Professor, The Coral Bell School of Asia Pacific Affairs, Australian National University, Canberra, Australia and Michael Watts, Professor Emeritus and Class of 63 Professor of Geography, University of California, Berkeley, United States of America as part of a programme of work on Illicit Financial Flows and Oil Commodity Trading, which was delivered under the supervision of Frederik Matthys, Head of the Global Partnerships and Policies Division, and Catherine Anderson, Team Lead of Governance for Development. It represents solely and exclusively the authors' views and opinions. The content of *Governing Through Transparency* is largely derived from the report on *Trader-National Oil Company Transparency and Potential Synergies with ODA Policy and Practice* authored by Michael Watts, but also draws upon the working papers and research conducted as part of the Illicit Financial Flows and Oil Commodity Trading project.

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Acronyms and abbreviations

AfDB	African Development Bank
CSOs	Civil Society Organisations
CSR	Corporate Social Responsibility
DfID	Department for International Development, United Kingdom (1997-2020)
EITI	Extractive Industries Transparency Initiative
FOSTER	Facility for Oil Sector Transparency and Reform
GIFT	Global Initiative on Fiscal Transparency
GOGIG	Ghana Oil and Gas for Inclusive Growth
GVC	global value chain
IFF	illicit financial flows
IMF/FTC	International Monetary Fund – Financial Transparency Code
IOC	International Oil Corporations
MSI/MSG	Multistakeholder Initiative/Governance
NEITI	Nigerian Extractive Industries Transparency Initiative
NOC	National Oil Company
NORAD	Norwegian Agency for Development Cooperation
NRGI	Natural Resource Governance Institute
ODA	official development assistance
OFC	Offshore Financial Centre
PDIA	Problem Driven Iterative Adaptation
PIAC	Public Interest and Accountability Committee, Ghana
RBL	resource-backed loan
RGI	Resource Governance Index
SOCAR	State Oil Company of the Azerbaijan Republic
SOEs	State-Owned Enterprises
SONANGOL	Sociedade Nacional de Combustíveis de Angola
SPV	Special Purpose Vehicles

SINOPEC	China Petroleum & Chemical Corporation
TAI	Transparency and Accountability Initiative
TAP	Transparency, Accountability and Participation

Executive summary

This paper examines the efficacy of transparency and accountability policies in the extractives sector that emerged during the 1990s as key planks in the good-governance agenda. It takes stock of the Extractive Industry Transparency Initiative's (EITI), development and elaboration of its EITI Standard and its multi-stakeholder approach, arguably the most prominent, institutionalised, and elaborate of all transparency-accountability-participation regulatory instruments (TAP or TAI).

Addressing illicit financial flows in oil and gas commodity trade requires examining downstream transactions

Much, though by no means all, of EITI's work has addressed the challenges of what is widely understood to be the endemic corruption, large-scale illicit financial flows (IFFs) and multiple economic and political risks associated with the oil and gas value chain. The upstream sector (licensing, tenders), revenue disclosures and the operations of state-owned enterprises (SOEs) in oil-producing states has provided a dominant focus for much of EITI's path-breaking analysis, assessment metrics and forms of certification. While *Governing Through Transparency* discusses EITI's record in the upstream arena, the report has a primary interest in IFFs in the less-studied downstream space. It focuses on IFFs and systemic governance challenges surrounding a trio of aspects, or moments, in what are called 'first trades' (defined as sales by states or SOEs as they bring to market and realise the value of their oil resources). The three foci of the report are: (i) buyer selection, (ii) terms of sale, and (iii) commodity transfer and payment collection. The EITI record bears directly upon the specific, unique, regulatory challenges of the commodity trading sector and whether the dynamic and often opaque structure and organization of a large and complex trading ecosystem operating at national and global scales requires new or different approaches.

Coverage of trader-seller transactions in this report fills a gap in academic and policy literature

While the report focuses on commodity trading in the global value chain, as an area of research and policy it has emerged only recently despite the fact that trading companies have been directly implicated in several major corruption scandals during the 1990s-2000s (Public Eye, 2018^[2]; Public Eye, 2017^[3]; Guéniat et al., 2015^[4]; Corruption Watch UK, 2013^[5]). Knowledge of the trading system; its structure, actors and dynamics, its relation to and dependence on the financial sector, and recent trends and shifts in the organisation of oil trading, often come from journalistic accounts (Russell, 2022^[6]; Blas and Farchy, 2021^[7]; Kelly, 2015^[8]). Conversely, scholarly research on traders and trader-seller transactions remains relatively thin, with Baines and Hager finding "no existing scholarship that has gauged the degree to which the commodity trading firms have invested in financial assets and generated profits" beyond industry and consulting reports that provide a limited insight into the issues of transparency and IFFs (Baines and Hager, 2021, p. 8^[9]; Pirrong, 2014^[10]; Ascher, Laszlo and Quiviger, 2012^[11]). Efforts to discuss the trading system as a regulatory arena were entertained by EITI only in 2012-13, a decade after its founding.

Mapping illicit financial flows in oil trading reveals strengths and limits of EITI Standard

This paper maps key IFF risks in the extractives sector, with a focus on the downstream segment of value chains and trader-seller transactions. It builds on the mapping to assess the EITI standard, considering the evolution of the 'transparency agenda' in the oil and gas sectors.

The report highlights the importance of the conjunctures (the time-bound, political and economic character of national and global contexts) at which the EITI is implemented. It traces how transparency-accountability instruments and approaches have evolved from first to what we call ‘second-wave approaches’¹ that feature greater attention to power and context. The report questions whether second-wave programs – sometimes referred to as TAP-Plus – can address the demands and complexities of regulating the oil and gas commodity trading sector which thrives by generating opacity and exploiting poorly regulated spaces internationally.

EITI’s experiences and track-record is crucial because it sheds much light on the distinct regulatory challenges of the commodity trading sector and offers up crucial questions as regards whether that often opaque, dynamic, and complex oil trading ecosystem requires other approaches. A core question is whether conventional TAP instruments (focusing on data and disclosure) and new TAP-Plus modalities are being adopted in practice or indeed are able to address sector-specific IFF risks associated with commodity trading, and under what conditions.

Rethinking transparency approaches

Transparency as a regulatory tool has produced a vast academic and policy literature but it is not without controversy (Fung, Graham and Weil, 2007^[12]). This report shows that it can be invested with different meanings and powers, and attached to, and deployed, in markedly different political and economic settings to yield a range of contrasting effects.

The delicate balance between visibility and concealment has always resided at the heart of debate over transparency instruments: the strong forms demand full disclosure, while the weaker forms acquiesces to the privilege of secrecy. For some critics, transparency of any sort has unintended consequences, does not deliver what it promises, and contributes to the decline of deliberation, regulatory capacity and trust in legislative and administrative bodies (Roelofs, 2019^[13]; Tienhaara, 2020^[14]). If transparency can lay the groundwork for a virtuous circle between the dissemination of information, civic participation, and democracy, it also has the potential for the exact opposite. As Fenster says “transparency constitutes a problem” (Fenster, 2017, p. 11^[15]). This report, in light of these debates and questions, addresses ways of rethinking transparency approaches and where official development assistance interventions around IFFs might be headed.

Structure of the report

Governing Through Transparency contains six sections. Section I presents an overview of IFF risks in the extractives sector and outlines transparency efforts to date. Section II examines the rise of transparency as a suite of governance tools in the oil and gas sector. It reflects upon the history of transparency as a form of regulation to assess its strengths and limits, and how transparency meanings and practices have changed in terms of political economy. Section III focuses on the EITI as a voluntary TAP mechanism and describes its action cycle (sometimes called the ‘logic’ or ‘theory’ of social change (Le Billon, Lujala and Aas Rustad, 2020^[16]; Appel, 2019^[17]; Valdovinos, 2022^[18])) and efforts in the realm of commodity trading. Section IV outlines the contemporary oil commodity trading system that the EITI and other transparency actors seek to regulate. Section V provides an overview and synthesis of the EITI’s transparency instruments and modalities, and of the strengths and limits of the EITI Standard as it has been elaborated and institutionalised globally. Section VI concludes with a discussion of the lessons learned from the EITI experience with TAP instruments and offers some forward-looking recommendations regarding possible avenues for OECD programming in light of the distinctive dynamics and characteristics of the oil trading system.

1 Illicit financial flows risks in the extractives sector and transparency responses

The scale of illicit financial flows (IFFs) originating from extractive economies has grown dramatically over the last four decades, with estimates pointing to striking levels of capital flight (Ndikumana and Boyce, 2022^[19]). The Brookings Institution estimates that sub-Saharan African (SSA) countries received nearly USD 2 trillion in foreign direct investment (FDI) and official development assistance (ODA) between 1980 and 2018 but lost over USD 1 trillion in IFFs during this period. Condemnation of corruption in the extractives sector (including non-energy minerals and timber) is now standard (OECD, 2016^[20]) – the “resource curse” and “paradox of plenty” being monikers of such governance failures – subjecting the sector to ever more public scrutiny driven by data leaks and financial scandals like the Paradise Papers, Luandagate, and others (Sovacool et al., 2016^[21]).

It is difficult to overestimate the scale of IFFs in the extractives sector. More than 20% of 242 enforcement actions taken under the US Foreign Corrupt Practices Act affected the sector – by far the highest of any industrial sector. Oil and gas are known to be especially prone: four of the top seven African emitters of IFFs from 1980 to 2018 were oil and gas producers that collectively accounted for over 55% of all IFFs (totalling almost USD 550 billion) in SSA during the period (Signé, Sow and Madden, 2020^[22]). A review of IFF trends associated with 60 corruption cases during Africa’s 2005-14 oil boom ‘super cycle’ implicated a range of actors in “an historic influx of oil rents”, including national and international oil companies (NOCs and IOCs), oil service companies, trading houses and financial institutions, offshore financial centres, and enablers and middlemen (Gillies, 2020^[23]). What was abundantly clear was the vast amount of illicit resources at stake and the complex networks of actors involved, what was described as the “broader mix of private players” (Gillies, 2020, p. 1171^[23]).

The oil and gas value chain has received considerable publicity and regulatory scrutiny over the last two decades (Gillies, 2020^[24]; Moisé, 2020^[25]). But the lion’s share of attention has focused on the upstream activities of licensing, tenders, tax, and royalty-benefit sharing, reflecting the standard view that corruption is “probably greatest during the process of awarding licenses” (Al-Kasim, Søreide and Williams, 2008^[26]). Downstream activities have received less attention, even though development organisations commonly point to commodity trading as a crucial domain for closer examination. An OECD study noted corruption in commodity trading as an “emerging area of heightened risk” while other agencies flag the growing magnitudes of downstream oil theft, and oil and gas black markets (OECD, 2016^[20]; Ralby, 2017^[27]). A decade ago and in a similar vein, UNCTAD called for greater transparency in commodity markets, considering their secretive and opaque character (UNCTAD, 2020^[28]).

Several factors explain why commodity trading carries heightened IFF risks (Longchamp and Perrot, 2017^[29]):

- Commodity trading involves large-scale and complex financing arrangements.

- Transactions entail interaction with public authorities and national oil companies, which present multiple interfaces where well-placed individuals can abuse their positions.
- Transactions and the array of actors involved are complex, opaque and often secretive.
- Transactions are grounded in a system of private governance subject to few specific regulations or good-practice norms and standards associated with public authority.

The scale of first trades is considerable. A 2014 study estimated that first trades by the top ten SSA oil-exporting countries accounted for more than 50% of their combined government revenues and more than 75% of export earnings (Gillies, Guéniat and Kummer, 2014^[30]). The risks of IFFs are particularly elevated at the juncture where producers realise the greatest value from their resources, i.e., ‘first trades’ of raw materials, when states or state-owned enterprises (SOEs) such as NOCs bring oil or gas products onto the world market.

Such trades are dominated by a few large trading houses and desks at IOCs. First trades by three large energy traders – Vitol, Glencore, and Trafigura – account for the equivalent of over half of OPEC’s oil output (Goldthau and Hughes, 2021^[31]). These companies alone moved 15 million barrels of oil each day, and the four largest energy traders posted collective revenues of nearly USD 750 billion in 2019. The traders and trading desks at IOCs like Shell and BP dominate a global oil trade marked by a governance framework that “emerged through the un co-ordinated activities of private market actors” (Goldthau and Hughes, 2021, p. 1411^[31]; Baines and Hager, 2021^[9]).

In this complex, oligopolistic trading system, IFF risks appear most prominently at three points: (1) when buyers are selected, and buyers’ rights allocated; (2) when the terms of sale are negotiated; and (3) when the proceeds of sale are collected and transferred as revenue to national budgets (Figure 1.1²).

Figure 1.1. Segments of the oil value chain where IFF risks arise



Source: OECD (2021^[32]) Typology of Corruption Risks in Commodity Trading Transactions, p.8, <https://doi.org/10.1787/590e80e8-en>.

A starting point for any understanding of the commodity trading system is how large trading houses have come to occupy a central position in the global oil and gas supply chain over the last four decades and, relatedly, the rise of private governance arrangements “constituted by a mix of private actors and institutional arrangements in the form of trading platforms and standardised contractual arrangements” (Goldthau and Hughes, 2021, p. 1420^[31]). Three characteristics of the oil commodity trading system are especially salient to this report:

- Parties to trading and trade financing typically operate in jurisdictions where the **reach of state regulatory agencies is limited**, either in the producer state or in an advanced economy that acts as host or home to a party to the deal (firm, financier, or enabler).

- Large independent traders have, in addition to relying upon diversified sources of finance, begun to act as banks for developing-country producers via **varied and complex financial instruments**, such as offtake agreements and commodity swaps. (Public Eye, 2020, p. 4^[33])
- Independent trading firms manage their affairs through purposefully complex and opaque corporate structures, and accounting practices that are effectively **shielded from regulatory scrutiny** by the secrecy and tax attributes of offshore financial centres.

Furthermore, systemic characteristics make oil trading one of the most complex, dynamic, and opaque segments of the global value chain, and correspondingly the most difficult to regulate. Contemporary market prices are capricious, and the risks in commodity trading are numerous. But market volatility and turbulence point to macro forces that transformed commodity trading over four decades. The inter-related effects of 1980s market liberalisation, the early 1990s launch of commodity indexes, the growth of futures contracts, and a raft of new market actors have all contributed to, and were expressions of, global capitalism's deepening financialisation (Gkanoutas-Leventis, 2017^[34]; Moors, 2011^[35]; O'Sullivan, 2009^[36]; Gkanoutas-Leventis and Nesvetailova, 2015^[37]; Gibbon, 2014^[38]). The appearance of new players was paved by permissive regulations such as the 2000 US Commodities Future Modernisation Act (CFMA), which opened oil commodity markets to mutual funds, hedge funds, insurance institutions, and banks, the largest of which – later known as “Wall Street Refiners” – established departments specialised in oil trading. Meanwhile, indexification created new sources of fragility and risk (Moors, 2011^[35]; O'Sullivan, 2009^[36]). Despite the plethora of regulatory agencies in global finance, regulatory arbitrage permits commodities markets to thrive in the gaps between regulatory spaces. Traders seized upon the opportunities provided by the new financial architecture and increasingly took on multifunctional roles rather than serving as mere intermediaries: they became involved in buying, selling, transportation, storage, and refining physical oil. With the advent of structured trading instruments, large commodity trading houses also became active in financial and credit markets, extending credit to finance-starved producer countries, drawing them into unregulated, high-risk segments of the financial system. (KPMG, 2015^[39])

These changes in the oil trading system created difficult, obscure, and demanding environments for transparency efforts. *Governing through Transparency* argues that these shifts in, and the morphing of, the oil trading system mean that transparency efforts – the norms and standards, institutional arrangements and so on of the sort promoted by EITI – are being put to work in exceptionally difficult, opaque and demanding environments. On one hand, these are what scholars refer to as ‘frontiers’ and ‘areas of limited statehood’, exceptionally challenging for regulation and enforcement (Watts, 2018^[40]) (Cons and Eilenberg, 2019^[41]). For example, in March 2021, *The Economist* described how, despite US sanctions, Iranian oil moves around the globe via tankers that “have links to [trading firms] in China, Singapore and the Marshall Islands” (*The Economist*, 2021^[42]). On the other hand, the oil value chain itself offers opportunities for IFFs associated with commodity trading transactions, including opacity of ownership, fragmented corporate vehicles, complex joint venture structures, concealment of the beneficial owners of buying entities, dubious enablers and intermediaries, and so on (see Figure 1.2).

Figure 1.2. Commodity trading transactions and the risk landscape

- Opacity of ownership and governance structures of key actors involved in commodity trading;
- Use of fragmented corporate vehicles in commodity trading transactions;
- Use of front companies to purchase commodities;
- Use of joint venture structures in commodity trading transactions;
- Concealment of beneficial owners of buyers;
- Involvement of politically exposed persons in commodity trading transactions;
- Use of intermediaries in commodity trading transactions; and
- A lack of or insufficient corporate due diligence.

Source: OECD (2021^[32]) Typology of Corruption Risks in Commodity Trading Transactions, p.9, <https://doi.org/10.1787/590e80e8-en>.

Because of the intricacy and scale of the oil and gas sector, the diversity of corruption risks, and its high profile in IFF scandals, the oil and gas sector has emerged as *the* most important theatre for the implementation of reforms designed to improve extractive governance through a raft of transparency instruments (TAP), both voluntary and mandatory. A core question explored in the report is whether TAP instruments are up to the task of addressing the specific character of commodity trading.

The 1990s gave birth to the ‘good-governance agenda’ and to a range of neoliberal, market-oriented policies and instruments designed to tackle governance and market failures perceived to be endemic across the Global South. As such, the agenda (Eisen et al., 2020^[43]; Brockmyer and Fox, 2015^[44]) refers to a suite of transparency, accountability and participation (TAP) policies and modalities that circulated in national and sub-national settings where DAC members were delivering aid, and featured in a wide array of reforms, including public service delivery, justice and security, community development, the extractives sector, public finance management, and others³. Over the last two decades, transparency has become a central tool in mineral supply-chains, illuminating corporate practice and capital flows where labour, human rights, conflict, and corruption collide in locations marked by fragmented sovereignty and limited statehood. The Dodd-Frank conflict-minerals legislation in the US (Section 1502) is one example of this form of transparency-disclosure theory and practice. (Le Billon and Spiegel, 2022^[45])

The rise and proliferation of transparency as governance went hand in hand with deepening demand for more and more elaborate forms of information and for measures and indices capable for organising and explicating the information. As one recent book on transparency put it: “Tracking, measuring, sorting, and storing data in order to constitute transparency indexes become an in-built necessity—we need more data to measure the transparency we “had” (before collecting that data). And we never seem to have enough” (Valdovinos, 2022, p. 18^[18]). Transparency’s maturity in the extractives sector is reflected in the development of its own audit culture, metrics, measures, and standardised indicators put to ranking, classifying, and assessing progress towards normative goals of efficiency, productivity, market discipline, and so on (Miller and O’Leary, 1987^[46]). But transparency as a suite of prescriptive practices has often laboured under the unrealistic weight of expectations. It is invoked and enrolled as a solution to many development problems, indispensable for accountable government, deliberative democracy, public trust in the state and citizen empowerment (Jensen and Thrall, 2021^[47]). While the strength of transparency as a regulatory instrument is unimpeachable, transparency measures nevertheless are often steeped in controversy, challenging its purported efficacy, intended or unintended consequences, and its action logic or ‘theory of change’ (Le Billon, Lujala and Rustad, 2021^[48]).

Transparency in the extractives sector has been, and remains, a central plank in contemporary approaches to the good governance agenda. The Extractive Industries Transparency Initiative (EITI) has in this regard

paved the way in collecting data on oil trading and addresses commodity trading regulatory requirements to a degree that other transparency initiatives have not. EITI developed and extended its remit and operations in response to its record and the changing political economy of the extractive industry landscape. Crucial shifts can be identified over time in the ways TAP initiatives are conceptualized, organized and accompanied by what are variously called ‘collateral measures’. The *TAP-Plus approach to anti-corruption in the resource value chain* (2020) released by the Brookings Institution and co-authored by some of the most prominent designers of the EITI, represents an important case in point and speaks to larger shifts in development policy, variously referred to as “thinking and working politically” or “doing development differently”⁴. On this canvas, *Governing Through Transparency* argues that the challenges of tackling IFFs in the commodity trading sector requires a nuanced understanding of EITI’s broad and developing approach to transparency and accountability, which in turn points to lessons where transparency instruments have been deployed beyond extractives.

Governing through Transparency does not suggest that the principle of transparency should be jettisoned⁵. But the fact is that the record is mixed, and all regulatory instruments have their limits, and their time (what we call their conditions of possibility). Transparency is, as we show, invested with differing meanings and with different powers, and is attached to and deployed in very different political economic settings to very different effect⁶. In his book *The Transparency Fix*, legal theorist Mark Fenster concluded that “Abandoning transparency in its broadest conceptual form does not require abandoning a commitment to open government or democracy,” but rather recognizing the limits of imposing transparency on states to which authority has been delegated and “abandon the quest for a magical solution.” (Fenster, 2017, p. 16_[15])

2 Situating the EITI: Transparency as governance

The principle of transparency⁷ and the right to information that affects the public interest is central to democracy and liberal governance. Transparency was part of the better government movement typically associated with the nineteenth century but the earliest freedom of information laws (FOI) – the first forms in which publicity and transparency emerged – can at least be traced back to Sweden’s FOI laws in 1766. In the US (as one illustration) transparency – or publicity as it was then called – back a century to questions of banking, financial disclosures, and corporate power during America’s Gilded Age. But in the post-World War II period, freedom of information as a plank of good government gained enormous momentum, in part through the 1946 UN General Assembly resolution on FOI as a basic human right, and subsequently as a vehicle for confronting Cold war secrecy. Transparency was of course sustained by a body of political theory that can be traced by to the Greeks but it is in the work of John Locke, Jeremy Bentham, Immanuel Kant up through the likes of 20th century philosophers such as John Rawls and Jürgen Habermas that the relations between transparency and deliberative democracy and the relations between democracy and the public sphere are clearest⁸.

Transparency, disclosure and accountability had no clear ideological affiliation. Populists and libertarians saw in transparency self-rule; social democrats and socialists something quite different. Since the mid-1980s, so-called targeted transparency has become a widespread policy instrument to reduce risks or performance problems through mandatory disclosure – by governments, companies, and civic and multilateral organisations – of standardised, comparable, and disaggregated information to further a defined public purpose (Fung, Graham and Weil, 2007^[12]). As the good governance agenda gained traction during the 1990s, transparency became part of a well-rehearsed, highly mobile, and rapidly globalised set of regulatory apparatuses.

So widespread and globalized is transparency talk and practice that it has been referred to “a key concept of our times”, and as a defining quality of our age⁹. As legal theorist Rachel Adams observes it is “now an institutionalized and dominant value of modern society” (Adams, 2020^[49]). It denotes the disclosure of information by typically a powerful or influential institution (government, corporations) it has come to refer more broadly to a mode of conduct, a way of behaving in which actions and decisions are open to public scrutiny and inspection. The conventional model of transparency rests upon the “cybernetic” or communicational model¹⁰ that underwrites the idea that the transmission of information – a communicational transaction – will both eradicate ignorance, enrich the public sphere and through liberal forms of politics make for better governance and accountability. Transparency is a common feature of political campaigns and state operations, is a plank of corporate good governance and corporate social responsibility (CSR), and in many respects is now regarded as a sort of basic human right integral to any sense of democracy and accountable public and private authority.

Over time transparency became a global phenomenon, understood in two senses. First as a principle of global governance associated with multilateral governmental agencies (for example the Rule of Transparency in Treaty-Based Investor State Arbitration of the UN Commission on International Trade Law of 2014, or the UN Economic Commission for Europe Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters, the so-called Aarhus

Convention of 1998). And second insofar as global governance regimes measure and rank domestic laws and policies, transparency becomes a vehicle for organizing global society, celebrating those parts of the world where its adoption is seen as an icon of progress, democracy and modernity, and reprimanding other parts of the world ('conflicted and fragile states' for example) where transparency lags or indeed is altogether missing. The Open Government Partnership is an obvious example, established in 2011 with the aim of universalizing transparency – measured across four domains that include fiscal transparency, access to information, asset disclosure and citizen engagement – through a transnational network of actors. In endorsing the Open Government Declaration, it promotes the idea that transparency is ethical in itself, capable of bringing social and political benefits through accountability, civic participation and the democratic distribution of power. As one legal scholar notes, transparency instruments aim to guide state institutions through "the enactment of internationally set standards on openness and information disclosure which claim, above all, a consensual universality" (Adams, 2020, p. 41^[49])¹¹.

Transparency talk is, in short, ubiquitous. It is a taken-for-granted, pan-ideological ideal and explanation of "how society and its organizations must function" (Christensen and Cornelissen, 2015, p. 13^[50]). There is tax transparency, business transparency, world aid transparency, open budgets and fiscal transparency and so on all claiming and affirming its central truth: transparency promotes good things (truth, accountability, democracy, participation). Because transparency is so deeply embedded and so taken-for-granted, it embodies two sorts of epistemological truths that are unquestionable in a world dominated by social media and the internet: successful social interaction requires access to information, and political power is gained when knowledge replaces ignorance or opacity (Fluck, 2016, p. 48^[51]). More information = more transparency, more transparency = more knowledge, and more understanding = enlightenment (or more properly a knowledgeable and engaged citizenry).

As a dominant political and cultural value, transparency exceeds the domain of institutions but is central to the idea of personal conduct, of self in society. Self-disclosure is central to the notion of an ethical citizen: it entails normative assumptions about the behaviour of individuals and allows us "as rational autonomous beings to assess each other's behaviour" (Plaisance, 2007^[52]).¹² The self can in this way be perfected, upgraded and normalized. Who after all can be against transparency?

It is paradoxical that the rise of transparency as governance has co-evolved with what one might call opacity: the sense that financial instruments are complex and unfathomable, the vast swaths of the world economy that are "shadow" domains, the genesis of post-truth politics and the proliferation of algorithmic thinking. But the two processes are deeply enmeshed: the German sociologist Niklas Luhmann pointed out that the contemporary demand for communication and information is the demand "to ensure staves of transparency in a world rendered opaque" (Luhmann, 2017, p. 229^[53]). Transparency grows in inverse relationship to opacity and a lack of social trust. In other words, the ubiquity of transparency discourse across many different realms of institutional and personal governance in the 21st century must also confront, and is curiously a product of, what has been called 'informational crises' capable of undermining the very foundations on which transparency rests (Pasquale, 2015^[54])¹³. On the one hand, the rise of fake news, misinformation, alternative facts, and so-called post-truth society challenges the notion that disclosed information is true or incontestable (European Union, 2018^[55]). And on the other, there are deep concerns over privacy associated with the rise and diffusion of data-based technologies and algorithmic processing of all manner of personal and institutional data – what Shoshana Zuboff (Zuboff, 2018^[56]) calls "the age of surveillance capitalism". On this canvas, the call for more information, and the logic of 'disclosure-participation-accountability' seem to be thrown into question.

The Extractive Industries Transparency Initiative (EITI) and similar TAP approaches are expressions of the much larger regulatory landscape of governance *through* transparency (Barry, Osborne and Rose, 1996^[57]). Transparency has become a *lingua franca*, a keyword, for contemporary politics and better governance, and is rendered as both cause and solution for many problems, from accountable government to deliberative democracy, from public trust in the state to citizen empowerment. In its ubiquity, transparency is seen to be capable of addressing virtually any problem¹⁴. Open government and shining

light into dark state spaces has been a mantra in national and global politics for decades. Transparency's promise to render visible and legible – to “disinfect”, as US Supreme Court Justice Louis Brandeis famously put it – offers a mechanism of accountability to shed light on the opaque and obscure, and provide confidence, trust and legitimacy in institutions and organisations (Brandeis, 1995_[58]).

To summarize, transparency's reach and universalism reflect that it is both a system of *theory and analysis* and a system of *action or practice*. In our view one can make two generalizations. The first is that the conventional model of transparency rests upon the “cybernetic” or communicational model of transparency. It underwrites the idea that the transmission of information – a communicational transaction – will both eradicate ignorance, enrich the public sphere and through liberal forms of politics make for better governance and accountability. As Fenster shows transparency has a trio of assumptions (Fenster, 2017, p. 77_[15]):

- The state is a producer and archive of information and can be made to control or distribute such information
- Government or public information is a message that can be isolated and disclosed
- The public are receivers of information and are ready, willing and able to understand and act upon this information.

But this model is potentially open to question because the state is not a bounded entity that can readily be opened and closed, disclosed information cannot self-evidently reveal state action and decision making, and that information communicates cannot be assumed to be value that can be readily understood and decoded by a motivated public¹⁵. Disclosure will consequences but are they necessary and predicable? Fenster poses two questions (Fenster, 2017, p. 127_[15]): is the public capable of responding rationally and knowledgeable? And “does the public even exist in some discernible form” – that is to say what is the character and organization of the public sphere?

Second, transparency, can be many things at once leading to considerable variation in meaning and execution, in its deployment for varied purposes (e.g., to deliberate, to legitimise, to control, to govern), and in its variety of metrics, accounting, and auditing to assess implementation and effectiveness (Mehrrouya and Djelic, 2014_[59]). These historical and conceptual aspects of transparency alert us to the conditions and circumstances under which transparency, accountability and participation (TAP) initiatives arose, and the political, economic and ideological arrangements in which they are embedded and must operate.

For the purposes of this paper, we offer three framings – (1) contention and limits, (2) origins and pathways, and (3) global iterations and audit culture – to shed light on how to situate and assess the work of organisations like EITI, and what they may or may not be able to achieve.

Analytical framings

Contention and the limits of transparency

Transparency and its relation to good government and democracy has a long and complex history in both theory and practice. But as a tool of modern government and rule it also disputatious history¹⁶. While held up by some as a normative idea of modern government, for others it falls short on its promise and has unintended consequences¹⁷. A comprehensive study of 25 years of research (1990-2015) on transparency policies in administrative, political and financial domains encompassing almost 4000 books, articles and policy briefs in multiple languages, showed that the number of studies revealed several trends (Cucciniello, Porumbescu and Grimmelhuijsen, 2017_[60]). First, there was a sharp and sustained increase in writing on transparency policies after 2004; second that that most analyses were conducted in and on Europe with a notable lack from the Global South. Third, that the majority of publications addressed financial

transparency, and finally that – with the exception of work revealing robust connections between transparency policies and reductions in corruption – the results of transparency policies were “mixed” (Cucciniello, Porumbescu and Grimmelikhuijsen, 2017, p. 41^[60]). They concluded that the “historically proffered...[transparency] solution.....to the gamut of challenges that governments face” needed to be seriously “qualify” such claims, while the mechanisms for lending transparency its effects “remain poorly understood” (Cucciniello, Porumbescu and Grimmelikhuijsen, 2017, p. 42^[60]). Others argue that disclosure policies “generate gradual, indirect and diffuse impacts” (Michener, 2019^[61]) at best, and that the context, meaning, and purpose of transparency matter (Worthy, 2018^[62]). Still other see transparency’s chief beneficiaries as less the public than the powerful interests it is meant to regulate (Hood, 2006^[63])¹⁸.

Box 2.1. Pathways and Historical Trajectories in the Ascendancy of Transparency

There are at least four national transparency strands:

1. Democratic exposure of the few to the many, e.g., the rise of the public sphere, the market and public opinion as a counterweight to traditional authority (discussed by Jurgen Habermas)
2. Impartial Spectator, e.g., John Locke and Adam Smith’s commitment to information for fluid market operations
3. Surveillance and controlling the many, e.g., the Benthamite notion of openness and information for the few to control the many
4. Social engineering and governing the many, e.g., society rendered legible for steering and managing populations

In addition, transparency took shape transnationally in various configurations through the League of Nations and the United Nations, embodied in the diffusion of freedom of information laws, through market regulation (the Marshall Plan, the EEC), and notably through the rise of neoliberalism and the global good-governance agenda. International organisations like the World Bank, IMF, and OECD took hold of, refined, polished, and projected their own transparency arrangements in the Global South. EITI is one example, but perhaps more crucial was consolidation of what is call the ‘new financial architecture’ and its set of market-based principles.

Source: Mehrpouva and Salles-Djelic (2014^[59]) Transparency: From Enlightenment to Neoliberalism or When a Norm of Liberation Becomes a Tool of Governing, <https://doi.org/10.2139/ssrn.2499402>.

Critics and sceptics argue that transparency and disclosure can be instrumentalised in ways that limit or compromise the operation of transparency’s logic of social change. First, they may be little more than “a theatre of performance manufactured for others but decoupled from actual performance” (Roberts, 2009, p. 963^[64]). Second, power asymmetries limit the efficacy of civil society and stakeholder participation. Third, the limits of data and transparency metrics can trigger a treadmill effect to produce new data and measures. Finally, social processes contained within transparency’s action cycle can be rendered technical rather than political (Li, 2007^[65]).

Other work questions the ‘logic of action’ itself by showing how transparency may have deleterious internal effects, fostering a culture of suspicion and self-censorship (evasions, half-truths, and deception), and imposing demands on organization that cannot be met or produce distortions and perverse incentives (‘the race to improve performance indicators’ (Shore and Wright, 2015, p. 422^[66])). When transparency arrangements are largely voluntary, it can create a form of self-referentiality in which those held to account define the terms of their participation (Pellizzoni, 2008^[67]).

The danger is that transparency may serve as a mask: allowing or even encouraging citizens to feel empowered in societies marked by ever more technological and social complexity and hence to have

reason to believe that the welter of forces, laws and institutions can be rendered legible: they can be seen, analysed and understood.

Origins and Pathways

The history of transparency is a complicated one that cannot be fully rehearsed here¹⁹. But the key question is how a word that arose in the 19th century in relation to photography and print as (a medium through which light refraction can take place) has three centuries on become a sort of universal norm, a neutral and unquestioned value? Transparency has a Latin derivation (trans) meaning to appear, and the word can always carry this sense of making visible and legible (the IMF Working Group on transparency defines the term as ‘making visible’). Historians have charted how transparency was a product of 18th-century Enlightenment ideals and co-evolved with the establishment of human rights including freedom of expression and freedom of information (Björkstrand and Mustonen, 2006^[68]; Geroulanos, 2017^[69]). Consistent with the transcendentalism of the Enlightenment, transparency as a set of governing practice came to be understood as a conveyor of truth. In its purported neutrality and non-political character, transparency assumed that the information disclosed upon which it rested is value-free and objective. Transparency models assume “a pure medium delivering raw, self-evident, neutral data” (Birchall, 2014, p. 90^[70]) But transparency’s proximity to the notion of truth, universality and basic human rights tends to hide its history (its conditions of possibility), its politics (how it can be attached to different political regimes for different purposes) and how it rests upon not only a number of “pre-conceived (and Western) categories” (Adams, 2020, p. 98^[49]) but also a set of questionable assumptions about how its logic (disclosure-social transformation) actually works in practice.

Contemporary forms of transparency including in the extractive sector, in other words, can be best understood by placing the concepts on a larger historical canvas. Citational research reveals that the words “transparency” and “accountability” exhibit a striking increase in referencing from about 1990 onwards. Both words show an uptick in the 1960s, followed by a rapid rate of growth after 1990, and another boom beginning around 2005. (For comparison, references to transparency in published work in English also show important increases at the turn of the 19th century and during the 1930s and early 1940s, coinciding with reform efforts during the Gilded Age and in the wake of the Great Depression, respectively.) Both transparency and accountability carry distinctive national and global meanings: national governments adopted versions of transparency legislation (sometimes called ‘publicity’) at various times, while TAP gained traction among international organisation and transnational regulatory agencies dating back to World War I it gained momentum after 1945. Box 1 summarizes these national and global strands associated with the rise of transparency as a form of regulatory governance adapted from the important work by two business school scholars, Afshin Mehrpouya, and Marie-Laure Salles-Djelic. (Mehrpouya and Djelic, 2014^[59])

Transparency and Audit Culture

As international development organisations began to project globally their practices after World War II, they became nodes in the production of expertise and transnational regulatory knowledge (Kentikelenis and Babb, 2019^[71]; Babb and Kentikelenis, 2021^[72]). One consequence was the flourishing of global development indicators and metrics of governance and performance efficiency by rating and ranking organizations (Cooley and Snyder, 2015^[73]; Kelley and Simmons, 2020^[74]; Katarova, 2019^[75]). By 2015 there were almost 300 such metrics. Transparency’s specific benchmarks, targets and rankings were key to accountability processes (Broome, Homolar and Kranke, 2018^[76]; Cooley and Snyder, 2015^[73]; Broome and Seabrooke, 2012^[77]). As metrics of soft power, benchmarking and audit culture more generally became a key source of indirect power to shape institutions and populations to their image of best practice or market-ready behaviour. These indices are also complex, requiring sophisticated forms of calculation and

assessment. For example, the OECD FDI Index – a measure of restrictive rules on FDI – is calibrated around 21 variables.

By linking global knowledge, governance and forms of audit, transparency as a mode of governance has been projected across the Global South, thereby legitimating, standard setting and crucially establishing the boundaries of what is seen as best practice.

Situating Transparency in History

These three framings demonstrate that transparency's history and apparatuses (metrics, organizations, instruments) are shaped by the political-economic settings in which they are developed and deployed. In short, transparency is invariably a "political initiative that can be deployed to achieve a range of different agendas". (Darch and Underwood, 2010, p. 4^[78]) How, then, might one understand the assorted and shifting meanings and forms of transparency, the problems it addresses, and its connection to political and ideological agendas? In some cases, transparency means surveillance in the interests of social control. In others, it refers to market and price information to facilitate optimal allocation and consumer protection. With the neoliberal turn of the 1980s, the more social-democratic meanings of transparency were repurposed in ways in which this original content is largely emptied from the term. Transparency became one arrow in the quiver of international organisations intent on restructuring economies and politics, ensuring market discipline and stability, and not least instilling investor confidence. Much TAP in the extractives sector arose in and around market thinking and the counter-revolution in development theory and practice, which Yale University legal theorist David Pozen refers to as transparency's "ideological drift to the right" (Pozen, 2018^[79]; Toye, 1987^[80]).

Transparency's and disclosure's variety of meanings and purposes carries the marks of different regulatory regimes. In the US at the turn of the 20th century, legislation addressing "publicity" was a centrepiece of the Progressive Era program to professionalise government and fight the plutocracy of the Gilded Age. Publicity politics sought to limit corporate and state excesses through disclosure and as "a precondition for new modes of responsive regulation and democratic action" (Pozen, 2018, p. 123^[79]). These efforts were tied to a reform agenda that endeavoured to constrain big business through efficient, scientific, and democratically accountable regulation. Central to this was the goal of reining in the profits and power of big banks. In other words, the disease was 'bigness', not fraud.

From the 1960s, however, the ideological profile of transparency shifted, targeting federal agencies, consumer politics, and popular and regulatory complacency surrounding business operations. Lost in the process was the original social-democratic and progressive link between open and active government, capitalist scale, and equity and justice. Over time, transparency became a means to enhance freedom of choice, transcend factional politics, and minimise government interference in the market. In effect, transparency – and anti-corruption policy in general – was neo-liberalised. Pozen does emphasise that neoliberalism was not the only force at work in shaping transparency: "At a conscious level, many transparency advocates do not draw on these [neoliberal] approachesbut [s]everal of the ways in which transparency's meaning has shifted—for instance, through the co-optation of open records and open meetings regimes by unanticipated users—arose in a decentralised manner and do not appear to reflect any coherent neoliberal plan". (Pozen, 2018, p. 148^[79]) The story of transparency in the United States has its own history and peculiarities of course, but the larger point – that transparency and accountability instruments and policies derive their specific meanings and practices from the larger political context in which they are situated – has equal currency in Europe and elsewhere. (Cucciniello, Porumbescu and Grimmeliikhuijsen, 2017^[60]; Boudier et al., 2015^[81]; Curtin and Meijer, 2006^[82]; Hood, 2006^[83]; Fenster, 2017^[15]; Krøvel and Thowsen, 2019^[84]; Torssonon, 2019^[85])

The broader argument that neoliberalism and global anti-corruption norms that arose together is incontestable. Katarova's research shows how the mid-1990s framing of global corruption promoted a

decisively neoliberal narrative about the merits of the free market and the deficiencies of politics: “being understood as a problem of corporate influence on politics, corruption became redefined... as the much more limited offense of bribery. The locus of corruption shifted from the private to the public sector, and our understanding of corruption came to be dominated by the image of the greedy politician” (Katzarova, 2019, p. 230^[75]). Corruption’s image was “nationalised” – a direction shaped by the United States more than any other country. Certainly, the link between anti-corruption (as part of a broader agenda to regulate multinationals) and neoliberalism (as an agenda for deregulation) was, like transparency itself, quite complex and not simply neoliberal window-dressing. Rather as Katzarova argues, “the question of corruption in global venues was to some extent constitutive of a neoliberal agenda; anti-corruption policies were about the making of neoliberalism itself”. (Katzarova, 2019, p. 7^[75])

The case of Transparency International (TI) is an instructive case in point. Founded in 1993 by a former World Bank Executive, it has played a foundational role in the genesis of a transnational advocacy network of NGOs, advocacy and human rights groups devoted to the encasement of global anticorruption norms not least among international financial institutions. Distinct from and sceptical of the freedom of information movement and of the role of the law in suppressing state powers, TI through its widely deployed – but also quite controversial – Corruption Perception Index (CPI) works around rather than through the state through a global franchise structure of over 100 accredited chapters. While TI pursues a distinctive transparency approach operating above and below the state it is entirely consistent with neoliberal tenets of the state-rollback and liberal governance through the external imposition of prevailing global norms of fiscal responsibility. Privatization and regulation and the promotion of markets in this account reduces the possibility of rent capture and illicit financial flows. Here the CPI as part of a putatively neutral technology rooted in standard administrative norms is a measure that serves to discipline the state, “a form of unelected ‘organized governance’ [imposed] on states and their agencies while it hides its more normative programmatic functions.” (Fenster, 2017, p. 46^[15])²⁰

By the time the good governance agenda was born in the late 1990s, transparency-type instruments had already been developed across a broad swath of sectors and institutions, largely in relation to anti-corruption programs in the Global South and, more generally, with respect to IFFs and state actors. The variety and diversity of these TAP-type programs is enormous, encompassing conflict mineral certification, the Minamata Convention on Mercury, the IMF Guide on Revenue Transparency, and the large number of programs devoted to public administration, public financial management, and the banking sector. (Gaventa and McGee, 2013^[86]) Some derived from national and domestic legislation such as anti-money laundering legislation in Switzerland and the UK. Other transparency instruments involved sanctions or mandatory disclosure of payments. Some legislation, such as the US Foreign Corrupt Practices Act, contained extra-territorial reach, while other instruments rested on transnational conventions like the Council of Europe’s Criminal Law Convention on Corruption, the UN Convention Against Corruption and the Wolfsberg Group Guidelines for banks. Still others are expressed through CSR programs. (Fransen and Kolk, 2007^[87]; Dingwerth and Pattberg, 2009^[88]; Brockmyer, 2016^[89]; Fougère and Solitander, 2020^[90]) Since the late 1990s, voluntary measures and multistakeholder initiatives have loomed largest in the extractives sector. In oil and gas in particular, EITI and its Standard assume a dominant position in this transparency and anti-corruption landscape.

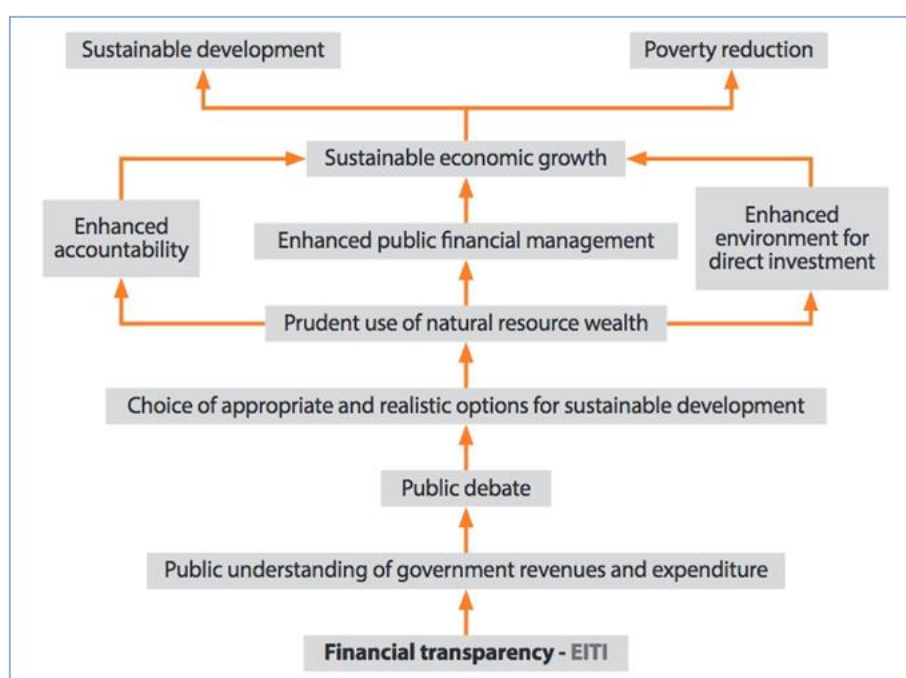
TAP and the extractives sector

During the 2000s, TAP instruments were adopted widely across the extractives sector, propelled by advocacy groups, certain DAC members, and international financial institutions (IFIs) like the World Bank. They largely focused on relations between extractive companies, the state, and extractive ‘host’ communities. In the wake of a number of company crises during the early and mid-1990s and the deepening public concern over human rights, ecological and security violations associated with operations of global corporate supply chains, transparency quickly became normalised across the oil and gas sector

as “the basis of good governance of commodity sectors” (UNCTAD, 2020^[28]). In short order a global anti-corruption norm arose in which the oil and gas sector played a key role. (Gillies, 2020^[24]) The calls for increased extractives-sector transparency emerged from two movements: the fight against corruption and the call for business to act responsibly in zones of conflict. Transparency International launched efforts to change laws regarding corruption, culminating in the OECD Anti-Bribery Convention. The campaigns, stimulating the creation of new NGOs and NGO coalitions, and incorporating donor governments and international institutions – including the World Bank and the UN Global Compact, International Alert, Global Witness, Pax Christi, and others – argued for revenue transparency as a powerful vehicle for generating change. (Haufler, 2010^[91])

The EITI was a voluntary TAP arrangement launched in 2003 in the wake of a scandal involving illicit payments by BP in Angola. It has become the most institutionalised and globally prominent form of so-called ‘transparency as governance’. Like all transparency instruments, the EITI, contains a prescriptive framework that rests upon an ‘action cycle’ (also called a ‘core logic’ or ‘theory of change’). The theory proposes that information users make use of disclosed information, make better and informed choices which in turn shapes state behaviour, thus reducing risks of public sector malfeasance and corruption, improving corporate governance, enhancing the business environment and delivering public interest outcomes (Figure 2.1).

Figure 2.1. TAPs and the logic of disclosure and social change



Source: Brockmyer, M. and Fox, J. (2015^[44]) Assessing the Evidence: The Effectiveness and Impact of Public Governance-Oriented Multi-Stakeholder Initiatives, p. 21, <http://dx.doi.org/10.2139/ssrn.2693608>.

There are other multi-lateral programs comparable in structure and purpose. One is the EU Accounting and Transparency Directive (2004/109/EC, mandatory for all EU-registered companies since June 2013), producing company payment data not available through the EITI. EU disclosure requirements facilitate the release of crucial information, especially payments made in secret, making it possible to scrutinise and track them to government accounts, (Knudsen and Moon, 2017, pp. 103-140^[92]; Publish What You Pay, 2017^[93]) and shed light on companies’ operations in secretive and corruption-prone countries such as Angola and Equatorial Guinea, states not part of the EITI. The Directive provides information about

companies neither headquartered nor listed in the EU, nor subject to mandatory disclosure laws in jurisdictions where they are headquartered – such as ExxonMobil, which has European subsidiaries in Germany and Luxemburg. But disclosure is uneven here too. A 2018 review of extractive companies, including oil and gas, could not locate reports for 40% of the sample set and data was inconsistent, requiring new, clearer forms of submission and collection. (Gaita and Hubert, 2018^[94]) Crucially, commodity trading houses were excluded, as the EU Accounting Directive (2013/34/EC) did not include payments for the sale of oil and gas as a category on which companies were obliged to report. In 2019, commodity traders were included in the EU's revamped Markets in Financial Instruments Directive (MIFID II), which aims to curb speculative trading and make markets more resilient and includes limits on the volume of commodity derivatives a trader can hold. Until then, commodity trading firms were outside the scope of the regulatory framework in the EU. A new rule book developed by the European Commission will be the first time any meaningful capital, liquidity and reporting regime is applied to them. (Porsch et al., 2018^[95])

TAPs have been widely adopted as part of an international anti-corruption norm (Rose, 2015^[96]) to address development and democratic deficits seen as structural attributes of limited statehood (Draude, Börzel and Risse, 2018^[97]) (also called 'weak' or fragile and conflicted states in the development community's nomenclature (Gaventa and McGee, 2013^[98])). The transparency and accountability field has evolved as multiple sub-fields with overlapping origins, principles, and methods. Of these, service delivery and public financial management are two in which TAPs are widely adopted, spawning innovations like more institutionalised forms of co-governance, public expenditure tracking surveys, citizen report cards, score cards, community monitoring, and social audits²¹.

Whether mandatory or voluntary, all forms of targeted transparency confront common challenges. The EITI's record over nearly two decades offers a trove of experiences in diverse national settings and a case for assessing multistakeholder governance and initiatives (MSG or MSI), which bring together government, companies, and civil society. Like much of the good-governance agenda, the EITI, with partners such as the Natural Resource Governance Institute (NRGI), designed and uses its own metrics and indicators of performance to determine compliance and certification for the EITI Standard. The EITI has thus developed its own audit culture, (Strathern, 2000, pp. 1-18^[98]; Strathern, 2000^[99]) consistent with development agencies' practice across a range of sectors (e.g., health, education, local government reform, public finance management). It is also one of the few organisations for which there is a track record (since 2013) of using transparency requirements (the so-called 4.2 Requirement) to explore trader-NOC relations, implemented through pilot studies since 2016. (OECD, 2020^[100])

3

The EITI as transparency governance and the rise of the commodity trading requirement

The Extractive Industries Transparency Initiative (EITI) was launched at the 2002 World Summit for Sustainable Development by Tony Blair, UK Prime Minister at the time. To reduce corruption in producer countries' management of extractive-industries revenues, the UK called for governments and companies to commit to transparency in the sector. The Department for International Development (DFID) was tasked with a pilot program for the EITI. Within a year, several countries, companies, and civil society organisations had agreed on a statement of principles to increase transparency of payments and revenues in the extractive sector, known as the EITI Principles. They remain the cornerstone of the initiative. Meanwhile, a conjuncture of forces created the conditions of possibility for the emergence and consolidation of EITI, an organization that played a, arguably *the*, pivotal role in the rise of a global transparency norm in extractives.

There are other important actors in the extractive transparency space, most importantly Publish What You Pay (PWYP) and the Natural Resource Governance Institute (NRGI). These organizations, whose work this report makes use of, arose from the same configuration of social and political that forces that gave birth to EITI. Nevertheless, the relations between these organizations while complementary are rather different²². The Publish What You Pay (PWYP) coalition was founded in 2002 by a small, ad hoc group of London-based NGO representatives (Global Witness, OXFAM, Save the Children, Transparency International among them) to tackle the 'resource curse' by campaigning for greater transparency and accountability in the management of revenues from the oil, gas and mining industries. Unlike EITI the goal of PWYP is mandatory disclosures by extractive companies focusing on (i) national and international accounting standards, (ii) stock exchange disclosure rules and (iii) the conditions that banks, export credit agencies and other financial institutions place on extractive sector clients for the financing or insuring of oil, gas and mining projects.²³ Crucially their constituency is civil society organizations and the building of national coalitions especially on building civil society organizations and national coalitions calling for mandatory disclosure of company payments and government revenues for the financing or insuring of oil, gas and mining projects, and stands in contrast to the EITI multi-stakeholder approach. While transparency is central to their work, PWYP makes clear that "transparency is not a 'silver bullet' that will solve all socio-economic and development issues", even if it is a fundamental condition to improving governance and economic management. The Natural Resource Governance Institute was established through the merger of the Revenue Watch Institute and the Natural Resource Charter in 2013²⁴ and in line with its mission, NRGI supports civil society organizations, government institutions, private sector enterprises, and the media with technical advice, advocacy, applied research, policy analysis, and capacity development with regard to natural resource governance. As an independent, non-profit organization, NRGI provides policy advice and advocacy driven by field-based insight and research which they freely with policymakers, accountability actors, and the global campaign for improved international anti-corruption norms.²⁵

What then was the ether in which EITI, and organizations like PWYP and NRGI, rose? First, it was widely understood that secrecy, opacity, contract fraud, corruption of politically exposed persons, and political thuggery and violence were the hallmarks of the oil and gas industry largely as consequence of the involvement of National Oil Companies (NOCs). Hydrocarbons along with minerals were seen by post-colonial states as national assets to develop, a priority area for large-scale foreign investment (including state capital by the likes of China, India, and Russia), and a significant source of state revenues. Reform of State-Owned Enterprises (SOEs) had already been established as a key target of aid programming and Structural Adjustment conditionality by the mid-1990s. NOCs were regarded as varieties of SOEs that automatically exhibit higher corruption risks due to their ownership, regulatory and hybrid public-corporate governance arrangements that produce chronic weaknesses in corporate disclosure. (Gillies, 2020^[24]) At the same time, the global oil complex had a well-documented trail of ecological and health disasters on and off the oilfields, even as the question of carbon emissions and global climate change gained political momentum during the 1990s.²⁶ By the mid-2000s, NOC reform had moved up the donor community policy agenda. (Heller, Mahdavi and Schreuder, 2014, p. 4^[101]) Transparency promised to shine light into the recesses of a state-dominated sector in turbulent frontier zones of petro-states like Angola, Indonesia, Nigeria, and oil-rich states in the Caucasus. Transparency and accountability became a prized regulatory asset. While NOCs figured centrally in the rise of a global, industry transparency norm, they were diverse in their structure, organisation, and efficiency, exhibiting varied obligations, priorities, scale, operations, and impacts. In hindsight, these reform engagements proved to be narrowly conceived, tending to favour a standard suite of policy reforms and modes of engagement largely oriented to disciplining NOCs and underplaying the global context of relationships and dynamics they were often subordinated to²⁷.

Second, the transparency movement intersected with, and drew from, two other global norms, each with a long and complex history. One was the link between human rights and development triggered by growing indigenous rights movements and the horrors of several brutal civil wars (Sierra Leone, Angola, Liberia). The other was a focus on corruption and bribery in relation to global value chains. The 1977 US Foreign Corrupt Practices Act was amended in 1998 with enhanced capacities through the International Anti-Bribery Act, designed to implement the OECD Anti-Bribery Convention. (Uvin, 2007^[102]; Thérien and Pouliot, 2006^[103])

Third, transnational corporations in the extractive sector faced a series of legitimacy or reputational crises which threw their 'social license to operate' into question. Controversy surrounding Shell's operations in Nigeria, the 1994 investigation of Elf that implicated the French government and several African state-owned oil companies and governments, the case of UNOCAL in Myanmar, pipeline controversies in the Caucasus and Chad, and other high-profile cases played their part. BP's admission in 2001 of large payments made to unnamed officials in Angola was in many respects a turning point. (Gillies, 2020^[24])

The ascent of transparency thinking was aided by an unprecedented inquiry into the World Bank's extractives-industry operations and contentious relations with civil society groups during the 1990s over investments in and technical assistance to mega-scale engineering and infrastructure projects (hydropower dams most obviously) and the mining sector. In 2000, the Bank conducted a participatory review of its activities in extractives followed by the independent Extractive Industry Review (EIR) in 2001. Both before and after, the Bank and other international financial institutions (for example, the IMF in Angola) pushed transparency and the Asian, African, and European development banks followed suit.

In sum, a constellation of forces all traceable to the character of global capital flows in a post-Cold War world, provided the conditions of possibility for EITI's ascent. It was an historic conjuncture that drew together a diverse and powerful set of actors including the international oil companies (IOCs), IFIs, and Western governments, all brokered by a coalition of civil society interlocutors that consolidated a set of collective interests around an industry-wide transparency and disclosure norm. Yet the rise of a global transparency-disclosure-accountability norm in the oil and gas sector was not intuitively obvious. It is populated by an array of actors and is institutionally complex, and the norm arose at a time when resource commodity prices were booming, capital flows deepening, and the ideological ethos was unsympathetic to

regulation. The sector is powerful, well-organised and historically operates with a high degree of secrecy and opacity. It is highly “securitised” – local and international security forces protect its assets and has been able to operate with relative impunity in environments largely without. The same might be said of the NOCs. Shining a light into this world – and the sort of information to be disclosed from it – seemed daunting to say the least. (Gillies, 2010^[104])

In practice, two distinct transparency arrangements were on offer, which have been apparent in other policy domains and periods. (Katzarova, 2019^[75]) One, promoted by George Soros’s Open Society Institute through its support for Publish What You Pay, primarily targeted North American and European IOCs and their home governments. It called for full corporate disclosure of payments made to oil producer countries, and for disclosure to be made mandatory through home-country legislation. Not surprisingly, oil companies were divided on this issue at first. Rising oil prices and competition from NOCs made IOCs wary of mandatory revenue disclosures. Conversely, the UK government pushed for implementation to be the responsibility of individual countries – a ‘middle path’ that transferred the onus of disclosure to oil producer country governments who were, moreover, to be voluntary signatories along with IOCs and civic groups. All major oil companies immediately signed up as supporters, and governments, IFIs, and multilaterals swiftly jumped on board.

When the EITI was announced, it placed the burden of disclosure and disciplining NOCs squarely on producing countries, resting on a system of voluntary compliance rather than international enforcement. A governance structure for compliance was designed soon after. A World Bank-run Multi-Donor Trust Fund to support the EITI implementation in producer countries was established in 2004. The EITI compliance rules were laid out in a Validation Guide, an EITI secretariat opened in Norway in 2007, and two country signatories (Azerbaijan and Nigeria) from the focus regions commenced implementation of the EITI certification process. In 2009, the first batch of countries was certified as compliant with the EITI – all of which afforded all actors considerable credibility.

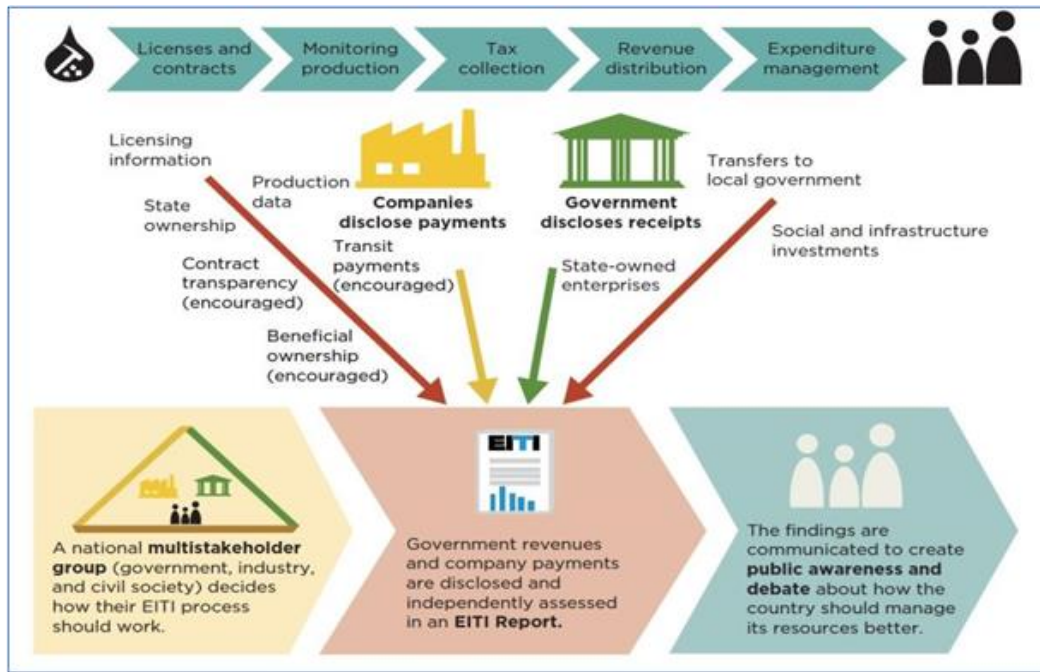
OECD DAC members were and remain important supporters of the EITI. Contributions by donor countries – in particular, Australia, Denmark, Switzerland, the UK, and the European Commission – constituted two thirds to three fourths of total EITI revenues in 2020, with approximately USD 4.5 million annually in 2017-20. The private sector constitutes the other substantial contributors. In 2021, these included 33 oil and gas and mining companies. In addition, international and regional development banks, international development agencies, bilateral agencies, and international civil society organisations provide funding direct to the EITI and fund national EITI chapters, as well as the implementation of the EITI Standard in producer countries. The World Bank’s Multi-Donor Trust Fund for the EITI (subsequently renamed the Extractives Global Programmatic Support Multi-Donor Trust Fund), disbursed almost USD 70 million in technical and financial assistance to EITI-related programs and projects in over 40 countries during 2005-15. Some countries invest additional funds from national state budgets to implement the EITI Standard at the country level.

The EITI Standard

The EITI’s core principle (Figure 3.1) is that governments of resource-rich countries voluntarily publish information about revenues from their extractive industries. These disclosures are subsequently matched to the payments (taxes, duties, royalties, bonuses, and others) that extractive companies made to the government regardless of whether they are private, state-owned, domestic, or foreign. An independent administrator or audit company, supervised by a multistakeholder group (MSG) consisting of government officials, and representatives of the extractive industries and civil society, reconciles the numbers and reports the disclosed figures. Over time, the EITI Standard has expanded in terms of the information collected and disclosed, and the indicators and metrics it deploys. Its report stating the revenues, payments, and discrepancies is made public and the data expected to inform debate and allow civil society

organisations to hold their governments accountable for discrepancies. An EITI-implementing country is granted compliant status when it meets all the requirements of the EITI Standard and must remain adherent.

Figure 3.1. The EITI Standard



Source: Hurdeman and Rozhkova (eds.) (2019^[105]) *Balancing Petroleum Policy: Toward Value, Sustainability, and Security*, p.163, <https://doi.org/10.1596/978-1-4648-1384-9>.

The objectives and strategies deployed by the EITI, and the transparency-disclosure campaigns that helped create it have evolved over the last two decades while the EITI Standard has expanded. Prior to the EITI, TAP initiatives focused almost exclusively on revenue disclosures, predicated on a 'name and shame' strategy to dissuade government and corporate corruption. In the decade after 2003, the EITI was concerned primarily with enrolling governments to institutionalise revenue disclosure in an inclusive fashion (to the extent of accepting those with records of authoritarian rule and grand corruption). Over the last decade, the EITI came to see its mission as encompassing the entire global value chain and worked with states, oil companies, and civil society groups to expand its scope and remit to include questions of licensing, beneficial ownership, and tenders. Seeing its remit as cleaning the supply chain, from extraction to revenue allocation, the EITI grew in size and organisational complexity, and "evolved from an anti-corruption tool to a resource governance framework". (Katarova, 2019, p. 12^[75]) Over time EITI eventually came to address first trades and commodity trading systems.

The EITI and first trade equity oil

Recognising the strategic importance of first trades and oil sales and incorporating commodity trading into the EITI Standard took over a decade for reasons that did not reside entirely with EITI itself. This pattern appeared in parallel efforts by national governments to regulate commodity trading in the world's major trading hubs (Dubai, Singapore, Zurich, and so on). The Federal Council of the Swiss government released a report in 2013, followed by interim reports in 2014, 2015, and 2016 to address recommendations on commodity trade corruption, human rights violations, and environmental harm, seen collectively as posing

reputational risks for the country. But five years after the initial report, Public Eye concluded that “very little” was achieved and “no reliable data” was available. (Public Eye, 2018, p. 3^[2])

Drawing commodity regulation and commodity houses into transparency frameworks proved difficult for several reasons. First, following the oil market restructuring in the 1970s, new market governance arrangements emerged dominated by private trading firms seeking to hedge supply and price risks, and secure revenue. States concluded that, while these actions might create a need for regulatory surveillance, they “did not find systemic problems with price settings”. (Goldthau and Hughes, 2021, p. 1425^[31]) Second, the large, powerful, and often privately held trading houses resisted coming to the table, insisting that their in-house due diligence sufficed. (RMF, 2021^[106]) Research further shows that traders pushed back against regulatory curbs on the destabilising effects of derivatives trading after the price spikes and financial crisis of 2007-8 and 2011. (Goldthau and Hughes, 2021^[31]; Blas and Farchy, 2021^[7]) Large energy traders were positioned to benefit from the turmoil and market volatility triggered by such crises. During COVID – and also following the 2014 price collapse – oil traders posted record profits. Vitol handed out USD 2.9 billion to 400 partners in 2020, while Trafigura’s net income soared 84% in the year up to September 2021. (Sheppard and Hume, 2021^[107]) Volatility said Trafigura’s Chief Financial Officer “is good for traders”. (Hume, 2015^[108]) Furthermore, the private ownership of many commodity traders shields them from activist pressures by equity divestment campaigns or shareholder resolutions that could have brought the trading houses into the EITI sphere and other transparency arenas. (Baines and Hager, 2021, p. 2^[9])

That said, the traders have moved, becoming more open as they sought new funding to expand their operations after 2010 and needing to limit the damage from corruption scandals. Trafigura, the world’s third largest independent oil trader, joined the EITI in 2014. But in practice the picture remains, to be generous, mixed. The Responsible Mining Foundation, which surveyed 25 major commodity trading companies, concluded that due diligence and transparency policies were overall weak, with the companies scoring an average 23% on environmental, social, and governance due diligence systems, and 28% on disclosure of public interest information. The study measured the existence of due diligence systems, not how effectively they were implemented, but the results indicate that many companies pay little attention to the effectiveness of these measures. Indeed, the 25 scored an average 10% on tracking, reporting, and reviewing their performance on managing human rights issues in their supply chains. (RMF, 2021, p. 6^[106])

The recognition of first trades was pushed forward when a 2011 external evaluation of the EITI and a Strategy Working Group discussion paper argued that expanded coverage of EITI requirements was needed to cover the resource revenue management chain. Revenues derived from the sale of oil and gas resources by producer governments and NOCs loomed large in this regard. According to NRGi research, oil and gas first trades by 35 NOCs generated over USD 21 trillion in 2018, equalling 22% of those countries’ government revenues. NRGi published research in 2019 that NOCs were managing portfolios and collecting a larger share of public revenues than previously understood. It found at least 25 NOC-dependent countries worldwide, where a NOC “by itself, collects funds equivalent to 20 percent or more of all government revenue”. (Heller and Mihalyi, 2019, p. 1^[109]) Underlining the significance of this income to producer-country treasuries, the EITI estimated that over half of revenues disclosed by the initiative’s member countries since 2003 originated from first trades of physical resources from oil, gas, and mining.

A first trade requirement – Requirement 4.2 – was finally included in EITI reporting in 2013. It required countries to disclose the volume of oil sold and revenue received for any material sale of the state’s share of production, or revenues collected in-kind (such as in the form of goods). Initially, the MSG was to agree which payments and revenues to consider material for the purposes of EITI reporting. Debate ensued about the levels of aggregation in data and degrees of discretion in compliance. It was argued that data should be disaggregated to levels commensurate with the reporting of other payments and revenue streams, at the minimum disaggregating at the level of individual company, government entity, and revenue stream. Another problem with the 2013 EITI 4.2 Standard was that the reconciliation of data on oil sale payments reported by governments was mandatory, on the one hand, but for buying companies, on the other, it was encouraged but not required. Non-mandatory status rendered reconciliation of the data less

accurate and useful, separating it from other payments such as taxes or royalties where both the paying company and the receiving government agency were required to report. The sentiment amongst governments was that they had less leverage to ensure that buying companies complied, since they fell outside national jurisdiction and/or control.

Not surprisingly, the launch of the requirement in the 2013 Standards proved to be difficult: 4.2 was not mandatory, some of the language was vague and inconsistent, and the complexity of the data itself often exceeded the capabilities of the CSOs to fully understand and make use of. Additionally, there were tensions between NOCs and IOCs over who was to disclose data, and the question of reconciling information on sales and buyer data was virtually impossible to achieve. In any case, trading companies were themselves largely absent from these discussions and were not invited to the EITI Board meeting until 2015, and their presence remained spotty.

In the wake of its formal adoption in 2013, the Requirement 4.2 has seen further elaboration. First, a 2016 revision of the EITI Standard promised fewer ambiguities regarding Requirement 4.2. compared to the 2013 Standard. The main difference was that disaggregation of the data under requirement 4.2 was no longer optional. Rather, it became mandatory that “data must be disaggregated by individual buying company and to levels commensurate with the reporting of other payments and revenue streams”. Disaggregation by the type of product, price, market and sales volume, as well as the reconciling of volumes sold, and revenues received with that of the buying companies remained optional. And second, a 2019 revision made mandatory the disaggregation of data by buying companies and made the scope of this obligation commensurate with the reporting of other payments and revenue streams (i.e., by project, company, government entity, and stream). Countries were also encouraged to disclose information on the process for selecting buyers and the sales agreements entered. Importantly, the 2019 EITI Standard explicitly names resource-backed loans – a crucial aspect of commodity trade – as being covered by disclosure requirements.

It took the better part of a decade for first trades to appear as an object of regulatory scrutiny, (EITI, 2015^[110]) partly because of the slow process of overhauling EITI requirements. Crucially, some EITI members (notably Iraq) had disclosed some Requirement 4.2 data as part of its audit processes, setting a precedent for other countries. Equally important was outside pressure by advocacy groups and investigative journalists in highlighting the reputational problems confronting many trading houses and governments housing major trading hubs, all of which provided incentives for the likes of Vitol and Trafigura to engage with EITI in transparency discussions.

Data on three risk areas were included in the 2013 Requirement and subsequent additions: buyer selection, negotiating terms of sale, and commodity transfer and payment collection. As a result, preliminary data was collected in advance of a 2016 six-country pilot study of first trades. The study had the advantage of a revised 2013 Standard that made it mandatory (in principle) to disaggregate flows by individual buying company and to levels commensurate with the reporting of other payments. The data for four African case studies (Figure 3.2) points to especially weak governance standards around the allocation of buyer rights and negotiation of the terms of sale. The picture is disappointing, confirming the difficulties of opening up the complicated black box of the NOC-trading company interface. (Poretti, 2018^[111])

Figure 3.2.. Country NOC scores: Buyers Rights, Negotiation of Terms, Revenue Transfers

Question	Ghana	Nigeria	Republic of Congo	Mozambique
Overall 2017 RGI Score	Satisfactory	Poor	Poor	Weak
Allocation of buyers' rights				
1.4.7a: Are there rules that govern how the NOC should select the buyers of its production?	Falling	Falling	Falling	Good
1.4.8d: Does the NOC or government publicly disclose the names of the companies that bought the production sold by the NOC?	Falling	Falling	Falling	Weak
Negotiation of terms				
1.4.7b: Are there rules that determine the prices at which the NOC should sell its production?	Falling	Falling	Good	Good
1.4.8a: Disclosure of volume of production sold by NOC	Good	Weak	Falling	Falling
1.4.8b: Disclosure of value of production sold by NOC	Good	Weak	Weak	Weak
1.4.8c: Disclosure of sale date of production sold by NOC	Falling	Weak	Falling	Falling
Collection and transfers of revenues				
1.4.7c: Are there rules that govern how the proceeds from the sale of the NOC's production should be transferred to the government?	Good	Falling	Good	Good
1.4.2b: NOC-government transfer of revenue disclosure	Good	Good	Good	Good

Source: Natural Resource Governance Institute (2019_[112]), "The National Oil Company Database", https://resourcegovernance.org/sites/default/files/documents/national_oil_company_database.pdf.

On a positive note, there is some progress across the sector in trader openness to transparency measures. For the first time in 2018, Glencore unilaterally reported that it had paid USD 1.45 billion for crude oil to SOEs in EITI countries in 2017 (Gunvor website, 2018_[113]; Poretti, 2018_[111]). During the same period, the company reported payments of USD 11.17 billion for crude oil to NOCs in non-EITI compliant countries, including the name of the counterpart (seller), volume, grade, and value of the product purchased, all aggregated annually by parent group, sub-entity, country, and port of loading, where available. The company considered it "included the level of detail that we believe will support stakeholders' understanding of the amounts and nature of the information provided, while also balancing our legitimate interest in protecting the confidentiality and commercial [interest]". (Poretti, 2018_[111])²⁸In April 2018, Geneva-based commodity trader Gunvor also announced that it intended to join the EITI because the company's support for voluntary disclosure of information aligned with EITI principles and transparency requirements, including information about the company's first purchases of crude oil and petroleum products from NOCs.

Before turning to the larger question of the EITI model itself, its track record and how to interpret the first generation of commodity trading data, we offer in Section IV a sketch of the contours of the oil trading system itself. While other reports from the *Illicit Financial Flows and Oil Commodity Trading* project will cover trading transactions in detail, it is impossible to assess the character of the challenges associated with the commodity trading system, and how well-equipped TAP instruments are to address them, without delving deeper in the structure and dynamics of the oil trade itself, and the trading houses and financial networks that compose the contemporary world of first trades.

4 Opacity, offshoring and the new financial architecture of the commodity trading system

Over the last four decades, large trading houses have come to occupy a key position in the global oil and gas supply chain. Central to it is a system of private governance arrangements comprised of a complicated mix of private actors and novel institutional arrangements including trading platforms and standardised contractual arrangements. A quartet of political-economic forces proved to be central to the ascent of the 21st century oil trading system. First, international oil companies' (IOCs') loss of upstream activities to national oil companies (NOCs) (Hughes and Goldthau, 2022^[114]) following the oil shocks of the 1970s created opportunities (including large, privately held inventories and storage) for arbitrage between suppliers and refiners. Second, financialization of the oil sector accompanied the emergence of complex hedging contracts and exchanges for physical and futures contracts with standardised specifications and quantities. Two other forces were crucial: the China-driven commodities "super-cycle" in the early 2000s, and the economic vacuum from the collapse of the Soviet Union, filled by trading houses. (Blas and Farchy, 2021^[7]) The rise of new market governance arrangements reflected this new-found power and reach of global oil traders and their hubs. (Goldthau and Hughes, 2021^[31])

But while the trader-centred system intermediates securely and efficiently between sellers and end-users, traders have been regularly mired in controversy, including grand corruption, dubious speculative activity and human rights violations. A report by the Money Laundering Reporting Office Switzerland (MROS), which functions as a relay and filtration point between financial intermediaries and law enforcement agencies, identified trading in fossil fuels as particularly risky, accounting for 85% of examined cases. It noted the roles of financial, accounting and auditing services, real estate companies, and pension funds among the corporate entities that facilitate the trader-NOC connection, and aid, abet and profit from financing criminal activities in trading raw materials. The report concluded that, given its size, the Swiss financial sector "is particularly exposed to the risk of money laundering linked to commodity trading, both through its banks and through traders established in Switzerland"²⁹. It offers multiple examples of illicit financial flow (IFF) risks and extensive bribery, collusion, and illicit practices in the trading sector. (Blas and Farchy, 2021^[7]) For example, Glencore International A.G. and Glencore Ltd. pleaded guilty and agreed to pay over USD 1.1 billion in May 2022 to resolve investigations into commodity price manipulation and violations of the US Foreign Corrupt Practices Act. (US Department of Justice, 2022^[115])

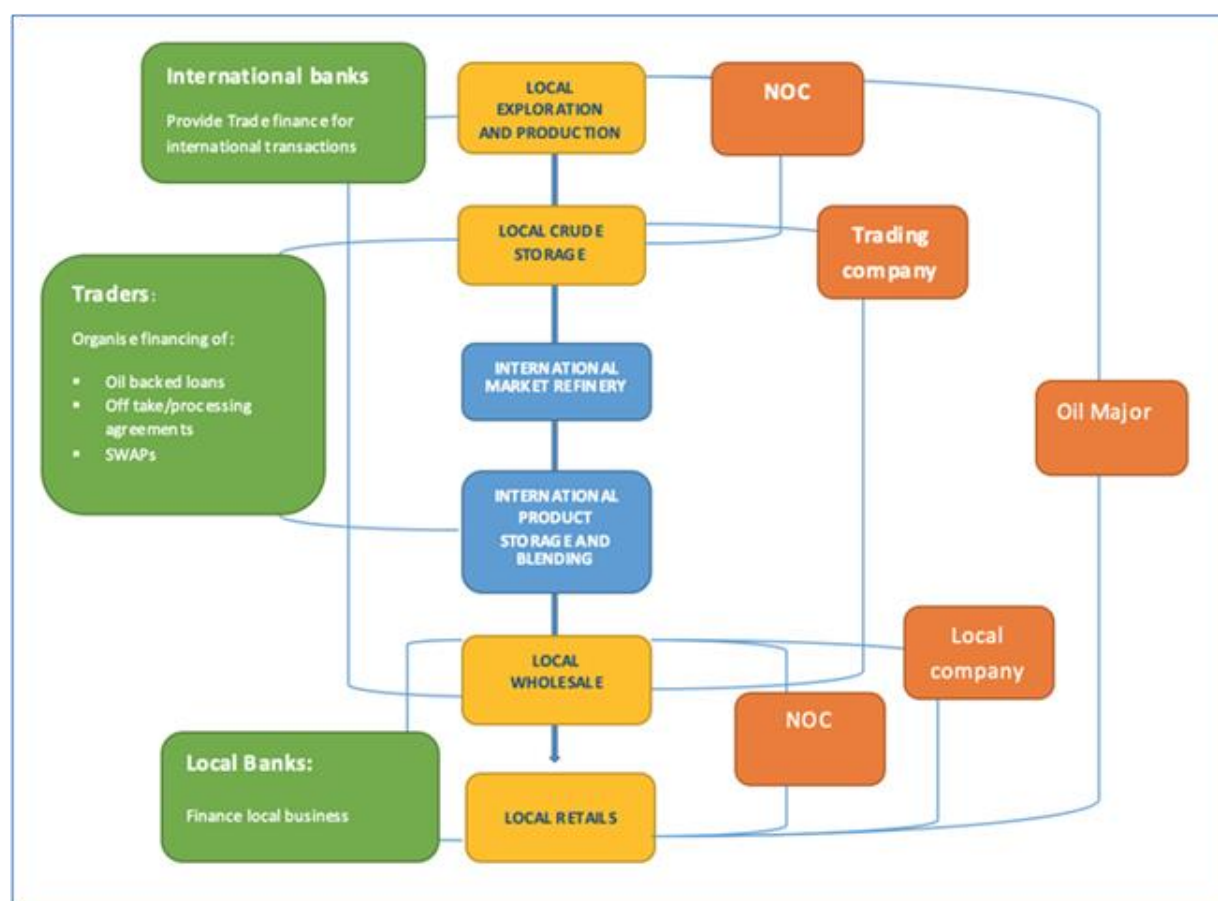
The fundamentals of oil commodity trading are well documented by the industry, though this in-house perspective can obscure, or pass over some of the system's more controversial operations and an historical record steeped in controversy³⁰. Commodity trading is, at its heart, a process of transforming commodities in space, time, and form. Physical trade of product is an essential part, but commodity trading companies also seek the most valuable transformations by optimising the form of oil commodities across time and space. The physical and operational actions they take to do so involve multiple steps that enable arbitraging risk and opportunities across jurisdictions. In fact, cross-jurisdictional operations are one of the defining qualities of the global oil trading system: they permit market transactions to thrive both across and

in-between various regulatory niches, thereby capitalizing on the permissive regulatory policies operating at the national level, while simultaneously exploiting unregulated spaces internationally. Through this lens, trading is indeed a transformative process, but opacity is its defining quality.

The oil trading system is comprised of a diverse group of traders, intermediaries, enablers, and financial actors marked by a diversity of character, size, capability, and profile in their national economies³¹. Switzerland, the world's leading commodities trading hub with an estimated 35% of the oil market, had over 500 trading companies, according to a 2017 report. Almost 90% were private while 42% had fewer than 10 employees, and 10% over 300. (IHRB, 2017^[116]) Prior to the outbreak of the COVID-19 epidemic, the five largest Swiss independent traders (Vitol, Glencore, Trafigura, Gunvor, and Mercuria) traded almost 19 million barrels per day, equivalent to 20% of global demand. (Longchamp and Perrot, 2017, p. 11^[29])

There is no common pattern in the commodities they trade, the transformations they undertake, their financing, or their forms of ownership. (Pirrong, 2014^[10]; Ascher, Laszlo and Quiviger, 2012^[11]) In practice, traders and sellers are linked in complex, financial and joint-venture agreements (Figure 4.1), which feature diverse sale contracts and price negotiations, and networks of companies, buyers, finance capital, audit houses, and credit rating agencies. Globally, trading activity clusters around a few hubs and offshore financial centres (OFCs) in the Netherlands, Switzerland, the UK, New York/Houston and Singapore, and emergent centres in Dubai, Hong Kong and Shanghai.

Figure 4.1. Simplified representation of the oil trading ecosystem



Source: OECD (2023^[117]), *Oil commodity trading and addressing the risk of illicit financial flows*, <https://www.oecd.org/dac/oil-commodity-trading-risk-financial-flows.pdf>.

IOCs with trading desks, like BP, Shell, and Total, sell their own production in addition to buying and selling third-party production. As asset-based traders, they can use their own capital to fund trading. These three firms alone traded 15 million barrels of crude per day in 2016. (Sheppard and Hume, 2016^[118]) These trading desks proved very profitable when oil prices crashed due to weak demand during the COVID-19 pandemic. In 2020, Shell and BP trading divisions posted annual profits of USD 2.5 billion. (Hurst, 2021^[119])

Conversely, independent, and often privately held international commodity traders (the largest of which are Glencore, Gunvor, Mercuria, Trafigura, and Vitol) generally do not engage in production, rely on bank finance to fund trading, and are “asset-light” (though this is changing and varies across firms). Glencore, with revenues of USD 219 billion in 2018 and 158,000 employees, became a major extractive company in the mining sector following its merger with Xstrata and owns limited upstream assets in the oil sector. Many are based in Switzerland, the UK, Dubai, and Singapore. The combined revenues of the ten largest independent traders in 2019 was USD 1.4 trillion. They vary in ownership structure and financial organisation. Glencore is public, with significant shareholding by Qatar Investment, Blackrock, and Harris Associates, with JP Morgan Chase, Baird Financial, and others holding bonds underwritten by Credit Agricole, Deutsche Bank, and ING. Trafigura conversely is privately owned by 700 senior employees with bonds held by GAM Holding, Close Brothers, and Azimuth Investments underwritten by Standard Chartered, Bank of China, and Sumitomo Mitsui. Most traders do not have fully integrated supply chains, chartering vessels and entering joint ventures with local counterparties. (Porter and Anderson, 2021^[11])

Domestic buying companies typically operate only in the producing country, but vary in scale, functions and operations. Some are large and established, while others are more akin to middlemen or “briefcase companies”, acting as intermediaries between the NOC and other larger buyers. NOCs in the Global South tend not to have sales, storage, and distribution channels, relying on oil and refinery companies, and independent traders. (Manley, Mihalyi and Heller, 2019^[120]) Any subsidiaries that trade in commodities are either producers themselves or buy from third parties (e.g., China’s Sinopec and Azerbaijan’s SOCAR).

Finally, there are investment banks that trade commodities, such as Goldman Sachs and Citigroup (the number of which has fallen dramatically due to bank regulatory changes after 2008), and end-users, such as refiners, smelters, and processors (e.g., Sinopec, JX Nippon Oil, and Energy Corp.).

The map of commodity trading is intricate and multi-faceted. But a central feature of the trading system is the fact that large commodity traders have evolved into complex, multi-subsidiary, multi-jurisdictional organisations encompassing hundreds, or thousands of entities linked in ownership arrangements marked by legal and geographic compartmentalisation. These complicated and often obscure arrangements render clear-cut identification of their corporate structure and functions difficult if not impossible. (Nesvetailova et al., 2021^[121]) Traders depend on large, regular amounts of liquidity and loans, typically through instruments to manage financing and settling of accounts, including opaque and complexly structured arrangements (for trader-NOC trades in particular).

Risks in the trading system

First trades often carry a particular class of risks associated with resource-backed loans (RBLs) provided to a government or state-owned company. Repayment either is directly in-kind or from a natural resource-related income stream or is guaranteed by a resource-related income stream, or collateral by a resource asset. A recent NRGi study identified 52 RBLs distributed across 14 countries in sub-Saharan Africa (30) and Latin America (22). Thirty-eight were lent by Chinese policy banks, seven by commodity traders, four by other Chinese state-owned enterprises, one by Korea Exim, one by Nigeria, and one by Rosneft. Forty-three of the loans are backed by oil, six by various minerals, two by cocoa, and one by tobacco. The total loan amount represented USD 164 billion, of which USD 66 billion went to Africa and USD 98 billion to Latin America. (Mihalyi, Adam and Hwang, 2020^[122])

RBLs are one of a number of transactions linking buyers and NOCs, but carry significant risks because of their magnitude, duration, and opacity. The NRGI study shows that RBLs carry major public finance risks, reflected in the fact that, of 14 RBL recipient countries, 10 experienced serious debt problems after the commodity price crash of 2014, with RBLs often an important contributor. (Mihalyi, Adam and Hwang, 2020^[122]) Similarly, oil swaps – in essence bartering arrangements – are invariably shrouded in secrecy and, as financial transactions, are cloudy and impenetrable, carrying substantial risks. (NRGI, 2015^[123])

A core attribute of the commodity trading system important for transparency initiatives is the role of trading hubs and offshore financial centres (OFCs). The main trading hubs have historically been located in the US (Houston, Chicago) and Europe (London, Amsterdam, and Geneva/Zug), but recent years have seen a shift towards Dubai, Hong Kong, and Singapore. While NOCs and IOCs appear to be moderate users of OFCs, a sample of the largest independent traders reveals that 96.7% make use of them. (Nesvetailova et al., 2021^[121]) While some have well-developed regulatory institutions, offshore financial centres (OFC) are increasingly coming under scrutiny for facilitating tax avoidance and attracting business with laws and systems that provide legal and financial secrecy, in effect rendering them hostile to transparency because they provide legal and financial secrecy to their clients.

Independent traders that lack their own oil production seek long-term deals to secure steady supply and predictable pricing. In off-take agreements, a trader agrees to buy a specified quantity from an NOC, usually at a floating price. Pre-financing is a common form of off-take agreement (in which funding is provided on a secured basis, and is repaid by delivery of product), others include physical swaps (for example of crude oil for refined products delivered over time) and joint ventures between traders, NOCs, and domestic or foreign private companies.

The suite of trading risks encompasses not only the potential for tax evasion and money laundering associated with mis-invoicing but also the possibility of bribery, collusion and below-market pricing associated with these largely opaque trade instruments used to secure access to product over time. (OECD, 2021^[32]; Corruption Watch UK, 2013^[5]) Independent traders often make use of intermediaries and enablers further complicating the picture. In Nigeria, several beneficiaries of export allocations are letterbox companies linked to high-ranking officials but have little or no commercial and financial capacity. (Sayne, Gillies and Katsouris, 2015^[124]) Such entities represent a major part of the market: Chatham House estimated that only 25-40% of Nigerian holders of export allocations actually have the capacity or will to finance, ship, and sell their cargoes. (Katsouris and Sayne, 2013, p. 8^[125]) Instead, the system attracts middlemen and politically exposed persons to companies serving as fronts for the political class and power brokers. In some regions, a significant proportion of trades involves stolen oil and invisible global supply chains associated with an “international oil mafia”. (Ralby, 2017^[27]) For example, it is estimated that at least 100,000 barrels a day are stolen in Nigeria (sometimes reaching 400,000) and the country lost approximately N4.57 trillion (almost USD 12 billion) to oil theft activities between 2015 and 2018, according to the latest figures by the Nigeria Natural Resource Charter (NNRC). (Maritime Security Review website, 2020^[126]; Katsouris and Sayne, 2013^[125]; OECD, 2018^[127])

Trading risks of this sort are part of a commodity trade ecosystem that is dynamic and constantly evolving response to market, financial and political forces. While volatility and turbulence are normal in creative and innovative commodities markets, energy and commodities companies – including utilities, industrial firms, and trading houses – now face more frequent volatility and extreme events and perturbations, such as the Russian invasion of Ukraine. Trading houses face four structural changes in the markets. First, energy markets are becoming more globally interconnected. For example, European power and gas trading hubs are increasingly correlated from north to south and west to east, transforming a collection of local hubs into a regional market. Second, oil markets increasingly trade in real time. For example, power and gas now trade in 10-minute slots in several countries. Third, markets are more and more automated. Day-ahead and intra-day power and gas trades frequently result from algorithms rather than human intervention, employing techniques similar to equity and fixed-income markets. Finally, the energy and wider environmental transition is giving rise to new commodities such as biofuels, renewables, lithium, and

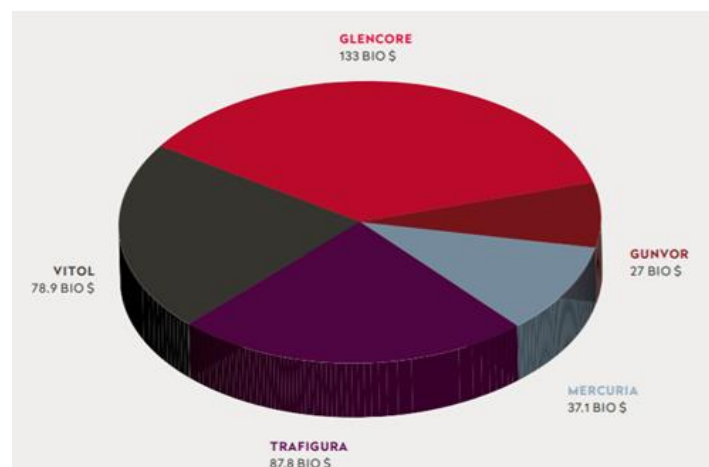
cobalt. While these initially traded on a bilateral basis, they quickly moved to over-the-counter (OTC) markets, with limited liquidity requiring strong price-risk management. (Barth, Noffsinger and Tai, 2021^[128])

Regulating the world of trading risks

To operate effectively in volatile markets that require arbitrage across both time and multiple jurisdictions, trading firms use sophisticated risk-management techniques to optimise the relationships of revenues to costs. By using a variety of techniques in doing so, trading houses capitalise on opacity and corporate fragmentation to maximise values manoeuvre risk among entities, often putting them beyond reporting requirements and public scrutiny. Such strategies make it more difficult for policymakers and regulators to distinguish between legal and illegal activities and interpret their intentions. Recent legal scholarship shows how companies, government officials, and other stakeholders “play” with legislation to perpetuate IFFs. “Playing with the rules of the game,” says Sophie Lemaitre, “is made possible not only through the support of intermediaries but also the availability of legal tools” to use and abuse and manipulate legal frameworks (Lemaitre, 2019, p. 107^[129]; Lemaitre, 2019^[130]).

Two recent shifts are particularly relevant to regulating trading activities and mitigating IFF risks. First, with falling margins brought on by price transparency and declining volatility after the 2008-09 financial crisis, privately-held trading firms expanded into other parts of the supply chain, including storage, distribution, and refining. The top four oil traders accounted for 84 acquisitions between 2010 and 2019, compared to 12 between 1990 and 1999). (Baines and Hager, 2021, pp. 15-19^[9]) At the same time, these firms generated less income from their financial divisions, some of which were closed. Second the exit of major investments houses and banks from providing liquidity to trading firms during this period changed the financial architecture to serve continued demand. As Public Eye documents, smaller and medium-sized firms now resort to risky open account payments, revolving credit facilities with banking syndicates, non-bank financing through bonds and (largely unregulated) private equity, and to large traders who assume the role of bankers through oil-backed loans and oil-swaps. The estimated volume of these corporate and revolving credit facilities is substantial (Figure 4.2). In some cases, finance appears to be derived from regional banking syndicates about which little is known. Such changes in asset structure and finance are not intrinsically bad but raise concerns pertaining to IFF risks and the opacity of trader practice.

Figure 4.2. Corporate loans and revolving credit facilities granted to the top five commodity traders, 2013-19 (USD billions)



Note: Figures do not include oil-backed loans and swaps. BIO= Billions

Source: Carbó and Duparc (2020^[131]), *Trade Finance Demystified: The intricacies of commodities trade finance*, <https://www.publiceye.ch/en/publications/detail/trade-finance-demystified>

Against a backdrop of global crises and financial volatility, the commodity trading system has shown to be extraordinarily adaptable and dynamic, but also vulnerable: gaining from market volatility, as in 2020, but bearing the costs of process collapses, as in 2018. (Seddon, 2020^[132]) Further, bankruptcy and corruption scandals – such as the 2019 collapse of Hin Leong Trading Pte Ltd, a USD 4 billion Singaporean oil trading empire, involving over USD 2.23 billion in fraudulent disbursements (Palma and Hume, 2021^[133]) – have made major investment banks wary of funding trading. This has facilitated a shake-out and concentration in the sector, marked by the growing dominance of big trading houses and IOC trading desks at the cost of smaller traders. Furthermore, traders are diversifying into renewables, carbon, power provision, and other strategic assets. But the fact remains that new actors and strategies are changing the landscape. Since 2010, Chinese and Russian traders have set up shop in Geneva; the UAE has aspirations to become a world-class trading hub; and Singapore is feeding the Chinese market and spinning new trading entities off from Hin Leong.

Market volatility, whether as a product of COVID, financial crises or other contingent events (currently the Russian war of aggression against Ukraine), is the bread and butter of commodity trade success as shown by the recent 'COVID earnings' of the IOCs and the trading houses. (Lang and Abebe, 2023^[134]) But traders cannot ignore the pressures on the oil sector even if they believe they can ride the train for another decade. The story is clear in the diversification shift by Trafigura, Vitol and others into renewables, power provision and other strategic assets. In the meantime, the combination of the opening of new oil frontiers, the expansion of LNG openings and the inevitability of market volatility all make for a bullish atmosphere in the world's commodity trading hubs.

In summary, the global oil trading system that arose in the wake of various crises in the 1970s and 1980s and which witnessed the explosive growth of a small number of trading houses. In conjunction with the trading desks of the IOCs and other traders and intermediaries, a new oil trading order has been created. Its scale, complexity and dynamism – to say nothing of its opacity and history of illicit dealings in conflicted and fragile resource-rich states – constitutes a new and challenging frontier for regulatory and TAP-style institutions. The central question for the purposes of this Report is the degree to which – in light of the risks within the sector – TAP-type modalities are capable of addressing the panoply of IFF risks flagged by OECD and advocacy organisations, and under what conditions.

5 EITI's evolving TAP program and the challenges of commodity trading

The EITI's record documents a significant scaling up of the transparency initiative into a global effort, spanning fragile states, low-, middle- and high-income countries, contributing in crucial ways to transparency as a norm in the extractives sector.³² The purpose of this section is threefold. First, to acknowledge the progress that has been made by EITI, while also recording some of the serious transparency challenges confronting this sector. Second, to examine the operations and assumptions transparency model itself and simultaneously recognize both its achievements, limits and dangers but also to highlight the conditions – what we call the conjunctures – in which transparency can go some way toward meeting its 'action cycle' or theory of change. (Le Billon, Lujala and Aas Rustad, 2020^[16]) Crucial to this story is the political landscape (Hickey and Izama, 2016^[135]; Frederiksen, 2019^[136]) into which transparency operations and the disclosure of data are inserted. And third, to chart new developments in EITI's transparency approach, the so-called TAP Plus instruments, which reflect wider policy and research trends in other sectors – public financial management, service provision and public sector reforms generally – that turn on political economy analysis, power asymmetries, and the notion of tailored 'politically smart development'. (World Bank, 2017^[137]; Andrews, Pritchett and Woolcock, 2013^[138]; Andrews, 2013^[139]) Here the report explores what such analyses might disclose about IFFs in the commodity trade sector and to assess whether transparency instruments as conventionally understood are capable of addressing the dynamic, opaque and complex specific features of the trading system outlined earlier.

Since 2003, 52 countries announced implementation and reached various stages of compliance with EITI rules. Of those, 46 published revenue numbers in some form, while 26 were deemed fully compliant. (However, five countries that implemented the EITI withdrew or were delisted.) The EITI has provided a rationale and a stimulus for "thickening" the breadth and density of civil society groups working on transparency; it has improved and extended its rules and requirements and introduced new standards of transparency in some countries where none existed before. Since 2013, EITI has made substantial progress in developing templates for the collection of sales data and beneficial ownership. Through an iterative process, reporting standards have become uniquely granular and precise and by virtue of its convening powers and standing in the regulatory arena, the EITI has brought recalcitrant traders into its orbit, and engaged them on trade issues and in obtaining EITI membership. The EITI's expanded 2019 Standard addresses the regularity and extent of disclosure, and compliance criteria (stakeholders must submit work plans, governments must submit annual activity reports, and reports must include subnational transfers).

Increased interest on the part of banks and investors for greater transparency in the commodity trading space also represents a crucial development in commodity trading transparency. Large commodity traders are heavily reliant on banks to finance their operations, and interviews with oil trade financiers during this project underscored their interest in easing their supervision burdens. Demonstrating their commitment to anti-corruption, transparency, and corporate governance, financial institutions have also increased their

expectations of their clients for sharing information. For example, the commodity trader Gunvor and ING Bank. ING announced a new financing facility in October 2018, linking its borrowing rate to targets including reporting on purchases of oil and gas from EITI NOCs (“transparency reporting related to feedstock origination”). Other financiers are following suit.

Despite these achievements, the first tranche of EITI 4.2 pilot reports revealed the limited impact of the requirement and the contentiousness of the regulatory domain itself. (Malden and Gyeyir, 2020^[140]) Engagement by traders has been low (with some Chinese and Russian buyers and financial houses beyond the reach of the EITI), and due diligence by trading houses can be weak or weakly implemented (see 6Annex A). The data generated through the 4.2 Requirement is uneven in detail and quality, and often inconsistent in what is measured. Contract disclosure is almost wholly absent, and beneficial ownership data is missing, especially from Ghana and Nigeria which emphasise local partners in the buyer selection process.

Crucially, the task of the multistakeholder group (MSG) to reconcile data from buyers and sellers has been impossible to achieve with any degree of granularity or veracity. Some countries never approached trading houses for the data, and the record is poor among those that did. In Nigeria, where the numbers of cargoes involved is extremely large, 66 of 73 companies did not submit the reporting templates and were unable to reconcile 81% of the NOC’s crude sales. (NEITI, 2019^[141]) In Ghana, the process was somewhat better, but the scale of oil first trade sales is miniscule in comparison. (GEITI, 2018^[142]) Non-participating countries like Chad and Cameroon have a better record of disclosure across the three domains than any of the pilot countries. Overall, countries that participated in the first 4.2 requirement initiatives have not outperformed those that did not.

The 4.2 requirement delivers new and important, but also extremely complex sales data. In fact it highlights a structural problem not only with EITI’s Standard but with transparency in general: (Pasquale, 2015^[54]) a fixation with data measurement and disclosure (“technical fixes”) and facilitating the release of a vast quanta of information much of which is unanalysed or beyond the ken of civic organizations. The cost is that an avalanche of data comes at the expense of addressing the problems of OFCs, global finance, and complex ownership structure and corporate organisation. There is a danger that standard supply chain transparency solutions fail to address core issues and might even cause them to be occluded from efforts to tackle IFFs. An expert review of the EITI and two other transparency instruments found that, regarding intentional opacity:

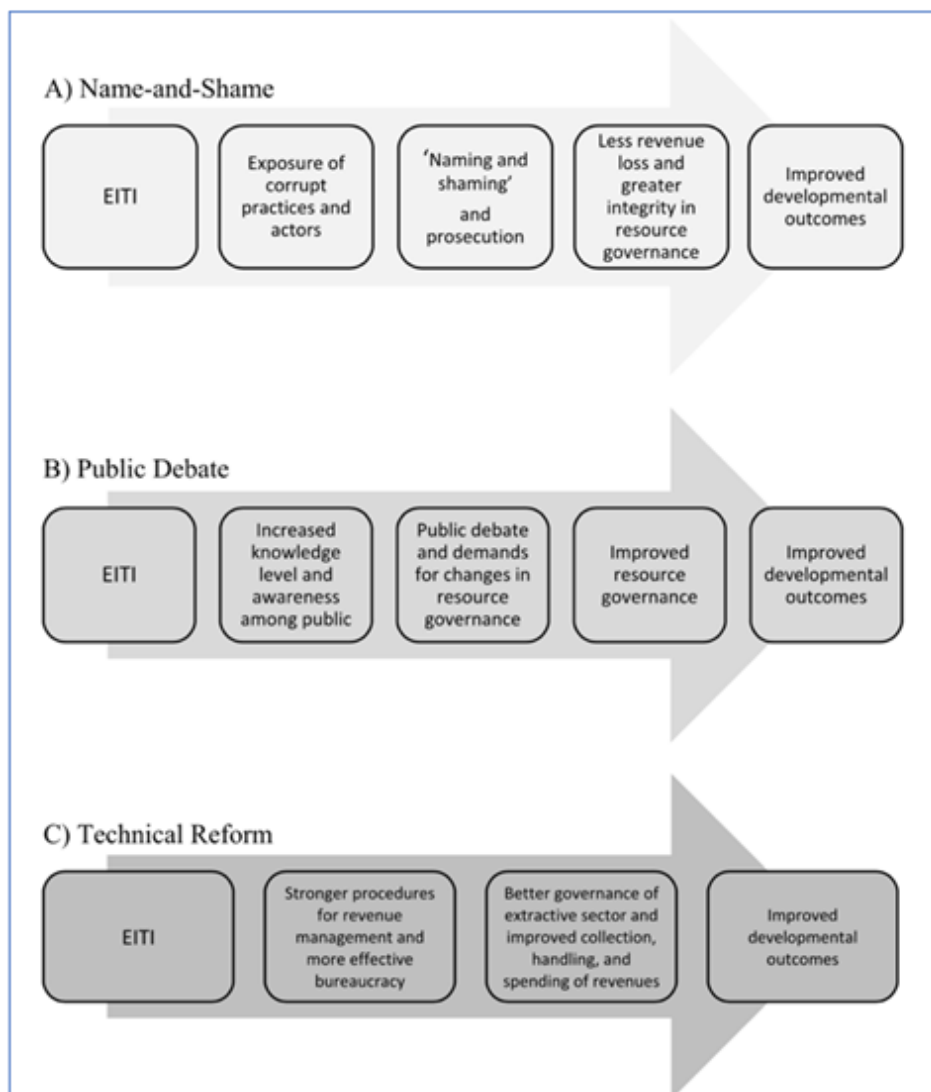
*Rather than seeing these costs as being hard to identify due to their intrinsic characteristics,hidden costs in these schemes are often concealed as their disclosure would expose the narrow and often biased rationality of these solutions, undermine their legitimacy, and consolidate claims for compensation or alternative solutions by cost-bearers...**We suggest that they are actively hidden by discursive constructs (e.g. by bounding a problem and associated solution); hidden by promoters of the solutions (e.g. campaigners) and implementers (e.g. consulting companies); hidden from the victims of these costs (e.g. local communities), the duty-bearers for these victims (e.g. health and regulatory authorities), and some of the supporters of these solutions (e.g. donors).** The hidden character of these costs can not only prevent or delay their mitigation, adaptation or compensation, but also shift blame for these costs as some of their more visible symptoms become more easily mis-represented....circumscribed norms and procedures generally benefit economic elites in several ways, including by containing forces that press for more substantive reforms (emphasis added) (Le Billon and Spiegel, 2022, p. 770^[45]).*

EITI has certainly deepened its remit and strengthened its regulatory ability within the parameters of the transparency model. (Le Billon, Lujala and Aas Rustad, 2020^[16]) But it remains a big tent approach supported by its voluntary nature, and the structure of compliance and limited enforcement powers. (Brockmyer and Fox, 2015^[44]) It is entirely possible for countries to participate while delaying implementing compliance standards, in effect providing a mechanism to back transparency and improve reputations and rebuild the social license to operate without threatening commercial or political interests. EITI has retained donor and IOC support by offering the sheen of respectability, just as it did to oil producing developing

countries crippled by the greatest reputational risks. The functionality of its model hinges on two principles that EITI’s proponents asserted would foster inclusive politics. One was designed to address informational asymmetries in the intricate set of structures within the political marketplace of the extractives sector, namely, revenue disclosure and the transfer of funds from oil companies to host governments. The other purported to address power asymmetries between players via the creation of an MSG comprising IOCs, NOCs and producer governments, and civil society organizations, somehow acting as equals by virtue of the purportedly level political playing field afforded by the MSG.

EITI is a voluntary mechanism, and obviously depends upon the effect of reputation to ensure compliance. It presupposes at minimum an effective and fully empowered MSG. (Brockmyer, 2016^[89]) However, it has become evident that its current form is unable to ensure that audits and disclosure have the consequences intended for public sector governance, corporate behaviour, or mobilisation of civil society. Much of this turns on the logic or theory of social change (the so-called action cycle), and the capacity of MSGs to pursue accountability. In reality, the EITI’s approach contains three related but slightly different threads (Figure 5.1) that often operate in tandem, but the record across them is mixed.

Figure 5.1. Related theories of change in the EITI action cycle



Source: Le Billon, Lujala and Rustad (2021^[48]) p.131, https://doi.org/10.1162/glep_a_00610.

In whatever configuration of name-and-shame, public debate, and technical reforms the EITI operates in national settings, a 2016 review of 16 EITI-compliant countries reveals limits frequently articulated in the advocacy and scholarly communities:

*We analysed the performance of the first 16 countries to attain EITI Compliance Status over the period of 1996–2014. We find, interestingly, that in most metrics EITI countries do not perform better during EITI compliance than before it, and that they do not outperform other countries. **We postulate four possible explanations behind the relative weakness of the EITI: a limited mandate, its voluntary nature, stakeholder resistance, and dependence on strong civil society.** (emphasis added) (Sovacool et al., 2016^[21])*

A large body of research points to the limits of information disclosure as an innate good capable of performing political work. (Lujala, Brunnschweiler and Edjekumhene, 2020^[143]) A 2019 survey of EITI stakeholders discovered that there is “no proven theory of social change” and that EITI is at risk of becoming obsolete in some countries. (Le Billon and Spiegel, 2022^[45]) Large-scale statistical analysis shows that EITI membership does not correlate with better civil rights in most subscribing countries, suggesting that transparency is a performative, bureaucratic ritual with legitimating rather than reformist effects. (Sørreime and Tronvoll, 2020^[144]; Öge, 2017^[145])

Global standards and mechanisms can elicit gains in fiscal transparency at the country level, but also carry political risks, such as legitimising questionable political regimes (Rudiger, 2018^[146]) (so-called transparent autocracies). It is dangerous to presume that adding disclosure requirements and generating new and more complex technical and financial data will reach a threshold where the causal links are revealed. In some accounts the jury on EITI and the transparency action cycle is still out, awaiting more and better evidence. (Muller, 2018^[147]) Yet if information on the inner workings of the oil and gas trading system will not be sufficient by itself, a question can and should be posed: at what point do marginal returns set in for a transparency-disclosure agenda which seeks to continually add new criteria, new categories and metrics, and new requirements all generating increasingly technical data?

To the EITI’s credit, a new independent review (Wilson, 2020^[148]) focuses on the measurement and evidence question. It reflects “a move away from simple attribution models for measuring results to contribution analyses that acknowledge the complicated environments in which transparency and [MSGs] often operate”. The report finds that the central need is granular and thoughtful data to improve implementation on a running basis, to understand what works based on early results, and to help MSGs and the International Secretariat adapt implementation to changing conditions and assumptions. The goal is more nuanced, cross-country, comparative data to better understand the conditions of possibility for effective transparency engagements. (Wilson, 2020^[148]) But disclosure of budget data is necessary but insufficient to achieve accountability and transform institutional practice. Government responsiveness to accountability demands depends on political economy incentives and elite dynamics. Accountability is a function of power that civic actors can build through collective action and collaboration through an integrated campaigning approach with vertical and horizontal links across the accountability ecosystem, rather than through technical capacity building. While there are alternative ways of thinking about social accountability, (Fox, 2014^[149]) it is always a laborious, time consuming and difficult enterprise in which the outcome is never predetermined.

Like all organisations, there are limits to the EITI’s remit and reach, of which it is fully aware and which are raised in assessments of its performance. The German development agency’s (GIZ) review of EITI noted the lack of results-based monitoring and evaluation systems and/or demand for their improvement, and observed that it was difficult to establish the views of stakeholders not directly participating in the initiative. It found that supporting evidence for the EITI’s impact was either anecdotal or expressed the judgments of stakeholders involved via either the EITI board or membership of MSGs. (GIZ, 2016^[150]) The fact remains that when one assesses the record of the EITI and similar organisations, implementation and efficacy always reveals considerable variation between countries and within countries at the at sub-national levels,

and over time. Such unevenness and asymmetries are not things that will even out over time, as a result of EITI gaining experience or being further embedded. Contexts do matter. Nigeria is not Ghana; Kazakhstan is not Indonesia. In some instances, the EITI Standard is simply performative or shallowly embedded, in others it fails to penetrate political infrastructures, while in others it gains traction and can result in pockets of effectiveness even in “resource-cursed” states (Hickey and Izama, 2020^[151]; Kjær et al., 2021^[152]; Porter and Watts, 2017^[153]; McDonnell, 2020^[154]). Here, the conjuncture of space, time and political economy is crucial to understanding what happens to the EITI and why, an approach being explored in the so-called TAP-Plus approach, what we call second-wave transparency engagements, which are discussed below.

EITI through a Nigerian lens

Nigeria offers an instructive case of how the conjuncture of space, time and political economy operates. Seen as an archetypical, “resource-cursed” petro-state with vested interests among the elite political and business classes, the country’s reform and transparency appear intractable. Nigeria was an early test-case for the EITI amid an inhospitable example of petro-criminality and contentious, conflict-riven politics (Ross, 2012^[155])

Curiously, the Obasanjo civilian government that came into power in 1999 after a long period of military rule was one of the first and most eager EITI signatories and pursued ambitious goals in excess of EITI requirements after Nigeria’s EITI (NEITI) was formed in 2004. The National Stakeholder Working Group (NSWG) grew quickly, and US-based advisors and an audit firm were engaged, laying bare the deep structure of the oil industry in “the gold standard for audits under EITI principles”. (Shaxson, 2009, p. 4^[156]) Meanwhile, an aggressive technocratic reform team lobbied for tougher benchmarks as they investigated the conduct and practices of the Central Bank, the Department of Petroleum Resources, the Nigerian National Petroleum Corporation, and the Federal Inland Revenue Service.

President Obasanjo’s reform team promoted the value of transparency, and NEITI seemed to be consonant with a package of neoliberal inspired reforms – to pensions, fiscal rules, civil service, and anti-corruption – that garnered domestic support in the wake of the long darkness of military rule, and international support from the World Bank, IMF, and key bilateral partners. NEITI was crucial to the EITI adoption, one plank in a raft of reforms that triggered the IMF’s approval of Nigeria’s Policy Support Instrument in October 2005 and provided credibility for Paris Club debt rescheduling that relieved Nigeria of USD 30 billion (85%) of its external debt. (Shaxson, 2009^[156])

For President Obasanjo NEITI killed a veritable flock of birds with one stone. Pitched as a nationalist reform addressing corruption and the power of ‘Big Oil’, NEITI sent the right political signals to domestic constituencies. (Meyer, 2019^[157]) Yet by 2006-07, the reform space had closed. NEITI became less visible, less active, and less central to political debate, and its functions and performance declined sharply. The NEITI Act passed in 2007 marked its death rather than a signal of reforms to come – NEITI was “becalmed”. (Shaxson, 2009^[156]) By the time Goodluck Jonathon assumed the presidency in 2009, NEITI had a very low profile and had become tardy in its reports and auditing for 2005-06 (2005 only appeared in 2009). A review concluded that NEITI had “unintended consequences of entrenching inefficient and corrupt systems, creating distrust between civil society organisations and the government as well as permitting unaccountability in the extractive industry” (Ejiogu, Ejiogu and Ambituuni, 2019^[158]).

The litany of problems was all-too-familiar: (NEITI, 2019^[159]) extensive involvement of shell companies in the award of licenses and contracts; involvement of blacklisted and sanctioned individuals and companies in the award of permits, licenses, and contracts; abuse of office and conflict of interest by politically exposed persons in the award of permits, licenses, and controls in contravention of existing public service code of conduct; and failure to ascertain and verify the ultimate beneficial owners in the award of permits, licenses, and controls.

Above all, Nigeria's case shows that conjuncture matters, and that capabilities can emerge, and an action cycle can gain traction even in difficult settings. (McDonnell, 2020^[154]) But the conjuncture can cut both ways. While Nigeria implemented transparency measures in and around extractive industries at the state level, the story reveals considerable sub-national variation of effectiveness and reach. At the same time and conjuncture still matters and can produce very different outcomes at the sub-national level. A study comparing two neighbouring oil states- Edo and Bayelsa- shows striking differences in effect and efficacy of NEITI instruments pushed down to the local level. (Porter and Watts, 2017^[153]) A blanket conclusion that transparency failed, and hard-ball politics succeeded, resulting in an 'implementation gap' would be misplaced.

From first- to second-wave transparency

The account of EITI in Nigeria points to a common pattern and to a more encompassing conclusion: namely, that the EITI record over three decades (first wave transparency) shows clearly that responsiveness of government and traders to accountability is shaped by the country-specific ordering of power and the political settlement in which the oil trading system operates. TAP initiatives like EITI have in turn responded by harnessing political economy analysis (PEA) and its operational counterpart, 'thinking and working politically', to address the sorts of gaps between EITI's promise and what has been delivered (McCulloch and Piron, 2019^[160]; Fritz, Levy and Ort, 2014^[161]). We refer to these new trends as 'second wave' transparency (what has been called TAP-Plus).

An important exemplar of second-wave transparency is the Brookings Institute's 2020 *Leveraging Transparency to Reduce Corruption* (LTRC) report, (Eisen et al., 2020^[43]) which maps the contours of the TAP-Plus approach to fighting corruption in the natural resource value chain. LTRC is an action-research initiative and knowledge platform to promote evidence-informed policies and programs that reduce corruption along the natural resource value chain. Its report affirms the flawed logic of change embedded in first-wave transparency modalities. It dismisses the linear assumption that information disclosure triggers political action and participation in the policy process or improves accountability and governance concluding that "improving transparency is necessary but not sufficient to improve broader governance outcomes". *Leveraging Transparency to Reduce Corruption* is in lockstep with other second wave efforts to identify contextual factors to be addressed for transparency and disclosure standards to result in social change. It highlights five of these: (1) state capture; (2) social trust, political trust, and conflict; (3) civic space and media freedom; (4) rule of law; and (5) government effectiveness.

Common to these five domains is recognition that information asymmetries are expressions of power, the product of purposive agency and only rarely an accident of history LTRC's findings align with the World Bank's, which also devotes attention to the questions of power asymmetries, political settlements and social contract dynamics. (World Bank, 2017^[137]) The lack of disclosure is often the result of powerful actors intentionally withholding information or resisting attempts to make it accessible. A hallmark of second-wave transparency is the linking of power and agency to address implementation gaps and failures of the EITI-style disclosure approach. What have these developments meant for second wave transparency prescriptions? It is early days, but two implications warrant noting, both of which we will return to in the concluding Section VI.

One consequence is efforts by donor policy analysts and academics to codify power distribution in countries to gauge how stakeholders might adopt, divert, reject, or delay governance reforms such as the adoption of international norms and standards of transparency. (Kelsall et al., 2022^[162]) Does the nation's political settlement result in power being broadly dispersed or narrow-concentrated? How do these arrangements have implications for donor programming? Might it be possible to plot the scope for elite agreements (including with external agencies) to become more or less inclusive and oriented toward investing in effective states and entitlements of citizenship rather than to personal gain. (University of

Manchester website, 2023^[163]; Kelsall et al., 2022^[162]; Centeno et al., 2017^[164]) Mapping the distribution of power, elite interests, and forms of political alliance can help donors understand whether settings are amenable to adopting governance reforms.

Second-wave transparency also appears to offer the prospect that not only that the interests of stakeholders in government, business, and civil society can be analysed, but that donor strategies and operations may on this basis set about to engineer the politics, interests and dispositions of power. Whether this will foster reliable, actionable knowledge about how to align reforms, and instrumentalise or influence political formations is the subject of fierce debate (Kelsall, 2018^[165]; Kelsall, 2018^[165]; Khan, 2018^[166]) and controversy, not least over whether this will result in more enlightened engagements, or, as may be imagined in heavily aid dependence settings a range of unanticipated perverse effects. Perhaps more likely, its legacy will be misplaced donor hubris. Either way, there is little doubt that second wave approaches “has implications for... the role of external actors and other interested parties” (Kelsall, 2018, p. 12^[165]).

Another consequence of second-wave transparency is apparent in OECD-DAC and donor policy pronouncements and the activities of researchers and transparency advocates like NRG1 regarding the commodity trading sector. As appreciation grows of the dialogue around second wave transparency programming has begun to shift away from an overwhelming focus on centres of power operating at the national scale – the national oil company, its relations with the trader or the state – to a more consistent effort to tackle the *multi-scalar dimensions* of the trading system. The global dimensions of trading system have not previously been part of the transparency remit: the larger global economy, the effect of OFCs, private financial actors’ instruments and practices, and the actors dominating private forms of oil governance.

In some respects, the focus on power and politics in second wave transparency is not entirely new to organizations such as EITI that obviously are aware of political interests. Indeed, EITI’s national secretariats work strategically within oil and gas regulatory institutions and are well aware of the elite interests and the nature of political settlements. Even in settings like Nigeria where the record of compliance has been limited and where oil sector governance has witnessed, especially after 2010, a serious decline, NEITI produced hard-hitting reports on IFFs in the sector, on oil theft and lost revenues, and was able in 2019 to launch a new beneficial ownership portal³³. But the EITI’s embrace of second-wave approaches might offer a new reservoir of ideas and strategies to enter a new phase of its operations.

TAP-Plus does, nevertheless, come with its own demands and limits. The Brookings Institution’s report, authored by some of the leading figures in the transparency movement, has properly emphasized some new analytical pathways including state capture, conflict, state legitimacy, civic space and so on. But PEA of this sort has yet to appear in any palpable way in the EITI and other organizations in the name of ‘working politically’. The call to work in this manner carries its own contradictions: is it possible to socially engineer political settlements, or plausibly enhance the scale and capacities of the civic space or build popular trust? Questions of national sovereignty, uninvited external meddling, social engineering and imperial ambitions loom large³⁴. *Transparency through Governance* has not delved into these questions but rather pointed to some key ‘frontier areas’ – largely unregulated, opaque and extra-jurisdictional – such as the trading hubs and OFCs that have not been central to the regulatory efforts of transparency organizations in the extractives space. A September 2022 independent evaluation of EITI by Voconiq and Square Circle did not suggest, however, that much of the second wave transparency has been taken up in any serious way (Voconiq and Square Circle, 2022^[167])³⁵.

EITI looking back and forward

The crises of legitimacy that arose in the 1980s-90s were resolved by shifting the transparency burden onto resource-dependent governments of the Global South, who were voluntary signatories to the EITI.

From the Asian Financial Crisis to the birth of the EITI, formulating the problem as a lack of transparency among countries and national oil and trading corporations focused on NOCs and their collateral state agencies, coloured by neoliberal palette. (Mehrrouya and Salles-Djelic, 2019^[168]) Such a formulation sat well with the recalcitrant views of the hedge funds and financial interests, including by the likes of Larry Summers then Secretary of the US Treasury, to call for increased transparency in offshore financial centres. Had the calls been heeded, the targets and forms of regulatory reform might have been different. Attention to the global and multi-scale remit of transparency would have revealed the need for obligatory compliance. As observers have pointed out, the danger is that transparency can become “the story of problematising, responsabilizing and transforming the local while empowering and exonerating the global” (Mehrrouya and Salles-Djelic, 2019^[168]).

Looking forward, the track record of the EITI suggests that the opacity and complexity of commodity trading houses’ global operations and links to the financial sector and OFCs will continue to overwhelm conventional transparency logics and practices. These frontier zones are especially resistant to the conventional arsenal of TAP initiatives. The EITI could, nonetheless, leverage its legitimacy as the space for stakeholder engagement on extractive industry transparency. It could use its convening powers to promote research and dialogue about how oil commodity trading systematically exposes oil-producing, developing countries to IFF risks in sales transactions, and demonstrate the need for multi-scale responses at the producer and consumer ends of these relationships. All of this will require a candid, clear-eyed reading of aspects that need to be made transparent and available to regulation by the EITI and its supporters and experts. Not least, it would demand a very critical assessment of the degree to which TAP-Plus measures are effective in a world where “the market is king, where transnational enterprises seem able to shrug off almost all attempts at regulation, and where titans of global finance hold more power than some elected politicians” (Blas and Farchy, 2021, p. 16^[7]).

6 Lessons Learned: Counter Oil trade IFFs through Transparency

In March 2022, EITI civil society board members remarked in a strongly worded press statement that the fundamentals of the oil and gas sector appear unchanged. Comparing the financing of the 2022 Russian invasion of Ukraine to the civil war in Angola 20 years before, the statement observed that “there has been no change in the willingness of the oil and gas sector to make itself complicit in the acts of violent dictators and kleptocrats who loot their country”. (Civil Society members of the International Board of the EITI, 2022^[169]) But while the Ukrainian crisis and sanctions underline the need to track and trace illicit financial flows (IFFs), the resolve, backing, and sophistication of current responses to the challenges of accountability for “dark money” indicate what needs to be addressed in the oil commodity trading sector.

One aspect is the energy sector’s ability to transform in response to crises like the COVID-19 pandemic and the Russian invasion of Ukraine. These highlight the commodity trade system’s volatility and potential for liquidity crises to ripple through the global economy in ways that must be monitored even though these shocks cannot be known in advance. The IMF World Index reached unprecedented levels with the outbreak of COVID-19 before falling sharply, then rebounded to levels not seen since the 9/11 terrorist Uncertainty attacks in 2001. (Ahir, Bloom and Furceri, 2022^[170]; Barney, 2008^[171]) Another aspect is the need to avoid treating transparency as an end or as endowed with all-resolving powers. Understanding transparency as a mix of potentials and limitations means guarding against converting it from a social process into a goal. (Pozen, 2020^[172]) Hailed as essential to better governance and an index of social, cultural and moral authority, transparency has been taken for granted in donor discourse and practice for too long. Awareness of these issues opens the way to other shifts in how the transparency-governance nexus and its principal and supporting actors, instruments, and regulatory domains are conceived and practiced.

Seeing transparency mainly as a means to discipline corrupt NOCs has led donors to assemble an unfortunately limited menu of ways to engage with sovereign actors in and around oil sector governance. (Hickey and Mohan, 2021^[173]; Hickey and Izama, 2020^[151]) Donors have therefore generally had a poor appreciation of their varied nature and roles, and the domestic and external pressures they face. One consequence is that donors often miss opportunities to mitigate IFF risks and vulnerabilities, such as by building NOC expertise in trading and commercializing their oil assets. This requires research, policy and programmatic engagements for a greater appreciation of the multi-faceted roles NOCs play – often well beyond their oil and gas production, development and marketing roles – for instance enabling ‘think big’ sovereign infrastructure investments, and service delivery and what are termed ‘quasi-fiscal functions’. Understanding why NOCs behave as they do will counteract the myopia reflected in much donor programming and encourage engagements that innately make NOCs more transparent. (Porter and Anderson, 2021^[1])

Transparency programming in the oil sector focuses on a narrow set of relationships and governing arrangements that obscure other important features. Understanding that opacity at the nexus of producers, traders, and financiers is not simply a by-product of complexity, but a result of deliberate action has a cascade of implications. Efforts at “invisibilisation” are global, highly professionalised, and lucrative. To be effective, a transparency-accountability logic engineered through voluntary and self-regulation must

combine or balance the interests of political and market actors and the public. In domains of market governance, voluntarism rarely succeeds to do so.

In settings in which public and civil authorities are compromised, private actors (especially large ones) can shape contractual arrangements in favour of their own interests³⁶ (Prem, 2021_[174]; Pellizzoni, 2008, pp. 217-223_[67]; Pellizzoni, 2006_[175]). They can define the frame of their accountability, leaving little possibility for other stakeholders and auditors to question their choices. Voluntary forms of regulating conduct – especially those that allow easy entry and exit and require a decision by amicable consensus – do not provide the hard-edged mechanisms for accountability comparable to democratic political institutions. Accountability here depends on how the parties to a deal define the public domain, interest or participation, and their stakeholders' ability or willingness to test it. Research across sectors and policy domains shows that artificial, multistakeholder group-style mechanisms that create a triad of weakened state and civic society capacities, and powerful private or corporate market actors armed with almost limitless resources and talent, lead to privatised (and voluntary) accountability arrangements. (Fougère and Solitander, 2020_[90]; Kabeer, Huq and Sulaiman, 2019_[176]; Prem, 2021_[174]; Dingwerth and Pattberg, 2009_[88])

It is important that agencies such as the EITI continue to press for data disclosure by all parties: private, public, and civil. Sustaining repeated iterations of debate about disclosure generates national and global fora where traders and their networks enter dialogue with NOCs and state/civil agencies to review, interpret, and audit data. The bigger picture is using data disclosure and debate to generate knowledge of offshore financial centres, structures, and techniques that create a “parallel world of selective lawlessness”. (Palan, 2003, p. 185_[177]; Nesvetailova et al., 2021_[121]; Harrington, 2016, pp. 295-297_[178]) This might shift the scope of accountability and make the primary drivers of IFF risks transparent and available for scrutiny. More dialogue, mandatory and obligatory protocols, and research are fundamental because large, independent traders rely on OFCs, and transparency in this area would help understand NOCs.

Sub-Saharan African oil producers are affected to an unusual degree by offshore transactions, whether through tax avoidance and evasion, legal and illegal flows of capital, or hiding the proceeds of oil theft or corruption. The United Nations Economic Commission for Africa (UNECA) panel on IFFs identified secrecy as the enabling common denominator. (UNECA, 2015_[179]) However, the way structures and processes associated with offshore transactions impact African development and political economy is inadequately addressed is most pronounced in the case of Africa's energy producers. Oxford political scientist Ricardo Soares de Oliveira notes that “the terrain in which offshore links meet the political economy of regimes, dominant political parties, armed forces and electoral competition is mostly unexplored in African political science”. (Soares De Oliveira, 2021, p. 18_[180])

Actions to address such gaps will require more knowledge of features in the trading system that are crucial to IFFs, some of which are shifting dramatically. These shifts include the emergence of new traders, such as in China, Russia, and some Gulf states, and the success of Singapore's Global Trader Program and others to attract formerly Switzerland-based traders keen to avoid reform in the sector. (Ng, 2011_[181]) These shifts (accelerated by the war in Ukraine) mean that trading oil from sub-Saharan African producers increasingly involves commercial traders and sources of investment and consumption finance from countries beyond the jurisdictions of OECD regulators. The eastward shift and offshoring of oil trading activities, coupled with the limited reach of corporate and market regulators in developing countries, creates a perfect storm for IFF risk mitigation.

These trends exacerbate the effects of privatised corporate governance and regulation. Until recently, transparency initiatives helped distract sector/industry monitors from private-sector actors who manufacture opacity. Attention focused on NOCs, producer countries and organised elements of their citizenry, whose roles and behaviours are conditioned by traders, trade financiers, and their global networks. (Blas and Farchy, 2021_[7]; Shaxson, 2019_[182]) The rise of corporate trading and financing, and the rapid expansion of offshore financial jurisdictions and secrecy accompanied, and were enabled by, the

privatisation of public regulatory authorities' market oversight and governance. Nowhere is this more apparent than in international accounting and auditing – the backbone of corporate regulation. Four large firms dominate the market – Deloitte, Price Waterhouse Coopers, Ernst & Young, and KPMG – with combined 2021 revenue over USD 150 billion. They owe their success to privatisation policies of the 1980s-90s, and the expansion of their business beyond financial accounting, fashioning their brands as “integrity warriors” who ensure financial probity and good governance. (Shore and Wright, 2015, p. 427^[66]; Brooks, 2018^[183]) Although made notorious by frequent revelations and prosecutions of their illegal activities, they receive far less attention for being the architects of the structures and accounting schemes that significantly lessen transparency. (Shore and Wright, 2015, p. 427^[66]; Brooks, 2018^[183]) It is striking that legal enforcement of market rules occurs through privatised arrangements largely free from scrutiny by public regulatory authorities. In addition, regulatory arbitrage characterizes the global financial system, letting commodities markets thrive between regulatory spaces, capitalising on permissive national policies and exploiting unregulated international spaces. (Gibbon, 2014^[38]) Donor governments' neglect of these frontiers in the global economy can inadvertently exacerbate asymmetries that create and conceal “pockets of unaccountable secrecy”. (Birchall, 2014, p. 66^[70])

Knowledge of this aspect of oil trade and financing is modest. Donors should support review of the effectiveness of efforts by the US Treasury Department, the Financial Action Task Force and others to reform the offshore world, such as through financial transparency and beneficial ownership registries. Whether such efforts are keeping pace with the “resourceful improvisation” (Soares De Oliveira, 2021^[180]) of the offshore industry to counter them remains an open question. Dialogue at the OECD has yielded an array of policy tools, guidelines, and working papers³⁷, but their empirical base relies on investigative journalism covering specific transactions and scandals. They reiterate remedies of the good-governance paradigm, centred on best-practice rules and performance metrics, and liberal-democratic norms for transparency and accountability. Such technical fixes are not always effective for programming.

The synthesis report of the first phase of this OECD program of work (Porter and Anderson, 2021^[11]) notes that any remedy must include sustained funding for scholarly and journalistic research to build the empirical base for policy and regulatory intervention, such as those associated with surveillance by the IMF (for example, via Article IV monitoring) or debt relief and development assistance by the World Bank or regional development banks. While the knowledge gained will not make the outcomes of donor-supported interventions predictable, it could create understanding of the political economy and institutional conditions that help or hinder positive outcomes. Even where such solid, granular knowledge exists, the impact on donors' thinking and action is uneven and idiosyncratic. Such research can also correct misunderstandings about oil trading and financing and reduce the focus on immediate adoption of transparency measures and shifting scores for pre-defined indicators.

The wider analytic lens of regulatory forums and programming will likely reinforce current shifts in how the international community is engaging with extractives industry governance. Concepts like ‘thinking and working politically’, ‘doing development differently’, and ‘politically smart development’ are now part of a larger move in donor doctrine towards more heterodox approaches. Governance interventions in the oil sector show where TAP-Plus thinking enables donors to support engagements, as in the UK government's aid-supported FOSTER program in Nigeria and the GOGIG project in Ghana. (Lopez Lucia et al., 2017^[184]; Buckley, McCulloch and Travis, 2017^[185]) While aiming to unlock obstacles to the transparency action logic, these programs support three streams of activity: (1) reforms of government agencies responsible for oil sector management; (2) deepening and widening the breadth and capability of demand-side accountability partners, including CSOs, the media, and informal political networks; and (3) strengthening sector oversight and scrutiny by governance institutions and other statutory accountability agencies. Although sceptics argue that evidence in favour of these approaches remains anecdotal, (International Working Group, NYU, 2020^[186]) these examples of second wave approaches are demonstrably injecting new conceptual sophistication and nuance into development interventions and attracting donor support. But these modalities carry risks and challenges of their own, and demand analysis beyond standard

contextual factors. To be effective and useful, second-wave transparency must be clear-eyed and candid, capable of understanding and taking on a world where market rule dominates, transnational capital often operates with impunity, and global finance often appears all powerful. It is a daunting prospect.

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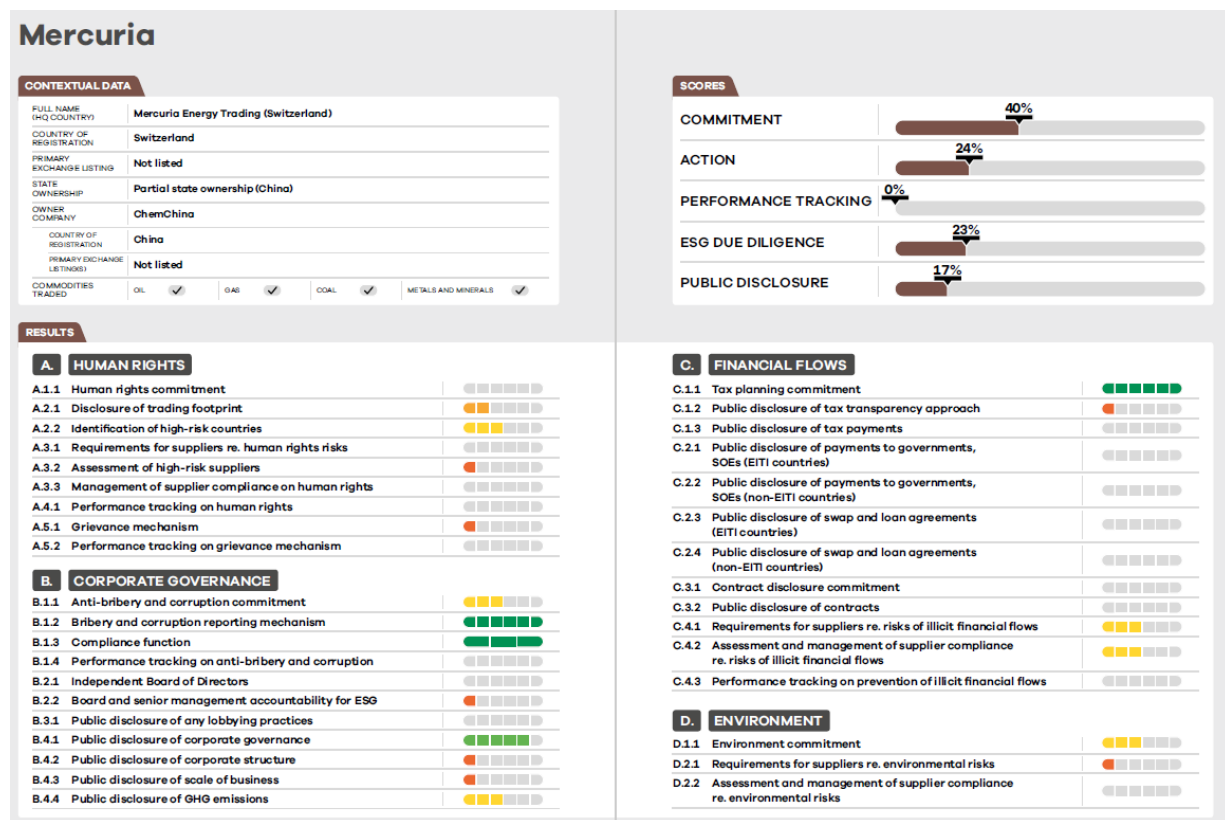
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Annex A. Due diligence rankings for two commodity trading houses, 2021

Figure A.1. ESG Due Diligence and Transparency Report on Extractive Commodity Trading: Mercuria profile



Source RMF, (2021^[106]), *The ESG Due Diligence and Transparency Report on Extractive Commodity Trading*, pp.56, 81, https://www.responsibleminingfoundation.org/app/uploads/EN_RM_F_DDAT_TRADING_2021_WEB.pdf

Notes

¹ What we call ‘second wave’ approaches are sometimes referred to as TAP Plus. See Eisen, N. et al. (2020) *The TAP-Plus Approach to Anti-corruption in the Natural Resource Value Chain: Leveraging Transparency to Reduce Corruption*. Brookings Institution. Washington DC.

² Figure 1.1 depicts a category of risks around shipping. While this study does not examine in detail the shipping sector, a notoriously opaque and weakly monitored industry, some of these shipping risks are part and parcel of the details negotiated in regard to buyers and payments. For details on commodity shipping see: <https://www.tracit.org/tracit-talking-points/illicit-trade-in-oil-and-fuel-an-emerging-global-policy-challenge>; Ralby, I. M. (2017). *Downstream Oil Theft: Global Modalities, Trends, and Remedies*. Washington, DC: Atlantic Council. On illicit shipping and relations to finance see: <https://www.spglobal.com/marketintelligence/en/mi/research-analysis/illicit-shipping-becomes-more-prevalent-how-banks-can-respond.html>.

³ In 1998 the IMF began to aggressively promote fiscal transparency and endeavor to impose transparency requirements on its lending. The World Bank adopted its own internal transparency policies in 2010 along with earlier promotion, since the mid 1990s, of anti-corruption policies. It released a major report on its new transparency and anti-corruption commitments in 2020: see The World Bank (2020) *Enhancing Government Effectiveness. And Transparency: the fight against corruption*. The World Bank: Washington DC. Global Integrity founded in 1999 plays a parallel role on this global landscape of transparency-accountability-anti-corruption policy and practice. For a history of the anti-corruption drive see: Sampson, S. (2010) “The Anti-Corruption Industry”, *Global Crime*, 11/2, pp.261-278.

⁴ These expressions are the offspring of the proliferation of political economy analysis (PEA) in development policy and prescription. See Booth, David. (2016) *Politically smart support to economic development*. Working Paper, London: Overseas Development institute; McCulloch, Neil, and Laure-Hélène Piron. (2019) *Thinking and working politically: Learning from practice*. Overview to Special Issue. *Development Policy Review* 37: O1-O15; Dasandi, Niheer, et al. (2019) *What does the evidence tell us about ‘thinking and working politically’ in development assistance?*. *Politics and Governance* 7.2: 155-168.

⁵ Consistent with e Fung, Archon, Mary Graham, and David Weil. (2007) *Full disclosure: The perils and promise of transparency*. Cambridge University Press, and their arguments for “targeted transparency”.

⁶ Central to these debates historically is not only questions of ‘transparency for whom’, but whether transparency is a ‘technical fix’, a simple data disclosure mechanism for making fuzzy information more clear, or whether it entails making social and political networks and connections legible)? For some critics, transparency has unintended consequences and does not deliver what it promises and contributes to the decline of deliberation and regulatory capacity – and trust in - in all manner of legislative and administrative bodies. See Fenster, Mark (2020) *The Transparency Fix*. Stanford: Stanford University Press; Roelofs, P. (2019) *Transparency and mistrust: Who or what should be made transparent?*. *Governance*, 32(3), 565-580. Tienhaara refers to technocratic, deliberative, disruptive and disciplinary forms of transparency each attached to different audiences and ideologies: Tienhaara, Kyla. (2020) *Beyond accountability: Alternative rationales for transparency in global trade politics*. *Journal of Environmental Policy & Planning* 22.1, 112-124.

⁷ Despite the doctrinal standing of transparency as governance, the term itself is often vague and undefined. A conventional and typically broad definition is offered by Lord: “transparency is a condition in which information about the priorities, intentions, capabilities and behavior of powerful organizations is widely available to the global public”, Lord, K. (2006) *The Perils and Promise of Global Transparency*. New York: State University of New York Press, p.5. The term’s widespread appeal is less rooted in sharp definitions than in the fact that it has symbolic value, its ability to garner public support “with the image of Ali Baba’s treasure trove of secrets...lead(ing) us to fetishize the means without attempting to grapple with the ends”, Fenster, M. (2017) *The Transparency Fix*, op cit., p. 9.

⁸ See (Valdovinos, 2022^[18]), chapter 2 for a history.

⁹ The quote is from Gupta, A. (2008) "Transparency under scrutiny: Information disclosure in global environmental governance". *Global environmental politics*: 8/2 (2008), 1; see also Lord, K. (2006) op cit; and Birchall, C. (2014) "Radical transparency?". *Cultural Studies? Critical Methodologies*: 14/1, 77-88.

¹⁰ This cybernetic model is taken from (Fenster, 2017^[15]) who sees it as an instance of a “classic linear model” and a “neutral engineering model” derived by the cybernetics revolution of the 1940s and 1950s.

¹¹ See also Han, B.. (2015) *The Transparency Society*. Stanford: Stanford University Press.

¹² See also Han, B. (2015) *The Transparency Society*. Stanford: Stanford University Press.

¹³ See also Birchall, C. (2021) *Radical Secrecy: the ends of transparency on datafied America*. Minneapolis: University of Minnesota Press

¹⁴ On this question there is a large and sophisticated body of research: see Pozen, David E., and Michael Schudson, eds. (2018) *Troubling transparency: the history and future of freedom of information*. Columbia University Press; Han, Byung-Chul (2020) *The transparency society*. Stanford University Press; Berger, Stefan, and Dimitrij Owetschkin, eds. (2019) *Contested Transparencies, Social Movements and the Public Sphere: Multi-disciplinary Perspectives*. Springer Nature; Neumann, Iver B., and Ole Jacob Sending (2010) *Governing the global polity: Practice, mentality, rationality*. University of Michigan Press; Power, Michael (1997) *The audit society: Rituals of verification*. Oxford University Press. Oxford; Roberts, John. (2009) “No one is perfect: The limits of transparency and an ethic for ‘intelligent’ accountability”. *Accounting, Organizations and Society*: 34/8, 957-970; Rose, Nikolas (1991) “Governing by numbers: Figuring out democracy”. *Accounting, organizations and society*: 16/7, 673-692; Messner, Martin (2009) “The limits of accountability”. *Accounting, Organizations and Society*: 34/8, 918-938.

¹⁵ Information needs a technological infrastructure, a legal framework, various forms of social and political organisation, the expenditure of time and energy—it requires people doing work. Once produced, it also needs to be collated, sorted, categorised, and stored, it needs to be put in circulation, combined with other information, edited, altered, translated, and deemed relevant; displayed, advertised, promoted, consumed, and incorporated—in short, we cannot properly assess it without recourse to some form of mediation. Valdovinos (2022) op cit., p.5.

¹⁶ See for example Hood, C. and Heald, D (eds) (2006) *Transparency: The key to better government*. Oxford: Oxford University Press and Schulzinger, R. (2001) “Transparency, Secrecy, and Citizenship”. *Diplomatic History*: 25/2, 165–17. Central to this contention is not only the question of ‘transparency for whom’, but whether transparency is a ‘technical fix’, a simple data disclosure mechanism for making fuzzy information more clear, or whether it entails making social and political networks and connections legible.

For some critics, transparency has unintended consequences and does not deliver what it promises and contributes to the decline of deliberation and regulatory capacity – and trust - in all manner of legislative and administrative bodies. See Fenster, Mark. (2017) *The Transparency Fix* op cit.; Roelofs, P. (2019) “Transparency and mistrust: Who or what should be made transparent?”. *Governance*, 32/3, 565-580. Tienhaara refers to technocratic, deliberative, disruptive and disciplinary forms of transparency each attached to different audiences and ideologies: see Tienhaara, Kyla (2020) “Beyond accountability: Alternative rationales for transparency in global trade politics”. *Journal of Environmental Policy & Planning*: 22/1, 112-124

¹⁷ See (Fung, Graham and Weil, 2007_[12]) Op cit., and their powerful arguments for “targeted transparency”.

¹⁸ Research has shown that disclosure laws may serve antithetical ends by resulting in an avalanche of data and materials that can barely be understood or sifted through, and privacy laws can be structured in a way that individuals are effectively excluded from having any meaningful understanding of how data is collected and used. See Pasquale, F. (2015) op cit.

¹⁹ Adams brilliantly traces the relation between photography, print and architecture in the Enlightenment and subsequently the genesis of international human rights around access to information (established by the UN in 2006) that contributed to transparency as “an a priori, neutral and unquestionable...that betters ...humankind”, Adams, R. *Transparency*, 2020 op cit., 28.

²⁰ See also De Sousa, Luís, Hindess, B. and Larmour, P., eds. (2012) *Governments, NGOs and Anti-Corruption*. Routledge, 2012.; Brown, E., and Cloke, J. (2004). "Neoliberal reform, governance and corruption in the south: Assessing the international anti-corruption crusade." *Antipode* 36.2: 272-294. On the role of NGOs and neoliberalism see: Bayart, Jean-François. (2007) *Global subjects: A political critique of globalization*. London: Polity.

²¹ See for example World Bank (2004) *World Development Report 2004: Making services work for poor people*. World Bank. Washington.

²² Inevitably while these organizations both work together in important ways, and adopt transparency instruments in through a slightly different division of labor, there are tensions and contrasts in approach. See for example the discussion in van Oranje, M. and Parham, H. (2009) *Publishing What We Learned: An Assessment of the Publish What You Pay Coalition*. London, Publish What You Pay, pp.57-50. Asmara Klein, (2017) *Pioneering extractive sector transparency. A PWYP perspective on 15 Years of EITI, The Extractive Industries and Society, Volume 4, Issue 4, 771-774* noted that “insufficient use of EITI data by citizens[has] prevented the [EITI] initiative from fully reaching its transformative potential for citizens and local communities in resource rich countries to reap important benefits from extractive activities” p.771. See also Civicus-PWYP (2016). *Against All Odds*. London: Publish What You Pay

²³ Funded largely by foundations, the PWYP coalition has grown to become a global network comprised of over 350 community organisations, international NGOs and faith-based groups and more than 25 national civil society coalitions working together towards the same goal. there are more than 350 members of the international coalition from more than 68 countries

²⁴ NRGI sees itself as especially well positioned to convene reform-oriented dialogue and to engage in constructive policy advocacy and has developed the widely deployed the Resource Governance Index, a repository of resource contracts, and the Natural Resource Charter Benchmarking Framework.

²⁵ NREGI provided both research and critical inputs into the Illicit Financial Flows and Oil Commodity Trading project through Alexandra Gillies, Joe Williams and Alexander Malden.

²⁶ It is now widely understood that some oil companies actively seeded fake news or dis-information regarding the relations between the industry and global climate change: see <https://www.nytimes.com/2022/09/14/climate/oil-industry-documents-disinformation.html>

²⁷ This policy and operational conformity became evident in the tendency to focus on the adoption of standard state-owned enterprise (SOE) reform actions – such as the ‘unbundling’ or separation of functions, across policy, commercial and regulatory domains of oil governance; or in radically curtailing the NOC’s quasi-fiscal expenditure activities. There has also been an over reliance on adoption by NOCs of revenue transparency norms as the principal means of regulating industry and trading conduct.

²⁸ See also Gunvor website : <https://gunvorgroup.com/en>

²⁹ The Swiss Confederation describes the complexities of the supervision of commodity trading activities from the point of view of money laundering. See Swiss Confederation (2021^[187]).

³⁰ For earlier work on IFFs and commodity trade see the work of the Graduate Institute of International and Development Studies in Geneva in 2012-2013: Campodónico, H. (2013) “Going Beyond Transparency and Good Governance”. International Development Policy | Revue internationale de politique de développement [Online], 4.2 |: <http://journals.openedition.org/poldev/1551>; Thut, W. (2012) “Commodities and Switzerland: Development Policy Challenges and Policy Options”. International Development Policy | Revue internationale de politique de développement [Online], <http://journals.openedition.org/poldev/1621>.

³¹ OECD will release other working papers from the project including a forthcoming Working Paper by OECD researcher Rebecca Engebretsen that examines some of the diversity and complexity of the trading system.

³² The purpose of this section is not to provide a systematic and full-throated assessment of EITI’s two-decade history. There is now a very substantial literature, both scholarly and policy oriented including studies commissioned by EITI itself, that map how the organization has extended and deepened its remit, developed new instruments and requirements, reflected in updated EITI Standards, and refined its system of data collection. An independent evaluation of EITI by the Voconiq-Square Circle consortium was published in September 2022: <https://eiti.org/sites/default/files/2023-01/EITI-Independent-Evaluation-Main-Report-Final-11-Nov-2022.pdf>. It is beyond question that EITI as an ODA-funded multinational institution has made substantial progress in improving the transparency – and public availability - of extractive industry payments to national governments. The record constitutes a significant scaling up of the initiative as a truly global effort, spanning fragile states, low, middle and high-income countries and has, without doubt, contributed to spreading the norm of transparency in the extractives sector. For a review of EITI and multi stakeholder approaches see Brockmyer, B. (2016) Global Standards in National Contexts: The role of transnational multi-stakeholder initiatives in public sector governance reform. PhD Thesis. American University. Washington DC. See summary of findings at pp. 476-7.

³³ <https://bo.neiti.gov.ng>

³⁴ See for example, Mbembe, A. (2018) On the Postcolony. Berkeley: University of California Press.

³⁵ The report's recommendations focus on tailoring the global model to the local, reinvesting in the MSI approach, new measures and encouraging subnational approaches. There is precious little in the report that reflects a commitment to political economy analysis or second wave approaches.

³⁶ Prem notes: "The strong focus on open deliberation, consensus, and problem-solving, however, fails to recognise that MSIs do not only entail relations that promote free and unconstrained action, but also those that approximate states of domination".

³⁷ For OECD initiatives on corruption in commodity trading, see: <https://www.oecd.org/dev/oecd-initiative-corruption-commodity-trading.htm>