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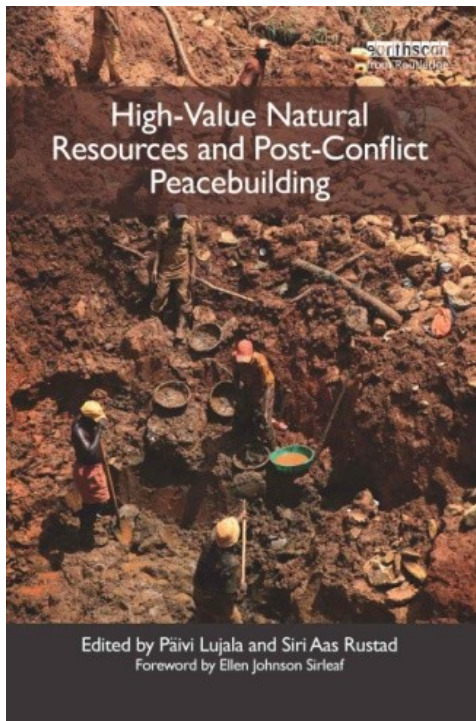
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### Addressing the roots of Liberia's conflict through the Extractive Industries Transparency Initiative

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# Addressing the roots of Liberia's conflict through the Extractive Industries Transparency Initiative

*Eddie Rich and T. Negbalee Warner*

The Extractive Industries Transparency Initiative (EITI) sets a global standard for transparency in the management of oil, gas, and mining revenues. Launched in 2002 and now endorsed by many international bodies and institutions, including the United Nations General Assembly, the World Bank, and the Group of Twenty,<sup>1</sup> the EITI is designed to strengthen governance by improving transparency and accountability in the extractive sector through the full publication of company payments and government revenues from oil, gas, and mining.

Compliance with the EITI standard is overseen by a coalition of governments, companies, and civil society groups, both at the international level and within each of the countries in which it is being implemented. The EITI has a robust yet flexible methodology that ensures that the standard is maintained throughout all participating countries.<sup>2</sup> The EITI board, which is made up of representatives from government, the private sector, and civil society, is the guardian of that methodology. Implementation itself, however, is the responsibility of the individual countries.

In many resource-rich countries, especially those that are recovering from civil war, opacity and silence have created mistrust and suspicion. Citizens often assume that the government and the extractive companies are in cahoots to keep the wealth for themselves, and companies sometimes feel that governments and citizens are ganging up on them to reset the rules and renegotiate contracts. The

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<sup>1</sup> The Group of Twenty (also known as the G-20) is an international forum for economic development “that promotes open and constructive discussion between industrial and emerging-market countries on key issues related to global economic stability” (G-20 n.d.).

<sup>2</sup> The validation methodology assesses a country’s meaningful and compliant implementation of the EITI on the basis of a number of indicators, including the country’s overall work plan and the dissemination of information to the public. For the full methodology, see EITI (n.d.a).

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EITI has been held up as a shining example of how multi-stakeholder initiatives can address these kinds of challenges. But the initiative is still young, and much of this praise has been premature.

Although the number of countries participating in the EITI has expanded rapidly to thirty, only half of the countries have produced EITI reports detailing what companies claim to have paid to the government in taxes and royalties, and what the government claims to have received. As these countries approach validation—the quality assurance test that determines whether they have met all the requirements of the EITI governance standard—the first clear picture of the relationship between transparency, multi-stakeholder approaches, and reconciliation is emerging.<sup>3</sup> In October 2009, Liberia became the first African country to pass validation, and thus be designated EITI compliant. Liberia is therefore a test case.

### LIBERIA AND THE EITI

Liberia's natural resource wealth has long been at the center of the country's tumultuous history, as well as at the root of much of its corruption.<sup>4</sup> Despite an abundance of iron ore, diamonds, gold, timber, and rubber, Liberia was ravaged by a fourteen-year civil war (1989–2003) that devastated the nation. By 2007, the country was still at the bottom of the UN's Human Development Index, ranking 169 out of 182 (UNDP 2009). After general elections were held in 2005, the new government led by President Ellen Johnson Sirleaf vowed to ensure growth, development, and reconciliation by improving transparency in the extractive sectors. In accordance with Johnson Sirleaf's priorities, Liberia joined the EITI and established the Liberia EITI (LEITI), a multi-stakeholder body responsible for implementing the EITI.

Recognizing the role that corruption, mismanagement, and distrust had played in fueling the war, the LEITI has made a special effort to be inclusive; for example, Liberia was the first EITI participant to incorporate rubber and forestry into the extractive industries initiative. The LEITI has also made extensive efforts to raise awareness of the initiative throughout the nation. The first LEITI report (Crane et al. 2009), which was published in February 2009 and covered July 2007 through June 2008, generated contagious interest among Liberians both within and outside the country; that interest was intensified by LEITI's outreach efforts, which publicized the results of the report through town hall meetings, radio programs, newspaper articles, street theater, and posters displayed in every

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<sup>3</sup> For more details on the validation process, see EITI (n.d.b).

<sup>4</sup> For more details on the conflict, see Stephanie L. Altman, Sandra S. Nichols, and John T. Woods, "Leveraging High-Value Natural Resources to Restore the Rule of Law: The Role of Liberia Forest Initiative in Liberia's Transition to Stability," and Michael D. Beevers, "Forest Resources and Peacebuilding: Preliminary Lessons from Liberia and Sierra Leone," both in this volume.



public building in Liberia.<sup>5</sup> The value of discussions about the report cannot be overemphasized, especially in Liberia, where information of this sort is hardly ever in the public domain.

### The LEITI report

But what did Liberia’s first LEITI report actually reveal? The report detailed, on a company-by-company basis, what mineral and forestry companies had paid to the government, in the form of taxes and other contributions. Because reported payments were matched to reported receipts, any discrepancy between what a company claimed to have paid and what the government claimed to have received was clearly revealed. The report, which covered almost thirty companies from

<sup>5</sup> The second LEITI report was published in February 2010. LEITI reports and related documents are available at [www.leiti.org.lr/content.php?sub=48&related=62&third=48](http://www.leiti.org.lr/content.php?sub=48&related=62&third=48).

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the oil, gas, and mining sectors, showed that the government received about US\$30 million in taxes and royalties from July 2007 through June 2008.

The report brought to light three key points. First, although taxes and other payments made to the government contribute to stability and sustainable development, the extent of this contribution has not always been recognized, even in the communities in which the extractive industries operate: the communities simply did not know what the companies paid or where the payments went. The report thus increases citizens' immediate understanding of the contributions made by extractive companies. It is little wonder that the LEITI is strongly backed by companies that are seeking a level playing field on which to compete.

In 2005, for example, ArcelorMittal, a Luxembourg-based multinational mining giant, signed a billion-dollar mineral development agreement with the transitional government of Liberia. When the current government rejected the agreement, holding that it was not in the interest of Liberia, the firm became the subject of criticism, negative publicity, and suspicion. The agreement was renegotiated in 2007—and, as the LEITI report shows, the nearly US\$24 million that the government received from ArcelorMittal constituted three-quarters of all taxes and royalties from the oil, gas, mining, and forestry sectors for the period covered by the report. In accordance with the terms of the renegotiated agreement, about US\$7 million of all taxes and royalties was for the direct benefit of the municipalities and counties where the company has its operations.<sup>6</sup>

The LEITI report thus represents an independent confirmation that ArcelorMittal paid the agreed-upon benefits and that the government of Liberia received the payments on behalf of the communities. As part of its efforts to rebuild trust with communities, ArcelorMittal has pointed to its contributions to the central government and to communities. Referring to the first report, Joe Mathews, chief executive officer of ArcelorMittal-Liberia, said that

the EITI is playing a key role in our relations with stakeholders, helping us to connect with the communities where we operate and with the government. Participation in the EITI also helps us to uphold the strong principles of corporate responsibility we believe in through supporting fair and transparent business practices and ensuring that proper accounting is made of all payments in our operations in Liberia (EITI 2010, 15).

Second, as previously noted, the report identified discrepancies between what the companies claim to have paid and what the government claims to have received. Most of these were minor, and were likely to have arisen because of differences in accounting classifications. One significant discrepancy concerned an income tax payment of over US\$100,000 from a precious metals and minerals company, AmLib United Materials, which the government denied having received—

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<sup>6</sup> For more details, see EITI (2009).

a position that was confirmed by a subsequent investigation. AmLib traced the discrepancy and found a clear-cut matter of internal fraud. The firm has since paid the government and taken appropriate legal action; it is also shoring up its financial systems. AmLib representatives have attended many of LEITI's town hall and public meetings, where they explained the matter directly to community residents and described the steps being taken to prevent such a thing from happening again.

Third, the report highlighted a number of suspicious, unexplained payments that had been made by some companies but had not been received by the government, and revealed that other companies that had failed to report at all—creating significant discussion within communities. Who is operating the mine down the road? Why was this payment made, and to whom? How can we raise our concerns with the government and with the companies themselves?

Although the report itself does not provide full answers to these questions, the LEITI has created a forum in which these and other questions can be discussed with both the companies and the government: openly, frankly, and in a safe and noncombative environment. The communities—and indeed all Liberians—have also used the opportunity to raise questions about how money is being allocated and used, and whether communities are receiving a fair return for their resources.

### **The LEITI Act**

In July 2009, following the publication of the first EITI report, the LEITI Act came into force (GOL 2009). The act requires all government agencies and extractive companies to comply with the LEITI process. The LEITI Act goes far beyond the core EITI requirements; in addition to obligating each company to document its payments to the government, it calls for all operating contracts and licenses to be reviewed, archived, and made available to the public.<sup>7</sup> This provision assures citizens and companies alike that all extractive companies operating in Liberia—whether from China, Malaysia, Europe, or elsewhere—are on an open and level playing field, and that there is a forum in which stakeholders can voice their concerns. Under the LEITI Act, any company that refuses to publish its contract is subject to sanctions.

### **LESSONS AND CHALLENGES**

The story of the LEITI demonstrates the power of the EITI process to create a platform for dialogue. The results achieved by the LEITI process were made possible through the personal commitment of the president; the dedication of the LEITI Multi-Stakeholder Steering Group, which is the governing body of the

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<sup>7</sup> See GOL (2009), sec. 4.1(d)(ii), (e), and (f).

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LEITI; and the shared commitment of all stakeholders, including the extractive companies.<sup>8</sup>

But Liberia's experience is also a reminder of another key fact about the EITI: it is only a start. The EITI is one component in the resource-governance value chain that begins with the award of a contract and continues through contract monitoring, documentation of payments and revenues, use of revenues, and the development of policies to support sustainable resource use. The EITI is therefore a necessary, but not sufficient, condition for peace, stability, and improved resource governance—as is evident in Liberia, where, despite successful implementation of the EITI, no one is yet better fed, or in school, or receiving medicines because of the EITI. It is even difficult to argue that the EITI has contributed to peacebuilding in Liberia. Nevertheless, Liberia now has a platform for the discussion of governance issues related to the extractive sector—which, in itself, has the potential to consolidate the EITI's achievements and deliver real impact. Not to mention the fact that the first report identified a clear-cut case of fraud.

Several further challenges face the LEITI in particular and Liberia's natural resource sector in general. Liberian civil society groups have developed a dossier of what they perceive as dubious contracts; donors and international observers still complain about ongoing graft in concessions; and communities still contend that extractive firms and local politicians are colluding to steal mine proceeds. In addition, reports from Global Witness, a nongovernmental organization that researches and campaigns against corrupt exploitation of natural resources, have warned against an overconcentration of particular companies in the forestry sector, and a UN panel of experts has filed a report about inadequate contracting procedures (UNSC 2008). Some ministers and government officials continue to be the focus of suspicion and innuendo. And finally, the expected returns on resource investments, particularly in forestry, have been slow to materialize.

On taking power, President Johnson Sirleaf arranged for an international panel of independent experts to undertake a full review of all resource contracts. Yet in the eyes of many observers, even this step failed to ensure maximum benefits for the Liberian people.<sup>9</sup> There are five principal reasons:

- After years of civil war, personal agendas, vested interests, and suspicion still remain. As a consequence, the advice of independent experts was not always followed.
- Once the international technical advisers had completed their review of existing contracts, the Forestry Development Authority and the relevant ministries lacked the capacity, and in some cases were reluctant, to negotiate new contracts.

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<sup>8</sup> The Multi-Stakeholder Steering Group is made up of fifteen members from government, civil society, and the private sector.

<sup>9</sup> Among the entities that have expressed such concerns are Publish What You Pay; the Energy, Environment and Development Programme; and Global Witness. See Friends of the Earth (2006), [illegal-logging.info](http://illegal-logging.info) (n.d.), and Global Witness (2006).

- Systemic corruption continues to thrive, compromising many governmental institutions and processes. The Liberian media is rife with reports of corruption involving senior government officials, and President Johnson Sirleaf has acknowledged that corruption is a crucial problem. Although successful implementation of the EITI is no guarantee against corruption, it should help combat it. The EITI has helped to create a civil society that, empowered and emboldened by credible data, can demand greater accountability and transparency. It is still too early to assess the impact of the LEITI data on efforts to strengthen governance and eliminate corruption.
- Extractive contracts have not always been fully monitored and enforced. Although monitoring and enforcement are beyond the scope of the EITI, Liberia has fortunately chosen to incorporate contract transparency into the LEITI, which may help improve the integrity of the sector. But this will take time.
- A collapse in the global price of commodities led to massive delays in mining and forestry contracts.

In sum, there is no room for complacency with regard to natural resource management in Liberia. The battle against corruption and for reconciliation goes on, within and outside the LEITI arena.

## **CONCLUSION**

Building trust in a resource-rich, post-conflict environment like Liberia's may take years, and will depend largely on sustained, interlocking, and self-reinforcing interventions in many areas of governance, including the judiciary, the civil service, and auditing institutions. There is a need for the president to provide exemplary leadership to all senior government officials by establishing and strengthening a culture of transparency and accountability.

The EITI focuses on just one area. Its contribution should therefore be recognized as the first bold step in creating an environment for reconciliation—that is, as a necessary, but not sufficient, framework for change. As President Johnson Sirleaf has said, “Trust is the greatest asset a country can have. . . . [LEITI] represents an important step in advancing our efforts to engage with stakeholders, to talk about our resources, and to build trust in our communities” (Johnson Sirleaf 2008).

## **EPILOGUE**

In October 2009, after the first LEITI report, Liberia became the first country in Africa (and the second country in the world, after Azerbaijan) to achieve EITI compliance.<sup>10</sup> Liberia's second LEITI report, produced in February 2010, represented

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<sup>10</sup> This epilogue draws from LEITI (2010).



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a significant improvement over the first: it covered more sectors and companies, reported more payments and revenues, and contained fewer discrepancies.

According to the second report, before reconciliation, total payments amounted to US\$32,391,137, and total revenues amounted to US\$50,300,746. Using source documents, including actual receipts, the reconciler confirmed that oil, forestry, agriculture, and mining companies (including a few diamond and gold dealers and brokers) had paid the government US\$35,280,234 in the form of taxes, royalties, rental and administrative fees, and other contributions, and that the government had received US\$35,425,230. The difference (US\$144,955, or 0.04 percent of the total declared by government agencies) resulted from two main causes: first, four companies claimed to have paid certain amounts to the government but failed to substantiate their payments; second, seven companies failed to submit payment data to the LEITI independent administrator, although the government proved that it had indeed received payments from those seven companies. Hence, the report reflected the proved revenues declared by the government, even where no corresponding data for payments were received. The LEITI subsequently fined the companies that had failed to report.

Moore Stephens LLP, the independent administrator, worked to resolve all discrepancies between payment and revenue data. Nevertheless, like the first LEITI report, the second report contains a few minor, unresolved discrepancies and two significant unresolved discrepancies.

The first significant unresolved discrepancy concerns the amount of US\$95,253, which Cocopa Rubber Company declared, but failed to substantiate—despite several reported requests for proof. The second material unresolved discrepancy involves Subseas Resources DMCC, which transferred its mineral rights to Ocean Bottom Resources West Africa, Inc., on November 26, 2008. Before transferring its mineral rights to Ocean Bottom Resources, Subseas made payments of US\$127,235 to the government of Liberia. The government reported and substantiated receipt of the Subseas payments, but Subseas did not report any data to the reconciler. Hence, the proved revenues received and reported by the government lacked corresponding reported payments from Subseas.

Despite the presence of unresolved discrepancies, the second LEITI report was widely disseminated and positively received by communities, civil society organizations, and other individuals and groups. This positive reception may be explained by three factors: First, the publication of unresolved discrepancies is viewed as evidence of a new spirit of transparency, in which the government is not concealing weaknesses or inconvenient facts. Second, because the payment and revenues data are published separately, it is easy to see the specific causes of the discrepancies. Third, it has emerged that many reports published by other EITI countries also contain discrepancies—and, as in the case of Liberia, some of the discrepancies are attributable to accounting and reporting weaknesses and are not necessarily the result of corruption or theft. Hence, the implementation of the EITI and the attending publication of payments and revenues data is helping to build confidence and trust, and thereby reduce suspicion and conflict in Liberia.

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