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Towards Understanding South Africa's Differing Attitudes to the Extractive Industries Transparency Initiative and the Open Governance Partnership

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ABSTRACT

The paper undertakes a critical assessment of the various motivations behind South Africa's active participation in the Open Government Partnership (OGP), as a contrast to the country's notable absence from the Extractive Industries Transparency Initiative (EITI). Indeed, although the South African government is one of the eight pioneering states to have officially launched the OGP on 20 September 2011, it is not a signatory to the EITI, which celebrates its 10-year anniversary in 2013. How has the South African government justified its absence from the EITI so far, and what do these justifications mean for its participation in the OGP? The paper focuses specifically on developments regarding access to information in South Africa – namely the Promotion of Access to Information Act – and their implications for the country's attitudes towards global transparency initiatives. The paper also considers the ways in which the South African government's discourses, practices and contrasting approaches vis-à-vis these two multilateral transparency frameworks hold relevance for access to information in the country's extractive resource sector. It suggests that the South African government may be more responsive to EITI-membership appeals if it perceives that its aspirations as an emerging power, both regionally and globally, are better acknowledged.

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ABBREVIATIONS AND ACRONYMS

ATI	Access to Information
BRICS	Brazil, Russia, India, China and South Africa
CSO	civil society organisation
DMR	Department of Mineral Resources
EITI	Extractive Industries Transparency Initiative
MPRDA	Mineral and Petroleum Resources Development Act
MSG	multi-stakeholder group
NGO	non-governmental organisation
OBI	Open Budget Index
OGP	Open Government Partnership
PAIA	Promotion of Access to Information Act
PoSIB	Protection of State Information Bill
PWYP	Publish What You Pay
R2K	Right2Know Campaign
SADC	Southern African Development Community
SAHA	South African History Archives
SAHRC	South African Human Rights Commission
SSA	sub-Saharan Africa
TI	Transparency International

INTRODUCTION¹

Recent figures from globally established indices reveal diverging perceptions about the state of transparency and corruption in South Africa. For instance, South Africa is positioned second in the Open Budget Index (OBI) Survey 2012, which was released in January 2013 by the Open Budget Partnership.² South Africa was only surpassed by New Zealand, with a score of 93 out of 100, which suggests that South Africa discloses extensive information on its budget, and therefore has a very transparent budget. South Africa's OBI score is especially important to note, given that the 2012 OBI average score was 52 out of 100 for the 100 participating countries, and given that South Africa fared better than countries generally reputed to be highly transparent, such as Sweden (fourth with a score of 84 out of 100) and Norway (fifth with a score of 83 out of 100).³ In contrast, South Africa ranked poorly on the Transparency International (TI) Corruption Perceptions Index 2012; at just 69th out of 176 countries and territories worldwide, with a low score of 43 out of 100.⁴ One may point to the fact that the OBI is specific to budget transparency, whereas the TI's index, in addition to being more comprehensive in nature, focuses not on transparency itself, but also on corruption. These different focuses may appear to complicate the comparison between both indices. However, by emphasising corruption (as enabled by a lack of transparency) rather than focusing on transparency itself, the TI's index allows an analytical bridge between both indices. This analytical bridge in turn reflects the expected role of transparency regimes in managing resources such as mining, oil and gas, and provides a helpful context for the paper.

In this regard, the paper asks whether South Africa is justified to invoke the transparency frameworks (both local and global) that the country has adopted and which are general in nature, as an alternative to joining the Extractive Industries Transparency Initiative (EITI). Specifically, the analysis refers to national discourses that directly and indirectly present the Promotion of Access to Information Act (PAIA) No 2 of 2000 at the local level, and the Open Government Partnership (OGP) at the global level, as effective and sufficient alternatives to the EITI. The paper seeks to investigate the implications of South Africa's absence from the EITI for transparency measures in the country's extractive sector. It is divided into three sections. The first discusses the significance of the EITI as a global initiative, and contextualises its implications for resource-rich African countries, and for South Africa in particular. The second section explores the nature of local and global transparency frameworks adopted by South Africa, to understand their relevance for the South African extractive sector. In doing so, the paper seeks to identify whether South Africa currently holds substantial alternatives to the EITI. The final section discusses possibilities for South Africa's adherence to the EITI, by presenting policy recommendations based on the preceding sections.

THE EITI: A 'GLOBAL' FRAMEWORK FOR TRANSPARENCY?

The EITI is a multi-stakeholder initiative involving a tripartite relationship between states, civil society and multinational corporations. It is aimed at increasing transparency and accountability in the mining, oil and gas sectors. Although announced by former British prime minister, Tony Blair, at the World Summit on Sustainable Development in

Johannesburg in 2002, it was not until the EITI's first plenary conference in 2003 that the initiative was officially launched, with the establishment of the 12 EITI Principles.⁵ Officially endorsed by the World Bank and many resource-rich countries in the global North, such as Australia, Canada, and the US, the EITI emerged from a global civil society initiative – namely a Publish What You Pay (PWYP) campaign led by Global Witness, an international non-governmental organisation (NGO). Yet despite its global roots and reach, the initiative now mostly includes resource-rich countries from the global South, particularly from Africa.

Indeed, the EITI has seen the striking absence of resource-producing countries from the global North as implementing countries, such as Australia, Canada, the UK and the US. With the exception of Norway, which became a compliant country in 2011, other resource-rich governments in the global North have long shown a reluctance in implementing the initiative, though this is beginning to change in a few cases. One such case is the Obama administration, which officially confirmed in September 2011 that the US will sign on to the EITI; a statement that was revealingly made at the launch of the OGP in New York, in the presence of other OGP-founding members such as South Africa.⁶ Almost two years after this announcement, the US is now much closer to becoming an EITI candidate country. The government is closer to meeting one of the main candidacy criteria, namely 'the formation of a multi-stakeholder group (MSG) comprised of representatives from government, industry, and civil society to oversee the implementation of EITI and develop a fully-costed work plan', having inaugurated the first USEITI Advisory Committee meeting in February 2013, which will serve as the first USEITI MSG meeting.⁷ The Australian government has also shown a stronger commitment towards the initiative following the US move – though it has proceeded more cautiously, announcing in October 2011 that it would implement an EITI pilot.⁸ In February 2013 Australia published a *Pilot Progress Report* to the EITI Board, which shows that the data collection phase of the pilot is under way, and will include figures for the financial year 2011–12.⁹ Despite its EITI pilot, Australia has still not committed to implementing the EITI.¹⁰

Another interesting case is the UK, which, like many rich countries (excluding the US and Australia), has expressed a possible interest in joining the EITI initiative but has yet to make any formal commitments. Prime Minister David Cameron recently called on G-8 leaders to not simply pledge financial support to the EITI, but to instead seek an implementation of the initiative.¹¹ This stance reflects an earlier recommendation from a UK parliamentary committee that the UK implement EITI back in August 2012.¹² Thus critics rightly wonder whether, or when, the British government will move from rhetoric to practice regarding its position on the EITI. Canada, on the other hand, has consistently declined invitations to join the EITI, both in rhetoric and in practice, pointing instead to its large financial contribution to the initiative as a significant contribution, and using its domestic transparency mechanisms as justifiable alternatives to the EITI.¹³

This relative reluctance from the global North to embrace the EITI partially explains why, as of March 2013, in the year that marks its ten-year milestone, the initiative comprised only 37 implementing countries: 20 compliant countries and 17 candidate countries. Notably, 21 out of 37 of these implementing countries are African.¹⁴ That the EITI membership is largely African reflects that it is perhaps the continent most concerned with the paradox of being simultaneously abundant in natural resources, yet poor. Some analysts have explained this paradox to be a result of resource revenues being lost to

corruption, particularly when it comes to highly lucrative resources such as oil.¹⁵ It is this argument that underpins civil-society movements, such as the PWYP campaign, which call on governments and companies to disclose information on payments and revenues from the mining, oil and gas sectors as a means to fight corruption and build a more accountable extractive sector.¹⁶ The PWYP campaign and the resulting EITI are ideal instruments for addressing the aforementioned paradox in the African resource sector. However, given that issues of transparency and corruption are rampant worldwide, thus explaining the global target of the EITI; and given that the perpetuation of corrupt practices in Africa's resource sector involves not only the participation of African governments but also that of other actors such as multinational corporations, most of which come from the global North and therefore must abide by laws from their home governments, it is pertinent to ask why growing pressure to implement the EITI continues to be unevenly targeted at regions in the global South, such as sub-Saharan Africa (SSA). In so doing, one can begin to better understand why South Africa may or may not be amenable to joining the initiative, and the policy implications for both the EITI as well as for South Africa.

The recent emergence of the OGP represents a compelling contrast to the EITI, as it is a multilateral transparency initiative with a global platform. The OGP was launched on 20 September 2011 by eight founding countries, namely Brazil, Indonesia, Mexico, Norway, the Philippines, South Africa, the UK and the US.¹⁷ Unlike the EITI, the OGP incorporates the participation and leadership of important global North players, such as the US and the UK. Interestingly, African presence in the OGP is minimal. Dominated by European countries, it has only five African countries (South Africa, Ghana, Liberia, Tanzania, Kenya) among its 58 members.¹⁸ It is therefore significant that the South African government, which is absent from the EITI, is not only an active member of the OGP, but also one of the eight founding members. Given similar concerns held by both initiatives, South Africa's choice to be a part of the OGP and not the EITI appears puzzling. Providing a striking resonance to the EITI's focus on transparency and accountability, the OGP's objective is to 'secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance'.¹⁹ Thus the core difference between the EITI and the OGP centres around the fact that, unlike the EITI, the OGP is general in nature and not specific to the extractive sector. As such, the OGP does not make direct provisions for corporate commitment to transparency. In this light, adhering to the principles of the EITI could complement South Africa's commitment to the OGP, as doing so would help address the gaps in the OGP as far as addressing transparency issues in the extractive sector is concerned. Moreover, given that the EITI and the OGP are dominated respectively by African and European countries, perhaps an efficient way for South Africa to be part of a truly global conversation would be to seek adherence to the EITI, until claims of both initiatives to be 'global' are realised through a wider, more global membership.

SOUTH AFRICA'S ALTERNATIVE TRANSPARENCY MEASURES AND THEIR RELEVANCE FOR THE EXTRACTIVE SECTOR

Dominant official discourses have attributed South Africa's absence from the EITI to existing transparency frameworks in the country.²⁰ A recent interview with a government

official from the Department of Mineral Resources (DMR) confirms this view. With respect to the EITI's aim of ensuring that the revenues collected from mineral extraction are accounted for, the following statement from the DMR representative maintains that South Africa already has measures in place to this effect: '[W]e don't really see a very compelling argument or need to be signatory of the EITI [...] We think we are transparent enough in terms of how we account for the mineral resources revenues that come to us'.²¹ Moreover, and at the core of this emphasis on existing local frameworks, is a strong denunciation of what appears to be a double standard on the part of countries in the global North. For instance, the DMR representative notes that some Northern governments continue to push the EITI agenda onto South Africa, while remaining reluctant to join the initiative themselves.²² Another often cited example is that of the UK government's continued absence from the EITI, which commentators from civil society organisations (CSOs) such as PWYP characterise as a double standards attitude, given that former UK prime minister, Tony Blair, was central in announcing the launch of the initiative in 2002; and most importantly, given that the UK continues to support the implementation of the EITI in countries in the global South.²³ The main implication of these denunciations is that if resource-rich countries in the global North are able to directly or indirectly justify their absence from the EITI based on their own domestic transparency frameworks, South Africa can also do so, given that the country has transparency frameworks in place, such as PAIA. However, the South African government's reluctance to join the EITI suggests a similar desire to abstain from the OGP, since the same justifications of alternative local transparency frameworks apply. This is especially so since the OGP, much like PAIA, is general in nature, and must therefore represent a redundant framework according to the aforementioned rationale. In this case, the EITI would appear to be a complementary framework to PAIA, given that it is focused specifically on the extractive sector, a focus that does not exist within South Africa's domestic transparency mechanisms such as PAIA. As such, the above justifications for South Africa's absence from the EITI can be largely understood as political and ideological rhetoric that are not substantiated. It becomes therefore important to move beyond mere discourse, and to examine to what extent the establishment of a local transparency framework such as PAIA can account for the fact that the government is not part of the EITI.

The passing of PAIA in 2000 theoretically suggests that South Africa has a strong legal framework that facilitates Access to Information (ATI) in the country. PAIA reflects the entrenchment of ATI in South Africa's Constitution (No 108 of 1996), with section 32 (1) (a) of the Bill of Rights providing for 'access to any information held by the state'.²⁴ However, section 32 does not provide for access to information directly held by entities such as corporations, unless such information can be accessed through the state. In this case, the objective of reconciling the extractive sector's revenues and payments as built within the EITI framework cannot be met within the PAIA framework, since one cannot seek information held by extractive multinationals independently from the state. This means that state information on revenues made from mining and oil companies cannot be verified against company information on payments issued to the government through PAIA; unless one seeks other avenues provided by companies themselves on this kind of information.

Furthermore, despite the effective existence of PAIA, its implementation is facing many hurdles that need to be addressed before it can serve as a strong platform for

addressing transparency issues, within or outside the extractive sector. Discussions with local CSOs, such as the Open Democracy Advice Centre and the South African History Archives (SAHA), as well as with the South African Human Rights Commission (SAHRC), suggest that when it comes to the implementation of PAIA, the average citizen faces a number of obstacles in terms of locating, accessing, and making sense of requested information in a timely manner.²⁵ Experiences and studies from these organisations report that many requests for ATI go unanswered or refused, where the possibility for appeal is often difficult. More troubling, in the wake of the Protection of State Information Bill (PoSIB), also known as the Secrecy Bill, which criminalises *unlawful* dissemination of some state information, many analysts and activists fear that progress on access to information may be jeopardised.²⁶ In the context of the extractive sector particularly, given that a lot of corporate information regarding resource extraction can be tied to secret state information, the passing of the bill may indeed contribute to keeping important information safely guarded, ultimately impeding the public's ability to hold the state and extractive corporations accountable.

Finally, given the general focus of PAIA, it is important to examine the extent to which the Mineral and Petroleum Resources Development Act (MPRDA), a legislation passed in 2002 and targeted at the management of mineral and petroleum resources in South Africa, may be a tool for enhancing transparency in the extractive sector. The MPRDA seeks to 'make provisions for the equitable access to and sustainable development of the nation's minerals and petroleum resources; and to provide for matters connected therewith'.²⁷ With this objective in mind, although the act speaks to matters of good governance, it does not directly provide tools that the public can use to access information related to the extractive sector. So far, according to one commentator, the implementation of the MPRDA has been more successful in illustrating the power of the state to access extractive companies' information, and to use such information accordingly, such as the revoking of corporate licences.²⁸ Although a great tool for government to regulate corporate behaviour with regards to resource exploitation in the country, the MPRDA does not do enough to increase transparency in the extractive sector. This is because the MPRDA focuses on regulating corporations, with no equal checks on the role of the state; and the role of civil society is relatively absent, with CSOs, workers and local communities not being provided with the means to access relevant information on extractive companies or on corporate-state activities in the extractive sector. In other words, in terms of being a potential alternative to the EITI – especially one of a mandatory nature – in practice the MPRDA does not represent a viable alternative through which the public can hold government and companies accountable when it comes to resource exploitation and revenue flows.

This suggests that there is no alternative to the EITI at the national level in South Africa. Although PAIA may be used to access government-held information (keeping in mind the aforementioned difficulties discussed), one cannot use it to request key information from the corporate sector. Yet corporate information from mining and petroleum companies are vital in providing civil society with the means to hold both states and extractive companies accountable. In sum, whether legal or voluntary, there is no single co-ordinated mechanism in the mining, oil and gas sectors that promotes the *proactive and timely* disclosure of information on state-company payments or revenues to the public, which is the aim of the EITI.

POLICY IMPLICATIONS: LESSONS FROM, AND FOR, THE EITI

Given the discussion so far, and in light of current discourse emanating from government circles in South Africa, there are no solid justifications for the country's absence from the EITI. However, were commentators to focus on questioning the effectiveness of the EITI as a transparency mechanism in itself, the debates regarding South Africa's absence from the initiative would be more productive. In a telling admission, an official from the DMR revealed that beyond the overall perception of skepticism concerning the EITI, there is currently no homogenised position from the South African government on the matter. As he put it, there has not been a concerted department-wide, nor interdepartmental, meeting to ask what the EITI means for South Africa: 'We haven't even sat down to ask what does this thing mean to us, how can we be relevant to it, how can it be relevant to us?' The DMR official also pointed to the existing confusion within the government on whether leadership over matters related to the initiative belongs to the DMR, the National Treasury (Department of Finance), or the Department of International Relations and Cooperation (DIRCO).²⁹ From this revelation, it is safe to assume that there is currently no serious dialogue between different departments of the government regarding the EITI; in other words, it is not a policy priority. More generally, this scenario reflects the lack of an official government position on issues related to transparency in South Africa's extractive sector. This ultimately suggests that transparency issues in the extractive sector are not prioritised at policy level in South Africa.

The immediate policy recommendation is the need for more serious and systematic discussions of transparency issues in the South African extractive sector at the government, corporate and civil society levels. This will be a necessary first step in involving all relevant actors to the debate, in order to meaningfully engage with the issue of transparency in South Africa's extractive sector. Second, policy debates should engage with practical aspects of how transparency measures in the extractive sector will translate into enhanced accountability. Finally, discussions with key South African government officials highlight that the government seeks to assert its position not only as a regional power but also as an emerging power globally. As such, growing calls for South Africa's implementation of the initiative will not be seriously considered unless the global North first shows a better record of implementing the EITI, as preliminary moves towards US EITI candidacy now indicate. Moves like the US one will give a better incentive for the 'emerging middle power'³⁰ to reconsider its reluctance to join the initiative. This ideological argument stresses the need to take note of the relevance of power relations when promoting the initiative, rather than seeking to present it in a depoliticised stance. As of April 2013, the only Southern African Development Community (SADC) countries in the EITI were Mozambique, Tanzania, Zambia (compliant countries) and the Democratic Republic of the Congo (which has been suspended temporarily as of 24 April 2013).³¹ The continued push for South Africa to join the initiative is therefore especially strategic, as it is also used as a political means to exert pressure on countries in the SADC region – including important resource producers like Botswana – to join. Perhaps disclosing this objective from the onset would provide better avenues for South Africa to genuinely assess its decision to adhere to the initiative based not only on its own local conditions but also on interstate dynamics, both at the regional and global levels.

These recommendations will only be possible with the active prioritisation of transparency issues within the extractive sector. Tellingly, during the fieldwork carried out in South Africa for this study from January to March 2013, discussions with a number of people from CSOs and the media revealed that many within these groups knew little or not enough about the EITI. This situation in turn creates an atmosphere in which meaningful debates on the topic of transparency in the extractive sector remain at the periphery of policy discourse, thus ensuring that the arguments for or against South Africa's participation in the EITI are not adequately addressed. In this context, it is important to recall that the EITI itself was established as a result of pressure from CSOs such as Global Witness, highlighting the central role of CSOs in this respect. With the impressive advocacy work on transparency that is being done by CSOs in South Africa through the Right2Know Campaign (R2K),³² a specific focus on transparency in the extractive sector is well within reach, but only if a real need is perceived and clearly articulated by the campaign.

CONCLUSION

The paper submits one main recommendation to the agenda of stakeholders who view transparency in the mining, oil and gas sectors as key to a country's development. The debate on whether a given country should join the EITI should not revolve on ideological and diplomatic arguments, but rather should focus on practical ways in which to use the initiative as a first step towards securing transparency and accountability in the extractive sector. After all, the sector is arguably one of the most susceptible to corruption. Whether this first step will actually lead to a reform of the initiative or to a radical alternative is unknown, but focus on the extractive industries must not be abandoned altogether in favour of a general debate on transparency. In the case of South Africa, although lessons can be learned from various sectors through a general standard for transparency such as PAIA, this framework is not enough. Sectors such as the oil, gas and mining industries hold particularities as far as licensing rights and contract agreements are concerned, which require specialised attention through the establishment of additional frameworks, whether locally or globally. Currently the global route could be a key platform for South Africa, which could be used as a means to reinforce and legitimise its status as a regional power within Africa; and perhaps as a means of assuming a leadership role within the BRICS (Brazil, Russia, India, China and South Africa) platform as far as transparency in the extractive sector is concerned. To date none of the BRICS countries is a signatory to the EITI. This analysis suggests that the potential membership of South Africa in the EITI will probably benefit the initiative, in the sense that the country may share lessons learned with the initiative regarding ATI legislation, particularly with regards to the prospects and challenges of legal frameworks for enhancing transparency.

ENDNOTES

- 1 The paper is informed by field research conducted in South Africa, and funded by the Students for Development Program, a Canadian International Development Agency project. The author would particularly like to thank SAIIA researchers from the Governance of Africa's Resources Programme, as well as other programs at the institute, for offering insightful comments following her presentations in Johannesburg and Cape Town in February and March 2013.
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- 28 Personal interview, Cape Town, 4 February 2013.
- 29 *Ibid.*
- 30 Schoeman M, 'South Africa as an emerging middle power', *African Security Review*, 9, 3, 2000, pp. 47–58. The term 'emerging middle power' exemplifies South Africa's aspiration to be an important player at the global stage. It also refers to South Africa as a rising power from the global South, especially within the BRICS complex, and as an emerging power globally.
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- 32 R2K is a civil-society platform in South Africa, which was launched in August 2010, and regroups organisations and people responding to the PoSIB. The R2K's mission has now broadened to include matters related to free expression and access to information. For more on this coalition, see R2K, 'What we do', <http://www.r2k.org.za/about/what-we-do>.

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