

**FIGHTING CORRUPTION, STRENGTHENING GOVERNANCE:
THE ROLE OF CIVIL SOCIETY IN THE EXTRACTIVE INDUSTRIES
TRANSPARENCY INITIATIVE**

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I. INTRODUCTION

EXECUTIVE SUMMARY

In 2002, the Extractive Industries Transparency Initiative (EITI) was launched with the ambitious goal of improving governance in resource-rich countries and helping to combat the resource curse, the well-documented phenomenon that such countries tend to suffer entrenched poverty and greater political and economic instability than their less well-endowed equivalents. The purpose of the EITI is to ensure that all revenue payments to the governments of such countries by oil, gas and mining companies are independently checked and fully disclosed to the public, thus helping citizens to exercise oversight over these revenues and reducing the mismanagement associated with the resource curse.

This study examines how EITI implementation affects the management of extractive industry revenues, with a focus on the role of civil society in these efforts. In particular, this study analyzes four specific elements or implications of the EITI process: civil society capacity and engagement, data disclosure and dissemination, government accountability, and broadening the debate beyond revenue transparency.

To do so, the study uses academic literature, policy reports, and field research conducted in Azerbaijan and Gabon, two countries which are rich in natural resources. Both Azerbaijan and Gabon have implemented the EITI for several years, but they are at different stages of implementation and operate in different economic, political, and social contexts.

The study ends with an assessment of the two countries' EITI implementation, which is based on the EITI Validation criteria that countries must fulfill to be considered compliant with the EITI requirements. Validation is a formal process performed by accredited analysts and overseen by the international EITI Board. The research team submits the assessment as a preliminary indication of areas of strength and weakness in the two countries' implementation of the EITI, which are likely to come to the fore during the official Validation process.

Overall, the research team finds that the measures taken to implement the EITI in both countries have been able to centralize, certify, and publish revenue and payments streams in a more reliable and consistent way than ever before. Efforts are still needed to ensure that the EITI is sustainable and effective in Candidate countries, but the research team has seen incremental gains in Azerbaijan and Gabon. Civil society engagement in the EITI is inherently valuable and important; indeed, the procedural interactions that arise from implementation are arguably more important than the actual reports the EITI produces. Yet, serious challenges to civil society engagement remain in both case study countries, as demonstrated by the recent arrests of civil society activists in Gabon.

Specifically, the research team finds that:

- Civil society is engaged in the EITI. Its members are active in meetings and use the process to pursue policy changes. Still, neither country has a political environment that is conducive to a free civil society. Recent events in Gabon raise serious questions about

the extent to which civil society groups can freely operate in an EITI context when serious constraints are imposed by the government. Civil society operates more freely in Azerbaijan, but there are real constraints there as well.

- Civil society capacity has improved since the EITI was launched. Some members have developed expertise and have been able to influence the process. Financial and technical constraints remain major concerns.
- Revenue data from governments and companies are available and reconciled. However, both countries have not adequately met the EITI requirement for all data to be audited to international standards to ensure reliability. Companies are not systematically required to have their data certified by independent auditors, and the EITI does not have clear guidelines for how governments demonstrate that their data is audited to international standards and reconciled with their national budgets.
- Data are disseminated to the public through websites and other media, as required by the EITI rules, but both countries lack a strategy for coherent and clear dissemination, which inhibits the public's engagement.
- Both governments appear willing to consider civil society's views on limited issues. Continued international engagement is required to enable civil society to hold governments accountable.
- The EITI has provided an entry point for civil society to raise significant issues about the management of natural resource wealth which are not directly covered by the EITI itself, such as the transparency of companies' contracts and of public expenditures. Although this has not translated into significant policy changes, this is an important step forward in generating broader debate on management of natural resources.

Based on these findings, the research team proposes the following recommendations:

RECOMMENDATIONS FOR THE EITI SECRETARIAT AND BOARD

1. Pressure implementing governments to allow civil society to operate freely. Civil society is harassed and intimidated in some countries, especially Gabon, which inhibits its engagement in the EITI. Civil society engagement is an important part of the EITI process, and government interference weakens its integrity.

2. Institute three levels of the EITI managed by the EITI Secretariat:

- **EITI Bronze:** current requirements.
- **EITI Silver:** disaggregated reporting of company data.
- **EITI Gold:** contract and expenditure transparency added.

By providing three levels of Validation, the EITI could further recognize the best performers without harming those countries that choose to participate as before. A tiered system could incorporate important data concerns (disaggregation) and other transparency issues (contract and expenditure transparency) into an EITI framework, provide incentives for additional reforms by Candidate countries, and clarify the actual achievements of disparate states.

3. Ask supporting governments to implement the EITI at home, make disclosure of payments to governments mandatory for all extractive companies listed on their home stock exchanges, and provide concrete support for EITI implementation in Candidate

countries. If supporting governments implemented the EITI, it would raise the initiative's credibility in countries where the EITI is viewed as a double standard. Stock exchange listings are an important point of leverage for companies seeking access to capital, and mandatory disclosure at this level would bolster transparency. Also, supporting governments should be pressured to do more to support EITI implementation in Candidate countries, employing resources rather than mere rhetoric.

4. Require that civil society representatives of the multi-stakeholder group (MSG) be selected by civil society. Currently, some governments nominate civil society representatives to the MSG rather than having civil society groups select their own representatives. This practice reduces the credibility of those representatives and the ability of civil society to effectively engage in the process.

5. Give Validators clear guidelines to look beyond the paper trail and focus instead on actual implementation as it happens on the ground. Despite progress, civil society still has concerns over implementation that only an in-depth Validation process can address.

6. Define clear minimum standards for a government to fulfill Validator Grid Indicator #13. Grid Indicator #13 requires government accounts to be audited to international accounting standards, but the EITI Secretariat has never clarified the government equivalent to the company standard defined by the International Accounting Standards Board (IASB).

7. Work towards mainstreaming the EITI so that it becomes a standard indicator of transparency. The more widely the EITI is used as a standard metric – for example, in shareholder activism for corporate social responsibility or transparency rankings of states – the more important it will become for governments and companies to join and implement. This will raise the benefits of adherence to its standard and improve the reputations of stakeholders that join, a significant reward already.

8. Increase civil society capacity-building efforts and coordination of existing activities among external actors. Many supporting embassies and international financial institutions (IFIs) already have begun capacity-building efforts, but there is little evidence that any of these activities are coordinated in the field. More coordination would allow civil society coalitions to consolidate gains already made and identify new areas for future growth.

9. Ask the World Bank to stop using the EITI brand for its initiatives (EITI ++) and to **reconsider management of its Multi-Donor Trust Fund (MDTF).** The World Bank currently operates an initiative called EITI ++. Having a separate organization use a similar name for a different purpose causes confusion. Currently, the World Bank's MDTF that supports EITI implementation reaches civil society via governments, which increases the risk of governments co-opting civil society.

RECOMMENDATIONS TO THE GOVERNMENT OF AZERBAIJAN

1. Establish a multi-stakeholder group and a country work plan with defined roles and responsibilities to govern EITI implementation. An ad hoc EITI framework in Azerbaijan

inhibits meaningful stakeholder engagement, causing civil society organizations to lag behind the government in overseeing the implementation process. More formal structures will increase the benefits of civil society participation and help the government meet the requirements of Validation Grid Indicators #4 and #5.

2. Allow more freedom in media sources. Do not intimidate reporters or suppress stories.

The research team found evidence in Azerbaijan that intimidation and suppression have led to media self-censorship. More press freedom will improve civil society's ability to engage in the EITI.

3. Certify that government and company reports are based on accounts audited to international standards. There are not adequate measures taken to ensure that both government and company data entering the reports is reliable, only that the information provided by companies and governments has been reconciled. Having audited accounts will help the government meet the requirements of Validation Grid Indicators #12 and #13.

4. Report monetary value of in-kind receipts and request an independent administrator to reconcile government's reporting with budget outcomes. There are no monetary amounts attached to the payments the government receives in oil and gas. Giving these payments a corresponding value will provide a better understanding of the true revenue stream.

5. Create a communications strategy for disseminating the EITI report results. Current dissemination takes place at irregular intervals and is dominated by government press. A more comprehensive plan with clearly defined roles and responsibilities would allow other perspectives to be heard.

6. Educate government employees in the Tax and Finance Ministries on the EITI. Currently, the EITI is a very centralized process within the Azerbaijani government, with only a handful of government employees engaged in the process. Engagement from other ministries outside of the State Oil Fund of Azerbaijan (SOFAZ) will improve government accountability.

7. Codify the EITI requirements into law. This will make reporting from companies and government ministries mandatory and will help to ensure meaningful compliance. It will also more clearly define roles and responsibilities, which will strengthen civil society.

RECOMMENDATIONS TO THE EITI GABON MULTI-STAKEHOLDER GROUP

1. Require that all companies making material payments are included in the next report and provide information on the proportion of revenues not covered by the report. Without information on the proportion of total revenues covered, discrepancies are difficult to interpret – they could represent good revenue management or company self-selection. The EITI MSG should define material payments and require that all extractive industry companies report accordingly to the Independent Expert. If companies fail to report, the Independent Expert should include estimates of revenues not covered in the reconciliation. This should enable Gabon to meet the requirements of Validation Grid Indicator #18.

2. Require that all companies submit audited reports. The EITI MSG should require that all EI companies provide the Independent Expert with reports audited to international standards, not only principal companies. This should ensure that Gabon meets the requirements of Validation Indicator Grid #12.

3. Create a communications strategy for disseminating the EITI report results. The EITI information dissemination is weak. The EITI MSG should identify a communications focal point among its members with the responsibility, authority and necessary resources to launch the communications plan now and to lead communication strategies in the future. This will help Gabon meet the requirements of Validation Grid Indicator #18.

4. Include timber in the EITI reports. Given Gabon's recent interest in nature conservation as a means to diversify into eco-tourism, inclusion of timber in the EITI would capitalize on gains already made by the Gabonese environmental law (16/93) relating to the improvement and protection of the environment. The EITI MSG should require that timber companies be included in the EITI as a means to monitor forest management and logging activities in areas already under protection by law. There is nothing in the EITI framework that prohibits the inclusion of timber, as witnessed by EITI implementation in Liberia.

RECOMMENDATIONS TO THE GOVERNMENT OF GABON

1. Respect the right of civil society organizations (CSOs) to operate freely without fear of harassment. The Gabonese government should immediately drop all charges against the PWYP coordinator and EITI MSG member Marc Ona and other anti-corruption campaigners who were arrested on December 31st, 2008. Unwarranted government action against civil society activists prevents the country from realizing the full benefits of civil society engagement in the EITI.

2. Publicize the results of the government's oil revenue projection and estimation model. By making the results of the oil revenue projection and estimation model public, interested parties will be able to compare projected revenues with actual revenues received - conferring additional legitimacy to government figures and the EITI reports. This is especially useful since audited government accounts are not published in a timely fashion.

3. Appoint permanent staff to support EITI implementation. The research team applauds the government for giving weight to the EITI by appointing senior officials to the Technical Committee and MSG. Appointing permanent technical staff, however, would relieve some of the pressures already felt by members, help clarify roles and responsibilities going forward, and provide additional assurance that Gabon is in compliance as it works toward Validation.

METHODOLOGY

The purpose of this study is to evaluate whether EITI implementation has increased revenue transparency and enabled civil society and the public to hold governments to account for the management and use of revenues. Specifically, the study assesses certain key elements of the EITI process: the opening of a political space for informed civil society, data disclosure and dissemination practices that enhance efforts to curb corruption, and whether these lead to

government accountability and democratic debate on resource revenue management.

The study draws on academic literature and reports, but is mainly based on field research in two case study countries: Azerbaijan and Gabon. Azerbaijan and Gabon were chosen because they have implemented the EITI for several years, yet they are at different stages of implementation. They face diverse challenges and possess different historical, cultural, and political backgrounds, thus providing the contrast necessary for an insightful comparative exercise.

The research team carried out face-to-face interviews, ranging from half an hour to two hours, following a pre-established list of questions to ensure consistency. Field interviews took place between October 26th and November 1st 2008; phone interviews took place between September and December 2008 (see Appendix I for a list of interviews). Interviews covered the following key groups of actors in the EITI process to gather a balanced view of implementation and the role of civil society:

1. Journalists and CSOs working on a range of issues, including CSOs from the PWYP coalition and CSOs outside of it. Interviews examined the level of understanding of the EITI, obstacles faced in engaging in the EITI process, and any assistance that the international community affords them.
2. Political actors, including national government officials, parliamentarians and state-owned company officials. Interviews examined perceptions of the usefulness of civil society engagement and public opinion on transparency and the EITI, and any support they offer to CSOs wishing to engage in the EITI.
3. Private company officials. Interviews focused on perceptions of EITI implementation (especially civil society engagement) and any contact with civil society in their area of operation.
4. Supporting institutions, including diplomatic missions of Western governments and officials from the IMF, World Bank, African Development Bank and UNDP. Interviews examined types of actions from the international community that best support civil society engagement in the EITI.

The study assesses EITI implementation to date in each country, but should not be interpreted as a full EITI Validation. Specific recommendations for each country are supported by evidence from interviews and research. Global recommendations for the EITI draw on comparisons between Azerbaijan and Gabon, as well as overall trends identified in published research on civil society engagement in the EITI and other comparable voluntary initiatives.¹

¹ This methodology for arriving at recommendations parallels that used by the CIVICUS Civil Society Index (<http://www.civicus.org/civicus-home>), one of the few organizations carrying out systematic analysis of civil society organizations. In the absence of an existing empirical and theoretical framework to analyze civil society engagement, CIVICUS finds it necessary to consider the strengths and weaknesses of civil society by country, its contextual limitations and develop suggestions for improvement from there.

RESOURCE CURSE BACKGROUND

The “resource curse” describes an economic situation in which resource wealth correlates negatively with economic growth and/or basic social indicators. Many emerging markets throughout the world have long histories with the resource curse. At least half of the OPEC nations were poorer in 2005 than in 1975.² Poverty in Venezuela increased over the last 25 years despite over \$600 billion in oil revenues;³ despite decades of oil wealth, 84% of Nigeria's population lives on less than \$2 a day.⁴

The resource curse can also precipitate conflict. While conflict worldwide is decreasing, civil wars in oil-rich countries are on the rise.⁵ The resource curse is believed to facilitate civil war by making governments increasingly weak and unaccountable, by increasing perceptions of disproportionate wealth distribution, by facilitating extortion and looting, and by financing militarization of the state and competing groups.⁶

Not every resource-rich country experiences the resource curse.⁷ The academic literature identifies three common causes of the resource curse: Dutch disease, perverse political incentives, and inefficient consumption and investment.

Dutch Disease

Dutch disease occurs when sudden growth in natural resource exports increases the real value of a country's currency such that the nation's manufacturing and agricultural goods become less competitive, thereby adversely affecting industries that were once major contributors to GDP. Dutch disease can be averted by saving revenues from extractive industries or investing them into other sectors of the economy for a more diversified economic future. Dutch disease has been observed in Gabon, where manufacturing and agriculture now account for only 10% of GDP,⁸ and Azerbaijan, where the rapid growth in real GDP is increasingly reliant on oil and gas.⁹

Perverse Political Incentives

Significant resource wealth can create perverse political incentives, perpetuating political dynasties and enriching the few at the expense of the many. Governments neglect more stable,

² Michael Ross, "Blood Barrels: Why Oil Wealth Fuels Conflict," *Foreign Affairs*, (May/June, 2008).

³ Oil Revenue Transparency: A Strategic Component of US Energy Security and Anti-Corruption Policy. (Global Witness, March 2007). http://www.globalwitness.org/media_library_get.php/379/us_briefing_paper_final.pdf.

⁴ UN Human Development Indices: A Statistical Update 2008. (United Nations Development Program, 2008). <http://hdr.undp.org/en/mediacentre/news/title.15493.en.html>.

⁵ Oil-rich countries had one-fifth of the world's civil wars in 1992. By 2008, they had one-third of them. Michael Ross, "Blood Barrels: Why Oil Wealth Fuels Conflict," *Foreign Affairs*, (May/June, 2008).

⁶ Ian Bannon and Paul Collier, eds. *Natural Resources and Violent Conflict: Options and Actions*, (Washington, DC: World Bank, 2003). Ch 2: Ross, Michael, "The Natural Resource Curse: How Wealth Can Make You Poor".

⁷ Nigeria and Venezuela were hit hard by the resource curse, but Botswana seems to have avoided it entirely. Scholars suggest the causes for the resource curse identified in this section account for the differences in outcomes among these countries.

⁸ Gabon Trade Brief, *World Trade Indicators 2008 database*, (World Bank, April 2008).

⁹ "Boom and gloom", *Economist Intelligence Unit ViewsWire*, 8 Mar 2007.

sustainable revenue streams and rely instead on petrodollars,¹⁰ distancing themselves from citizens who would demand representation if subjected to taxation. Leaders who control enormous revenue streams and face uncertain political futures may choose to engage in clientelism to placate opponents or siphon rents to benefit personally from political office.¹¹ These leaders tend to misallocate funds, extract resources inefficiently, and behave in a repressive manner.¹²

Countries can eliminate these perverse political incentives by creating institutions that promote accountability and state competence.¹³ In the words of Senator Richard Lugar of Indiana, “When oil revenue in a producing country can be easily tracked, that nation’s elite are more likely to use revenues for the vital needs of their citizens and less likely to squander newfound wealth on self-aggrandizing projects.”¹⁴ Countries with good institutions actually tend to benefit from resource booms,¹⁵ since leaders face significant penalties for misallocation.

Inefficient Consumption and Investment

Resource booms increase spending in both the public and private sectors by increasing expectations of future income. With unrealistic revenue projections, resource-rich governments often incur foreign debt faster than other countries by borrowing against future production.¹⁶ Resource-rich governments generally pay less attention to public spending quality, at the expense of development opportunities.¹⁷ The long-run positive effects of investment are smaller in resource-rich countries than elsewhere.¹⁸

THE EITI BACKGROUND

By supporting increased transparency in the financial transactions between extractive companies and the host governments of resource-rich countries, the EITI aims to counter aspects of the “resource curse.” The EITI, a voluntary international initiative, unites relevant stakeholders – governments, companies, civil society groups, investors, and international organizations – to increase government accountability and improve a country’s prospects for growth, development, poverty reduction, and democratic debate over resource management.

¹⁰ Ian Gary and Terry Lynn Karl, *Bottom of the Barrel: Africa's Oil Boom and the Poor*, (Catholic Relief Services, 2003).

¹¹ James A Robinson, Ragnar Torvik, and Thierry Verdier "Political foundations of the resource curse," *Journal of Development Economics*, 79 Issue 2, (April 2006), 447-468.

¹² Ibid.

¹³ James A Robinson, Ragnar Torvik, and Thierry Verdier "Political foundations of the resource curse," *Journal of Development Economics*, 79 Issue 2, (April 2006), 447-468.

¹⁴ <http://lugar.senate.gov/press/record.cfm?id=304878>.

¹⁵ Ibid.

¹⁶ Ian Gary and Terry Lynn Karl, *Bottom of the Barrel: Africa's Oil Boom and the Poor*, (Catholic Relief Services, 2003). Volatile commodity prices may be partially to blame for unrealistic revenue projections.

¹⁷ James A Robinson, Ragnar Torvik, and Thierry Verdier "Political foundations of the resource curse," *Journal of Development Economics*, 79 Issue 2, (April 2006), 447-468 and supported in the analysis of panel data in Paul Collier and Benedikt Goderis, "Commodity Prices, Growth, and the Natural Resource Curse: Reconciling a Conundrum", (CSAE WPS/2007-15, August 2007).

¹⁸ Ibid.

Of the twenty-four countries currently committed to EITI implementation, only ten have published an EITI report. The quality and completeness of reports has varied across countries.¹⁹ The level of accuracy with which independent experts have been able to reconcile payments and revenues has also proven highly variable.²⁰

Each EITI Candidate country must undergo an independent Validation process within two years of acceding to the initiative. Validation, an essential part of the EITI, is the process by which the quality of EITI implementation within a country is evaluated with reference to the EITI's global standard. It is both an opportunity for dialogue and self-assessment at the country level and a guarantee of the EITI brand across countries. Validation ensures a meaningful commitment on the part of the government to implement the EITI. In addition to technical issues, Validation criteria encompass the involvement of the multi-stakeholder group and civil society, assessing such issues as whether measures have been taken to deepen awareness about the implementation of the EITI and build capacity within government and civil society.

Azerbaijan and Gabon, the two case study countries, have made significant strides in implementing the EITI criteria and are pending Validation. Both countries have reconciled company payments and government receipts, published data, and engaged civil society to a degree. Between the two countries, Azerbaijan has gone further than Gabon in EITI implementation and will be the first country to undergo Validation.

Despite its relatively narrow focus on disclosure of data on extractive industry revenues,²¹ the EITI embodies a host of associated development objectives and is often credited with fueling a debate on broader issues. Implicit in its goal of strengthening governance by improving transparency and accountability in the extractives sector is an enhanced role for civil society. By requiring civil society to be actively engaged as a participant in the design, monitoring and evaluation stages, the EITI seeks to support its role in holding governments to account for extractive industry revenues and promoting democratic debate about the management of natural resources. The extent to which civil society is engaged is, therefore, a crucial determinant in the successful realization of the EITI. As such, the EITI represents an important global multi-stakeholder initiative (MSI) that is not only attempting to combat the economic maladies of the resource curse, but also to promote and support government accountability and civic values.

¹⁹ World Bank Group, "Implementation Lessons Learned: EITI Policy Implications", Sustainable Development Network vice presidency, Oil Gas Mining and Chemicals Department, Policy and Operations Unit, (July 2008): 5.

²⁰ One example of this variance is Nigeria. In Nigeria's EITI report auditors found that both companies and the Central Bank of Nigeria reported making and receiving payments that the other could not corroborate. Auditors in Nigeria also found a large quantity in unpaid crude oil invoices from the national oil company to the government. At the same time, EITI in Nigeria has received the highest degree of political backing in the form of an EITI National Assembly bill passed into law in May 2007 and substantive assistance with implementation, as demonstrated by the Hart Group audit of oil industry and resulting action plan. As a result, efforts to promote transparency of fiscal resources even in the most conducive environments face serious obstacles. Endemic corruption, failed accounting and poor capacity to account for resources are among the impediments to Validation.

²¹ The scope of this disclosure is itself subject to debate. Nigeria and Mongolia require the publication of payment data by individual company, also known as disaggregated reporting. While not required for EITI compliance, the issue of disaggregated reporting has become important for some civil society groups. More information on the disaggregation debate is included in the Azerbaijan case study.

CIVIL SOCIETY BACKGROUND

Civil Society Definition

The term civil society²² as used in this report is defined as “the realm of organized social life that is voluntary, self-generating, (largely) self-supporting, autonomous from the state, and bound by a legal order or set of shared rules.”²³ As defined, civil society is not in opposition to the state or private enterprise per se, but rather seeks to engage with these sectors to achieve shared goals.²⁴

Civil Society Engagement

There is growing interest in the significance and scope of organizations that occupy the realm of civil society. As privately structured organizations with distinct public objectives, they have emerged as potentially important strategic partners in the resolution of complex modern problems. In fact, the idea that CSOs play an important role in development has long been recognized.²⁵ Their support from and connection to the grassroots, their relatively unencumbered management structure, their adaptability and their ability to raise funds from both the public and private sector have made CSOs rising players in developed and developing countries alike.²⁶ Some would even concede that a dense civil society is almost universally seen as a necessary condition for modern liberal democracy.²⁷

In practice however, civil society can encompass a wide range of formal and informal organizational arrangements and can represent a vast collection of ideas and ideologies. In addition, the capacity of civil society and the space in which it is allowed to operate varies widely between groups, areas of interest, countries, and continents. Civil society may be able to play a crucial role in important social and political developments, such as good governance, community-driven development, and human rights. But the jury is still out as to whether "civil society is the 'magic bullet' ensuring sustainable human progress or yet another grand idea, which fails in practice".²⁸

Another argument would submit that despite its potential weaknesses, civil society is a key ingredient in the development of robust democratic institutions precisely because it is distinguished from the state by its voluntary nature and from the realm of private enterprise by its

²² Often referred to as the “third sector,” civil society emerged as a formal concept in reaction to the development of modern capitalism and was defined by early European political philosophers [See Hume (A Treatise of Human Nature), Smith (The Wealth of Nations) and Ferguson (Essay on the History of Civil Society)] as the relationship between the state, the market and society.

²³ Diamond, Larry, "Rethinking Civil Society: Toward Democratic Consolidation", *Journal of Democracy*, Vol. 5, No. 3 (July 1994): 4-17.

²⁴ It is also important to note that by this definition, the media is not considered part of civil society in as much as outlets are typically private enterprises or run by the state.

²⁵ Civil Society and Aid Effectiveness – Concept Paper (draft of Sept. 17, 2007). World Bank.

²⁶ Salamon, Lester M., Sokolowski, S. W. and List R., Global Civil Society. An Overview. (Center for Civil Society Studies, Institute for Policy Studies, The Johns Hopkins University, 2003).

²⁷ Fukuyama, Francis, Social Capital and Civil Society (April 2000). IMF Working Paper No. 00/74 Available at SSRN: <http://ssrn.com/abstract=879582>.

²⁸ Edwards, Michael. 2004. Civil Society. Cambridge: Polity Press.

interest in securing public goods. In this sense, civil society has the potential to not only restrict the power of the state and market, but also to legitimize them.

Voluntary Multi-Stakeholder Initiatives

The last decade has seen the emergence of MSIs across a wide range of sectors that specifically require civil society engagement. Although there is currently no conclusive empirical evidence relating civil society engagement to the relative success of voluntary initiatives, MSIs are becoming increasingly widespread – suggesting that civil society engagement is becoming an accepted best practice.²⁹

Broadly speaking, MSIs aim to create self-reinforcing partnerships. Each stakeholder is expected to enjoy a unique set of skills and perspectives, which when brought together permit a more holistic and comprehensive approach to the initiative in question.³⁰ Much of the literature suggests that CSOs play a vital role in the success of such initiatives by bringing to bear a broad range of competencies and a direct connection to the grassroots that in turn confers a greater degree of authenticity to an initiative than would otherwise exist.³¹

There is a growing international consensus that the problems facing today's world are simply too complex for any one sector to solve alone and that another model for action is required. Even the creation of an MSI and the dialogue that inevitably ensues is a positive accomplishment in itself. If nothing else (and if practiced in good faith), civil society engagement in MSIs allows for greater communication across sectors, is a good step toward reinforcing democratic governance, can hold other stakeholders accountable for their commitments, and lends much needed legitimacy to governments.

Civil Society Engagement in the EITI

A key tenet of the EITI is civil society engagement.³² In this regard, the EITI has already recorded significant achievements and a number of countries have taken important steps to guarantee meaningful civil society engagement. The governments of Mauritania and Peru, for example, specifically requested that civil society representatives to the EITI undergo an internal selection process to avoid being appointed by the government.³³ Going further, the Nigerian EITI Secretariat, recognizing the need to build capacity within civil society, has carried out a number of activities including several road shows and training workshops for civil society (and

²⁹ The UNDP on CSOs and development states: “Substantive partnership with CSOs is of greater strategic importance than ever given the integral role of civil society actors in development. There is growing recognition that engagement with CSOs is critical to national ownership, accountability, good governance, decentralization, democratization of development co-operation, and the quality and relevance of official development programmes.” <http://www.undp.org/partners/cso/> .

³⁰ Multi-stakeholder Partnerships: Issue Paper, Kuala Lumpur. (Global Knowledge Partnership, 2003).

³¹ Three examples of MSIs in operation today are the 2002 Bali Principles of the World Summit on Sustainable Development (or Earth Summit 2002), the UN Global Compact, and the International Criminal Court, as established by the Rome Statute.

³² Point 5 of the EITI Validation criteria states that, “Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate.”

³³ Goldwyn, David, ed., *Drilling Down: The Civil Society Guide to Extractive Industry Revenues and the EITI*. (New York: Revenue Watch Institute, 2008). <http://www.revenuewatch.org/news/publications/drilling-down.php>.

the media).³⁴ Civil society groups have also successfully exerted pressure to improve EITI implementation in Candidate countries. For example, civil society in Liberia advocated for the inclusion of timber in the EITI reports, and civil society in Ghana pushed for the publication of payments from the federal government to provincial councils as well as the publication of information about specific government expenditures.³⁵

In addition, Publish What You Pay (PWYP), an international coalition of over 350 CSOs in 59 countries promoting transparency in the extractive industries, has taken a leading role in coordinating the participation of civil society in the EITI.³⁶ Although the message of PWYP is distinct from the EITI in that it advocates for the mandatory³⁷ disclosure of payments and receipts, PWYP is involved in civil society capacity building on revenue transparency issues and has proven to be an important driving force behind meaningful EITI implementation.

In spite of these encouraging examples and the existence of supportive mechanisms,³⁸ the degree and quality of civil society engagement in the EITI varies widely. A joint report by PWYP and Revenue Watch Institute (RWI) highlights the biggest challenges facing civil society engagement with the EITI.³⁹ Challenges range from the complexity of the extractive industries and the limited number of CSOs with adequate knowledge to participate fully in the process (as in Cameroon) to harassment and intimidation, including the arbitrary arrest of civil society activists by government authorities in Congo Brazzaville and Gabon, among others. These problems make it difficult for civil society to play a major role in the EITI and raise doubts that other stakeholders are genuinely interested in civil society participation. Furthermore, as a voluntary initiative, the EITI is largely dependant on the good will of both the government and natural resource companies, again potentially affecting the ability of civil society to engage with the EITI.

The EITI represents an important step toward transparency in the extractive industries, but like other MSIs, there has been no systematic appraisal of whether civil society engagement with the EITI is truly meaningful or effective. The following two country case studies, upon which conclusions and recommendations are drawn, will help address this gap in the literature.

³⁴ EITI website, <http://eitransparency.org/node>.

³⁵ Eye on EITI: Civil Society Perspectives and Recommendations on the Extractive Industry Transparency Initiative (Revenue Watch Institute, 2006).

³⁶ PWYP website, <http://www.publishwhatyoupay.org>.

³⁷ PWYP does not expect the EITI, an initiative that is voluntary for governments to join, to be implemented in every resource-rich country. Through advocacy and direct lobbying PWYP coalitions are seeking to affect existing legal frameworks and global institutional and regulatory mechanisms to attain these objectives. The idea is to seek amendments to existing reporting requirements at the national and international level to include payments made by extractive companies (both state-owned and multi-national) and receipts received by associated governments. To achieve this, PWYP is targeting legal frameworks for resource revenues, stock exchange listing requirements and international accounting standards, among others.

³⁸ EITI supporting governments also make financial contributions to the World Bank administered MDTF, which is used to EITI implementation in Candidate countries support. Depending on the context, this might also include funds for civil society capacity building and training. In principle, the Fund can also be used to fund international CSOs that produce information and guidelines on EITI, including funding the EITI Secretariat.

³⁹ Eye on EITI: Civil Society Perspectives and Recommendations on the Extractive Industry Transparency Initiative (Revenue Watch Institute, 2006).

II. CASE STUDY: AZERBAIJAN

COUNTRY BACKGROUND

The Political Context

After decades of Soviet totalitarian rule, Azerbaijan has experienced significant political changes and moved in a more semi-authoritarian direction.⁴⁰ Semi-authoritarian regimes “allow little real competition for power, thus reducing government accountability. However, they leave enough political space for political parties and organizations of civil society to form, for an independent press to function to some extent, and for some political debate to take place.”⁴¹ The country’s nascent democratic values are an improvement over the past. However, the weak consolidation of democratic institutions has hindered the development of a capable and effective civil society.

Politics in the unitary, highly centralized Republic of Azerbaijan preclude true contestation, and the country’s dynastic ruling family is a primary symbol and cause of the overall lack of political freedom. Following the country’s independence from the Soviet Union in 1992, all meaningful political power was vested in Heydar Aliyev. The current president, Ilham Aliyev, acceded to power in 2003 following his father’s resignation. He was overwhelmingly re-elected in 2008, though the most important segments of the country’s weak and fractionalized opposition boycotted the polls.

The presidency and its sprawling ministerial bureaucracy subordinate all branches of government in Azerbaijan. The 125-seat unicameral National Assembly (“Milli Mejlis”) exercises minimal independence from the executive and is dominated by the ruling Yeni Azerbaijan Party. Presidential and parliamentary elections fail to satisfy international standards of legitimacy, and are characteristic of the country’s imperfect civil liberties.

The people of Azerbaijan are nominally protected by constitutional guarantees of free speech, assembly, and press. In practice, the government has limited these freedoms.⁴² The Azerbaijani state’s history of intimidation constrains the freedom of its citizenry. Consequently, individuals and CSOs are cognizant of implicit, unspoken limits to their activism.

The Media

The state of Azerbaijan’s independent media is “grave” and deteriorating according to representatives from the Organization for Security and Co-operation in Europe (OSCE).⁴³ Azerbaijan’s press freedoms are also declining in comparative terms, having fallen to 139th place

⁴⁰ For an in-depth look at political freedom in Azerbaijan, see Freedom House, “Azerbaijan Country Report (2008),” *Freedom House*, <http://www.freedomhouse.org/template.cfm?page=22&country=7346&year=2008>.

⁴¹ Marina Ottaway, *Democracy Challenged: The Rise of Semi-Authoritarianism* (Washington, D.C.: Carnegie Endowment for International Peace, 2003), 3.

⁴² For details, see the U.S. Department of State, *Country Reports on Human Rights Practice, 2007* (Washington, D.C.: U.S. Department of State, 2007).

⁴³ *Ibid.*

in the latest global assessment by Reporters Without Borders.⁴⁴ The Azerbaijani government has inhibited the autonomy of media outlets by failing to renew operating licenses and repressed individual journalists through violence, detention based on charges of criminal defamation or libel, and subtle intimidation. Azerbaijan imprisoned more journalists than any other OSCE country in 2007, leading many reporters to appeal to foreign embassies for political asylum.⁴⁵ Azerbaijani correspondents frequently express frustration that intimidation inevitably ensues from reporting on certain sensitive subjects, such as the President's family or individual corruption within the ruling elite.

State-owned or pro-government media dominate reporting despite the presence of other news sources. Several pro-opposition newspapers exist, though they often contain unsubstantiated ad hominem attacks on government figures that undermine rather than contribute to the sophistication of public debate. There are few independent newspapers capable of investigative journalism, and circulation of non-governmental media is low. Moreover, the vast majority of Azerbaijanis receive their information from television, which has a high degree of state control.⁴⁶ With the government's recent decision to ban foreign radio broadcasts, its grip over this medium has tightened as well.⁴⁷

The Economic Context

Azerbaijan's immediate economic welfare is inextricably tied to oil, though its role as a natural gas producer is increasingly important. In 2007, the country's oil output grew rapidly, accounting for 59% of overall GDP.⁴⁸ The extractive industries boom has increased nominal GDP per capita from \$880 in 2003 to roughly \$3,663 in 2007.⁴⁹ Over the same time period, the share of the population in poverty decreased from almost 40% to 16%.⁵⁰ On the other hand, rapid and undiversified growth has generated concerns about sustainability, equity, inflation, and the ramifications of commodity price fluctuations.

Over 30 international and state-owned oil companies from more than one dozen countries are responsible for exploiting Azerbaijan's fossil fuel resources. The Ministry of Energy and Industry negotiates the production sharing agreements (PSAs) that govern Azerbaijan's roughly two dozen onshore and offshore fields. The State Oil Company of Azerbaijan Republic (SOCAR) oversees declining output from Soviet-era fields, is a significant stakeholder in the country's PSAs, and is entitled to significant revenue streams. SOCAR, which has been likened

⁴⁴ Reporters Without Borders, "Worldwide Press Freedom Index 2007." http://www.rsf.org/IMG/pdf/index_2007_en.pdf.

⁴⁵ The Representative on Freedom of the Media, *Yearbook 9: 2007* (Vienna: Organization for Security and Co-operation in Europe, 2008).

⁴⁶ Of six television news channels, two are state-owned, three are maintained by government sympathizers, and one is private but influenced by the government Sabit Bagirov, *Azerbaijani Oil: Revenues, Expenses and Risks*, (Baku: Central European University, 2007), 85.

⁴⁷ http://www.rferl.org/content/Azerbaijan_Bans_RFERL_Other_Foreign_Radio/1364986.html.

⁴⁸ International Monetary Fund, *Republic of Azerbaijan: 2008 Article IV Consultation*, (Washington, D.C.: International Monetary Fund, 2008).

⁴⁹ Ibid.

⁵⁰ Ibid.

to a “state within a state,” is widely accused of secrecy and corruption.⁵¹ The vast majority of Azerbaijan’s oil production and reserves, among the twenty largest in the world, derive from BP operation of the Azerbaijani Chirag Guneshili (ACG) field on behalf of an international consortium.⁵²

The influx of oil revenues presents both opportunities and risks, as the body of literature on the resource curse attests. To improve management of state resources, former President Heydar Aliyev created SOFAZ in 1999. Quarantined from the general budgetary process and modeled on Norway’s successful sovereign wealth fund (with the conspicuous exception of parliamentary oversight), SOFAZ was designed to promote stabilization, guarantee savings, and deter “Dutch disease.”⁵³ Due to a dramatic increase in profit oil and other payments from companies, SOFAZ’s resources have grown exponentially from roughly \$1.2 billion in 2006 to over \$19 billion in 2008.⁵⁴

SOFAZ has been lauded for its competent leadership and reformist practices.⁵⁵ Though SOFAZ is an exemplary model for other state agencies in Azerbaijan, it is not immune from government abuse. Michael Cohen, a Western energy analyst, argues that “restrictions on presidential spending of the oil fund are not being effectively controlled” and that SOFAZ has been subject to capricious expenditures.⁵⁶ President Aliyev has recently specified limits on the appropriate size and destination of SOFAZ spending, but the degree to which they will be enforced remains uncertain.⁵⁷

In general, the Azerbaijani state is prone to criticism for its collection and spending of the country’s oil revenues.⁵⁸ According to Bagirov, oil revenues’ potential public benefits go

⁵¹ [Princeton University interview (name withheld, SOCAR), Baku, October 30, 2008.] According to one correspondent, SOCAR is not transparent or efficient, and employs 65,000 people for minimal production. [Princeton University interview with Kamalya Mustafayeva, Correspondent , Upstream, Baku, 30 Oct 2008.] Others claim SOCAR withholds pertinent information from the public. [Princeton University interview with Himayadar Humanitarian Progress Public Union staff, Baku, 31 Oct 2008.] Some Western diplomatic sources do not have confidence in SOCAR’s revenue streams. A civil society activist says SOCAR is the “main problem” or impediment to improved transparency. [Princeton University interview with Galib Efendiev, Regional Consultant for Caucasus and Central Asia, RWI, Baku, October 29, 2008.] However, some representatives from IFIs and Western diplomatic sources defended SOCAR by saying it is improving, is currently under good management, is benefiting from young, reformist employees, is now included in the consolidated budget, and may be audited to international standards in the near future.

⁵² Energy Information Administration, *Azerbaijan Energy Profile*, U.S. Government, http://tonto.eia.doe.gov/country/country_energy_data.cfm?fips=AJ.

⁵³ [Princeton University interview, attributed to Baiba Rubesa, Government and Public Affairs Manager, StatoilHydro, Baku, October 29, 2008.]

⁵⁴ At current exchange rates of approximately .8 New Manat to 1 U.S. Dollar. Tax revenues to the state budget will be eclipsed, growing from slightly over \$4 billion in 2006 to only \$8.2 billion by 2008. International Monetary Fund, *Republic of Azerbaijan: 2008 Article IV Consultation*, (Washington, D.C.: International Monetary Fund, 2008).

⁵⁵ For example, SOFAZ was a recipient of a United Nations 2007 Public Service Award for its efforts to improve transparency and accountability.

⁵⁶ Michael Cohen, "The Effect of Oil Revenues on Transition Economies," *Geopolitics of Energy*, 2006, 13.

⁵⁷ Ibid.

⁵⁸ See reports from the National Budget Group, www.nbg.az, for a detailed assessment of the government’s budget. The National Budget Group is particularly concerned about continued gaps in budget transparency and disclosure, the absence of economic or functional classification for much of the budget, the direction of expenditures (e.g.

unrealized due to low government capacity, a fragmented legal code, nonexistent checks and balances, conflicts of interest, and the weakness of democratic institutions, civil society, and independent media.⁵⁹

Corruption

Azerbaijan ranks in the bottom 30% of countries on the World Bank's World Governance Indicators; roughly 85% of countries outperform Azerbaijan on the specific measures of voice, accountability, and corruption.⁶⁰ According to Transparency International's 2008 Corruption Perceptions Index, Azerbaijan is perceived to be one of the world's 25 most corrupt countries.⁶¹

The government has pursued policies to improve the country's reputation, increase the president's prestige, attract foreign investors, or at least create the appearance of reform.⁶² In recent years, the regime has proscribed bribery, passed laws to improve disclosure and limit cronyism by public officials, disseminated a National Strategy for Increasing Transparency and Combating Corruption, and formulated a Freedom of Information Act. The government also prosecuted two ministers in 2005 on corruption-related charges, though the motivation for the case was perceived by civil society activists to be political.⁶³ Although many of these steps have not been implemented or enforced, Azerbaijan received a respectable score as "top reformer" in the most recent report by the International Finance Corporation (IFC) on ease of doing business.⁶⁴

External actors have also undertaken measures to combat corruption. IFIs and Western embassies engage in capacity building, technical assistance, and financial support for transparency initiatives by the government or CSOs.⁶⁵ Diplomats and IFI staff also promote anti-corruption, good governance reforms in private dialogue with the government, though in interviews many privately admitted that this approach has only limited impact when not attached to concrete funding or other forms of leverage.⁶⁶

towards security rather than social services), and unaccountable spending on construction projects. [Princeton University interview with Emil Omarov, Coordinator, National Budget Group, Baku, October 27, 2008.]

⁵⁹ Bagirov, 2007. For example, low government capacity derives from the country's recent inclusion in the Soviet Union and relatively short history as an independent nation.

⁶⁰ World Bank Institute, "Country Data Report for Azerbaijan, 1996-2007," *Governance Matters 2008*, WBI Multimedia Center, <http://info.worldbank.org/governance/wgi/pdf/c15.pdf>.

⁶¹ Transparency International, *2008 Corruption Perceptions Index*, *Transparency International*, http://www.transparency.org/news_room/in_focus/2008/cpi2008/cpi_2008_table.

⁶² President Aliyev has reportedly taken personal umbrage at corruption rankings of Azerbaijan and instituted reforms designed to improve how the country is perceived abroad. [Princeton University interview with World Bank country office staff, Baku, October 31, 2008.]

⁶³ [Princeton University interview with Members of Support for Economic Initiatives Public Union, Baku.]

⁶⁴ IFC, *Doing Business 2009: Country Profile Azerbaijan*, (Washington, D.C.: The World Bank, 2008).

⁶⁵ For example, the World Bank has implemented a Corporate and Public Sector Accountability Project to enhance the quality of financial reporting. [Princeton University interview with World Bank country office staff, World Bank, Baku, October 31, 2008.]

⁶⁶ [Princeton University interviews with western diplomatic sources, Baku, October 27 and 30, 2008.] [Princeton University interview with World Bank country office staff, Baku, October 31, 2008.]

The Extractive Industries Transparency Initiative

The EITI is the most prominent anti-corruption initiative in Azerbaijan because it specifically addresses extractive industries, which are central to Azerbaijan's economy. Azerbaijan joined the EITI in June 2003, motivated at least in part to address the country's reputational problems. It has been lauded as one of the most active EITI Candidate countries because of its early accession and commitment to the initiative.

In November 2003, a government committee ("the Committee") was formed to begin the process of EITI implementation. Civil society officially organized the Coalition for Improving Transparency in Extractive Industries ("the Coalition"), a body designed to influence the EITI in Azerbaijan, in May 2004.⁶⁷ The Committee, the Coalition, and companies agreed to a Memorandum of Understanding (MOU) in November 2004.⁶⁸ The MOU outlines guiding principles, waives confidentiality clauses for companies, defines the relationship between parties, and clarifies reporting procedures. According to Sabit Bagirov, a well-respected Azerbaijani extractive industries expert, most Coalition proposals to improve the early implementation of the EITI – particularly in relation to the form and content of company disclosure – were not incorporated into the MOU or the templates that had been formulated by the Committee and companies.⁶⁹ Despite dissension within the Coalition about the wisdom of participating in a process which was seen as flawed, a desire to promote rapid implementation of the EITI and position civil society to obtain future leverage over the initiative's evolution convinced concerned members of the Coalition to sign the MOU.⁷⁰

The MOU continues to guide EITI implementation in Azerbaijan, particularly since the country has not established a standing MSG or fully-costed work plan.⁷¹ Currently, private sector EITI reports are voluntary but all individual companies operating in Azerbaijan have acceded to the MOU and agreed to comply with the initiative's basic requirements.⁷²

Azerbaijan has issued eight EITI reports since 2003. These reports have suffered delays and discrepancies of varying magnitude.⁷³ The Coalition has highlighted these problems while the Committee says they are merely minor inconsistencies due to imperfect capacity and company voluntarism. Azerbaijan has until March 2010 to be deemed an EITI compliant country, though it has already begun the Validation process and hopes to announce its completion in early 2009.

⁶⁷ The Coalition's members are listed on its website: http://www.eiti-az.org/ts_gen/eng/koalisiya/k1.htm.

⁶⁸ Parties to the MOU are listed in the appendices of the latest EITI report: <http://www.oilfund.az/pub/uploads/swbtPV2M.pdf>.

⁶⁹ Sabit Bagirov, *Extractive Industries Transparency Initiative: Azerbaijan's Experience and Development Road Map*, (Baku: Coalition for Improving Transparency in Extractive Industries, 2007).

⁷⁰ Ibid.

⁷¹ The MOU does establish a Selection Group, composed of two members each of government, civil society, and companies, to engage in technical issues such as selecting an audit company. But the broader engagement of civil society is less formalized than an MSG would entail.

⁷² According to the 2007 EITI report, the Azerbaijan International Operating Company (AIOC) is the only extractive industry company or consortia not party to the MOU. As defined in the report, every company that comprises AIOC was an individual party to the MOU.

⁷³ According to Coalition statements, companies routinely issue delayed reports, similar discrepancies arise in all reports despite extensive experience with EITI implementation, the government and companies use different standards of measurement and terminology, and the selection process of the audit company is not competitive.

CIVIL SOCIETY

Civil Society Capacity

Although still imperfect, there is consensus among foreign governments, members of Azerbaijani government, oil companies, and CSOs that civil society capacity has improved since EITI implementation began in 2003. In 1999, most CSOs were inactive and controlled by the state,⁷⁴ but members of civil society today are more independent of government and more powerful. The Coalition includes some of the nation's best CSOs, some of whom are now considered experts in the field.⁷⁵ They do independent analysis and raise issues for public debate. CSOs now demonstrate political sensitivity in balancing positive and negative comments about the government.⁷⁶ CSOs also transmit their findings more effectively via increased media reporting on transparency and revenue management than they did before the EITI adoption.⁷⁷ Some stakeholders attribute all these changes directly to the EITI.⁷⁸

These improvements in civil society capacity are tempered by some mainly introspective criticisms. First, there is a wide consensus among stakeholders that further CSO capacity improvements are needed.⁷⁹ One oil company representative noted that civil society do not speak English – the language of the Azerbaijani oil industry – and do not understand the economics of petroleum and gas, but these facts were disputed by civil society.⁸⁰ They may not understand the issues presented at the EITI meetings⁸¹ and government sources believe only a small number are well-informed.⁸² Civil society advocates countered by claiming that CSOs in meetings knew the issues better than the government officials present.⁸³ Western diplomatic sources argue that many CSOs are tenuously held together by personalities, rather than sustainable structures.⁸⁴ One CSO raised concerns about whether organizations are "involved" enough with the EITI coalition to make decisions,⁸⁵ and several others expressed concern that other members were only involved for access to international funding and clout.⁸⁶ These concerns were also disputed by one Coalition member.⁸⁷

⁷⁴ [Princeton University interview with Himayadar staff, Baku, October 31 2008.]

⁷⁵ [This view was widely held as revealed in Princeton University interviews with Richard Scarborough, First Secretary, Royal Norwegian Embassy, Baku, October 30 2008, with World Bank Country Office Staff, Baku, October 31 2008, and with Nabat Mammadora, Azerbaijan Energy Officer, U.K. Embassy, Baku, October 27 2008.]

⁷⁶ [Princeton University interview with World Bank Country Office Staff, Baku, October 31 2008.]

⁷⁷ [A view confirmed in Princeton University interviews with Vahid Ahmadov, MP, Baku, October 30 2008 and Nabat Mammadora, Azerbaijan Energy Officer, U.K. Embassy, Baku, October 27 2008 and seemingly widely-held.]

⁷⁸ Ibid.

⁷⁹ A view held widely by Azerbaijani government sources, western diplomatic sources, and even several members of civil society during Princeton University interviews between October 27 and 31 2008.

⁸⁰ [Princeton University interview with Jamilya Gadiyeva, External Affairs Advisor, StatoilHydro, Baku, October 29 2008, and Gubad Bayramov, Princeton, January 28 2009.]

⁸¹ [Princeton University interview with IMF staff in Azerbaijan, Baku, October 27 2008.]

⁸² [Princeton University interview with (name withheld), Baku, October 2008.]

⁸³ [Princeton University interview with Gubad Bayramov, Princeton, January 28 2009.]

⁸⁴ [Princeton University interview with western diplomatic sources, Baku, October 31 2008.]

⁸⁵ [Princeton University interview with Himayadar staff, Baku, October 31 2008.]

⁸⁶ [Princeton University interviews with Himayadar staff, Baku, October 31 2008. and with Kamalya Mustafayeva, Upstream, Baku, October 30 2008.] The staff of Himayadar asserted that 80% of EITI Coalition members are interested more in extra funding sources than in substantial work.

⁸⁷ [Princeton University interview with Gubad Bayramov, Princeton, January 29 2008.]

Second, the breadth of civil society participation remains limited. Although there are over one hundred registered members in the Coalition, stakeholders report that only three to five CSOs – or about seven people – dominate Coalition information sources⁸⁸ and activities.⁸⁹ Several stakeholders agree that interest in the EITI is waning among coalition members.⁹⁰ However, Coalition members assert that this waning of interest is a direct result of government officials not taking CSO recommendations seriously.⁹¹

Finally, some CSOs report that existing EITI reporting is not rigorous⁹² or frequent⁹³ enough to keep civil society informed. Some even believe that the EITI makes information sharing more difficult for CSOs outside of the Coalition because their queries for information are now directed to subcontractors or the Coalition instead of being answered directly.⁹⁴ However, an international oil company representative disputed that view, and it did not emerge in other interviews.⁹⁵

Civil Society Engagement

The EITI improved government engagement with civil society.⁹⁶ It is the first MSI in Azerbaijan, assembling government, oil companies, and CSOs for discussions.⁹⁷ World Bank staff in Baku indicate that CSOs are "very frank" and that the government appears to consider their opinions when making decisions.⁹⁸

Stakeholders have voiced serious concerns about the ad-hoc nature of the EITI's implementation and structure. Azerbaijan has neither an MSG nor a country work plan. SOFAZ representatives argue that the MOU and ad hoc meetings are an adequate substitute, that Azerbaijan's early accession means it does not have to follow standards published later, and that it has met all standards of disclosure.⁹⁹ However, members of the Coalition argue that the current framework inhibits the participation of civil society groups.¹⁰⁰ In any case, the government provides CSOs with insufficient time to approve EITI reports,¹⁰¹ and some members of civil society express

⁸⁸ In a Princeton University interview with Himayadar staff, Baku, October 31 2008, some staff expressed concern that many EITI coalition members only republish information from more active CSOs.

⁸⁹ [Princeton University interviews with Kamalya Mustafayeva, Upstream, Baku, October 30 2008; Aydin Gashimov, Stakeholder Investment and Reporting Manager, BP; Ayla Azizova, Transparency and Public Reporting Team Leader, BP, (both interviewed in Baku on October 31 2008); and Nabat Mammadova, Azerbaijan Energy Officer, U.K. Embassy, Baku, October 27 2008.]

⁹⁰ [Princeton University interviews with IMF Staff, Baku, October 27 2008, and Gubad Ibadoglu, Coordinator, EITI Coalition, Baku, October 28 2008.]

⁹¹ [Princeton University interview with Gubad Ibadoglu, Coordinator, EITI Coalition, Baku, October 28 2008.]

⁹² [Princeton University interview with Galib Efendiev, RWI, Baku, October 29 2008.]

⁹³ [Princeton University interview with Himayadar staff, Baku, October 31 2008.]

⁹⁴ [Princeton University interviews with Mirvari Gahramanli, Chairperson, Oil Workers' Rights Protection Organization, Baku, October 29 2008 and Himayadar staff, Baku, October 31 2008.]

⁹⁵ [Princeton University interview with an International Oil Company representative, 2008.]

⁹⁶ [Princeton University interview with Galib Efendiev, RWI, Baku, October 29 2008.]

⁹⁷ [Princeton University interview with World Bank Country Office staff, Baku, October 31 2008.]

⁹⁸ Ibid.

⁹⁹ [Princeton University interview with Adil Mammadov, EITI Coordinator, SOFAZ, Baku, October 28 2008.]

¹⁰⁰ [Princeton University interview with Gubad Bayramov, Princeton, January 28 2009.]

¹⁰¹ [Princeton University interview with Emil Omarov, Baku, October 27 2008.]

concerns that they have limited influence.¹⁰² Some feel they are merely observers in the transparency process,¹⁰³ being driven by the Azerbaijani government and always following as members of civil society rather than leading as equal partners.¹⁰⁴

CSOs argue that the government attempts to control EITI Coalition members. Some Western diplomats believe that many CSOs are government-controlled,¹⁰⁵ and some media sources and active Coalition members claim these government-controlled CSOs form a large, generally inactive, portion of the Coalition.¹⁰⁶ Civil society disagreed with this assessment.¹⁰⁷ However, some Western diplomats observe a strong cultural tendency among Azerbaijanis to equate any government cooperation with being co-opted.¹⁰⁸ Consequently, it is possible these interactions are being misinterpreted.

The government's knowledge of and interaction with the EITI is highly centralized.¹⁰⁹ Stakeholders report that only a few, high-level people in government know about the EITI¹¹⁰ and only rarely respond to CSO and media inquiries.¹¹¹ Several well-respected journalists said it was almost impossible to obtain interviews with government officials.¹¹² Furthermore, CSOs complain that the government representatives at the biannual stakeholder meetings are low-ranking and unqualified, making government claims of active engagement less credible.¹¹³ These reports raise serious questions about the quality of the dialogue occurring between the Azerbaijani government and CSOs.

Members of civil society still report difficulties meeting with oil company representatives participating in the EITI.¹¹⁴ While oil and gas companies with the largest presences in Azerbaijan

¹⁰² Ibid.

¹⁰³ [Princeton University interview of Himayadar staff, Baku, October 31 2008.]

¹⁰⁴ [Princeton University interview of Galib Efendiev, RWI, Baku, October 29 2008.]

¹⁰⁵ [Princeton University interview with western diplomatic sources, Baku.]

¹⁰⁶ These views were explicitly expressed in interviews with members of the Support for Economic Initiatives Public Union and Kamalya Mustafayeva. [In Princeton University interview with Mirvari Gahramanli, Oil Workers Rights Protection Organization, Baku, October 29 2008], the proportion of government beholden NGOs in the EITI Coalition was placed at over one-half. Members of the Support for Economic Initiatives Public Union pointed to recent, substantive information leaks from the Coalition board meetings to indicate that one or more of their board members are controlled by government.

¹⁰⁷ [Princeton University interview with Gubad Bayramov, Princeton, January 28 2009.]

¹⁰⁸ [Princeton University interview with western diplomatic sources, Baku.]

¹⁰⁹ [Princeton University interview with Galib Efendiev, RWI, Baku, October 29 2008.]

¹¹⁰ Ibid. Mr. Efendiev identifies three individuals in SOFAZ by name.

¹¹¹ [Princeton University interviews with SOCAR representative, Baku, October 30 2008; and Mirvari Gahramanli, Oil Workers Rights Protection Organization, Baku, October 29 2008.]

¹¹² [Princeton University interview with (name withheld), Baku.]

¹¹³ [Princeton University interviews with Mirvari Gahramanli, Oil Workers Rights Protection Organization, Baku, October 29 2008] corroborated this result. Himayadar staff claim that 17-18 year old secretaries were often sent to these meetings.]

¹¹⁴ [In a Princeton University interview in Baku in October 2008, one well-known journalist (name withheld) characterized meetings with IOCs as occurring infrequently and only about once a year. Mirvari Gahramanli, Oil Workers' Rights Protection Organization, agreed that IOCs only infrequently agreed to meet with CSOs in a Princeton University interview in Baku, October 29 2008.]

report interacting frequently with civil society,¹¹⁵ companies with smaller presences appear not to maintain CSO relationships at all.¹¹⁶

Some international oil companies express frustration about working with CSOs, pointing to their low capacity.¹¹⁷ They suggested that the caliber of questions from media and CSOs betray a misunderstanding of oil economics and of the EITI's role as a revenue transparency mechanism instead of an expenditure transparency mechanism. To alleviate these difficulties and as part of their corporate social responsibility program, BP has implemented programs to improve civil society capacity by conducting informational sessions on how PSAs function.¹¹⁸

The IMF, the World Bank, and the US, Norwegian, UK, Japanese, and various European embassies have implemented at least one civil society transparency program in Azerbaijan in the past decade.¹¹⁹ The IMF maintains a presence in Azerbaijan, and the World Bank notes that it receives more invitations to CSO events than it can reasonably attend.¹²⁰ Although these institutions encourage transparency in meetings with government officials, they do not currently maintain anti-corruption programs in Azerbaijan specific to the EITI.

International CSOs such as PWYP and RWI provide funding and capacity-building assistance for local CSOs. One member of the Coalition claims the presence of international CSOs in Azerbaijan ensures that civil society remains independent, implying that if their support wanes, the EITI will be less successful.¹²¹

DATA DISCLOSURE

Azerbaijan was the first country to submit EITI reports and has issued the most reports thus far. This should be recognized as an important step forward, and Azerbaijan is to be commended for taking often difficult, pioneering steps toward greater transparency.

While recognizing Azerbaijan's noteworthy progress and unique hurdles as a pilot country in the EITI, civil society and international observers continue to raise concerns regarding the integrity of reports. This suggests that further steps may yet be required in order for Azerbaijan to achieve

¹¹⁵ BP releases extensive information about its operations in Azerbaijan, including its disaggregated payments to the Azerbaijani government, in its annual sustainability report. In a [Princeton University interview in Baku with BP Stakeholder Investment and Reporting Manager, Aydin Gashimov, and Transparency and Public Reporting Team Leader, Ayla Azizova, Baku, October 31 2008.] BP claimed to hold ad hoc and formal meetings with CSOs. Several CSO representatives laud BP for its transparency in reporting. StatoilHydro maintains good relationships with civil society by conducting press conferences and responding to information requests.

¹¹⁶ Some smaller IOCs admitted during interviews to not engaging with CSOs at all. Those interviewed said all interactions with CSOs and the media require corporate approval. Even when approval is granted, one western oil company representative said that local company representatives often remain hesitant to engage.

¹¹⁷ [Princeton University interviews with international oil company representatives, Baku, October 28 2008, and Jamilya Gadiyeva, External Affairs Advisor, StatoilHydro, Baku, October 29 2008.]

¹¹⁸ [Princeton University interview with Aydin Gashimov, Stakeholder Investment and Reporting Manager, BP, Baku, October 31 2008; Ayla Azizova, Transparency and Public Reporting Team Leader, BP, Baku, October 31 2008.]

¹¹⁹ [Princeton University interview with Emil Omarov, National Budget Group, Baku, October 27 2008.]

¹²⁰ [Princeton University interview with World Bank Country Office staff, Baku, October 31 2008.]

¹²¹ [Princeton University interview with the Support for Economic Initiatives Public Union, Baku, October 29 2008.]

compliant country status through Validation.¹²² These concerns include: quantity and repetition of errors, unexplained fluctuations in revenue, lack of valuation of in-kind (crude oil and gas) transfers, inconsistencies and delays in reporting, uncompetitive selection of the reconciling body, and deficiencies in the reporting templates.¹²³

Azerbaijan's latest EITI report was released in December 2007.¹²⁴ All local and foreign companies party to the MOU were required to submit reports, which now includes all extractive companies operating in Azerbaijan.¹²⁵ The participation of all companies in preparing the latest EITI report is regarded by civil society as real progress from earlier reports, and this significantly improves the public availability of extractive industry data in Azerbaijan.¹²⁶

Discrepancies between aggregated company payments and government receipts exist in most categories. However, these discrepancies are relatively small, and the government reported receiving more than the companies reported paying in some categories, which is unlike the experiences of other implementing countries, such as Mongolia.¹²⁷ To civil society, this suggests the possibility of collusion between the government and companies.¹²⁸ This concern could be mitigated by requiring the certification of company data submitted for EITI compliance. With certification, the company's auditors would be required to confirm that the submitted data was audited to existing financial standards.¹²⁹

¹²² See Appendix II for relevant Validation Grid Indicators # 12 and #13.

¹²³ Stated concerns compiled from 1) "Statement by the ITEI Coalition of civil society institutions on the (8th) Independent Accountant's Report for the six month period ending on December 31st, 2007 in the framework of the Extractive Industries Transparency Initiative in the Azerbaijan Republic", 5. Princeton University Interview with IMF official, October 6 2008.

¹²⁴ The Committee on the Extractive Industries Transparency Initiative of the Republic of Azerbaijan, Independent Accountants' Report for the year ended 31 December 2007, (Baku: 2007).

¹²⁵ Appendix 2 of the report contains a list of companies party and not party to the MOU. There are 25 companies party to the MOU, and only one company, the AIOC, is not party to the MOU. BP is the operating company of the ACG oilfield, and its partners are Exxon Azerbaijan Limited, Statoil, Inpex, SOCAR, Devon Energy Caspian Corporation, ITOCHU Oil Exploration (Azerbaijan) Inc., Amerada Hess (ACG) Limited, Turkish Petroleum A.O., Unocal Khazar (Chevron Overseas Petroleum Azerbaijan Limited). The EITI Coordinator at SOFAZ said that as parties to the MOU, all AIOC companies already report to EITI and all material revenue streams are captured. Therefore it is unclear why AIOC is listed under the section "Not party to the MOU". At present EITI reporting is not a mandatory process in Azerbaijan and no provision for it is made in PSAs.

¹²⁶ Civil society's opinion of the August 16 2006 Deloitte & Touche report highlights "the inadequacy of disclosure of reports by companies" due to the fact that one company (Binagadi Oil Operating Company) was not party to the MOU and had not submitted a report: http://www.eiti-az.org/ts_gen/eng/feal/CoalitionOpinionSept2006.pdf. In 2005, SOCAR, Binagadi, and the AIOC were listed as Not Parties to the MOU, and in 2004, Chevron, Agip, Inpex, JAOC, and AIOC were listed as not parties to the MOU.

¹²⁷ "Statement by the ITEI Coalition of civil society institutions on the (8th) Independent Accountant's Report for the six month period ending on December 31st, 2007 in the framework of the Extractive Industries Transparency Initiative in the Azerbaijan Republic", 5. In other implementing countries, such as Mongolia, the discrepancies were much wider, and the government reported receiving much less than companies reported paying than in Azerbaijan.

¹²⁸ Ibid.

¹²⁹ "Implementing the EITI; Applying Early Lessons From the Field." World Bank, 2008. 61. http://siteresources.worldbank.org/INTOGMC/Resources/implementing_eiti_final.pdf.

Additionally, the government would be required to take parallel steps to ensure data reliability. The latest report omits the valuation of in-kind receipts (the government's receipts in oil and gas). Reporting these receipts helps assure the integrity of the government's side of the ledger.¹³⁰

The dual role played by SOCAR raises other data concerns. SOCAR acts as both a commercial entity and as a government representative, which is a potential conflict of interest and a statistical loophole leading to confusion regarding revenue reporting.¹³¹ Despite concerns over a lack of transparency at SOCAR,¹³² it has taken recent steps toward greater transparency. SOCAR data has been subject to international standards since 2007, and its first audit report was published in December 2008.¹³³

Azerbaijan is also not likely to undertake a full audit of its oil industry as Nigeria did in 2006.¹³⁴ Such a step is purportedly unnecessary both because the findings would be of limited use to a public that would not understand them and because Azerbaijan's PSAs are professionally negotiated and signed, which ensures that the country receives the correct amount of compensation. While the EITI does not deal with the question of ensuring that governments are receiving the right amounts, the Validation criteria require the government to ensure that both government and company reports are based on audited accounts to international standards, which gives validity to the argument for greater SOCAR transparency.

The EITI does not require that data be disaggregated by company in the final report; however, civil society considers disaggregated data very helpful for understanding and interpreting results and holding companies accountable. All civil society members and some foreign embassies interviewed are in favor of reporting that is disaggregated by company.¹³⁵ Companies' positions on disaggregated reporting are mixed in Azerbaijan: BP¹³⁶ and StatoilHydro¹³⁷ voluntarily report disaggregated data for Azerbaijan, while Exxon Mobil feels that tax and contractual payments are proprietary information.¹³⁸

¹³⁰ Recent steps taken by the government, such as transparent SOFAZ rules, the inclusion of subsidies in the budget, and the inclusion of SOCAR in the consolidated budget, support this next step toward greater transparency.

¹³¹ http://www.eiti-az.org/ts_gen/eng/feal/eng_f11_CoalitionOpinion2006feb.pdf.

¹³² [Princeton University Interview with Vahid Ahmadov, MP, October 30 2008.]

¹³³ The research team understands that this fact has been recently uncovered during the Validation process.

¹³⁴ [Princeton University Interview with Adil Mammadov, EITI Coordinator, SOFAZ, Baku, October 28 2008.]

¹³⁵ Opinion of the CSO Coalition "To Improve Transparency in the Extractive Industry" concerning a report by AGN MAK Azerbaijan Ltd. auditing company within the framework of the EITI released on January 16, 2006. [Princeton University Interview with Nabat Mammadova, Azerbaijan Energy Officer, British Embassy.] The UK Embassy takes no stance on having the Azerbaijani government force disaggregation, but it agrees that more disaggregation "would be great."

¹³⁶ BP Sustainability Report 2007:

http://www.bp.com/liveassets/bp_internet/bp_caspian/bp_caspian_en/STAGING/local_assets/downloads_pdfs/s/BP_Annual_Report2007.pdf

¹³⁷ StatoilHydro Sustainability Report 2007:

<http://www.statoilhydro.com/en/EnvironmentSociety/Sustainability/2007/Pages/Statistics.aspx#overview>

¹³⁸ ExxonMobil's Coordinator for Upstream Public Policy Issues, John Kelly, stated in an interview (11/24/08) that the ExxonMobil believes that disaggregation can be important as it can reveal proprietary information that is valuable to competitors and that it is not needed for the goals of EITI. In the case of Nigeria where disaggregated reporting is required by the government Exxon Mobil was required to comply. ExxonMobil also publishes its payments made to the government of Chad for the Chad-Cameroon Development Project (http://www.esso.com/Chad-English/PA/Files/24_allchapters.pdf, see pages 77-79).

According to the EITI Coordinator at SOFAZ, the government has no objections to disaggregated reporting if all companies were to do it, but it faces strong opposition from several American and Japanese corporations. Further, the government does not want to get involved in this process and primarily views it as one to be solved between civil society and companies.¹³⁹ In a separate meeting, a SOCAR representative stated that its concerns regarding possible political ramifications, including public pressure to renegotiate contracts and its effect on future investment, prevent it from supporting disaggregation.¹⁴⁰ Therefore, it remains unclear which stakeholder's position represents the greater obstacle to disaggregation in Azerbaijan.

Additionally, many observers support the view that access to individual published contracts is necessary.¹⁴¹ While disaggregated reporting tells the public what each company is paying, publication of contracts would reveal whether all material streams are included. The publication of all signed contracts is considered good practice for policy transparency where PSAs are the main instrument of the fiscal regime. This makes available all of the relevant information to the public, which in turn promotes accountability and mitigates the risks of corruption.¹⁴² While PSAs and company contracts are not made public, they are accessible through informal channels¹⁴³ and are widely read among stakeholders. The IMF noted that public access to contracts can strengthen the government's hand in negotiations with companies through pressure to secure favorable terms.

DATA DISSEMINATION

Current dissemination practices in Azerbaijan revolve around bi-annual reports and joint press releases issued by the parties to the MOU. The reports and accompanying statements, including a critical opinion by civil society, are published on the EITI Azerbaijan website in English and Azeri.¹⁴⁴ According to the Royal Norwegian Embassy, important EITI developments are reported in the media, and most of what is reported is based directly on government press releases. There is relatively little investigative or critical reporting.¹⁴⁵ Another Western diplomatic source stated that the EITI is yet not well known in Azerbaijan, but that there are also signs of open discussion on the reports.¹⁴⁶ CSOs in Azerbaijan consume EITI reports and disseminate them to the media, or they rely upon EITI reports for further analytical work.¹⁴⁷ In 2006, local networks first covered oil revenue issues, which led to open discussions of oil

¹³⁹ [Princeton University Interview with Adil Mammadov, EITI Coordinator, SOFAZ, Baku, October 28 2008.] Notably, this is counter to the experience of Nigeria, where the government required companies to submit disaggregated data for the EITI reports.

¹⁴⁰ [Princeton University Interview (name withheld), Baku, October 30 2008.]

¹⁴¹ [Princeton University interviews with IMF official, Princeton, October 6 2008, and Mirvari Gahramanli, Oil Workers Rights Protection Organization, Baku, October 29 2008.]

¹⁴² IMF Guide on Resource Revenue Transparency, 2007: 17, 22.

<http://imf.org/external/np/pp/2007/eng/051507g.pdf>.

¹⁴³ [Princeton University interviews with Mirvari Gahramanli, Oil Workers' Rights Protection Organization, Baku, October 29 2008; Support for Economic Initiatives Public Union, Baku, October 29 2008.]

¹⁴⁴ http://www.eiti-az.org/ts_gen/eng/index.php.

¹⁴⁵ [Princeton University interview with First Secretary Richard Scarborough, Royal Norwegian Embassy, Baku, October 29 2008.]

¹⁴⁶ [Princeton University interview with western diplomatic sources, Baku, October 27 2008.]

¹⁴⁷ [Princeton University interview with Emil Omarov, National Budget Group, Baku, October 27 2008.]

revenue by CSOs.¹⁴⁸ These developments indicate that dissemination of EITI reports and data has had some effect on public awareness and discussion of extractive industry revenues.

However, it is also clear that dissemination in Azerbaijan is hampered by a lack of formalized guidelines and the absence of a proactive communications plan to communicate EITI engagement to the broader public. These shortcomings are partially attributed to Azerbaijan's early entrance to the EITI, but there is also evidence of a restrictive media environment that inhibits the reporting on and use of findings. The media in Azerbaijan still report government intimidation, and members of civil society claim that those making strong statements against the government either left the country or were silenced.¹⁴⁹ Government intimidation is still believed to be common, and it results in CSO fatigue and self-censorship, stifling expression and undermining civil society's ability to hold the government accountable for resource revenues.¹⁵⁰

Low capacity on the part of non-governmental media is also a frequently-cited reason for its limited impact on public opinion. While opposition newspapers write about oil corruption, the journalistic standards of many of these sources are low, leading to publication of stories that occasionally lack a factual basis and are not widely believed.¹⁵¹ Dissemination in Azerbaijan is further constrained by the centralized nature of the EITI itself¹⁵² which is confined to a relatively small number of people within the government.

GOVERNMENT ACCOUNTABILITY

No stakeholders claim that the EITI has had an immediate and dramatic effect on governance in general or even on oil revenue management in particular. There is still a possibility of collusion between companies and the government to omit certain payments from the EITI reports.¹⁵³ However, most observers believe the EITI satisfies its objectives of clarifying revenue streams, promoting confidence in their probity, and increasing knowledge about resources at the government's disposal.¹⁵⁴ External actors also use the EITI reports to engage in limited but important efforts to verify government figures and promote accountability.¹⁵⁵

¹⁴⁸ [Princeton University interview with staff from Himayadar, Baku, October 31 2008.]

¹⁴⁹ [Princeton University interview with Support for Economic Initiatives Public Union, Baku, October 29 2008.]

One civil society stakeholder claimed during an interview the only "acceptable" experts in television broadcasts are from government-directed CSOs.

¹⁵⁰ [Princeton University interview with western diplomatic sources, Baku, October 27 2008.]

¹⁵¹ [Princeton University interview with western diplomatic sources, Baku, October 27 2008.]

¹⁵² [Princeton University interview with (name withheld, SOCAR), Baku.]

¹⁵³ In the words of the latest Moore Stephens report, "If payments/allocations were made by the Companies but omitted from both the Companies' and government's submissions, our work would be insufficient to detect them." The Committee on the Extractive Industries Transparency Initiative of the Republic of Azerbaijan, Independent Accountants' Report for the year ended 31 December 2007, (Baku: 2007).

¹⁵⁴ Western diplomatic sources said EITI gives them reason to believe money going from companies to government coffers is fairly transparent. There is less confidence, however, in the money that flows into and out of SOCAR, which lacks transparency, accountability, and audits that satisfy international standards. [Princeton University interviews with western diplomatic sources, Baku, October 27 and October 30 2008.]

¹⁵⁵ For example, IMF staff reconcile EITI data with the government's budget estimates. Where differences arise, the Ministry of Taxes is urged to explain and resolve them. [Princeton University interview (name withheld), Baku, October 27 2008.]

A majority of respondents allege that the EITI has incrementally improved the government's willingness to incorporate outside opinions into its decision-making. Given ongoing failures of governance in Azerbaijan, the salutary impacts of the EITI can only be appreciated through a historical lens. One IFI country staff member sees "all of EITI's impacts as positive steps" because the young country had almost no previous history of accountability or engagement.¹⁵⁶ Galib Efendiev from RWI provides the appropriate perspective: "Five to six years ago, even discussing extractive industries revenues was taboo. Under EITI, it is not."¹⁵⁷ He went on to emphasize the EITI's role as the first initiative to entitle civil society to have input in the government: "of course EITI is a good thing. When you don't have anything, any improvement is a good thing." Most Western diplomatic sources acknowledge the limits of the EITI but emphasize that it has framed issues in ways that enable progressive forces – inside and outside of government – to anchor efforts to move the government in a more accountable direction.

At the same time, there is little indication that the EITI's norms have spread to other facets of the regime.¹⁵⁸ CSOs active in the EITI are mostly free to express opinions, but there is a difference between the government listening to and acting on proposed solutions.¹⁵⁹ At least one journalist argues that government corruption has not diminished – only made more sophisticated – after eight EITI reports.¹⁶⁰ Consequently, some members of the Coalition believe that the public, government, embassies, and IFIs are becoming more complacent about the EITI as interest and faith in it wanes.¹⁶¹

Despite such concerns, few would contend that the EITI has a deleterious impact on government accountability. However, there is an ongoing risk that the Azerbaijani government could reap reputational rewards from its EITI engagement that are disproportionate to its actual achievements.¹⁶² In other words, plaudits for the government's pioneering role in the EITI could be used by the state to obscure its shortcomings in oil revenue management and other areas. Therefore, the international community must explicitly recognize what the EITI does for Azerbaijan, as well as what it does not do. It must also remain engaged in EITI implementation, attempt to influence it in a positive direction, use the Validation process to redress the shortcomings of the EITI in Azerbaijan, and ensure that Validation promotes continued progress rather than the routinization or reputational exploitation of the EITI.

FURTHERING THE DEBATE ON RESOURCE MANAGEMENT

The relevance and efficacy of the EITI for improving resource management more generally is a source of contention in Azerbaijan. Contract transparency remains an outstanding issue, though oil and gas contracts are currently available to some interested parties through private

¹⁵⁶ [Princeton University interview with World Bank country office staff, World Bank, Baku, 31 October 31 2008.]

¹⁵⁷ [Princeton University interview with Galib Efendiev, RWI, Baku, October 29 2008.]

¹⁵⁸ [Princeton University interview (name withheld), Baku, October 30 2008.]

¹⁵⁹ [Princeton University interview with Gubad Ibadoglu, Coordinator, EITI Coalition, Baku, October 28 2008.]

¹⁶⁰ [Princeton University interview with Kamalya Mustafayeva, Upstream, Baku, October 30 2008.]

¹⁶¹ [Princeton University interview with Gubad Ibadoglu, Coordinator, EITI Coalition (and Chairman of Economic Research Center); Alimammad Nuriyev, President of "Consitution" Researches Fund and Coordinator of Anti-Corruption Network of NGOs; and Dunya Camalova, Member of Coalition Council, Baku, October 28 2008.]

¹⁶² Indeed, Azerbaijan has already improved its international reputation through EITI, as evinced by positive attention from international NGOs and its receipt of a U.N. Public Service Award.

channels.¹⁶³ Many CSOs outside of the Coalition question the initiative's importance because they believe the country's deepest problems stem from mismanagement of expenditures, which the EITI does not address. Even CSOs intimately involved with the EITI view spending transparency as a necessary and logical next step in promoting accountability. Most Western diplomats, IFIs, companies, and civil society representatives agree spending transparency is a more important and formidable challenge than mere revenue transparency. Meanwhile, companies and bureaucrats expressed frustration that spending transparency is often invoked in EITI discussions, even though the latter is not designed to address the former. Government officials will resist any effort to use the EITI as a vehicle for political reform; according to one Western diplomat, that is precisely what a greater emphasis on spending transparency would do.¹⁶⁴ If spending transparency were a requirement of the EITI, it is unlikely that Azerbaijan would ever have enlisted.

While there is little evidence that the EITI has had an appreciable impact on the patterns of government spending, there is reason to believe that the EITI has enabled individuals and groups to advocate more effectively on spending transparency. Representatives from IFIs, Western embassies, and oil companies claim that the EITI has provided civil society with the necessary space and information to argue for greater disclosure of government disbursements.¹⁶⁵

It is possible countervailing forces besides the EITI have also broadened the debate on resource management.¹⁶⁶ Yet that spending transparency was invoked by most interviewees is its own powerful testament to the EITI's ability to promote broader discussions on resource revenue management.

¹⁶³ [Princeton University interview with Mirvari Gahramanli, Oil Workers' Rights Protection Union, Baku, October 29 2008.] [Princeton University interview with Members of Support for Economic Initiatives Public Union, Baku.] A SOCAR lawyer said that contract transparency might encourage the public to demand the renegotiation of contracts. [Princeton University interview (name withheld, SOCAR), Baku, October 30 2008.]

¹⁶⁴ [Princeton University interview (name withheld), Baku, October 30 2008.]

¹⁶⁵ For example, EITI was an inspiration for the founding of the National Budget Group, which uses information available from EITI and other sources to advocate for spending transparency. [Princeton University interview with Galib Efendiev, RWI, Baku, October 29, 2008.] National Budget Group reports have provoked reaction from government officials, indicating that they are somewhat sensitive to NGO pressure on budgetary issues and willing to respond to it. [Princeton University interview with Emil Omarov, Coordinator, National Budget Group, Baku, October 27, 2008.] In addition, Western diplomatic sources cite advocacy from local and international NGOs as a primary cause of the government's decision to present a more detailed, project-delineated budget to parliament. [Princeton University interview (name withheld), Baku, October 31 2008.]

¹⁶⁶ Increased production and higher oil prices have likely enhanced the salience of resource revenues and caused more individuals to demand budget reform. [Princeton University interview with Kamalya Mustafayeva, Upstream, Baku, October 30 2008.] At the same time, higher oil revenues might decrease the government's internal and external accountability since its resources enable to it ignore international opinions or conditionalities, engage in coercion, and purchase goodwill.

III. CASE STUDY: GABON

COUNTRY BACKGROUND

Political Context

The Gabonese Republic gained independence from France in 1960, and current President El Hadj Omar Bongo has ruled since he created the Parti Democratique Gabonais (PDG) in 1968.¹⁶⁷ President Bongo dissolved the other political party in existence and ruled a one-party state until 1990. At that time, economic and political turmoil forced the President to convene a national conference that led to constitutional and political reform.¹⁶⁸

Since 1990, President Bongo has consistently won re-election, despite allegations of fraud, voting irregularities, two coup attempts, and sporadic incidents of violence.¹⁶⁹ The PDG has also maintained control over Gabon's National Assembly since the 1990 reforms, and Freedom House expects President Bongo and the PDG to remain in power for foreseeable future.¹⁷⁰ Of the 50 registered political parties in Gabon, 40 are part of the ruling coalition, which is led by the PDG and accused by Freedom House as "serving as a vehicle for dispensing patronage to regime loyalists."¹⁷¹

Under the revised constitution of 2003, the president is elected by universal suffrage and faces no term limits.¹⁷² Among his many powers, President Bongo can appoint and dismiss senior government officials, including the prime minister, the cabinet, and judges of the Supreme Court.¹⁷³ He also has great authority over the legislative process.¹⁷⁴

Despite a constitutional guarantee to the freedom of speech, this right is often restricted by the government or simply not exercised to avoid negative repercussions. The U.S. Department of State notes that "few citizens criticized the government for fear of losing their jobs, and only a few opposition legislators in the National Assembly openly criticized the government."¹⁷⁵ With a government dominated by executive power and the lack of a credible parliamentary opposition, the need for a stronger civil society in Gabon is pronounced.

¹⁶⁷ CIA World Factbook Country Profile, <https://www.cia.gov/library/publications/the-world-factbook/geos/gb.html>.

¹⁶⁸ U.S. Department of State Background Notes, <http://www.state.gov/r/pa/ei/bgn/2826.htm>.

¹⁶⁹ CIA World Factbook, U.S. State Department Background Notes, and U.N. Office for the Coordinator of Humanitarian Affairs Country Profile, <http://www.irinnews.org/country.aspx?CountryCode=GA&RegionCode=WA..>

¹⁷⁰ Freedom House Country Profile, <http://www.freedomhouse.org/template.cfm?page=22&year=2008>.

¹⁷¹ Freedom House Country Profile: <http://www.freedomhouse.org/template.cfm?page=22&year=2008>.

¹⁷² U.S. Department of State Background Notes. <http://www.state.gov/r/pa/ei/bgn/2826.htm>.

¹⁷³ Ibid.

¹⁷⁴ Ibid. President Bongo may "dissolve the National Assembly, declare a state of siege, delay legislation, and conduct referenda."

¹⁷⁵ U.S. Department of State Country Reports on Human Rights, <http://www.state.gov/g/drl/rls/hrrpt/2007/100482.htm>.

The Media

Freedom of the press is enshrined in Gabonese law, but is not usually followed in practice. In 2008, Reporters Without Borders ranked Gabon 110th out of 173 countries for press freedom.¹⁷⁶ In a recent press freedom assessment, Freedom House ranked Gabon 153rd out of 195 countries globally and 34th out of 48 countries in sub-Saharan Africa.¹⁷⁷

Civil society activities are impeded by the fact that “the state keeps a tight rein on state-owned media and places limitations on the independent press.”¹⁷⁸ In 2002, President Bongo closed three newspapers after they reported allegations of corruption in his government.¹⁷⁹ A newspaper was temporarily banned in 2006 for discussing an ongoing sovereignty dispute between Gabon and Equatorial Guinea.¹⁸⁰ In 2007, the regime banned two more papers.¹⁸¹

Legal action against journalists is common as well, with one paper reporting “that 250 trials have been conducted against the media in Gabon since 1990.”¹⁸² Reporters Without Borders notes that, as of 2008, journalists are not allowed to write stories that “reflect badly” on the president or those close to him.¹⁸³ In response to such pressure, some newspapers moved to nearby Cameroon, but their publications were censored upon entering Gabon.¹⁸⁴ Some members of the media practice self-censorship to avoid upsetting the regime.¹⁸⁵

The Economic Context

Despite the concentration of political power and media repression, Gabon is one of Africa’s wealthier countries.¹⁸⁶ Much of this wealth is due to its abundant natural resources, especially oil. Oil constitutes approximately half the country’s GDP, 60% of government revenues, and 80% of the nation’s exports.¹⁸⁷ The upstream oil industry is Gabon’s major source of foreign exchange, accounting for the majority of all exports. The downstream oil industry is also well-

¹⁷⁶ Reporters Without Borders, http://www.rsf.org/article.php3?id_article=29031.

¹⁷⁷ Freedom House Global Press Freedom 2008, <http://www.freedomhouse.org/uploads/fop08/FOTP2008Tables.pdf>.

¹⁷⁸ UN Office for the Coordination of Humanitarian Affairs Country Profile.

<http://www.irinnews.org/country.aspx?CountryCode=GA&RegionCode=WA>

¹⁷⁹ [Princeton University interview with NGO leaders, Libreville, October 30, 2008.]

¹⁸⁰ UN Office for the Coordination of Humanitarian Affairs Country Profile.

¹⁸¹ Freedom House Country Profile,

<http://www.freedomhouse.org/template.cfm?page=22&year=2008&country=7396>.

¹⁸² Ibid.

¹⁸³ Reporters Without Borders, http://www.rsf.org/article.php3?id_article=29031.

¹⁸⁴ UN Office for the Coordination of Humanitarian Affairs, August 2007,

<http://www.irinnews.org/country.aspx?CountryCode=GA&RegionCode=WA>.

¹⁸⁵ [Princeton University interview with NGO leaders, Libreville, October 30, 2008.] Also, The U.S. Department of State reports restrictions on freedom of speech and press in Gabon.

¹⁸⁶ The CIA World Factbook estimates Gabon’s GDP per capita at \$14,900 in purchasing power parity terms.

<https://www.cia.gov/library/publications/the-world-factbook/geos/gb.html>.

¹⁸⁷ Heritage Foundation/WSJ Index of Economic Freedom, <http://www.heritage.org/Index/Country/Gabon>. Other sources arrive at different numbers, but they are roughly equal. For example, the UN Office for the Coordinator of Humanitarian Affairs and U.K Foreign Office estimate that oil comprises 50.7% of GDP, 63% of government revenue, and 80% of exports. The U.S. State Department estimates that oil accounts for 43% of GDP, 65% of government revenue, and 81% of exports.

developed with the Sogara refinery at Port Gentil and a number of international oil companies active in the distribution and marketing of petroleum products.¹⁸⁸

For all its economic success, income inequality remains high in Gabon. The U.S. State Department notes that “the richest 20% of the population receives over 90% of the income, and about one third of Gabonese live in poverty.”¹⁸⁹ Several observers also suggest that the economy has been badly managed. The IMF has criticized Gabon’s budgetary, monetary, and reform practices,¹⁹⁰ while public works projects, including the Transgabonais railway, have come under international scrutiny.¹⁹¹ Resource wealth, a skewed income distribution, and poor economic management all are evidence of the resource curse in Gabon.

Declining oil production could make these problems even more pronounced. Since 1997, total oil production in Gabon has decreased from 370,000 barrels per day to 244,000 barrels per day in 2007.¹⁹² The CIA estimates that Gabon has 2 billion barrels in proven reserves,¹⁹³ but its production will likely fall dramatically over the next few decades without new discoveries.¹⁹⁴

The need for Gabon to diversify its economy is well-understood. In addition to oil, it has ample manganese, timber, and natural gas. The U.N. Office for the Coordination of Humanitarian Affairs reports that “10% of the country’s land has been designated as a national park, the highest percentage in the world.”¹⁹⁵ Gabon’s agricultural resources remain underutilized as well. The country has natural wealth in fisheries, a tropical climate, and fertile soil, but it remains dependant on food imports.¹⁹⁶

Nevertheless, obstacles to diversification remain. It is difficult to start a business in Gabon, and foreign investors may find the country’s “unpredictable legal system” difficult.¹⁹⁷ Limited access to credit also inhibits entrepreneurial activity.¹⁹⁸ To help address these concerns, Gabon started an IMF structural adjustment program in 2005,¹⁹⁹ but more efforts are needed to wean the economy off its dependence on oil.

¹⁸⁸ Mbendi reports notes that there are currently 26 oil companies present in Gabon:

http://www.mbendi.co.za/sndmsg/org_list.asp?P=0&C=1&M=0&R=0.

¹⁸⁹ U.S. State Department Background Notes, <http://www.state.gov/r/pa/ei/bgn/2826.htm>.

¹⁹⁰ CIA World Factbook Country Profile, <https://www.cia.gov/library/publications/the-world-factbook/geos/gb.html>.

¹⁹¹ UN Office for the Coordination of Humanitarian Affairs, <http://www.irinnews.org/country.aspx?CountryCode=GA&RegionCode=WA>,

¹⁹² Energy Information Administration Gabon Energy Profile: http://tonto.eia.doe.gov/country/country_energy_data.cfm?fips=GB.

¹⁹³ CIA World Factbook Country Profile, <https://www.cia.gov/library/publications/the-world-factbook/geos/gb.html>.

¹⁹⁴ UN Office for the Coordination of Humanitarian Affairs, <http://www.irinnews.org/country.aspx?CountryCode=GA&RegionCode=WA>. The UN quotes an IMF report that Gabon will run out of oil in 30 years without finding new reserves.

¹⁹⁵ UN Office for the Coordination of Humanitarian Affairs, <http://www.irinnews.org/country.aspx?CountryCode=GA&RegionCode=WA>.

¹⁹⁶ Ibid.

¹⁹⁷ Heritage Foundation/WSJ Index of Economic Freedom, <http://www.heritage.org/Index/Country/Gabon>.

¹⁹⁸ Ibid.

¹⁹⁹ Freedom House Country Profile, <http://www.freedomhouse.org/template.cfm?page=22&year=2008&country=7396>.

Corruption

According to Freedom House, “four decades of corrupt, autocratic rule have made [President] Bongo one of the world’s richest men.”²⁰⁰ Corruption is perceived to be widespread in Gabon. Transparency International’s 2008 Corruption Perceptions Index ranks Gabon 96th out of 180 countries.²⁰¹ Gabon’s economy is the world’s 122nd freest economy according to the Heritage Foundation’s 2008 Index of Economic Freedom Report, with its lowest score coming in the area of freedom from corruption.²⁰² The Heritage Foundation reports that government officials have asked foreign firms to contribute to political candidates affiliated with the ruling party and that corruption has even led to unpaid domestic and foreign debt.²⁰³ However, the report also notes that, “Civil service corruption [in Gabon] is not as extensive as in other developing countries in the region.”²⁰⁴ Civil society accuses the government of intimidating anyone who publicly discusses corruption and poor governance in Gabon.²⁰⁵

Despite such a gloomy prognosis, anti-corruption efforts have been undertaken. In May 2003, the IMF conditioned assistance to the government on the creation of the National Commission Against Illicit Enrichment. The commission requires civil servants to disclose their financial assets prior to joining the government so that an audit can be performed when they leave their positions. Still, the commission is headed by a member of the government, creating a potential conflict of interest, and as of January 2009 it has not issued a report or taken action against any corrupt officials.²⁰⁶

The Extractive Industries Transparency Initiative

In March 2005, the government first expressed its intention to join the EITI to improve the transparency of financial flows, signal good governance, and enhance public trust in government.²⁰⁷ To monitor the EITI process, the government created the EITI Work Group by ministerial decree in February 2005.²⁰⁸ In July 2005, a presidential decree announced the creation

²⁰⁰ Ibid.

²⁰¹ Transparency International 2008 Corruption Perceptions Index:

http://www.transparency.org/news_room/in_focus/2008/cpi2008/cpi_2008_table

²⁰² The Heritage Foundation/WSJ Index of Economic Freedom Report 2008:

<http://www.heritage.org/Index/country.cfm?id=Gabon>

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ [Princeton University interview with PWYP members, Libreville, October 27, 2008.]

²⁰⁶ Freedom House Country Profile,

<http://www.freedomhouse.org/template.cfm?page=22&year=2008&country=7396>.

²⁰⁷ EITI Gabon, http://www.eitigabon.org/Fr/eiti_gabon.php.

²⁰⁸ EITI Gabon, http://www.eitigabon.org/Fr/eiti_gabon. The Work Group is an interface between companies and the independent auditor, and its missions include coordinating administrative services and collecting data on behalf of the government. It was comprised of the following officials: A Representative of the Anti-Corruption Commission (NCIE), The Technical Adviser to the Minister Toungui on matters related to oil, a Representative from the Ministry in charged of *contrôle d'état*, a Representative from the Office of Hydrocarbons, a Representative from the Office of Mines, a Representative from the Office of Taxes, a Representative from the Office of Services and Treasury, and a Representative from the Office of Customs. The decree appointed senior officials to be the President, Vice President and Permanent Technical Secretary of the EITI Work Group (Fidèle NTSISSI, Directeur du Cabinet Privé du Président de la République, Chef de L'Etat ; Vice Président: Hyacinthe MOUNGUENGUI, Conseiller Economique et Financier du Premier Ministre, Chef du Gouvernement ; Secrétaire Technique Permanent

of the Group of Interest, the initiative's MSG.²⁰⁹ The Group appointed Ernst & Young as the independent auditor in August 2005, with the mission of gathering and comparing data on 2004 oil revenue provided by the government and oil companies. As a Candidate country, Gabon has until March 2010 to undertake Validation. During the October 2006 international EITI conference, Gabon was elected to the EITI Board as an implementing country. Gabon published its second EITI report in April 2007 and its third in March 2008.

CIVIL SOCIETY

Civil Society Capacity

According to one high ranking government official, there were no CSOs working on the issue of oil prior to the launch of the EITI.²¹⁰ Gabon's civil society development to date has been described as "embryonic."²¹¹ Members of PWYP estimated that there were only about 10 independent CSOs in the country.²¹² In Gabon, the consensus is that only CSOs dealing with environmental issues are developed and have the independence and resources to fully engage in public discourse.

The intricacies of the oil and gas industries elevate the importance of capacity building among CSOs. Some attributed these groups' weaknesses to their lack of technical capacity, which hurt their ability to understand the EITI reports and effectively advocate for transparency.²¹³ Except for the PWYP coalition and the civil society members of the MSG, virtually no other CSOs have seen the EITI reports according to CSOs involved in the process.²¹⁴ Even if they had, it is uncertain that the majority of them would have the adequate expertise to analyze the information covered, given the complexity of oil and gas sectors.

As of May 2008, Gabon does not receive financial assistance from the World Bank's MDTF, which provides funds and technical assistance to governments implementing the EITI.²¹⁵ However, the MDTF supported a June 2007 training seminar for civil society in Libreville that discussed aspects of civil society engagement in the EITI.²¹⁶ Gabon did not receive funding from

: Jean Eudes Régis IMMONGAULT, Conseiller Financier du Ministre d'Etat, Ministre de l'Economie, des Finances, du Budget et de la Privatisation).

²⁰⁹ EITI Gabon, http://www.eitigabon.org/Fr/eiti_gabon. The Group of Interest consists of representatives of the government, extractive companies and civil society. It manages EITI implementation and coordinates all actions regarding extractive industry transparency. Its tasks include centralizing data, determining procedures for sharing information related to the Initiative, selecting an independent, internationally recognized expert, providing it with the relevant data, and publishing the data as reconciled by the auditor.

²¹⁰ [Princeton University interview with Mr. Fidele Ntsissi, Libreville, 28 October, 2008.]

²¹¹ Ibid.

²¹² [Princeton University interview with PWYP Members, Libreville, 27 October 2008.]

²¹³ [Princeton University interview with Mr. Samba Thiam, Resident Representative, IMF, Libreville, October 29, 2008, and Tayeb Diallo, UNDP, October 30, 2008.]

²¹⁴ [Princeton University interview with PWYP members, Libreville, October 27, 2008.]

²¹⁵ http://siteresources.worldbank.org/EXTEXTINDTRAINI/Resources/mdtf_eiti_country_portfolio_5_08.pdf?resourceurlname=mdtf_eiti_country_portfolio_5_08.pdf.

²¹⁶ http://siteresources.worldbank.org/INTEXTINDTRAINI/Resources/eiti-mDTF-MC_DraftProgressReport_May122008_.pdf.

the World Bank's Development Grant Facility, which provided "technical assistance to civil society working on EITI" from 2005 to 2007.²¹⁷

Support from the international community is needed to help build civil society capacity in Gabon. In the political context in which CSOs operate, it is imperative that they receive adequate support in order to fulfill their missions and avoid being incapacitated by a President "adept at the use of patronage in undermining the opposition."²¹⁸ In Gabon, it is widely accepted by civil society activists that financially weak organizations tend to be easily co-opted or bought off by the government.²¹⁹

Civil Society Engagement

During the sign up phase of the EITI, the Gabonese government committed to allowing the participation of independent civil society in the MSG, a critical component of the initiative's requirements. Prior to the establishment of the EITI Work Group, only government representatives and extractive companies were mentioned in the process.²²⁰ To meet the requirement of having civil society members represented in the EITI process, the government nominated two representatives to the MSG in July 2005.²²¹ In 2006, the government invited two additional civil society representatives to join the MSG after a request from civil society.²²² Civil society engagement in the EITI is thus done through the involvement of these four individuals in the MSG. During the tripartite meetings, these members freely review the content of published reports, make useful criticisms, raise concerns and questions about the EITI process, and formulate recommendations for improving the reports.

Civil society members have widely praised the EITI's role in providing them with the opportunity to engage with the government on transparency issues, enabling them to have access to information on revenues deriving from the extractive industries and for making their organizations more "visible".²²³ One civil society MSG member describes the initiative as a "halfway between the state and the PWYP coalition,"²²⁴ and another acknowledges that the MSG facilitates their engagement in the debate and allows them to openly voice their opinion.²²⁵ Bas

²¹⁷ http://siteresources.worldbank.org/INTEXTINDTRAINI/Resources/dgf_summary.pdf.

²¹⁸ Freedom House, "Gabon Country Report (2008)," *Freedom House*, <http://www.freedomhouse.org/template.cfm?page=22&year=2008>.

²¹⁹ [Princeton University interviews with PWYP members, NGO leaders, Jean Valentin Leyama, Libreville, October 27, 30, 31 2008.]

²²⁰ Décret n° 000535 /PR/MEFBP, EITI Gabon, <http://www.eitigabon.org/Fr/decret535.htm>.

²²¹ ARRETE N° 00056 /MEFBP, EITI Gabon, <http://www.eitigabon.org/Fr/arret56.htm>. Both individuals were from the *Conseil Economique et Social Gabonais*, a quasi-governmental body that submits reports to the Government, Parliament, and President. (Site Officiel de la Republique Gabonaise, <http://www.legabon.org/instit.php?Id=4#>.)

²²² [Princeton University interview PWYP members, Libreville, October 27, 2008.] Marc Ona noted that his organization, Brainforest, was included in the MSG after a request was made by PWYP Africa Regional Coordinator, Matteo Pelligrini. Fidele Ntsissi acquiesced, but also asked that Reverend Jocktane be added to the MSG.

²²³ [Princeton University interview with Marcel Libama, Secrétaire National Charge de l'Administration de l'Education Nationale (SENA), Libreville, October 28, 2008.]

²²⁴ [Princeton University interview with Reverend Mike Jocktane, Libreville, October 27 2008.]

²²⁵ [Princeton University interview with PWYP members and Mr. Marcel Libama, Secrétaire National Charge de l'Administration de l'Education Nationale (SENA), Libreville, October 27-28, 2008.]

Huijbregts of the World Wildlife Fund notes that there is a growing movement of local CSOs that are speaking out for the first time with PWYP being a vehicle for such groups.²²⁶

Outside of the MSG, civil society's engagement with the EITI can be characterized as very weak.²²⁷ Most CSOs in the country do not know much about the EITI,²²⁸ and an overwhelming majority of Gabonese citizens are not aware of it. Lack of press coverage, inadequate communication mechanisms, and the population's preoccupations with daily socio-economic problems are all reasons for this lack of knowledge and interest in the EITI.²²⁹

Many CSOs feel that the government acts as a roadblock in their quest for more transparency in the management of resources.²³⁰ Western diplomats also add that the organizations suffer from both overt and subtle constraints from the government. If one is seen as being too vocal and too critical, serious repercussions could follow. CSOs in Gabon have experienced government harassment and intimidation for speaking out on issues such as mismanagement of oil revenues. In January 2008, for example, the government banned members of PWYP Gabon for "alleged violations of public order."²³¹ In July 2008, the coordinator of PWYP Gabon, who also serves on the EITI Gabon MSG, and other CSO leaders were questioned, but not charged, by Gabonese police in connection with their public demands for an investigation into the finances of Gabon's chief prosecutor.²³² A travel ban has restricted the PWYP Gabon coordinator from international travel since June 2008.²³³

The harassment culminated in the New Year's Eve arrest of the PWYP Gabon coordinator and four other anti-corruption activists.²³⁴ They were detained for 12 days in unsanitary conditions without access to medical facilities.²³⁵ The activists were charged with "possessing a document for dissemination for propaganda purposes" and "oral or written propaganda with a view to inciting rebellion against the state authorities."²³⁶ Global Witness, PWYP International, RWI called for the "trumped-up" charges to be dropped and demanded access to legal counsel and sanitary prison conditions for the activists.²³⁷

²²⁶ [Princeton University interview with Mr. Bas Huijbregts, Program Leader at World Wide Fund for Nature (WWF), Libreville, October 29, 2008.]

²²⁷ Almost every party interviewed noted the weak nature of the engagement of civil society organizations outside of the MSG, and Gabonese civil society in general.

²²⁸ At a meeting with PROGREANE (Programme de Renforcement des Acteurs Non-Etatiques), an organization that currently includes 146 local NGOs and working on themes such as good governance, the Director, Mme Edwige Betah, volunteered that she had heard about EITI but did not know what it was, Libreville, October 29, 2008. During a meeting with PWYP members on October 27, they noted that the majority of CSOs in Gabon do not know about EITI.

²²⁹ [Princeton University interview with PWYP members, NGO Leaders, PWYP Members, Libreville, October 27 and 30 2008.]

²³⁰ [Princeton University interview with NGO leaders (see list in Appendix I), Libreville, October 30, 2008.]

²³¹ <http://www.renewatch.org/news/010509.php>.

²³² Ibid.

²³³ Ibid.

²³⁴ <http://af.reuters.com/article/gabonNews/idAFL916248220090109?pageNumber=1&virtualBrandChannel=0>.

²³⁵ <http://www.renewatch.org/news/011609.php>.

²³⁶ <http://af.reuters.com/article/gabonNews/idAFL916248220090109?pageNumber=1&virtualBrandChannel=0>.

²³⁷ <http://www.renewatch.org/news/010909.php>. One activist is Gregory Ngoua Mintsa, a civil plaintiff in a December 2nd complaint filed in Paris that called for an investigation into assets acquired in France by three African heads of state, including the President of Gabon.

The activists were released on bail on January 12th, but charges are still pending.²³⁸ On January 21st, a bipartisan group of U.S. Members of Congress accused Gabon of breaching its international treaty obligations by arresting and detaining the activists and demanded the restoration of their legal rights.²³⁹

The government's behavior toward civil society is incompatible with its status as an EITI Board member and raises serious questions about its sincerity to create an environment for open and free debate on resource revenue issues. The Gabonese government's ongoing harassment and intimidation of civil society activists demonstrates one of the central challenges for the EITI – how can civil society groups freely operate in an EITI context when serious constraints are imposed by the government.

Outside of the MSG, oil companies are not meaningfully involved with CSOs. Total Gabon, the country's largest oil company, stated that it did not have much interaction with CSOs.²⁴⁰ Both parties could reap benefits from greater engagement. Civil society could gain from the technical assistance companies have, and companies could build goodwill and improve their reputations.

Western governments and IFIs recognize the autocratic nature of the state and acknowledge to varying degrees its harassment and intimidation of civil society. Rather than openly confront the Gabonese government, they often show their support for beleaguered civil society activists by offering moral support and engaging in quiet diplomacy.²⁴¹

DATA DISCLOSURE

Gabon has published three EITI reports so far, providing more independently reconciled data on extractive revenues than was ever available before. Each report has improved on the previous one in both extent of coverage and data quality. This is an impressive achievement, for which all stakeholders should be applauded.

There is, however, much room for improvement on data disclosure. Gabon's latest EITI report was published in March 2008 and covers revenues for 2006.²⁴² It states that the EITI requirement that all material payments are covered is met because the two principal oil companies (Shell and Total) and the principal mining company (Comilog) are included. However, there is no available information to verify what proportion of total production or revenues are in fact reported.²⁴³ Only

²³⁸ <http://www.publishwhatyoupay.org/en/story/gabon-civil-society-activists-provisionally-released>.

²³⁹ McGovern, James P., Edward R. Royce, Donald M. Payne, Barney Frank, and Gwen Moore. Letter to His Excellency El Hadj Omar Bongo Ondimba. 21 Jan. 2009. Washington D.C.

²⁴⁰ [Princeton University interview with Mr. Jerome Andre, and Mr. Jean-Francois Daganau of Total Gabon, Libreville, October 31 2008.]

²⁴¹ [Princeton University interview with Western diplomatic sources, Libreville, October 2008.]

²⁴² République Gabonaise Initiative pour la Transparence des Industries Extractives, Rapport 2006 sur les revenus pétroliers et miniers de la République Gabonaise (Libreville: 2008).

²⁴³ The report includes 20 out of 26 oil companies and 10 out of 23 mining companies operating in the country. The report does state that Total and Shell produce 61% of all oil barrels. (République Gabonaise Initiative pour la Transparence des Industries Extractives, Rapport 2006 sur les revenus pétroliers et miniers de la République Gabonaise (Libreville: 2008), 17.) Even if this were true, it would not satisfy the materiality requirement, which requires that any company making a material payment report. It is unclear why not all companies report.

the three principal companies were required to submit audited reports. Profit oil is included (in millions of US dollars, not in barrels of oil). Revenues are reported in the aggregate, not disaggregated by company. There are no reported discrepancies in the mining sector; in the oil sector there is a 63.4 million US dollar discrepancy (3% of total reported revenues).²⁴⁴ Lacking information on the proportion of total production or revenues included, this discrepancy is difficult to interpret – it could represent good revenue management as much as company self-selection.

The official discrepancy is not the main concern of civil society members; they are more concerned with the reliability of the data currently reported. All civil society members interviewed agreed that the next EITI report should require all companies to submit audited reports. PWYP coalition members would also like to see government accounts independently certified, which is an EITI requirement.²⁴⁵ The government holds that its accounts are certified in an appropriate manner.²⁴⁶ One member of civil society concurs that no more can be required of the government without infringing upon its sovereignty.²⁴⁷ An IMF performance criterion for the Gabonese government is to build an oil revenue estimation and projection model.²⁴⁸ The model is

²⁴⁴ The report does not include any explanation for this discrepancy. In his comments, the independent expert states that it is not evidence of “significant anomalies” between company and state declarations of revenue (République Gabonaise Initiative pour la Transparence des Industries Extractives, Attestation de l’Expert Indépendant Année 2006 (Libreville: 2008), 9). Three interviewees confirmed that most of the discrepancy arises from differences between the official and market exchange rates at which each transaction is converted [Princeton University interviews with Reverand Mike Jocktane, President, Rassemblement des Eglises et Ministères Pentecôtistes et Charismatiques du Gabon, Libreville, October 27, 2008; Samba Thiam, Resident Representative, IMF, Libreville, October 29, 2008; Jerome Andre, Financial Director and Jean-Francois Daganand, Director Juridique et Associations, Total Gabon, Libreville, October 31, 2008.] The rest of the discrepancy is likely explained by small difficulties in the government’s management of receipts, such as not including the banking commission for the exchange of receipts and calculating taxes/profit oil on average petrol prices (instead of actual price when sold).

²⁴⁵ [Princeton University interview with PWYP members, Libreville, October 27, 2008.]

²⁴⁶ EITI requires that government receipts be based on audited accounts to international standards, but the Secretariat has never defined what that means. No standard equivalent to the IASB’s accounting standard for companies exists for governments. Best practice in many governments is that laws require the judiciary to audit the legislative/executive accounts and that governments do as their laws stipulate. The Gabonese Government publishes its State Budget twice annually (Loi de Finance Initiale and Loi de Finance Rectificative: <http://www.finances.gouv.ga/>, the second (Loi de Finance Rectificative) includes data on oil revenue receipts. The Court of Auditors (Cour des Comptes, part of the judiciary) publishes an annual report that compares stated government receipts with the execution of the budget (République Gabonaise Cour des Comptes, Rapport General sur le Controle de l’Execution des Lois de Finances en Vue du Reglement du Budget de l’Exercice 2004 (Libreville: 2006)). The Ministry of the Economy publishes an annual Declaration of Conformity between the general accounts of the state’s auditors and the general administrative accounts of the state (République Gabonaise Ministère de l’Economie, des Finances du Budget et de la Privatisation, Declaration Generale de Conformite (Libreville: 2003)). All these documents contain information regarding petrol receipts to the same level of detail as the EITI report provides. However, they are all published with a delay of four or five years.

²⁴⁷ [Princeton University interview with Reverand Mike Jocktane, President, Rassemblement des Eglises et Ministères Pentecôtistes et Charismatiques du Gabon, Libreville, October 27, 2008.] This member of civil society is also an advisor to the President. Arguably, most governments (including most Western governments) would reject independent certification as an infringement on sovereignty. However, some governments (New Zealand, for example) have contracted out their accounting to a private firm.

²⁴⁸ IMF, Gabon: First Review Under the Stand-By Arrangement and Requests for Waiver of Nonobservance of Performance Criteria and Modification of a Performance Criterion—Staff Report (Washington, D.C.: 2008), p. 31, p. 37. The Government has contracted this model out to KPMG, and given them access to all contracts and production (110 in total, 40 in exploration, 70 in production) as declared by the 23 companies operating in the

currently confidential to the government, but the IMF would like it to be public, as it could help explain discrepancies and provide a more independent certification of revenues.²⁴⁹

Going beyond the minimum requirements of the EITI, PWYP Gabon coalition members would also like to see more data disclosed, specifically: contracts made public, revenues disaggregated by company, barrels of profit oil reported and timber included.

Making contracts public would enable civil society members to check what revenue streams are due to the government.²⁵⁰ It is unclear what the obstacles to publishing contracts are given there is support from a range of stakeholders.²⁵¹ PWYP Gabon coalition members suggested that pressure from the EU and the US on companies listed on their stock exchanges would help.

PWYP Gabon coalition members would like to see revenues disaggregated by company, and more importantly, barrels of profit oil and details of their sale included as well (not just final sale amount as currently reported).²⁵² Such additional disclosure would improve transparency and facilitate better management. Inclusion of barrels of profit oil is a requirement of the EITI²⁵³ and companies are not opposed to it.²⁵⁴ It is unclear whether the technical capacity to carry this out is in place,²⁵⁵ but it seems that political will is more of an obstacle.²⁵⁶

country. The model plots revenue field by field and contract by contract. It will help the government budget more effectively (reducing differences between the Loi de Finance Initiale and Rectificative).

²⁴⁹ If revenue in the EITI reports significantly differs from the model predictions, civil society members could ask for explanations.

²⁵⁰ Without access to contracts, this calculation is difficult to do because (for example) although there is an official tax rate on oil companies, taxes are in fact negotiated contract by contract. Vaalco is the only company currently publishing its contracts. Even if contracts are published, without independent surveys of production it is impossible to translate revenue streams due into payments owed. This, however, is well beyond the scope of EITI.

²⁵¹ The ex-president of the MSG agreed that contracts should be published. The IMF advocates transparency of contracts as good practice (Op de Beke, Anton. Office Memorandum: Meeting on Transparency in Oil, Gas and Mining Contracts. (Washington, D.C.: 2007)). Total Gabon officials said they had no problem with publishing contracts in principle, but that the Government had never asked them to.

²⁵² Part of the profit oil due to the government is traded by the oil companies and paid in dollars to the government; part of it is paid in kind. All profit oil paid in kind is traded by a private company called Petrolin. (République Gabonaise Initiative pour la Transparence des Industries Extractives, Attestation de l'Expert Indépendant Année 2006. (Libreville: 2008), p. 17.) Civil society members explained that the key to revenue transparency was having more information about Petrolin. Civil society members believe that Petrolin (which is allegedly linked to President Omar Bongo) sells to a number of smaller traders that also appear to be owned by people close to President Omar Bongo, who may be buying at low prices and selling at higher prices, reaping large profits that are escaping government coffers. If civil society knew the number of barrels of profit oil handed over to the Government (and hence to Petrolin) it could exercise some oversight on these sales.

²⁵³ EITI, Source Book. (2005), p. 28. Nigeria, another EITI Candidate country, already provides this information in its reports.

²⁵⁴ Total Gabon publishes barrels of oil produced in its annual reports and would be happy to comply if asked. Shell has a global policy in favor of disaggregated reporting, and will comply if asked http://www.shell.com/home/content/responsible_energy/society/using_influence_responsibly/payments_to_governments/our_approach/our_approach_ptg.html. Marathon would be happy to comply if asked and if other companies did to [Princeton University interview with Marathon, Princeton, December 8, 2008.]

²⁵⁵ The ex-president suggested more capacity and manpower was required; the Permanent Technical Secretary said that the Independent Expert had already been provided with disaggregated numbers (and that company resistance was the reason this hadn't been reported). Technical assistance is available from the World Bank, the IMF's AFRITAC and the African Development Bank, and the government has refused assistance on EITI from the first two.

Finally, PWYP Gabon coalition members would like to see timber included in the EITI reports.²⁵⁷ There is no requirement for this under the EITI, as timber does not fall within the typical definition of an extractive industry, but there is consensus that greater transparency of the timber industry would be of benefit to policy discussions about environmental protection.²⁵⁸

DATA DISSEMINATION

There is broad consensus that communication of the EITI reports is currently inadequate.²⁵⁹ Although a few interested government officials and parliamentarians have looked up the report, most have never seen it.²⁶⁰ Only a small circle of interested CSOs know about the EITI, and they have been informed directly by PWYP Gabon coalition members.

Government officials and civil society members agree that audiovisual presentations would be more effective than written material for conveying information about the EITI; seminars and trainings would work best.²⁶¹ Opinions on whether the press was a suitable medium varied with perceptions on how free the media really is, but in any case press coverage on the EITI has been limited to date. There is also less clarity over roles and responsibilities for data dissemination, with some preferring to use civil society networks,²⁶² others insisting the government should take responsibility, and still others hoping that the global EITI Secretariat will take charge. In any event, no one has so far. Upon request from the MSG, one civil society MSG member has written a communications plan. The MSG has set aside about \$75,000 for data dissemination, with the plan pending approval at the next meeting, but civil society members are concerned that the government may lack the capacity and political will to implement it.

²⁵⁶ Both the ex-president and the Permanent Technical Secretary [Princeton University interview with Regis Immongault, Permanent Technical Secretary, EITI Gabon, Libreville, October 31, 2008] of the MSG agreed that disaggregation would be a good idea, but remained vague on reporting barrels of profit oil.

²⁵⁷ Reverend Mike Jocktane (civil society member on the MSG) disagrees, as this could slow down the process in order to account for insignificant resources.

²⁵⁸ The IMF Resident Representative and the local WWF office [Princeton University interview with Bas Huijbregts, World Wildlife Fund, Libreville, October 29, 2008] agree, and the MSG's Permanent Technical Secretary sees no reason why not to. Liberia already includes timber in its EITI reports.

²⁵⁹ The MSG organizes a press conference after each report, at which the president of the MSG speaks. Civil society organizations and journalists are invited to these press conferences. Attendance at the last one was about 30 people. No copies of the reports have been distributed. There has been no debate on the television or radio, and only three articles on the EITI reports (one of which mentioned the 3% discrepancy). The press has not approached civil society organizations, companies or the government to enquire about EITI. The report is published on the EITI Gabon website, but this address has not been publicized and the majority of people do not have access to the internet. Civil society members, journalists, government officials, parliamentarians, the World Bank and Western diplomats all agreed this was a weakness of EITI Gabon. Only one interviewee said that the reports were well communicated [Princeton University interview with Tayeb Diallo, UNDP, Libreville, October 30, 2008.]

²⁶⁰ [Princeton University interview with Jean Valentin Leyama, Deputy Secretary General, Union Gabonaise de Development et Democratie, Libreville, October 31, 2008.]

²⁶¹ Some civil society members suggested using the educational system to spread awareness of EITI and revenue management. A version of the report in easy, digestible language, distributed for free was also a popular suggestion.

²⁶² Among others, there was a suggestion that the PROGREANE platform could be used.

Although the EITI was initiated by the government, most government officials are not very familiar with the topic.²⁶³ An opposition member in the Gabonese Parliament noted that dialogue relating to the EITI is absent from the bicameral legislature.²⁶⁴ He believes that Parliament, being the governmental body that represents the citizens, should have a place on the MSG, a move supported by at least one executive official.²⁶⁵

Despite the guarantee of press freedom in the constitution, there is little public debate or media coverage of the EITI.²⁶⁶ One journalist felt that while the press is free to discuss the EITI or revenues without fear of government repercussion, coverage of the EITI remains non-existent because journalists lacked information about the initiative and self-censored their work.²⁶⁷

GOVERNMENT ACCOUNTABILITY

Opinions on whether the government has the political will to meaningfully implement the EITI are mixed. Some believe the government is participating in good faith.²⁶⁸ There have been some improvements to the EITI reports prompted by requests from civil society. However, most civil society members interviewed, as well as an opposition parliamentarian and a Western diplomat, agree that the government is mainly interested in appearing as a “good student” of the EITI, doing the minimum required to comply. This group also agrees that on its own civil society – financially and organizationally weak, and facing an internally coherent, strong government – will find it difficult to monitor EITI implementation. This imbalance of power leads many civil society members to believe that only international pressure can hold the government to account

²⁶³ [Princeton University interview with PWYP members, Libreville, 27 October 2008.]

²⁶⁴ [Princeton University interview with Mr. Jean Valentin Leyama, Opposition Member of Parliament, Libreville, October 31, 2008.]

²⁶⁵ [Princeton University interview with Mr. Jean Eudes Régis IMMONGAULT, Conseiller Financier du Ministre d'Etat, Ministre de l'Economie, des Finances, du Budget et de la Privatisation, Libreville, 31 October 2008.] He stated that he would also welcome such an expansion.

²⁶⁶ [Princeton University interview with Mr. Marcel Jouve, Conseiller de Cooperation de d' Action Culturelle, Ambassade de France, October 28, 2008.]

²⁶⁷ [Princeton University interview with Mr. Norbert Ngoua Mezui, Editor of bi-monthly newspaper, *NKU'U – Le Messenger*, and President de l' Association des Professionnels de la Presse Ecrite Libre (APPEL), Libreville, October 29, 2008.] Mr. Mezui added that the government provides an annual subsidy of 500 million CFA (approximately one million US Dollars) to the written press. One can deduce that the Gabonese press is not independent since it is paid by the government. In Gabon, only the daily *L'UNION* benefits from advertisements' revenues on its pages. There is no law preventing companies and organizations from buying advertisement space on other newspapers, but they simply do not do it. The lack of revenues from advertisement hurt the independent newspapers such as *NKU'U* and they find themselves having to rely on the government subsidy. The research team should also note that Freedom House reported on Mr. Mezui's paper, being banned for more than two weeks in August 2005 for criticizing the National Council for Communication, a government body that determines accreditation for professional journalists.

²⁶⁸ The ex-president of the MSG insists that in Gabon, sign-up to the EITI was a governmental initiative. The IMF and the ADB point out that Gabon has displayed some political will in implementing EITI so far. Specifically, the government has worked to identify oil revenue streams, which requires a good deal of administrative time [Princeton University interviews with Samba Thiam, Resident Representative, IMF, Libreville, October 29, 2008; and with Assitan Diarra-Thioune, Principal Economist, African Development Bank, Libreville, October 31, 2008.] One civil society representative on the MSG [Princeton University interview with Reverand Mike Jocktane, President, Rassemblement des Eglises et Ministères Pentecôtistes et Charismatiques du Gabon, Libreville, October 27, 2008] believes the Government is implementing EITI in good faith, providing answers when asked and making good progress.

for EITI implementation.²⁶⁹ At the same time, civil society members are skeptical of the international community's ability to monitor implementation of the EITI. In the past, the international community only monitored Gabon's adoption of international initiatives, not their implementation. To avoid a similar disappointment, CSOs repeatedly stress the importance of meaningful EITI Validation that looks beyond the initiative on paper and at the realities on the ground.²⁷⁰

Civil society members report that a difficulty with relying on international pressure is that the EITI is perceived by some as a Western neo-colonialist initiative for African countries.²⁷¹ Western diplomats in Gabon confirmed that they saw no need to implement the EITI at home, but civil society members insist that this would make international pressure considerably more effective.

Civil society members also question the extent to which a voluntary initiative can hold the Gabonese government to account.²⁷² Many civil society members would like to see the international community establish an enforcement mechanism: sanctions or aid conditionality. Civil society members believe the government will lose nothing if it is forced to leave the EITI, and the initiative has no leverage on the government's political will to reform if there is nothing to lose from withdrawal. This is particularly pressing as Validation approaches. However, the IMF, the World Bank, the African Development Bank and Western diplomats are unwilling to make a condition of a voluntary initiative.²⁷³ The consensus in this group is that the government knows it is being watched and cares about how supporting governments and institutions perceive it.²⁷⁴

²⁶⁹ [Princeton University interview with PWYP members, Libreville, October 27, 2008.]

²⁷⁰ For example: In the 1990s, the international community (led by the World Bank) insisted on multi-party elections. These have been held in name ever since, but it is common knowledge that most "opposition parties" have been co-opted by the government. The IMF recently made establishment of a Corruption Commission a condition of its operations. The Commission has been established, but most civil society members and some members of the international community acknowledge it is not independent and will not affect corrupt practices.

²⁷¹ No supporting governments except Norway are implementing EITI domestically. This is the South African government's stated reason for not joining EITI [Princeton University interview with PWYP members, Libreville, October 27, 2008.]

²⁷² They explain that EITI is not adequate for Gabon's political context because it is conceived to be supported by democratic institutions. Civil society is caught in a bind – because EITI is a voluntary initiative, the government can pull back if pressure is applied, and they don't want the government to retract, so they have to be careful with what pressure they apply. This is a problem with the EITI generally, not just in Gabon. [Princeton University interview with PWYP members, Libreville, October 30, 2008.]

²⁷³ The IMF states that EITI implementation is not suitable as a structural performance criteria to its programs, but has made other transparency indicators performance criteria and has included structural benchmarks in some countries specifically requiring transparency in the context of EITI (Global Witness & Bank Information Centre, Assessment of International Monetary Fund and World Bank Group Extractive Industries Transparency Implementation (2008)) The EITI also does not fit the standard format of the African Development Bank's disbursement conditions. A number of Western governments list the EITI as one possible indicator of good governance, often a requirement for financial aid or economic agreements. A difficulty for all these actors regarding Gabon is that the country is not dependent on financial aid, so any conditions would have to be attached to other agreements (e.g. preferential trade treatment) or support (e.g. additional World Bank program funding).

²⁷⁴ The perception of credit rating agencies is especially important to Gabon at the moment – it recently received a BB- rating on sovereign debt, allowing it to float debt on the international market for the first time.

FURTHERING THE DEBATE ON RESOURCE MANAGEMENT

All civil society members and supporting organizations interviewed agree that the initiative provides CSOs with the information, credibility and visibility to engage in a debate on resource revenue management, which was previously a taboo subject.²⁷⁵ The PWYP Gabon coalition is broadly acknowledged to be taking the lead on this debate, looking beyond revenues to expenditures, which are a greater concern to Gabonese people.

Supporting organizations, companies, civil society and politicians all agree that the main weakness in the fiscal system is expenditure,²⁷⁶ but they disagree over whether the EITI should be expanded to cover it. Government officials and one civil society member believe extending the EITI to expenditure management would lead to the international community infringing upon Gabonese sovereignty.²⁷⁷ PWYP Gabon coalition members consider expansion of the debate to expenditures the main reason for continued engagement in the EITI, and complain that neither the global PWYP coalition nor the EITI Board provide a clear vision of next steps for the EITI. They believe that only pressure from the international community will push the Gabonese government to broaden the debate to include expenditures.²⁷⁸ The international community's approach to initiatives on expenditure has so far been fairly weak and uncoordinated,²⁷⁹ mainly arguing that a voluntary initiative can only go as far as the political will of the government.

²⁷⁵ Often, civil society groups that raise issues of good governance are drowned by a government counter-initiative – EITI provides some cover from this. Jean Valentin Leyama, an opposition parliamentarian, gives a good example of the usefulness of EITI information: he used the information in the report to confront companies extracting manganese in his region about the taxes they pay. [Princeton University interview with Jean Valentin Leyama, Deputy Secretary General, Union Gabonaise de Development et Democratie, Libreville, October 31, 2008.]

²⁷⁶ The Gabonese Government publishes its budgets, albeit with a significant delay. The main difficulty – acknowledged by all actors, including the government – is in tracing revenues received through the budget and into implementation of high quality projects on the ground.

²⁷⁷ EITI ++, the World Bank initiative covering expenditures, is particularly criticized by this group.

²⁷⁸ Jean Valentin Leyama, an opposition parliamentarian, concurs that international community pressure on this issue would be welcome, and does not consider this an infringement on sovereignty. [Princeton University interview with Jean Valentin Leyama, Deputy Secretary General, Union Gabonaise de Development et Democratie, Libreville, October 31, 2008.]

²⁷⁹ The World Bank and UNDP sponsored a National Plan of Good Governance with some (limited) civil society involvement. The World Bank has also begun to promote its EITI++. The IMF suggested that Gabon create a Fund for Future Generations to invest a part of oil revenues and the government complied in 1998. However, the IMF's own assessment is that the Fund is failing its stated purposes. The ADB has a particular interest in expenditures since Gabon still has to pay back some of its loans, so it has established (with the WB and UNDP) a project to follow certain expenditures through the 2009 budget process.

IX. CONCLUSION

As an MSI, the EITI is a powerful policy instrument for addressing failures of governance and transparency. Civil society engagement in the EITI process is inherently valuable; indeed, the procedural interactions that arise from implementation are arguably more important than the actual reports the EITI produces. The EITI has helped to create a space in which civil society can engage with the state and private enterprise on an equal footing. Through this, long-standing taboos have been challenged and a veil of secrecy typical of the extractive industries has been lifted. As a result, there is a growing debate about resource extraction in Candidate countries that in some cases goes beyond revenue transparency to expenditure transparency – a key to tackling the protracted problems of poor governance, inequity, and poverty.

However, the EITI remains vulnerable as a voluntary initiative. The strength of the EITI may be in its process, but it will also need to deliver tangible results to ensure that stakeholders (in particular civil society) remain committed to it. This delicate balance between process and results is a tall order; the EITI's primary stakeholders have different and at times divergent interests.

The success or failure of the initiative depends on the goodwill of governments. If pushed too far, they are likely to defect. The credibility of the initiative depends on civil society – and in many countries on a limited number of key individuals – but if the EITI fails to deliver on its promise of improved governance and poverty alleviation civil society will disengage. Companies, to one degree or another, are beholden to governments and civil society and obliged to pacify them both. They can be powerful drivers for change and are well placed to have a positive impact on the implementation and evolution of the EITI, but they are also likely to advocate for minimal requirements unless the payoffs of the EITI change.

As countries approach their Validation deadlines, the quality of EITI implementation must be assured for the initiative to remain legitimate and consequential. For the EITI to survive beyond Validation, it will need to articulate its vision for the future and work toward an incremental expansion that addresses the core challenges of resource-rich countries, while incorporating the incentives of each stakeholder.

Without adequate, consistent, and comprehensive support, the EITI could very well fade into the annals of yet another good idea gone awry. If supporting governments, IFIs, and other interested parties do not prioritize the initiative – monitoring developments in Candidate countries, exerting pressure where needed, and conferring praise when earned – the EITI will falter. Likewise, if companies do not play a more constructive role by moving towards greater transparency – such as voluntarily disclosing individual payments, as is the case with BP – the EITI is likely to stagnate. Sporadic support is insufficient.

To reverse the resource curse, bold steps are needed. First, the EITI will never be fully legitimized without being implemented by supporting governments.²⁸⁰ Second, a coordinated effort to finance, train, and safeguard civil society to be an authoritative force free from intimidation and harassment is imperative. Third, other constraints limiting EITI

²⁸⁰ This would be a low-cost way to secure wider buy-in from a greater number of middle-income resource-rich countries such as South Africa.

implementation, such as restrictions on civil liberties and the media, will need to be tackled comprehensively. Fourth, a more harmonized approach will help manage expectations and address an almost pervasive sense of confusion as to what the EITI is supposed to accomplish. Fifth, initiatives that hope to build on the EITI (such as EITI ++) should only be floated into the public domain by the Secretariat or risk undermining the gains already achieved by the EITI. Finally, greater emphasis will need to be placed on citizen outreach and education, clarifying guidelines, and mainstreaming the EITI as a global norm.

All things considered, the EITI has been able to centralize, certify, and publish revenue and payments streams in a more reliable and consistent way than ever before. This is undoubtedly an important first step toward combating the resource curse through greater transparency in resource revenues. As seen from first hand experience in Gabon and Azerbaijan, incremental improvements are consistently being made as EITI implementation proceeds. Yet efforts are still needed to ensure that the EITI is sustainable and consequential in Candidate countries. Meaningful EITI implementation should not be taken for granted; only through a concerted and coordinated effort will the EITI help transform natural resource wealth into a positive force for progress and development.

APPENDIX I: INTERVIEWS CONDUCTED OR REQUESTED

LIBREVILLE INTERVIEWS

Alain Moupopa, President, Afrique Horizon
Assitan Diarra-Thioune, Principal Economist, African Development Bank
Bas Huijbregts, Project Leader, World Wildlife Fund
Bekale Nguema, ALCR (Association de Lutte Contre les Crimes Rituels)
Brigitte Mke Ondo, Association de Lutte contre le Risque et Negligeance Medicale
Clementine Avomo Ndong, President, Association de Charite Chretienne de Gabon
Edwige Betah, PROGREAINE (Programme de Renforcement des Acteurs Non Etatiques)
Fidele Ntsissi, Tresorier Payeur General, Government of Gabon (also ex-president, EITI MSG)
George Mpage, President, ROLBG (Reseau des Organisations de Bonne Gouvernance au Gabon) (also member, Conseille Economique et Sociale)
Jean Elvis Ebang-Ondo, President, ALCR
Jean Valentin Leyama, Deputy Secretary General, Union Gabonaise de Developement et Democratie
Jean-Francois Daganand, Director Juridique et Associations, Total Gabon
Jerome Andre, Financial Director, Total Gabon
John Corrao, Economic/Commercial Officer, US Embassy
Marc Ona, President, Brainforest
Marcel Jouve, Conseiller de Cooperation et d'Action Culturelle, Ambassade de France
Marcel Libama, Secretaire National Charge de l'Administration, SENA, (also member, FOSCPG (Front de Organisations de la Societe Civile pour la Lutte contre la Pauvete)
Markky Edzang, Secretary General, RENARES
Nathan Holt, Deputy Chief of Mission, US Embassy
Norbert Ngoua Mezui, Editor, NKu'u - Le Messenger & President, APPEL
Regis Immongault, EITI Permanent Technical Secretary
Reverand Mike Jocktane, President, Rassemblement des Eglises et Ministères Pentecôtistes et Charismatiques du Gabon
Samba Thiam, Resident Representative, IMF
Simon Evouna, Intersyndicale
Steve Stoop, World Bank
Tayeb Diallo, UNDP

LIBREVILLE INTERVIEWS (UNAVAILABLE)

Hervé Nnang, Ministère des Hydrocarbures
JF Makanga, Ministère des Mines
Joachim Boussamba Mapaga, President, Gabonese Chamber of Commerce
Luc Oyoubi, President, Finance/Budget Commission of Parliament
M. Abeke, Directeur, COMILOG
Ministère des Finances & Ministère des Impots
Norwegian & British Embassies
Roger Ratanga, External Affairs Manager, Shell Gabon
Yvon Tchicot, Technical Assistant for Oil, Ministère d'Energie

BAKU INTERVIEWS

Adil A. Mammadov, EITI Coordinator, SOFAZ²⁸¹

Alimammad Nuriyev, President of "Constitution" Researches Fund and Coordinator of Anti-Corruption Network of NGOs, EITI Coalition

Ambassador Hafiz Pashayev, Rector, Azerbaijan Diplomatic Academy

Aydin Gashimov, Stakeholder Investment and Reporting Manager, BP

Ayla Azizova, Transparency and Public Reporting Team Leader, BP

Dunya Camalova, Member of Coalition Council, EITI Coalition

Emil Omarov, Coordinator, National Budget Group

Fariz Ismailzade, Director, Advanced Foreign Service Program, Azerbaijan Diplomatic Academy

Farzaliyev Farid, Economist, Oil Contracts Department, SOFAZ

Galib Efendiev, Regional Consultant, Caucasus and Central Asia, RWI

Gubad Ibadoglu, Coordinator, EITI Coalition

Jamilya Gadiyeva, External Affairs Advisor, StatoilHydro

Kamalya Mustafayeva, Correspondent, Upstream

Koba Gvenetadze, Resident Representative in Azerbaijan, IMF

Members of Support for Economic Initiatives Public Union

Mirvari Gahramanli, Chairperson, Oil Workers' Right Protection Organization

Nabat Mammadora, Azerbaijan Energy Officer, U.K. Embassy

Richard Scarborough, First Secretary, Royal Norwegian Embassy

Sabina Piriyeva, Business Support Manager, StatoilHydro

Saida Bagirli, Senior Operations Officer, and Farid Talishly, Economist, World Bank

Sandra Gentile, Country Manager, Amerada Hess Corporation

Staff from Azerbaijani Investigative Journalist Network

Staff from Himayadar Humanitarian Progress Public Union

Staff from SOCAR

Staff from Turan News Agency

Staff from U.S. Embassy and USAID

Vahid Ahmadov, Member of Parliament and Deputy, The President of Azerbaijan Industrialists and Owners Union

BAKU INTERVIEWS (UNAVAILABLE)

Ingilab Ahmadov, Public Finance Monitoring Center

Lukoil

Republic of Azerbaijan Finance Ministry & Republic of Azerbaijan Tax Ministry

OTHER INTERVIEWS AND REPORT CORRESPONDENCE

Adel Chaouch, Resident Manager, Equatorial Guinea and Gabon, Marathon

Clare Bebbington, former Director of Communications and External Affairs at BP Azerbaijan
Department of State, Washington D.C.

EITI Secretariat, Oslo, Norway

Helen Sullivan, Public Affairs, Shell

Richard S. Karp, Government and Public Affairs, Chevron Corporation

Sheldon Daniel, Director of Corporate Responsibility, BP

²⁸¹ Mr. Mammadov expressed concerns that certain sections of the report did not accurately characterize his statements, though he never provided the research team with a list of specific grievances.

APPENDIX II: AZERBAIJAN AND GABON VALIDATION

Editor’s Note: This is the research team’s unofficial assessment of the two countries’ progress toward Validation, based on the EITI Validation criteria.

The Validation Grid

EITI Implementation (Azerbaijan)

Sign up	Preparation	Disclosure	Dissemination
<p>1. Has the government issued an unequivocal public statement of intention to implement EITI? <input checked="" type="checkbox"/></p> <p>2. Has the government committed to work with civil society and companies on EITI implementation? <input checked="" type="checkbox"/></p> <p>3. Has the government appointed a senior individual to lead on EITI implementation? <input checked="" type="checkbox"/></p> <p>4. Has a fully costed workplan been published and made widely available, containing measurable targets, a timetable for implementation and an assessment of capacity constraints (gov. , private sector and civil society)? <input checked="" type="checkbox"/></p>	<p>5. Has the government established a multi-stakeholder group to oversee EITI implementation? <input checked="" type="checkbox"/></p> <p>6. Is civil society engaged in the process? <input checked="" type="checkbox"/></p> <p>7. Are companies engaged in the process? <input checked="" type="checkbox"/></p> <p>8. Did the government remove any obstacles to EITI implementation? <input checked="" type="checkbox"/></p> <p>9. Have reporting templates been agreed? <input checked="" type="checkbox"/></p>	<p>10. Is the multi-stakeholder committee content with the organization appointed to reconcile figures? <input checked="" type="checkbox"/></p> <p>11. Has the government ensured all companies will report? <input checked="" type="checkbox"/></p> <p>12. Has the government ensured that company reports are based on audited accounts to international standards? <input checked="" type="checkbox"/></p> <p>13. Has the government ensured that government reports are based on audited accounts to international standards? <input checked="" type="checkbox"/></p> <p>14. Were all material oil, gas and mining payments by companies to government (“payments”) disclosed to the organization contracted to reconcile figures and produce EITI reports? <input checked="" type="checkbox"/></p> <p>15. Were all material oil, gas and mining revenues received by the government (“revenues”) disclosed to the organization contracted to reconcile figures and produce the EITI report? <input checked="" type="checkbox"/></p> <p>16. Was the multi-stakeholder group content that the organization contracted to reconcile the company and government figures did so satisfactorily? <input checked="" type="checkbox"/></p> <p>17. Did the EITI report identify discrepancies and make recommendations for actions to be taken? <input checked="" type="checkbox"/></p>	<p>18. Was the information made public in a way that was: - publicly - comprehensive - comparable</p> <p>How have the mining companies implemented EITI?</p> <p>What steps are being taken to act on the findings to address the issues and ensure EITI is sustainable?</p>

1. Satisfactory –On June 17, 2003, at the First International Conference on EITI, a delegation headed by the current president, Ilham Aliyev, declared Azerbaijan would join and support the EITI.²⁸² On November 13, 2003, the government’s Cabinet of Ministers

²⁸² SOFAZ, “EITI Implementation in Azerbaijan,” SOFAZ, <http://www.oilfund.az/eiti/en/content/2/2>.

issued Ordinance No. 224, which formed a Committee – chaired by the Executive Director of SOFAZ – to guide EITI implementation.²⁸³

2. **Satisfactory** – The MOU was signed by representatives from companies, civil society, and the government on November 24, 2004. By virtue of signing the MOU, the government committed to working with civil society and companies on EITI implementation.
3. **Satisfactory** – The National Committee on EITI governs the interagency EITI implementation process and is chaired by the Executive Director of SOFAZ. The current Executive Director of SOFAZ, Shahmar Movsumov, is a member of the global EITI Board. SOFAZ also houses an EITI Secretariat, led by Coordinator Adil Mammadov, which manages the routine implementation of the EITI.
4. **Not Satisfactory (with caveats)** – Azerbaijan has not formulated a fully costed work plan to guide implementation of the EITI. Civil society believes the absence of a work plan impedes a systematic implementation of the EITI based on clear obligations and indicators of progress.²⁸⁴ While the government argues that a work plan is irrelevant and that the MOU is sufficient,²⁸⁵ the work plan has become a key criterion of the EITI's initial phase. The government could have devised a work plan post hoc.
5. **Not Satisfactory (with caveats)** – Azerbaijan does not have an MSG. Without an MSG, there is no body, composed of specific leaders from civil society, companies, and the governments, which engages in routine supervision of EITI implementation.²⁸⁶ The government justifies the absence of a MSG with three primary arguments: a) the MSG was not a requirement of Validation when Azerbaijan began EITI implementation, b) the MSG is unnecessary because adequate interaction of civil society, companies, and the government is ensured through ad hoc engagement, and c) the MOU provides all necessary guidance for interaction between stakeholders.²⁸⁷ Regardless, some advocates allege civil society is disadvantaged without a formal MSG, perceiving themselves as one step behind the government – reacting to it, rather than engaging as an equal partner in the process.²⁸⁸
6. **Satisfactory** – The Coalition was officially formed in May 2004. Despite overcoming significant obstacles, civil society remains engaged.²⁸⁹ The Coalition has expanded to over 100 organizational and individual members, and they are extremely active, advocating on the EITI as well as related issues.²⁹⁰

²⁸³ Ibid. Also, the text of Ordinance No. 224 can be found here: <http://www.oilfund.az/en/content/14/45>.

²⁸⁴ [Princeton University interview with Gubad Ibadoglu, Coordinator, EITI Coalition, Baku, October 28, 2008. Princeton University interview with Galib Efendiev, Regional Consultant for Caucasus and Central Asia, RWI, Baku, October 29, 2008.]

²⁸⁵ [Princeton University interview with Adil Mammadov, EITI Coordinator, SOFAZ, Baku, October 28, 2008.]

²⁸⁶ Azerbaijan has a Selection Group, which is described further under Validation Grid Indicator #10. However, its meetings are more technical in nature than a MSG.

²⁸⁷ [Princeton University interview with Adil Mammadov, EITI Coordinator, SOFAZ, Baku, October 28, 2008.]

²⁸⁸ [Princeton University interview with Galib Efendiev, Regional Consultant for Caucasus and Central Asia, Revenue Watch Institute, Baku, October 29, 2008.]

²⁸⁹ These obstacles include low capacity, late organization, and government-sponsored NGOs in the Coalition. Sabit Bagirov, *Extractive Industries Transparency Initiative: Azerbaijan's Experience and Development Road Map*, (Baku: Coalition for Improving Transparency in Extractive Industries, 2007). [Princeton University interviews with Mirvari Gahramanli, Chairperson, Oil Workers' Rights Protection Organization, Baku, Oct. 29, 2008.]

²⁹⁰ [Princeton University interview with World Bank country office staff, World Bank, Baku, October 31, 2008.]

7. **Satisfactory** – Companies are very engaged in Azerbaijan’s implementation of the EITI. They had a formative role Azerbaijan’s initial accession to the EITI, particularly BP.²⁹¹ Though EITI participation is voluntary in Azerbaijan, there is now universal participation among oil and gas companies.²⁹²
8. **Satisfactory** – There are no insurmountable obstacles to the successful implementation of the EITI’s basic requirements. As referenced in the MOU, the government waives confidentiality clauses for companies willing to issue reports. Civil society still faces numerous constraints to engagement on the EITI and other issues; for example, the difficulty of registering a new CSO discourages new activists from organizing and interacting with the government.²⁹³ In addition, the restrictive media environment prevents civil society from reaching out to the public or using the EITI as a platform to improve accountability. Though there is room for improvement, the government has enabled and facilitated the basic facets of EITI implementation.
9. **Satisfactory (with caveats)** – Technically speaking, stakeholders have agreed to reporting templates that appear to capture all relevant revenue streams from oil and gas extraction (and in the future, minerals). However, some interviewees expressed serious concerns that civil society did not have an equal voice in the creation of reporting templates.²⁹⁴ The form and content of reporting templates were purportedly agreed in advance by companies and the government, and the templates were presented to civil society for only cursory review and pressured approval. Civil society proposed several “reasonable” changes to the templates, most of which were rebuffed. Regardless of the veracity of these claims, it seems unlikely certain indicators of the Validation criterion – such as “multi-stakeholder group minutes of template discussions” or “draft templates provided to the multi-stakeholder group” – have been satisfied.
10. **Satisfactory (with caveats)** – Azerbaijan has a Selection Group that appoints a firm to perform reconciliation. Civil society, companies, and the government each have two representatives on the Selection Group, and there is no clear evidence that the Selection Group per se is dissatisfied with current or past contractors. However, the Coalition’s statement on the 2007 annual EITI report expressed concern that the three most recent reports were compiled by the same company; that the Selection Group approved Moore Stephens without any alternatives; and that this violates clause four of the MOU (which states the selection of an audit company should be based on competitive bidding).²⁹⁵
11. **Satisfactory (with caveats)** – As previously indicated, all extractive companies operating in Azerbaijan are participating in the EITI and issuing the necessary reports. Though there is no legal mandate on company reporting, the government has achieved the desired outcome on company reporting – likely through the goodwill of companies,

²⁹¹ [Princeton University phone interview with Clare Bebbington, former Communications and External Affairs Director in Baku, BP, November 18, 2008.]

²⁹² “All extractive sector companies operating in the country now are the stakeholders of EITI implementation process in Azerbaijan.” SOFAZ, “EITI Implementation in Azerbaijan,” SOFAZ, <http://www.oilfund.az/eiti/en/content/2/2>.

²⁹³ Sabit Bagirov, *Azerbaijani Oil: Revenues, Expenses and Risks*, (Baku: Central European University, 2007).

²⁹⁴ Sabit Bagirov, *Extractive Industries Transparency Initiative: Azerbaijan's Experience and Development Road Map*, (Baku: Coalition for Improving Transparency in Extractive Industries, 2007). Princeton University interview with Galib Efendiev, Regional Consultant for Caucasus and Central Asia, RWI, Baku, October 29, 2008.

²⁹⁵ “Statement by the ITEI Coalition of civil society institutions,” http://www.eiti-az.org/ts_gen/download/8-ci_hesabata_MSSA_reyi_eng.pdf.

contract negotiations, and verbal pressure by the government or other stakeholders. Yet company reports have occasionally been flawed, issued with delays and/or containing discrepancies.²⁹⁶ Civil society argues disaggregation of reports by company would enable stakeholders to hold persistent offenders accountable.²⁹⁷

- 12. Not Satisfactory** – A recent Coalition statement on the latest EITI report states that companies have recently introduced International Financial Reporting Standards (IFRS), which would lead the team to believe that companies are or will be subject to appropriate audits.²⁹⁸ However, the team was not informed of steps taken by the government to ensure company reports are audited to international standards – through legislation, the MOU, or regulations. One possible way to ensure this is to require the certification of company data. With certification EITI data submitted by companies is accompanied by a statement from the company’s own auditors confirming that they are based on existing financial reports audited to international standards.
- 13. Satisfactory (with caveats)** – The research team is unaware of government regulations, laws, or decrees to ensure that government reports are audited to international standards]. However, SOFAZ receives many of the country’s oil and gas revenues, coordinates EITI implementation, and is audited to international standards. SOCAR has been subject to international standards since 2007, and its first audit report was published in December 2008. Other ministries that provide data should also demonstrate that their data is similarly reliable, while SOCAR and SOFAZ’s auditor’s certification statements should be made available to the Administrator and included in the EITI report.
- 14. Satisfactory** – To the best of the team’s knowledge, all material oil and gas payments made by companies were disclosed to the organization contracted to reconcile figures.
- 15. Satisfactory** – To the best of the team’s knowledge, all material oil and gas receipts to the government were disclosed to the organization contracted to reconcile figures.
- 16. Not satisfactory (with caveats)** – Since Azerbaijan lacks an MSG, it is impossible to state categorically that the MSG is satisfied with the organization contracted to reconcile government and company figures. However, if the Selection Group is considered an adequate substitute for the MSG, and the Selection Group continues to ratify reports and reappoint the same audit company, Azerbaijan may satisfy this criterion.
- 17. Satisfactory (with caveats)** – The latest report identifies discrepancies and takes steps to reconcile them and explain the reasons for their existence. All discrepancies were accounting errors, which the companies could justify. However, civil society is legitimately critical of consistent patterns of delayed reports and divergent figures, which have plagued EITI reporting in Azerbaijan since its inception.²⁹⁹ The reports should recommend ways to mitigate these persistent problems.
- 18. Satisfactory (with caveats)** – Current EITI reports, along with past archived reports, are made accessible through publication on the websites of SOFAZ and the Coalition. The reports are printed in both Azeri and English and are generally comprehensible. They are rather comprehensive, but they do not recommend additional steps to be taken, as other

²⁹⁶ Ibid.

²⁹⁷ [Princeton University interview with Gubad Ibadoglu, Coordinator, EITI Coalition, Baku, October 28, 2008.]

²⁹⁸ “Statement by the ITEI Coalition of civil society institutions,” http://www.eiti-az.org/ts_gen/download/8-ci_hesabata_MSSA_reyi_eng.pdf.

²⁹⁹ “Statement by the ITEI Coalition of civil society institutions,” http://www.eiti-az.org/ts_gen/download/8-ci_hesabata_MSSA_reyi_eng.pdf.

countries' reports do. The government also claims to hold press conferences to announce reports or other major EITI events.³⁰⁰ There is no communications plan for report dissemination.

The Validation Grid

EITI Implementation (Gabon)

Sign up	Preparation	Disclosure	Dissemination
<p>1. Has the government issued an unequivocal public statement of intention to implement EITI? <input checked="" type="checkbox"/></p> <p>2. Has the government committed to work with civil society and companies on EITI implementation? <input checked="" type="checkbox"/></p> <p>3. Has the government appointed a senior individual to lead on EITI implementation? <input checked="" type="checkbox"/></p> <p>4. Has a fully costed workplan been published and made widely available, containing measurable targets, a timetable for implementation and an assessment of capacity constraints (gov. , private sector and civil society)? <input checked="" type="checkbox"/></p>	<p>5. Has the government established a multi-stakeholder group to oversee EITI implementation? <input checked="" type="checkbox"/></p> <p>6. Is civil society engaged in the process? <input checked="" type="checkbox"/></p> <p>7. Are companies engaged in the process? <input checked="" type="checkbox"/></p> <p>8. Did the government remove any obstacles to EITI implementation? <input checked="" type="checkbox"/></p> <p>9. Have reporting templates been agreed? <input checked="" type="checkbox"/></p> <p>10. Is the multi-stakeholder committee content with the organization appointed to reconcile figures? <input checked="" type="checkbox"/></p> <p>11. Has the government ensured all companies will report? <input checked="" type="checkbox"/></p> <p>12. Has the government ensured that company reports are based on audited accounts to international standards? <input checked="" type="checkbox"/></p> <p>13. Has the government ensured that gov. reports are based on audited accounts to international standards? <input checked="" type="checkbox"/></p>	<p>14. Were all material oil, gas and mining payments by companies to government ("payments") disclosed to the organization contracted to reconcile figures and produce EITI reports? <input checked="" type="checkbox"/></p> <p>15. Were all material oil, gas and mining revenues received by the government ("revenues") disclosed to the organization contracted to reconcile figures and produce the EITI report? <input checked="" type="checkbox"/></p> <p>16. Was the multi-stakeholder group content that the organization contracted to reconcile the company and government figures did so satisfactorily? <input checked="" type="checkbox"/></p> <p>17. Did the EITI report identify discrepancies and make recommendations for actions to be taken? <input checked="" type="checkbox"/></p>	<p>18. Was the information made public in a way that was - publicly - comprehensive - comprehensible</p> <p>How have mining companies ensured EITI implementation?</p> <p>What steps to act on to address discrepancies to ensure EITI is sustainable?</p>

1. Satisfactory. In May 2004 the President of the Republic of Gabon declared his intention for the country to adhere to the EITI. In July 2004, Finance Minister Toungui informed the World Bank of his country's commitment to adhere to the EITI, and requested technical assistance for its implementation. In March 2005, the government expressed its commitment

³⁰⁰ [Princeton University interview with Adil Mammadov, EITI Coordinator, SOFAZ, Baku, October 28, 2008. Princeton.]

to join the EITI in a letter of intent to the IMF. This decision was confirmed by the Council of Ministers in April 2005.³⁰¹

2. **Satisfactory (with caveats).** It would appear that the government did not fully understand the requirement of engaging civil society in the EITI process initially: only government representatives and extractive companies are mentioned in the July 2005 Presidential decree that established the MSG.³⁰² However, a ministerial decree later that month nominated two civil society representatives to the MSG,³⁰³ both from the Economic and Social Council, a quasi-governmental body.³⁰⁴ In 2006, following a request from the PWYP Africa Coordinator, two additional civil society representative were invited to join the MSG.³⁰⁵
3. **Satisfactory.** In February 2005, the EITI Work Group was created by ministerial decree to lead on EITI implementation.³⁰⁶ The decree appointed senior officials to be the President, Vice President and Permanent Technical Secretary of the EITI Work Group.³⁰⁷
4. **Not Satisfactory.** The work plan is published on the EITI Gabon website and includes activities up until December 2005. However, it is not fully costed and does not include steps towards Validation. The MSG has a budget of \$830,000, 10% of which is for the communications plan.³⁰⁸ The communications plan will likely be approved at the next MSG meeting, but CSOs are concerned the government will be slow to implement it.³⁰⁹
5. **Not Satisfactory.** An MSG has been formed. However, civil society is not adequately represented. The invitation to participate in the group was not open and transparent – all members of the MSG (including civil society members) have been nominated by the government. PWYP Gabon coalition members do not feel that civil society is adequately or independently represented.³¹⁰ There are four civil society representatives on the MSG. Two belong to a quasi-governmental body, one of whom (Jean Baptiste Bikalou) runs a petrol products company. A third is an advisor to the President (Mike Jocktane). Only Marc Ona can be said to be truly independent of government and/or the private sector.
6. **Not Satisfactory.** The government's handling of CSO engagement raises serious questions about the sincerity of its endorsement of the EITI Principles and Criteria. Throughout 2008, RWI and PWYP documented numerous cases of Gabonese CSO harassment and intimidation, leading to the arrest and detention of the PWYP coordinator and other CSO activists under suspicious circumstances. The government's frequent harassment of civil society activists is incompatible with its commitment to allow CSOs to be engaged in the

³⁰¹ EITI Global, <http://eitransparency.org/Gabon>.

³⁰² Décret n° 000535 /PR/MEFBP, EITI Gabon, <http://www.eitigabon.org/Fr/decret535.htm>.

³⁰³ ARRETE N° 00056 /MEFBP, EITI Gabon, <http://www.eitigabon.org/Fr/arret56.htm>.

³⁰⁴ The council is established in the Constitution as a semi-independent body that submits reports to the Government, Parliament and President. <http://www.legabon.org/instit.php?Id=4#>

³⁰⁵ Reverand Mike Jocktane (President, Rassemblement des Eglises et Ministères Pentecôtistes et Charismatiques du Gabon) and Marc Ona (President, Brainforest).

³⁰⁶ ARRETE N° 229/MEFBP, EITI Gabon, <http://www.eitigabon.org/Fr/arret229.htm>.

³⁰⁷ Fidèle Ntsissi (Directeur du Cabinet Privé du Président de la République, Chef de J'Etat), Hyacinthe Mounquengué (Conseiller Economique et Financier du Premier Ministre, Chef du Gouvernement) and Jean Eudes Régis Immongault (Conseiller Financier du Ministre d'Etat, Ministre de l'Economie, des Finances, du Budget et de la Privatisation) respectively. Of note, Mr. Ntsissi was recently appointed to the Treasury and is likely to step down as EITI President; a replacement has not yet been named.

³⁰⁸ [Princeton University interview with Regis Immongault, Permanent Technical Secretary, EITI Gabon, Libreville, October 31, 2008.]

³⁰⁹ [Princeton University interview with PWYP members, Libreville, October 27, 2008.]

³¹⁰ [Princeton University interview with PWYP members, Libreville, October 27, 2008.]

process. While the EITI has been praised by various civil society members for making debate on transparency issues possible, CSO involvement is limited to the four representatives on the MSG selected by the government. It is important to highlight that two of those four representatives were both from a quasi-governmental body, whose members are appointed by President Bongo. Outside of the MSG, civil society participation in the EITI is virtually non-existent. Most CSOs are not financially independent and often lack the technical and organizational capacity to be fully engaged in the initiative.

7. **Satisfactory.** Company representatives to the MSG were nominated by ministerial decree on 27 July 2005 (Total Gabon, Marathon and COMILOG). More companies have reported in each report, and companies appear to be aware of the EITI.³¹¹
8. **Satisfactory.** To the best of the team's knowledge, there do not appear to be any obstacles in the legal/regulatory framework. Companies are obliged to report if asked by the government; confidentiality clauses do not apply to EITI disclosure.³¹²
9. **Satisfactory (with caveats).** Reporting templates are drawn up by the Technical Committee and agreed upon at the MSG level. Templates were initially established without the input of civil society, but they have been improved upon over time. The December 2005 EITI report did not provide information on the government's share of profit oil, which according to estimates might be as much as half of total oil revenue. Civil society representatives on the MSG worked to redress this and the second EITI report did include profit oil. Civil society is now calling for the inclusion of timber and of profit oil by barrel (not just in dollars, thus accounting for the sale and redistribution of revenue undertaken by Petroline), but templates have yet to be adjusted to reflect this.
10. **Satisfactory.** Ernst & Young won a competitive bid to reconcile the EITI figures. The terms of references were drawn up by the Technical Committee and agreed upon by the MSG. A tender was released in August of 2008 to identify a new firm upon the recommendation of the independent expert from Ernst & Young.
11. **Satisfactory (with caveats).** The third report includes 20 out of 26 oil companies and 10 out of 23 mining companies operating in the country. The number of companies included has increased with each report, but it is unclear why not every company is reflected. Companies have no contractual obligation to report, but the out-going president of the MSG said that companies have never refused to report when asked, and that the government could sanction companies that fail to comply. He explained that companies that do not appear in the report are either no longer producing or have sold their block between reports.³¹³ One civil society member underlined the importance on enshrining EITI compliance in law for all extractive contracts, but no action has been taken to date.³¹⁴
12. **Satisfactory (with caveats).** For the first time, in the third EITI report, three principal companies were required to submit audited reports based on international auditing standards. It is unclear whether this requirement will be extended to the remaining companies.
13. **Not Satisfactory (with caveats).** The EITI requires that government receipts be based on audited accounts to international standards, but the EITI Secretariat has never defined what

³¹¹ [Princeton University interview with Regis Immongault, Permanent Technical Secretary, EITI Gabon, Libreville, October 31, 2008.]

³¹² [Princeton University interview with Fidele Ntsissi, Trésorier Payeur Général, Government of Gabon, Libreville, October 28, 2008.]

³¹³ Ibid.

³¹⁴ [Princeton University interview with Reverend Mike Jocktane, President, Rassemblement des Eglises et Ministères Pentecôtistes et Charismatiques du Gabon, Libreville, October 27, 2008.]

that means. Best practice in many governments is for the judiciary to audit the legislative/executive accounts. Gabon publishes its State Budget twice annually; the second includes data on oil revenue receipts.³¹⁵ The Court of Auditors³¹⁶ publishes an annual report that compares stated government receipts with the execution of the budget.³¹⁷ The Ministry of the Economy publishes an annual Declaration of Conformity between the general accounts of the state's auditors and the general administrative accounts of the state.³¹⁸ All these documents contain information regarding petrol receipts to the same level of detail as the EITI report provides. However, publication is delayed four to five years.

- 14. Not Satisfactory.** The third report includes 20 out of 26 oil companies and 10 out of 23 mining companies operating in the country. Although the report does state that Total and Shell produce 61% of all oil barrels, there is no available information on what proportion of total production or revenues are in fact reported.
- 15. Not Satisfactory.** In the absence of an independent certification of government accounts it is unclear how this can be verified.³¹⁹ The government holds that its accounts are certified in an appropriate manner;³²⁰ however, certification is often delayed by up to five years under current procedures. This makes it difficult to interpret EITI reports.
- 16. Satisfactory.** Although MSG members are largely satisfied with the Independent Expert appointed, at least one civil society representative was right to point out that the report itself is an almost exact copy of EITI Mauritania.³²¹
- 17. Not Satisfactory.** Only discrepancies were reported (and not explained), and no recommendations for improvement were included.
- 18. Satisfactory (with caveats).** The EITI Gabon website was launched in October 2005. All EITI reports have been published on this site. The website was published once in L'Union, but has not been publicized further. No paper copies were made available. There is broad consensus that communication of the EITI reports is currently inadequate. Although a few interested government officials and parliamentarians have looked up the report, most have never seen it. Only a small circle of interested CSOs know about the EITI and usually because they have been informed directly by PWYP Gabon coalition members. Government officials and civil society members agree that audiovisual presentations would be more effective than the written word; seminars and trainings would work best. Opinions on whether the press is a suitable medium for EITI dissemination varied with perceptions on how free the media really is. There is also less agreement on who should be in charge of the communications strategy rollout - with some preferring to use civil society networks, others insisting that it is the government's responsibility and some suggesting that the EITI Secretariat should take charge since no one else has so far.

³¹⁵ Loi de Finance Initiale and Loi de Finance Rectificative. <http://www.finances.gouv.ga/>

³¹⁶ Cour des Comptes - part of the judiciary.

³¹⁷ République Gabonaise Cour des Comptes, Rapport General sur le Controle de l'Execution des Lois de Finances en Vue du Reglement du Budget de l'Exercice 2004 (Libreville: 2006).

³¹⁸ République Gabonaise Ministère de l'Economie, des Finances du Budget et de la Privatisation, Declaration Generale de Conformite (Libreville: 2003)

³¹⁹ [Princeton University interview with PWYP members, Libreville, October 27, 2008.]

³²⁰ Arguably, most governments (including most Western governments) would reject independent certification as an infringement on sovereignty. However, some governments (New Zealand, for example) have contracted out their accounting to a private firm.

³²¹ Available at <http://www.cnitie.mr/article.php?categ=38&PHPSESSID=f3dc042a81ab8f4c7bd5d3d35d95589c>.