Extractive Industry Transparency Initiative: A Utopia in Oil and Mining Industry in Developing Countries

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Abstract
Transparency has emerged as a key principle in the global business regulation and governance in the contemporary global economy. It is often suggested that providing stakeholders with more information on companies’ activities can enhance transparency and accountability. However, within the global capitalist economy, ‘transparency’ has remained a contestable concept. Although proponents of transparency claim that it opens the channel of communication and allows scrutiny, this study argues that transparency has been rather used to legitimise the actions of large transnational corporations. Yet, the bourgeoning literature in accounting has paid relatively little attention to the dilemma of ‘transparency’, especially the transparency initiatives in developing countries. This study, therefore, seeks to explore the contradiction inherent within the neo-liberalism global regulatory framework on transparency initiatives in developing countries. Building upon the recent literature and theory of crony capitalism and neo-liberalism, the study describes Multinational Companies (MNCs) as an externality-making machine and argues that transparency initiative does not change the nature of corporation, nor does it give the stakeholders any enforceable rights, it only legitimises the corporate image and Western hegemony. The paper therefore advocates a radical reform to tame the power of corporations and that of the benefiting elite by strengthening the enabling structures.

Keyword: Accountability, Transparency, Extractive Industry, Multinational Companies, Government Agencies, Stakeholders, Developing Countries.
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Introduction

Recent years have seen a considerable increase in the variety and volume of literature on transparency. As an interdisciplinary discourse, the literature on transparency has received much attention in a variety of disciplines, such as sociology, philosophy, accounting, management, finance, law and politics (Strathern, 2000, 2004; Hernández, 2003; Holzner and Holzner, 2006; Fung, Graham and Well, 2007; Garsten and De Montoya, 2008; Lessig, 2009; Neilsen and Madsen, 2009; Phillips, 2011; Birchall, 2011; Gallhofer, Haslam and Walt, 2011). This literature is informed by a variety of theoretical perspectives that arguably seek to address issues about openness, right to know, accountability, good governance and participatory democracy. Within the accounting literature, transparency has been considered an aspect of accountability which informs, empowers and improves resource governance and, more broadly, societal change (Welch and Rotberg, 2006; Drucker and Gumpert, 2006; Belal, Cooper and Roberts, 2013). Indeed, ‘transparency’ is centred on the idea of making things visible. As Gray (1992) argues:

‘The development of accountability . . . increases the transparency of organisations. That is it increases the number of things that are made visible, increases the number of ways in which things are made visible, and, in doing so, encourages a greater openness. The inside of the organisation becomes more visible, that is, transparent’ (1992, p.415).

However, given that the fundamental assumption of transparency, as expressed within the conventional accounting reporting, is to communicate information to various social constituents, what is revealed or uncovered is arguably to be as significant as what is concealed (also see Roberts, 2009). Yet, it has been argued that, through inclusion by measurement and disclosure, importance and relevance are assigned to some matters of business, but, through exclusion, some issues have repeatedly been excluded (Young, 2003, p. 621). Rather than exposing the inherent
contradictions within the capitalist production system, arguably contemporary accounting based modes of communication (intended to enhance transparency), seems to be deployed in order to obfuscate these conflicts and other class struggles embedded in the capitalist society (Arrington and Puxty, 1991; Puxty, 1986; Sikka, 2010, 2011; Tinker et al., 1991). As Strathern (2004) argues, transparency involves processes of abstraction and de-contextualisation that merely conceal the real workings of the institution, ‘its social structure, cultural values, and modes of organisation’ much of which is embedded in tacit, shared but taken for granted knowledge.

Although proponents of transparency claim that it opens the channel of communication and allows scrutiny and increases accountability, this paper argues that the ‘metaphor of transparency’ continues to be developed within the shadow of the existing systems of corporate governance, centred upon greater disclosure – giving more information to shareholders. This shareholder primacy model of corporate governance may, in practice, repeatedly neglect or downplay the attention attached to other social issues affecting the wider society. It is in this context that Roberts (2009) posits that the ‘idea of a complete transparency is an impossible fantasy’ (p. 958). Yet, the burgeoning literature in accounting has paid relatively little attention to the tyranny of transparency initiatives in making invisible things visible, especially in developing countries. Within the contemporary globalising era, developing countries’ governments have been urged to undertake several initiatives as a way of enhancing democracy, accountability, openness and increasing government revenues. In developing countries, the transparency initiatives have been more prominent in the extractive industry, a sector cloaked in secrecy and dominated by large transnational corporations (Ölcer, 2009). This has led to the advocacy, by scholars and international organisations, for a technocratic and depoliticised idea of
accountability in the extractive countries. These include, Publish What You Pay (PWYP), which focuses on transparency in revenues from extractive industries, such as petroleum and minerals, the Extractive Industries Transparency Initiative (EITI); and lately, country-by-country reporting, which would make MNCs break down their results for each country.

However, there been little or nothing to show for all these efforts, in terms of improvement in the quality of life and economic growth, as the educational and health systems in the emerging economies still remain in a state of decay, and social services and access to fresh water supplies remain poor, while revenue from these resources remain unaccounted for (Nwete, 2007; Shaxson, 2009; Mol, 2010; Africa Progress Panel Report, 2013). As Nwete (2007) puts it:

‘Corporate social responsibility and Transparency, as presently practiced in the extractive industries have failed to deliver measurable and sustainable benefit to both the people living along project corridors and natural resource producing communities as a whole’ (p. 313).

This paper therefore calls for more critical research, focusing on the dilemma of accountability and transparency initiatives in developing countries. Rather than associating transparency with a relatively stable flow of information that generates trust and efficiency, the study proposes that a critical analytical approach can provide a much-needed perspective on how it has been mobilised as a means and not the goal in itself (see Birchall, 2011). There is also, arguably, a more specific need for such research within the accounting field, given the roles that accounting plays in creating visibility or invisibility of organisational activities and its implication for accountability and transparency practices. Yet, it has been argued that the implications of such an accounting for transparency rules have not been sufficiently considered (see Zaman, 2012; Joannides, 2012; Belal, Cooper and Robert, 2013).
Few attempts have been made to examine the actual content and playing out of transparency, such as, for example, the complex negotiations and agreements binding the actors, what should be disclosed and what shall remain hidden, how power and control entered into the practice and the process through which it is achieved (see Roberts, 2009). This study, therefore, seeks to contribute to the emerging stream of literature on the problematic of transparency. It therefore, critically examines the capacities of transparency to counter opaqueness and to illustrate its complexities, considering the embedded nature of corporation, power and politics of the time. The study further illuminates the issue through case studies designed to draw attention to the dynamics of what may remains unseen beneath the veil of transparency.

To advance its arguments, this study is organised into five further sections. From political economy traditions, the first section provides a framework for understanding and deconstructing the concept of transparency against the worldview of being objective and neutral. It argues that transparency discourses in regulatory disclosure are embedded with huge complexities and draws attention to how the intensification of neo-liberal policies and crony capitalism may pose serious question about transparency in the extractive sector. The second section builds on the insights from previous studies to examine the extractive industry transparency initiative (EITI) as global and local regulatory and reform process. The third section provides the socio-political and economic history of EITI in extractive states in developing countries. This section further illustrates the capacities of transparency to counter opaqueness and thereby underpin stakeholders' confidence. The fourth section analyses the extractive industry reports of some selected extractive countries in developing economies to establish if the figures and estimates in those reports can demonstrate how each form of invisibility has political and economic
implications for rendering the corporation more democratically accountable. The last section summaries the paper by providing the conclusion and suggestion for future reforms.

Neoliberalism, Crony Capitalism and Transparency: Some Theoretical Insight

Transparency has well-established historical roots in philosophy, sociology and policy making which indicate its significant impact on contemporary organisational, regulatory and governance contexts (Albu and Flyverbom, 2013). It has received much attention in a wide range of disciplines, such as sociology (Garsten and De Montoya, 2008), management (Welch and Rothenberg, 2006; Drucker, 2006; Lazarus and McManus, 2006), accounting (Low, Davey and Hooper, 2008; Billings and Capie, 2009; Holm and Zaman, 2012; Joannides, 2012; Balal, Cooper and Robert, 2013), law (Fenster, 2006), cultural studies (Birchall, 2011; Philips, 2011; Boothroyd, 2011) and developmental studies (Fox, 2007). In other words, transparency, as a concept, has illustrated its compelling influence as a regulatory and governance mechanism.

Over the last two decades, the neoliberal transformation in domestic governance, combined with globalisation of production, and crony capitalism have significantly shaped the nature of regulatory requirements and the size of disclosure practices in a number of countries. Neoliberalism\(^1\) has become a key feature of the contemporary world that shapes the social relations in revenue governance. This has also resulted in significant shifts in the economic and political structures in many developing countries. Given the global impact of neoliberalism, as an

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\(^1\) Neoliberalism commonly refer to 'a set of ideologies and practice, particularly at the level of national government policy, designed to facilitate or enforce the intensification and expansion of capitalist markets and trade' (Hayden, 2003, p. 48).
ideological and political project, it is pertinent to contextualise extractive industries regulation and development of transparency practice within the complex global market capitalist economy.

In the integrated global economy, the expansion of capitalist economy has become a key feature of the contemporary world that shapes the social relations, including global revenue regulations. Corporations and governments are major centres of power in the contemporary capitalist state. Therefore, in the contemporary market capitalist economy, large corporations have been able to undertake fundamental transformation in order to increase their corporate profits and drive the socio-economic structures in the developing countries (Sklair, 1995; Harvey, 2005). Sikka (2008) has also argued that such developments are shaped by the interplay between corporate power, globalisation and the state. Such an interplay can be used to craft opportunities and economic gains for corporations, wealthy individuals and elected officials. This has led to the use of a variety of financial and economic schemes, such as thin capitalisation and structured investment contracts, which may have serious implications for the regulation of corporations in the extractive industry. As Kotz (2002) notes:

"The changed competitive structure of capitalism has altered the political posture of big business with regard to economic policy and the role of the state, turning big business from a supporter of state-regulated capitalism into an opponent of it" (p. 65).

The role of the state is to create and preserve those institutional structures appropriate to guarantee, for example, the quality and integrity of the industry to enhance corporate profits and return to capital (Harvey, 2005). This presupposes that a state regulation that does anything more than create a space for capitalism to triumph is an unnecessary intrusion (Andrew and Cortese, 2013; Elmore, 2007). The minimal role of the state renders the market capitalist system more vulnerable to unequal exchange of power, shaped by a variety of questionable practices which
frequently bring them in conflict with the state and the society (see Bakan, 2004). For example, their involvement in environmental degradation, human right abuses, corruption and predatory practices in resource rich emerging economies have been documented in the literature (Nwete, 2007; Shaxson, 2009; Soros, 2009; Africa Progress Panel Report, 2013). According to the advocates of market capitalism, reducing international regulation and barriers to trade and investment (through deregulation and privatisation)\(^2\) will increase trade, investment and development and so deter predatory practices (World Bank, 1997; Rose-Ackerman, 1996; Jessop, 2002; Harvey, 2005). Yet, such practices still subsist. As Africa Progress Panel Report (2013) puts it:

‘Most governments treated the governance of resource wealth as a state secret. In addition, complex commercial transactions between government agencies and foreign investors were cloaked in secrecy – an arrangement that was highly conducive to corrupt practice’ (p. 9).

Constrained by the ideologies of market capitalism, the contemporary state, embedded in globalist society is obliged to stimulate the economy through private investments, tax incentives, re/deregulation and private property right (Jessop, 2002; Harvey, 2005; Sikka, 2011). In the competitive process associated with attraction of foreign direct investment, the power of the MNCs is strengthened, as nation-states (extractive countries) compete with one another to attract investment funds to stimulate their own domestic economy. As Harvey (2005) notes:

‘The market, depicted ideologically as the way to foster competition and innovation, became a vehicle for the consolidation of monopoly power..... And so began the momentous shift towards greater social inequality and the restoration of economic power to the upper class’ (p. 26).

As a consequence, developing countries have been persuaded to deregulate and privatise their economies, reduce taxes on businesses and the investing class in order to attract foreign direct

\(^2\) Such policy initiatives have been in many cases instigated or supported by institutions such as the World Bank, the IMF and the WTO.
investment (FDI) and to control the practice associated with state intervention in the market (see Oman, 2002). The intensification of FDI is accompanied by extreme inequalities and is driven by competing and complementary motives. Paradoxically, the conditions that promote market capitalism are responsible for the expansion of opaque practices in the extractive sector in developing countries. Arguably, trade and investment between countries place the political elite (government officials) and businesses in a relationship that is conducive to predatory practices that have the capacity to affect transparency.

As developing countries often lack the financial resources and technical know-how to explore their natural resources, they frequently turn to international multilateral companies and investors to provide investment through a variety of bilateral, multilateral and trade agreements, joint venture operations and treaties. Some of these structures allow a variety of actors to devise and establish impenetrable corporate structures for the purpose of exploiting the investment climate and the tax regime (Sikka, 2008, 2011). Therefore, the nature of these agreements primarily rests upon the relative bargaining strength of the parties involved in the deal and the established norms. Through these structures, corporations have not only acquired vast monopoly powers, but with it also, the power to shift operation, investment and power to discipline the state. Therefore, the tension between the corporate pursuit of profits and the expansion of global market share and adequate corporate disclosure of secret practice cannot be easily reconciled with acclaimed transparency and openness in revenue governance in the extractive countries.

In recent years, corporations have been increasingly adopting codes of conduct and actually in a number of cases, they have been opting for ‘certification’ of their compliance with the code, laws
and have been engaging in social responsibility (Holzner and Holzner, 2006). As an essential component of corporate accountability system, transparent reporting continues to be grounded in the logic of capitalism, facilitating corporate profits and private property rights. This has further implications for corporate ability for disclosure on their social related issues and corporate claims to accountability and openness which is problematic. As Garsten and De Montoya (2008) argue, there is more to transparency than meets the eye:

'Transparency may come with a bundle of good intentions, and with a set of instruments that render visible, records, differentiate and communication. But transparency hides as much as it reveals. The many negotiations around what is to be revealed and what is to be kept secret, what is to be made transparent and what is to remain or be made opaque, bring to mind shows puppetry in which opaque, articulated figures create the illusion of moving, differentiated images that proceed to tell a tale' (p. 283-284).

Arguably, handling information in a way that balances secrecy and confidentiality with openness and sharing is an important part of corporate culture and discretion. Corporate disclosure policies can be designed to serve purely technocratic end without allowing any real shift in power and which, in reality, often reinforces existing power structures (Florini, 2008). This is because corporations are often reticent about providing information on their activities and a host of others on the claim that it might rob them of this competitive edge. According to Haufler (2010):

'Information disclosure is not a policy that corporations necessarily welcome. Any single company has disincentive to adopt information disclosure on its own, since it might undercut its competitive position and reduce its ability to obtain contract with secretive government. Nor are the host government particularly amenable to it, since if it works, as claimed, it will undermine the wealth and position of existing elite’ (p. 58).

Arguably, more transparency can lead to more suspicion. Corporate engagement and their response to calls for greater transparency constitute an enterprise logic to strengthen their legitimacy and the trust they can gain from the outside world (Garsten and De Montaya, 2008; Holzner and Holzner, 2006; Manzetti, 2009; Andrew and Cortese, 2013). Paradoxically, it is
basically a narrative around which corporations build and craft image for themselves by showing corporation figures as responsible and ethical actors (see Garsten and De Montoya, 2008).

In principle, secret and opaque practices could be checked by global governance regulation and enforcement, but such discourses and practices are highly problematic. In the globalised capitalist world system, the capacity and the will of states in developing countries to regulate and check predatory enterprise culture is constrained (Kang, 2002; Haber, 2002; Elmose, 2007). Some lack the political, financial and administrative resources to constrain large corporations (Elmose, 2007). Arguably, a state’s willingness to adopt regulatory reforms could be adversely affected by the diversity of powerful coalitions of actors. Neoliberalist ideologies also limit the capacities of the state to develop and enforce regulation with claims that robust regulatory activity violates privacy and property rights, stifles innovation, reduces wealth-creating opportunities, dilutes economic activities, forces capital to migrate to other less constrained countries (Kang, 2002).

Government and civil society may be interested in transparency and openness to disarm secrecy, thereby, improving the quality of information available in the extractive sector, but corporations may not necessarily share such a goal. In essence, the strings attached to FDI contracts pose serious questions about the boundary between the state and corporations. Civil society, NGOs and parliament may debate on government policies to bring about openness, but corporate contracts are confidential and considered to be private and, thus, not available to non-state actors and their representatives (see Sikka, 2011). Some governments of many developing countries may have the capacity to bring some contracts under scrutiny, demand openness and accountable
business practice, but a number of governments, civil society and NGOs of many developing countries lack the necessary financial, legal and political will to secure such openness (see Sikka, 2011).

Theoretically, crony capitalism\(^3\) offers some guidance in understanding the inefficiency in economic systems of much of developing world (see Kang, 2002; Haber, 2002). During the process of colonisation, political and economic arrangements are based on negotiation which has the tendency to favour the powerful actors within the scheme. This structure not only empowers the powerful elite, it also facilitates the rent-seeking\(^4\) activities of the elite. The institutional structures shaped by polities, power and light regulation were the core plank of crony capitalism, which made them more amenable to clientelistic\(^5\) relationships and the capture of the state (Mkandawire and Soludo, 1999). Secret and opaque practices have negative effects on the economy of developing countries, which rarely have the necessary resources to check corporate power and economic elite. Thus, the implementation of transparency initiative with government that has tied their hands to such commitment becomes problematic and enmeshed in an unending variety of contradictory policies.

The state-guaranteed market of the extractive industry has been the making of the multinational corporations. This gives them easy access to top government officials in offering their expertise in oil and mining operation. Since corporate power depends on the patronage of the state,

\(^3\) Crony capitalism has been conceptualised as a system in which those close to the political authorities who make and enforce policies receive favours that have large economic value (Haber, 2002).

\(^4\) Rent-seeking is when a company, organization or individual uses its resources to obtain economic gain from others without reciprocating any benefits back to society through wealth creation.

\(^5\) Clientelism is about monopolies of distribution or resources and opportunities.
citizens expect the state to create appropriate regulatory frameworks and make power accountable. The poor quality of regulation has played a major part in the loss of revenue from the extractive sector. As the state’s legitimacy depends on mass support, it is obliged to be seen to be checking corporate activities detrimental to economic development, but this increasingly has to compete with processes that safeguard the long-term well-being of capital. This might have a negative and huge impact on the wealth and happiness of the crucial members of the political elite and corporations that support such a government. As Sikka (forthcoming) puts it:

‘The interests of capital are embedded within the system and the state’s own survival is dependent on the long-term welfare of the capital. At the same time the state has to secure social legitimacy for its reproduction and needs to be seen to be even-handed and responding to popular demands for jobs, improved material conditions and social welfare’ (p. 3).

Arguably, any economy driven by private appropriation of public resources, a regular use of clientelism, nepotism and other vertical exchange relationships to maintain power, creates enormous opportunities for politicians. The pressure to protect their personal interest and allow the privileged sector of the business community to maintain their rents simply cannot coexist with transparency (Kang, 2002; Manzetti, 2009). Corrupt and inefficient governments are naturally reluctant to open up their most valuable source of revenue to public scrutiny, despite the spotlight of international attention (Haufler, 2010). For example, political and economic entrepreneurs are quite resourceful and institutional design or policy choices are subject to manipulation, evasion, and modification (see Kang, 2002). This suggests that institutions and policies are intervening variables and the larger institutional environment – in this instance the government-business relationship – affects any specific issues, particularly regulation of social activity.
The huge volume of MNCs operations and the related costs of scrutiny make the regulatory process selective on the premise that corporations will be checked by existing laws and regulations. In so many cases, corporations are able to capture regulators because regulators rely on technical know-how which is embedded in corporate culture and values that privilege corporate interests. Despite the acclaimed commitment in transparency, revenue governance in extractive countries, large tracts of business activity remain relatively opaque (Shaxson, 2009; Garsten and De Montaya, 2008; Africa Progress Panel Report, 2013). For example, company accounts rarely provide any information about the trade and contracts agreements and variety of novel schemes and stabilisation clauses. The resulting vacuum has created space for a variety of questionable practices that increase corporate profits but also undermine the social fabric and welfare of citizens. The next section examines the transparency initiative model, aimed at promoting global revenue governance in extractive countries.

Transparency in the Extractive Industries

The previous section argues that a substantial body of literature has paid scholarly attention to this practice from a variety of competing perspectives. The global promotion of transparency for the extractive sector—oil, gas and mining—has been widely accepted as an appropriate practice for corporation (Dingwerth and Eichinger, 2010; Gersten and De Montoya, 2008) and as a solution to weak governance in resource-rich developing nations (Haufler, 2010; Africa Progress Panel Report, 2013). This section begins with a general historical overview of EITI initiative to put the extractive revenue governance reform process in developing countries in perspective.
Extractive Industry Transparency Initiative

Extractive industries transparency initiative (EITI), as an institution, is a result of transparency becoming embedded within multiple over-lapping transnational networks in related areas, to further extend and promote the reach of transparency (Gupta, 2008; Shaxson, 2009; Ölcer, 2009; Haufler, 2010; Africa Progress Panel Report, 2013). According to its proponents, transparency evokes a variety of images, ranging from a general openness to the ‘opposite of secrecy’ to greater flows of information worldwide (Gupta, 2010; Haufler, 2010).

As documented in the literature, the initiative (EITI) started out as a UK foreign policy proposal, launched by Tony Blair at the 2002 World Summit on sustainable development (Shaxson, 2009; Ölcer, 2009; Haufler, 2010). The initiative has evolved into a global programme that brought together companies and governments who committed to publishing the amounts paid and received. This led to the full establishment and creation in 2006 of the EITI secretariat, based in Norway, to fully institutionalise its provision with a board and president⁶, and it was agreed to hold a member conference every two years. Ensuring its actualisation requires ‘high standards of transparency and accountability’ which, according to EITI, requires:

'Full disclosure of government revenues received from extractive industries, as well as establishing a national commission to oversee the EITI process and stimulate a public debate about how the country’s natural resources should be managed' (EITI Progress Report, 2013, p. 8).

The EITI has acted as a catalyst for reform in many countries, providing government, civil society and foreign investors with a set of benchmarks for good practice (Haufler, 2010). A review of the geography of EITI adoption shows that there were 24 EITI candidate countries

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⁶ It first president was Peter Eigen, former head of Transparency International (EITI Progress Report, 2009-2011), and currently Clare Short (see EITI Progress Report, 2013).
implementing the initiative and 12 supporting countries providing political and financial support to promote EITI (see EITI Progress Report 2007-2009). Between 2009 and 2011, five countries became compliant countries, 27 candidate countries, one suspended, 50 supporting companies and 9 supporting civil society organisations (see EITI Progress Report, 2009-2011). As at 2013, there were 18 compliant countries, 13 candidate countries, 6 countries were suspended and 7 other countries have shown their commitment (see EITI Progress Report, 2013) (Table 1 below).

In addition, the 2013 report recorded that $200 billion was the total worth of revenue disclosed in 2009, which increased to $570 billion in 2011 and to $1 trillion revenue in 2013 (EITI Progress Report, 2013).

### Table 1 Geography of EITI Adoption

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**Source:** Extracted from EITI Reports 2007-2013

This shared belief and commitment were based on the premise of making markets work more efficiently, to enhance trust and co-operation, strengthen institutions, reduce corruption and hold the actors accountable (see Shaxson, 2009; Ölcer, 2009; Haufler, 2010; Africa Progress Panel Report, 2013). This presupposes that secrecy and opaque practices do not flourish in the market capitalist economies. In contrast, a body of literature has documented that secrecy and
opaqueness are both embedded within private and public sectors economic relations (Holzner and Holzner, 2006; Garsten and De Montoya, 2008; Fund et al., 2007).

A further review of EITI report shows that African countries account for 11 of the 18 countries that are EITI compliant. Another 7 countries are registered as EITI candidate countries, while Equatorial Guinea and Gabon lost their EITI status (Africa Progress Panel Report, 2013). The proponents of transparency within the advocacy community argue that there should be public disclosure by firms and governments of a wide range of information⁷ (Ölcer, 2009). Despite reservations about the voluntary nature of the EITI, many NGOs⁸ support it and seek to expand transparency beyond financial flows⁹. Haufler (2010) opines that these disclosures were targeted at changing resource politics in states governed by close and repressive regimes or those classified as failed state, due to inept and corrupt government, violent opposition and civil conflict. Yet, the template designed for EITI related disclosures ignore some key areas which are masked with secrecy and confidentiality clauses.

**Some Issues Relating to EITI**

In the last couple of years, little has been directly explored with regards to the potential negative consequences of transparency as a strategy of democratic reform (Shaxson, 2009; Florini, 2010),

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⁷ These include details of the call for proposals and bidding process for natural resources exploration and development contracts, the contents and terms of these contracts, payments made by companies to governments (royalties, taxes, signing bonuses, fees), pricing decisions, the size of the reserves, the location of resources, exploration, and developments and government budgets of distributing resource rents (see Haufler, 2010).


⁹ This to include, contract terms, stock exchange listings, accounting standards, and a range of other objectives.
regulatory instrument and mechanism of accountability (Gray, 1992; Hernández, 2003; Robert, 2009; Messner, 2009; Joannides, 2012; Rose et al., 2013). Arguably, transparency is not necessarily the ‘end of secrecy,’ nor is the relationship between these concepts a polar continuum—it is much more complex than the proponents presume (Holzner and Holzner, 2006). The EITI is based on a voluntary participation of states. The critics of voluntary approaches argue that transparency in corporations may turn into a formal and ritualised ‘box-ticking exercise’, devoid of any sincere commitment to transparency and accountability. In a similar way, extractive countries commitment to participate may be driven by promised incentives in form of aid and diplomatic support (see Haufler, 2010). Catholic Agencies (2011) further argue that:

‘Implementing countries decide what to include within the extractive industries scope, which companies to include or exclude from the EITI reports, define a materiality threshold, or decide whether to aggregate/disaggregate data. This freedom given to implementing countries is a part of EITI’s success, but is also an important constraint for this initiative, because the data provided by businesses is not internationally comparable’ (p. 4).

Garsten and Hernes (2008) argue that practices of reporting on transparency – both voluntary and required – risk the danger of becoming smokescreens, behind which murky, unethical practices may continue unabated. Or, they may function as ‘lightning rods’, directing attention to some practices that are voluntarily opened up for observation, whilst veiling others that are less appropriate for the spotlight. It has therefore been argued that transparency is needed throughout the entire resource stream, from how contracts are awarded and monitored, what constitute the contract agreement, to how taxes and royalties are collected, and how investment choices are made and executed (Africa Progress Panel Report, 2010). Therefore, the call for transparency from corporation expresses a concern for ethical reflexivity in the pursuit of corporate profits.

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10 The agencies include, CIDSE, CAFOD, Cordiad, Misereor and Justice et Paix.
although it is believed that EITI will improve transparency and accountability and good governance and thereby lead to sustainable economic growth in the extractive sector. ölcer (2009) argues that when perceptions of corruption in the countries that have signed up to the EITI are examined, there has been no visible effect.

NGOs and civil society organisations remain a driving force behind the EITI, charged with three key roles: advocacy, analysis and capacity building, but similar structure in extractive countries are very weak (shaxson, 2009; EITI Progress Report, 2013). Furthermore, Catholic Agencies (2011) argue that with data quality unverifiable, civil society and even investors are unable to assess the fairness of contracts agreed between the government and extractive companies. EITI data could contribute to an understanding of government take in specific countries, but it might not provide all the information needed to compare different countries’ take levels. It was further suggested that, using EITI data, that are imprecise and not standardised, makes conclusions about take even less reliable (Catholic Agencies, 2011). It has been observed that participating in EITI validation process does not necessarily guarantee improved transparency and the elimination of corruption, since countries and non-compliant companies face no real sanctions.

Hence, implementation of revenue governance reforms, such as provided by EITI, requires a state that is strong (potentially coercive, relatively autonomous) and capable, in addition to willing to exert coercion to enforce reforms. Secrecy over the relationships between the government and oil and mining companies contributes to public discontent. Arguably, a state’s willingness to adopt transparency reforms could be adversely affected by large corporations and Western supporting countries which are proving the weight behind EITI in ensuring that
capitalism flourishes. When the EITI reports were examined, the funding was majorly from supporting countries, multinational oil and gas, mining companies and institutional investors (see Table 2 below). This structure then seems problematic because it might lead to the expansion of the supremacy of corporate power and Western hegemony. The question about how this can promote public interest then arises.

Table 2 EITI Sources of Funding

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<td>Government of Norway</td>
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<tr>
<td>Supporting countries</td>
<td>37%</td>
<td>50%</td>
<td>45%</td>
</tr>
<tr>
<td>Oil and gas companies</td>
<td>26%</td>
<td>24%</td>
<td>17%</td>
</tr>
<tr>
<td>Mining companies</td>
<td>13%</td>
<td>8%</td>
<td>10%</td>
</tr>
<tr>
<td>Institutional investors</td>
<td>1%</td>
<td>1%</td>
<td>28%</td>
</tr>
<tr>
<td>Supporting civil society organisations</td>
<td>3%</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Budget</td>
<td>$3 million</td>
<td>$3.5 million</td>
<td>$4.1 million</td>
</tr>
</tbody>
</table>

Source: Extracted from EITI Reports 2007-2013

A number of developing countries also exhibited some of the classic traits of weak and predatory state and were unable to formulate consistent or coherent economic policies. Oversight by government agencies and ministries was just as ineffective. A number of regulatory institutions were equally ineffective. Although, theoretically, they are independent and accountable to the legislature, they are, in reality and in practice, dependent on the government in power and on the active participation of extractive companies in the domestic economy. Therefore, power with accountability is one thing, but power, without it, is free to block openness and transparency. Therefore, the socio-political and economic context is clearly critical to the success of any transparency initiative for accountability. This is examined in the next section.
The Political Economy of Extractive Industries in Developing Countries

As suggested in the previous section, transparency initiative is multidimensional and not just confined to the mere disclosure of information relating to revenues from oil and mining resources. A number of other political and economic issues are, in part, a result of weak state institutions, governance, rule of law and other practices that undermine the creation of a viable and transparent extractive sector. This section examines the political and economic environment of oil and mining governance and discusses whether institutional barriers are strong enough to prevent conflicts of interest, corruption and other agendas that may lead to revenue governance failure.

Developing countries have a long history of mineral endowment. Extractive industries, which include mining and oil and gas production, are major sources of investment and revenue in many developing countries. Available data show that the continent hosts 30 per cent of the world’s total hydrocarbons and mineral reserves, 12 per cent the world’s crude oil reserves, 42 per cent of the world’s bauxite, 38 per cent of uranium, 42 per cent of gold, 88 per cent of diamonds, 44 per cent of chromite, 82 per cent of manganese and 95 per cent of vanadium, among others. Despite this huge deposit, lack of transparency in the management of these resources has often led to conflicts, corruption and poverty (Karl, 2004). Karl (2004) further argued that dependence on oil and mining resources skew the social structure of developing countries. Because of the enormous capital and technological resources, necessary to exploit these resources, foreigners (principally, oil and mining companies) became a dominant force in the industry, thus, showing the sector’s continued central role in attracting foreign direct investment (FDI) to the continent.
For example, UNCTAD notes that in 2012, investment in extractive industries remains the most important driver of FDI to Africa.

In the late 1980s and most of the 1990s, the emphasis was on longstanding economic liberal notions of free trade, minimal states and the general superiority of markets for allocating resources. Gradual relaxation of barriers to trade and the implementation of structural adjusted programmes in developing countries have resulted in the increasing number of global MNCs. Developing countries policy framework for oil and mining industry were strongly influenced and shaped by international extractive companies. Thus, new legislative and contract terms were instrumental in bringing back the much-needed modernisation and investment into the sector. As a consequence, Lundstøl, Raballand and Nyirongo (2013) note that:

'The modest outlook for the mining industry, and its economic, social and political significance in many developing countries, many fiscal regimes and the inherent benefit-sharing formulas established in mining development agreements (MDAs) were tailored towards securing investment and protecting against the downside. These often had long-term fiscal stabilisation clauses' (p. 9).

The pressing need to increase foreign revenue earnings forced many resource-rich governments to reverse course to attract foreign direct investments. In most developing countries, the extractive sector policies shifted from excessively restrictive to very neo-liberal agenda of the multilateral international agencies. There was too much emphasis on attracting FDI and not minding its contribution to the extractive sector. Some commentators believe that the World Bank in particular is placing too much emphasis on providing generous incentives to transnational corporations while neglecting its impact on development (UNCTAD, 2005). Contractual imbalances are often said to have been born by asymmetries in the bargaining power of companies and governments.
The legal and regulatory framework\(^ {11}\) that governs the relationship between most developing countries' governments and investors in the extractive industries determines the long-term investor-government relationship. The legal and regulatory framework includes several pieces of domestic legislation (including the constitution, the mining or petroleum code, the tax law) and international treaties (bilateral investment treaties, double taxation treaties), but often, the details of the partnership between a specific investor and a country is enshrined in a separate contract or license (Vale Columbia Center, 2010). It was further argued that where legal and regulatory institutions are not strong, the context described above may be too simple. And other actors play much more of an influential role than those prescribed by law (Vale Columbia Center, 2010).

Since a number of developing countries attained independence in the 1960s, particularly in Africa, political power has vacillated between civilian and military rules and it has taken time for democracy to mature (Shaxson, 2009; Karl, 2004). It has been argued that when democracy functions poorly, public officials amass huge discretion and monopoly (Otusanya, 2012). As a consequence, incentives to perform for better sector regulation, revenue administration and budget processes may dwindle. Unbalanced concentration of power in the hands of the executive has undermined institutional checks and balances and inter-branch accountability, needed to support extractive industry revenue governance. A related issue that continues to arise is that of corruption in the contracting process. The extractive industries are unique in this regard because many of contracts are confidential. As Vale Columbia Center (2010) observes:

\(^ {11}\) The legal framework, including the contract, can cover myriad issues: fiscal terms, community rights and benefits, health, safety, and environmental obligations, and disclosure of information, among many others.
'Governments may therefore use confidentiality as a veil from public scrutiny, according to some. Weak institutions also mean that corrupt public officials can easily avoid scrutiny. Companies also have an incentive to make questionable payments, enjoy favourable fiscal terms, or just turn the other way when something that does not seem quite right appears to be afoot' (p. 6).

Hence, low institutional quality supports rent-seeking behaviour in the natural resource sector, which leads to rising corruption and distorted allocation of public funds (Otusanya, 2010). This suggests that institutional framework for oil and mining governance has not been made strong enough to prevent conflicts of interest. In particular, it has been difficult to ensure transparency and control over production figures and revenues. Gboyega et al. (2011) note that:

'Every institution along the extractive industries value chains that potentially could prevent fraud is weak. Although these weaknesses allow for manipulation, it is clear that the necessary underlying conditions for what generally is perceived as best practice in petroleum governance are not in place' (p. 15).

This therefore poses a huge challenge for actualisation of transparency in the extractive sector. It has also been argued that a developing country could easily be captured by the private sector. Firms have been able to influence the legal and regulatory machinery through financial inducements. Success in business became increasingly dependent on partnership with political forces. Multinational companies in the extractive industry have had to adjust significantly to oil and mining sector governance environment (see Gboyega et al., 2011).

Research Methods

Before considering cases involving transparency in the extractive industry it should be noted that there are considerable difficulties involved in collecting data on secret and fraudulent practices. This paper does not rely on a statistical sample in any positivistic sense because companies and individuals rarely provide information about their underground practices. Therefore, the size of the populations cannot be determined in any meaningful way. Opaque practices are generally
pursued away from the glare of public scrutiny and company financial reports are mostly silent on the issues. It is also extremely unusual for extractive companies and extractive countries’ governments and their agencies to be willing to discuss details of their practices. This paper recognises that it is only possible to discuss evidence which is available in the public domain. In other words, the study relies on materials that can be gathered from investigatory reports, regulatory reports and civil society accounts of un-openness or opaqueness in the activities of the corporations and governments and its agencies. Furthermore, it uses cases to illustrate the gap between the extractive industries transparency initiative rhetoric’s and the reality to problematise the claim of corporate accountability and openness of extractive countries governments towards global revenue governance.

For the foregoing reasons, this paper does not pretend to offer a comprehensive analysis, but instead provides evidence that has been brought to public attention by regulators and civil society organisations. The data for the case studies were obtained from archival documents from the media, documents published by EITI regulators and other documentary sources, to provide empirical evidence on the global revenue governance through transparency initiative. The paper focuses on three extractive countries in developing countries that are compliant countries from Sub-Saharan Africa. As at 2013, 10 of the Sub-Saharan African countries were compliant extractive countries, and three countries were selected from among these countries with one each from West Africa, East Africa and the South African regions. In all the three countries, oil and mining has a long history. The selection was based on the fact that these countries shared and experienced major features that characterised the development in sub-Saharan countries of Africa. In each of these countries, one single mineral dominates completely, contributing more
that 90 per cent of this country’s export. In Nigeria it is oil, in Tanzania it is gold and copper in Zambia.

**Characteristics of Case Studies**

**Nigeria**

The petroleum sector has long become the most important aspect of the national economy, accounting for about 80-85 per cent of government revenues, 90-95 per cent of export revenues\(^\text{12}\) and more than half of the GDP (see Shaxson, 2009; Gboyega et al., 2011). Oil and gas production is concentrated in 9 out of the 36 states in Nigeria\(^\text{13}\). Nigeria was one of the first countries to sign the global EITI in 2003, it subsequently launched NEITI in 2004 and it is now EITI compliant. In 2007, the NEITI Act was passed, which made Nigeria the first country with a legal framework for the implementation of the EITI. Nigeria has since produced four reports – the 1999-2004, 2005, 2006-2008 and 2009-2011 NEITI reconciliation reports.

**Tanzania**

Tanzania is endowed with abundant valuable mineral resources\(^\text{14}\), which have the potential to provide for social-economic development, improve the standard of living and reduce poverty in the country. By 2008, Tanzania became Africa’s third-largest exporter of gold, accounting for as much as 44% of the country’s value of exports (Kaiza, 2010). Tanzania declared its commitment to join the EITI process in February 2009. The government’s decision to join the EITI can be partly attributed to the recommendations of the Presidential Mining Review Committee, which, among other things, recommended Tanzania’s joining the initiative in order

\(^{12}\) As a result of Nigeria’s dependency on hydrocarbons, mining and petroleum taxes are the main source of governmental revenue.

\(^{13}\) The states are Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers, with the five core states accounting for more than two-thirds of production.

\(^{14}\) These include gold, coal, copper, silver, tin, mica, gypsum, sand, lime, nickel and gemstones, such as diamonds, tanzanite, rubies, sapphires and emeralds (MEM, 2009).

**Zambia**

Zambia has a mining history\(^{15}\) which spans over ninety years, including the late 1960’s, when Zambia was the world’s third largest copper producer, after the US and the former Soviet Union. Zambia has predominantly been a copper-mining country, being the largest copper producer in Africa and the world’s seventh copper producer (Zambia Development Agency, 2013). The sector accounts for over 80 per cent of export earnings and contributes 11 per cent to the Gross Domestic Product (GDP) (Namutowe, 2013). Zambia declared its intent to undertake the EITI implementation in July 2008 and it became a candidate in May 2009. Zambia has since produced three reports – the 2008, 2009 and 2010 ZEITI reconciliation reports.

**A Review of Related Cases of Transparency Initiatives in Sub-Saharan Africa**

The extractive industries transparency initiative (EITI) has focused attention on the oil and mining sector, which has traditionally been shrouded in secrecy. The contribution of the extractive industries (oil and mining) to economic and social development in Sub-Saharan Africa has been under increased scrutiny and criticism. However, it has been argued that EITI candidate countries are not improving their scores on the corruption indicators (Ölcer, 2004; Shaxson, 2009). This section examines the implementation of the EITI in three compliant extractive

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\(^{15}\) Zambia’s endowment of mineral resources is substantial and it includes metals, gemstones, industrial, agricultural, building and energy minerals. Production of metallic minerals dominates the mining sector (Zambia Development Agency, 2013).
countries in Sub-Saharan Africa in order to understand how it has impacted on their revenue governance and on the lives of people.

**Ownership Structure**

Over the past decade, foreign direct investment (FDI) has been the largest source of private capital in developing countries (Sikka, 2011; Africa Progress Panel Report, 2013; Lundstøl, Raballand and Nyirongo, 2013). Governments of the Sub-Sahara African countries through their neo-liberal ideology, sought to attract FDI into the extractive industry by offering a variety of incentives and concessions and sophisticated foreign investment protection laws. While capital flows to developing regions, as a whole, fell in 2012, in Sub-Saharan Africa they increased to an estimated $54 billion (Africa Progress Panel Report, 2013). The drive for FDI can be traced to the huge capital and technological resources necessary to exploit this resource and hence, the dominance of international oil and mining corporations. The deregulation and privatisation process in many extractive countries in Sub-Saharan Africa, brought about a broad change to the ownership structure.

Arguably, lack of local ownership across the entire extractive industries is scarily visible and daunting. Tanzania’s extractive industries are dominated by foreign ownership, including multinational corporations (MNCs) and transnational companies (TNC). The TEITI reports show that six major producing mines dominated the large-scale mining sector, all predominantly in gold; these accounted for 85-90 per cent of the audited export of gold from Tanzania\(^\text{[16]}\) (TEITI Reconciliation Report, 2008/2009, 2009/2010). Since the privatisation of large-scale gold mining

\(^{16}\) The largest investor and owner in the large-scale gold mining sector in Tanzania is the Canadian company, Barrick Gold Ltd., through its fully owned subsidiary African Barrick Gold Ltd.
operations in Tanzania, an estimated $2-3 billion of foreign investment has been made in the sector, the number of mining licences in Tanzania has increased from 9 in 1990 to 4,000 active large-scale licences in 2007 (Lundstol, Raballand and Nyirongo, 2013). As a consequence of the skewed ownership structure in the extractive industries, Tanzania’s reconciliation report asserts that:

‘In a situation where natives are locked out of meaningful extractive industries ownership speculations and suspicions of capital flight and transfer pricing may promote long term negative impact. A convenient mechanism should be devised to help transforming current extractive industries ownership structure’ (TEITI Reconciliation Report I & II, 2013, p. 10).

Further evidence shows that the size of the revenue the government collects from the extractive sector is dominated by gold mining (64 per cent) with two of the large scale goldmine companies monopolising the scene with 58 per cent under their charge (TEITI Reconciliation Report I & II, 2013). Similar to Tanzania, there are seven largest mines in Zambia four of which dominate copper mining: two brownfield operations (Konkola and Mopani) and two greenfield operations (Kansanshi and Lumwana). The privatisation of the mines in Zambia in the late 1990s and early 2000s had led to a diverse international ownership\(^{17}\), with the government maintaining a minority ownership share of 10-20 per cent in most of the mines through the holding company Zambia Consolidated Copper Mines – Investment Holdings Plc. (ZCCM-IH) (Lundstol, Raballand and Nyirongo, 2013). Africa Progress Panel Report (2013) concludes that:

‘In Zambia, the government retains a minority interest in most of the large copper projects through its holding company Zambia Consolidated Copper Mines Investments Holdings’ (p. 50).

\(^{17}\) The International ownership was based on a mix of Swiss (Glencore Ltd. - majority owner of Mopani), Canadian (First Quantum Minerals Ltd. - majority owner of Kansanshi), Indian (Vedanta - majority owner of Konkola Copper Mine (KCM), and Chinese (several companies and smaller operations and smelters) (Lundstol, Raballand and Nyirongo, 2013).
Multinational Companies and Taxation Regimes

In developing countries, many fiscal regimes and the inherent benefit-sharing formulas established in the oil and mining agreements were tailored towards securing investment and protecting the interest of capital (Sikka, 2011; Lundstol, Raballand and Nyirongo, 2013). These often had long-term fiscal stabilisation clauses (Sikka, 2011). All the compliant companies discussed in this paper pledge commitment to the EITI and claim to observe and behave transparently in their operations and in their relations with the relevant agencies of the governments where they operate. Yet, the management and control of their taxes and related risks are based on a responsible and transparent tax strategy which is aligned with their long-term business strategy.

The Nigerian National Petroleum Corporation (NNPC) has production-sharing contracts with over 30 oil companies\textsuperscript{18}, manages production-sharing agreements with the country’s main sources of investment\textsuperscript{19} (Africa Progress Panel Report, 2013). Despite the country’s share in the JVC contracts, the oil MNCs, that have the technical capacity to extract oil, essentially control the operation (including the running cost) of the JVC. In this connection, the NEITI 1999-2004 Report noted that:

\begin{quote}
For over 40 years, international extractive resource companies had operated in an opaque manner protected by confidentiality clauses with the Nigerian government that prevented them from disclosing fundamental details of their operations to Nigerians. This has led to distrust and poor perception by Nigerians of the extractive industry’ (p. 4.)
\end{quote}

The overdependence of the Nigerian state on oil and its weak position in the global capitalist system undermines its capacity and incentive to effectively regulate the activities of oil MNCs.

\textsuperscript{18} These include ExxonMobil, Chevron, Total and Petrobras, Equatorial Guinea’s national oil company, GEPetrol (p. 49).
\textsuperscript{19} Major US oil companies, including ExxonMobil and Marathon, and with a growing number of European and Chinese companies (p. 49).
Often, developing countries do not have the means to conduct the necessary tests and establish the level of oil and mining done. Some have argued that the actual amount of oil produced in Nigeria is not known, due to the inability and lack of capacity to adequately measure the flow of oil from the reserves to the various terminals (Saxson, 2009; Africa Progress Panel Report, 2013). Other commentators also argue that, even if they could, they may not be in position to apply the rules because of the closeness of the state to the oil and mining corporations and the terms contained in the oil and mining agreements (see Sikka, 2011). Further evidence shows that Shell Petroleum Development Company (SPDC) was reported to have a working system in place at its terminals, but this system does not meet the international industry standard (NEITI Report 2009-2011). For example, Bonny terminal has metering skids, all fitted with ultrasonic and master meter but their effectiveness was questioned. The physical and process audit report 2009 to 2011 reaffirms this through extractive companies metering system:

'The automatic tank gauging system is the Endress and Hauser system. This system has four devices for measurement of tank level, ...... The E + H transmitter uses free state rada technology. The current issue with reliability has to do with the location of the electronics...... in more temperate countries, this configuration may have been okay, but high ambient temperature in Nigeria make the installation inadequate' (Physical and Process Audit Report 2009 – 2011, p. 39-40).

In addition, it was reported that:

'Chevron did not install meter on the incoming crude oil line from the flow stations, although, four positive displacement (PD) meter runs are all installed on the export delivery lines. There is need to install inlet metering devices to measure the production from the flow stations to the tank farm' (Physical and Process Audit Report 2009 – 2011, p. 40).

The above shows that government agencies suffer from lack of skills and capacity, particularly in comparison to international oil and mining companies in the extractive industry. This may therefore have implications for the implementation of the transparency initiative.
The evidence from the Tanzanian EITI reports show that the six large-scale gold mines in Tanzania increased both the quantity produced and exported in the three financial years covered in the report. The export values increased even more significantly due to the rise in average global prices. Overall there is a clear upward trend in profitability, as measured by the increase in implicit earning margin A from an average of 32 per cent to 50 per cent in the three financial years. Despite the global rise in price and corporate performance, Golden Price Mine (owned by Resolute Tanzania Limited) was the only company reported to have paid corporation tax out of the six large-scale gold mine operations (3rd EITI Reconciliation Report, 2013). Analysis of the second and third reports indicated low tax revenue as a percentage of sales of gold exports by the six large-scale operators for the two financial years covered in the reports. The evidence from the reports show that:

'The net tax revenue as a percentage of gold export in 2009/2010 and 2010/2011 was 6.1 per cent and 9.8 per cent respectively. These figures show a disproportion revenue-sharing between companies and the government, raising the question as to whether economic rent collected by the resource owner is a fair share' (3rd EITI Reconciliation Report, 2013, p. 6).

In Zambia, the overall tax collection between 2008 and 2009 increased by 7 per cent from $415 million to $445 million. The explanation for this was not due to the commitment of the extractive companies and government agencies to transparency in the industry but to changes that occurred between the reported periods and at the international market:

'This may be partly explained by the fact that copper prices decreased in 2009, and windfall tax had been abolished. It is worth noting that 28 extractive companies reported data in 2008 compared to 14 in 2009, and the 2009 report covered 24 different types of taxes while the 2008 report covered 13' (ZEITI Report 2009-2010).

In the case of Nigeria, the NEITI report shows a reduction in revenues from the extractive companies and this was attributed to the average oil price despite consistent production.

'The total financial flows to the Federation and other government entities during the years 2009 to 2011 under review was $143.5 billion, (a decrease of 4 per cent on the 2006-2008 audit total of $148.5 billion. The decrease was largely due to a 50 per cent reduction (from $60 billion to
$30 billion in 2009 arising from a drop in the applicable average oil price (from $100 per barrel in 2008 to $63 in 2009) despite fairly consistent production volumes’ (NEITI Reconciliation Report 2009-2011, p. 5).

The state’s obligation to prevent corporations in the extractive industries from breaching the tax and revenue laws rests upon the assumption that it can exercise its sovereign right to enact laws and build capacities to regulate important areas of public policy. The ability of the governments in developing countries to achieve these obligations and to bring about transparency and accountability is hampered by the various oil and mining agreements and the clauses. Evidence shows that the development and attraction of investment in the extractive industry is driven by the neo-liberal ideology adopted by extractive countries. For instance, the government described the Mineral Policy of Tanzania in the following terms:

‘The mineral policy stresses that private sector led mineral development while the major roles of the government are regulatory, promoting and facilitating’ (Tanzania EITI 2008-2009 Reconciliation Report, p. 10).

Several revenue governance problems are associated with the ownership and operating structures built around extractive investment projects. The presence of offshore-registered companies in the ownership chain limits public disclosure requirements. Meanwhile, the involvement of subsidiaries and affiliates as conduits for intra-company trade creates extensive opportunities for trade mispricing, cost manipulation, transfer pricing, aggressive tax planning and tax evasion, enabling companies to maximize the profit reported in low-tax jurisdictions (Shaxson, 2009; Africa Progress Panel Report, 2013). The company ownership structures linking major multinational companies to assets in Africa often involve complex partnerships and linkages. For example, the Mopani Copper mine in Zambia’s Copperbelt illustrates a typical case:

‘Mopani is 90 per cent owned by a company called Carlisa Investments, which is jointly owned by Glencore Finance – a wholly owned Bermuda-registered subsidiary of Glencore – and a British Virgin Islands-listed subsidiary of First Quantum (a Canada-listed company). The other 10 per cent of Mopani is owned by ZCCM Investment Holdings, listed in Lusaka and London, in which the Zambian government holds an 87 per cent stake’ (p. 49).
Furthermore, apart from royalties, companies are taxed on the profits they make. The higher their costs, the smaller their reported profits, the less money they have to pay to the government and the more they retain for themselves. It is a great incentive for oil companies and contractors (often in collusion with each other) to inflate their cost artificially — above the real cost, so as to reduce the profits that they report to the government, to reduce their payments to government (Shaxzon, 2009). For example it has been reported that:

'These practices happen all the time, not just in the oil industry — and it is very hard for revenue authorities to challenge them under current accounting standards. Parent company accounts, which are consolidated (aggregated) on global or regional basis, cannot be unpicked for each country, to check whether the profits and cost of each subsidiary really do match what is reported to the tax authorities of individual countries, such as Nigeria' (Shaxzon, 2009, p. 34).

This kind of maneuvering is, without doubt, one of the greatest sources of oil and mining industry profits worldwide - causing a massive ongoing transfer of wealth from extractive countries to owners of capital in the West. As Global Financial Integrity puts it, 'the average annual loss to Africa between 2008 and 2010 stood at $38 billion. To place this figure in context, it was slightly higher than the flow of development assistance to the region over the same period. Another $25 billion is lost through other illicit outflows (Africa Progress Panel Report, 2013).

EITI hardly looks into these kinds of issue. Foreign investors in Africa’s extractive industries operate across jurisdictions and through enormously complex company structures. Petroleum and mining companies channel their financial and trade activity in Africa through local subsidiaries, affiliates and a web of offshore companies (Africa Progress Panel Report, 2013). The combination of complexity, different disclosure requirements and limited regulatory capacity is at the heart of many of the problems with ensuring transparency and accountability in the extractive industry. It facilitates aggressive tax planning, tax evasion and corruption. The report further noted that complex corporate structure will also lead, in many cases, to the
undervaluation of Africa’s natural resources – a practice that drains some of Africa’s poorest nations of desperately needed revenues (Africa Progress Panel Report, 2013).

**Contract Agreements and Confidentiality Clauses**

Foreign investment in Africa’s natural resource sector involves array of players. In Sub-Saharan Africa, oil and mining operation is dominated by large Western extractive companies. These companies operate through agreements with state companies which sell concession and exploration rights, manage production sharing agreements and joint ventures and award licences through negotiations or biding competitions (Africa Progress Panel Report, 2010). It has been argued that investment agreements and treaties are ultimately shaped by asymmetries of power and are often ‘one sided investment’ which may limit the power and control of the host countries against foreign investors or foreign-owned investments (see Sikka, 2011). Evidence examined here shows how contract agreements and confidentiality clauses are embedded within the capitalist economy driven by neo-liberal policies of the extractive countries in Sub-Saharan Africa.

The process of licensing is an important factor in extractive sector governance. Confidentiality clauses inserted in the oil and mining contracts raises some fundamental question about the ability of sovereign governments to enact laws and develop a regulatory capacity, the power and accountable transnational corporations and their home countries (see Sikka, 2011). The current deregulated global oil and mining industry and architecture enables multinational corporations in the extractive industry to demand for favourable tax regimes. The review of various EITI countries’ reports shows that most oil and mining countries have multiple exemption regimes.
These often vary between companies, depending on when the development agreements were signed. Lundstøl, Raballand and Nyirongo (2013) therefore argued that:

‘There is really no good reason to grant extensive exemption regimes to extractive industries in most developing countries. Investment and production decisions of the companies are mainly based on the quality of the mineral resource, and the overall conditions and ability to produce and export the refined minerals’ (p. 32).

However, these exemptions have been questioned, despite little or no firm evidence of their effectiveness in securing investment and production, and in spite of the known effect they have in undermining the tax base. African governments, negotiating the terms of concessions and licences do not have the type of information they need to assess the extent of mineral reserves and the potential costs of extraction and marketing. It contrast, oil and mining companies have unrivalled access to commercial market information, geological analysis, technologies for exploration and extraction, financial resources, and export channels (Africa Progress Panel Report, 2013). It has been argued that in a number of cases in extractive countries, agreements and concessions were negotiated by parties of unequal economic strengths. In Nigeria and in common with other extractive countries, concessions and incentives are provided, depending on the nature of the contract and the stage of production. Gboyega et al. (2011) state that:

‘To complicate matters, most oil companies have entered into stabilisation agreement with the government lasting for 15 to 30 years, thus making them immune from any subsequent changes in the tax law. As a result of these special provisions, the fiscal regime has become quite intricate’ (p. 29).

Further evidence shows that the head of state or minister awarded oil blocks on a discretionary basis and block fees were usually negotiated (See Shaxson, 2009; Gboyega et al., 2011). The state’s obligation to prevent corporations (third parties) from breaching payment of relevant taxes rests upon the assumption that it can exercise its sovereign right to enact laws. However, the ability of poor developing countries to meet these obligations is hampered by fiscal terms in
old and even new oil and mineral contracts, which could remain in effect for the entire life of such contracts. It can also limit their capacity to fulfil present and future obligations under their constitution, particularly when such contracts and agreements are done in secret.

To facilitate increased revenue, the extractive countries may have to impose higher taxes or effect changes in the tax regime on the oil and mining corporations which have the tendency of affecting the investor in terms of return to capital, since the latter will invoke the terms contained in the agreements. The Tanzanian government’s effort to re-negotiate existing contracts was weakened because fiscal terms in old contracts were fixed for the entire life of the mine of large-scale operations (Tanzania Extractive Industries Transparency Initiative Report (TEITI), 2011). The prevalent opacity and impunity of government officials, regulating mineral and gas, made the public believe that corruption and rent-seeking had significantly influenced the government to secretly enter into Mining Development Agreements (MDAs) and Gas Production Sharing Agreements (PSAs) with extractive companies (Kaiza, 2013).

The mining tax regime in Tanzania was basically an outcome of efforts to make the sector more attractive in the late 1990s, following decades of public ownership and stagnating levels of investment. For instance the neo-liberal reforms, as enshrined in Mineral Policy 1997, Mining Act 1998, and Regulations 1999 attracted, at least, 6 large-scale gold mining operations and a further review led to the new Mineral Policy 2009 and Mining Act 2010. Yet, the reviews produce little impact in terms of revenue contribution to the government because a mechanism for collecting substantial economic rent when prices are high is not provided in the Mining Act 2010. Therefore, the state now faces the dilemma of either preserving the neo-liberal ideology
and the sanctity of the investment agreement or neglecting its developmental capacity. Lundstol.

Raballand and Nyirongo (2013) notes in this connection, that:

‘For most mining companies these changes only applied on a ‘voluntary’ basis, as they all had fiscal stabilisation clauses in their mining development agreements. Enforcement of these changes has proved to be difficult in practice, and the low levels of mining tax still collected triggered several government studies and commissions. These again led to changes in the Mining Act in 2010: the increase in royalty from 3 to 4 per cent for gold; further specification of thin capitalisation rules (70/30 debt/equity ratio); ring-fencing by mine; limitation of VAT exemption to exploration and prospecting; and the possibility of limited free government equity’ (p. 15).

Identifying these differences seems impossible because the EITI does not focus on what multinationals ought to have paid, but only on what they have paid, and it never investigates the means through which corporations were able to circumvent taxation. Aggregated templates used by multinationals and even the EITI system, prevent scrutiny. For example, this may easily allow another subsidiary of the same mining company, based in another jurisdiction, to make a corrupt payment to a politician in a host country. It would allow a company within Zambia, created for shell purposes, to be paid for ‘services rendered’, diminishing tax. Thin capitalisation, as noted above, would allow for one subsidiary of the same parent company to grant high interest loans to the host country subsidiary, diminishing taxable profits. These possibilities are endless and are often utilised in the extractive industry.

A revised tax regime emerged after the privatisation process in Zambia for the large copper mines with basic elements. The development agreements, which are specific to individual companies, became confidential documents, with provisions in some, if not in all, of the development agreements imposing binding favourable tax regime with a number of clauses on poor developing countries. In the case of Zambia, the tax regime was designed to support extractive companies:
'Development Agreements, including mineral royalties set at 0.6 per cent, compare to the standard rate of 3 per cent of gross turnover, as allowed for in the Act. Other provisions variously included a concessionary company profit tax rate of 25 per cent of mining companies, as opposed to 35 per cent for other sector, duty-free import on mining equipment, tax deductible status for capital investments and stability agreement of over 15 years, freezing the applicable tax regime (Lundstøl, Raballand and Nyirongo, 2013; Zambia EITI Reconciliation Report, 2013).

A further review occurred in 2007\(^{20}\), but these changes, however, were only applicable to future mining production licence holders, and, therefore, did not affect the major mines in Zambia (Lundstøl, Raballand and Nyirongo, 2013). A number of changes took place afterwards but the country was under pressure from the MNCs concerning the introduction of windfall tax, and the threat of closure of several of the mines in Zambia. The 2010 Zambia EITI Reconciliation Report (2013) notes that:

>'The enactment of the 2008 Mines and Minerals Development Act was seen by some of the companies operating in Zambia as a significant and damaging change to the commercial basis and tax regime under which they were operating; at least one company is engaged in a legal challenge to the annulment of the corresponding development agreement' (p. 19).

Despite assertions from some mining companies that the tax and royalty framework was no longer an incentive to mining development in Zambia, there exists a strong level of exploration activity (Zambia EITI Reconciliation Report, 2013). This contestation led the government of Zambia to enact the following reversals in 2009: removal of the windfall tax, reintroduction of 100 per cent capital allowance, and the re-introduction of hedging as a regular business activity of mining.

**Technical and Regulatory Capacity**

Political will and interference have played a significant role in most mining and petroleum countries. Informal political processes, as well as formal regulatory frameworks, were

\(^{20}\) The changes included, raising the royalty rate from 0.6 per cent to 3 per cent, a corporate income tax rate of 30 per cent and a 15 per cent withholding tax on dividends, management services and interest on loans from associated companies (Lundstøl, Raballand and Nyirongo, 2013, p. 15).
responsible for creating a favourable window for investment in the extractive industries, but this window has now become polarised and very politicised. The emergence of transparency initiative in 2002 and the voluntary form of disclosure reinvigorates the old tension between capitalism and regulation, driven by the process of globalisation. The dialectic nature of globalisation exposed the fact that while MNCs now enjoy new rights, powers and freedoms, their corresponding obligations and responsibilities to society have diminished, with negative consequences for especially developing countries (Lauwo and Otusanya (forthcoming)).

The government revenue receipt structure, as implied in the report, indicates an overly haphazard management of extractive industries revenue. There were too many unco-ordinated government points at which extractive companies make payments. ‘There is no coordination whatsoever, no information, for example, whether the payments so received are finally channeled to Tanzania Revenue Authority (TRA)... the current extractive industries revenue management is inefficient and prone to corruption due to inherent lack of transparency and accountability’ (p. 10). For example the report states that:

‘Some studies also indicate the lack of audit technical capacity on the part of the government to assess what should have been received by the government’ (TEITI, 2011, p. 6).

Poorly managed state-owned companies are part of the problem in many countries. Through their control over concessions, involvement in production-sharing agreements, and role as a conduit for foreign investment, export earnings and domestic market activities, state-owned companies occupy a pivotal position in natural resource governance. Their management of revenues, the value that they place on the assets under their control, and the prices they receive for concessions, are not just commercial transactions. They also affect the revenues that governments receive – and, hence, governments’ capacity to invest the resource wealth in health,
education and economic infrastructure. For example, the 1999-2004 NEITI report highlighted the weak capacity of the Federal Inland Revenue Service (FIRS) to assess and collect Petroleum Profits Tax and other direct taxes from the joint ventures, production-sharing contractors and sole risk operators.

There have been recorded cases of extractive companies and government agencies involved in extractive operations failed to filled in their templates as required by the audit. Evidence also shows that there was simply no tradition of good record-keeping. For example, in Nigeria, the challenges encountered in data gathering from the covered entities and several of the templates returned were incomplete, wrongly classified and transposed between financial flows and limited participation from critical organisations like CBN. Specifically, the NEITI reconciliation report, 2009 – 2011, cited a number of extractive companies’ refusal to co-operate with the audit process.


The Zambian reconciliation report also documents the resistance experience by the audit team from the reporting entities:

‘During visits to company premises for reconciliation meetings, gaining entry and access to premises of some of the reporting entities of Asian origin in the absence of very senior management from the company was challenging on occasion’ (ZEITI Reconciliation Report, 2010, p. 12).

Yet, there were no records of sanctions imposed on these companies and government agencies for refusal to co-operate. An effective implementation of the EITI is only possible in countries where the state has minimum capacity to enforce regulation and where the political will exists. The ‘revolving door’ phenomenon is common in the extractive countries in which oil and mining
sector regulators are senior executives in the oil and mining industry or are seconded to work in the regulatory agencies while on leave from their international multinational corporations. This practice further weakens the integrity of regulation and tax administration, required to support strong transparency in the industry.

Audit Model

It has been argued that, to establish a correct tax base on which to apply an efficient tax regime, it is essential to ensure that the export-sale volume, grade and by-products all reflect the real situation (Lundstøl, Raballand and Nyirongo, 2013). If there is substantial variation in any of these parameters, it can, in effect, easily remove any potential for profit and substantially reduce the base for other taxes and fees in the country of production. Audits may find serious financial irregularities, but that does not necessarily mean that governments will take the steps necessary to correct all of the problems. EITI auditors, companies and government agencies sit at a forum to reconcile the differences in the data collected. This approach does not consider the influence and the unequal economic strength and power each party brings to the reconciliation table.

In the case of Nigeria, the auditors were only given authority to identify the discrepancies, not to find out what actually happened to the oil and the money. For example, the audit firm (Sada, Idris & Co.) for 2009-2011 audit states that:

"Our findings in the accompanying report, including the appendices, do not express any assurance on the transaction beyond the explicit statements as it relates only to the subject matter, specifically in the term of reference, and do not extend to any documents or financial statements of any entity taken as a whole" (Physical and Process Report, 2009-2011, p. iii).

While any information about extractive operations through transparency initiative is welcome as it helps to focus attention on corporate power, role of the state and practice, the scope of the EITI
template and information in the country’s EITI reports and disclosures are dependent on government discretion, which is driven by its neo-liberal ideology. Although the improved and better-defined EITI validation process may help address this situation, it is not clear that the governments will follow through to implement recommendations. As Shaxson (2009) puts it:

’Better transparency leads to improved governance and accountability – is widely assumed to be true but has not been very well research in the context of mineral – dependent states such as Nigeria. It should be noted that it is one thing to enlighten citizens; it is another thing to empower them’ (p. 8).

Evidence has shown that EITI reports emphasise government revenue earning with limited focus on governmental expenditure. The EITI reports have so far identified and published discrepancy between government accounts of oil and mining revenue earning and extractive MNCs’ record of payment. However, the monitoring of actual governmental expenditure of oil and mining revenues has so far been absent, while the initial Nigeria EITI report (1999-2004) suggested that:

’The discrepancies between revenues paid by oil companies and those received by government agencies amount to $300 million, subsequent auditing suggests that only about $6 million is unaccounted for. The director of communications of NEITI attributed the initial discrepancies to sloppy book-keeping, improper labelling and inadequate communication between companies and various governmental agencies’ (NEITI 1999-2004 Report).

In the case of Tanzania, the government reported receiving a total of $99.5 million while the extractive companies reported to have paid a total of $135.5 million, resulting in a discrepancy of $36 million. The 3rd TEITI report notes that:

’In January 2012, the Office of the Controller and Auditor General issued a report that reduced the discrepancy to $326,805.07 on mineral royalties, TZS1.3 billion on PAYE (tax on employees salaries), TZS 0.5 on NSSF (social contributions), and TZS 0.3 billion on Skill Development Levy (SDL) (Tanzania 2010-2011 Reconciliation Report, p. 19).

The Second TEITI reconciliation report was completed and launched on 31st May, 2012. The report covered the period from 1st July, 2009 to 30th June, 2010. A total of Tsh. 419 billion ($305 million) is reported to have been paid to the government and its agencies by 23 companies that have reported payments. The un-resolved discrepancy in the 2nd TEITI Report was reduced from
TzS 5.0 billion, as reported in the second reconciliation report, to TzS 0.72 billion which remains unresolved. In a similar vein, differences were also recorded in the Zambian reconciliation and the Zambia EITI Council (ZEC) reported that:

'The ZEC has recommended that this difference is not material in the context of 2010 ZEITI reconciliation, but is considering further action to be undertaken to examine and understand the cause of the residual difference' (ZEITI Reconciliation Report, 2010, p. 10)

Similarly, NEITI 2009-2011 report states that the aggregated unresolved difference is within the permissible margin of error for aggregate value of all revenues and investments flows set at zero point five per cent (0.5%) of the annual total) and does not require further investigation.

'The report claimed that, unresolved differences within each individual financial flows are lower than $100 million stipulated as the materiality threshold for core EITI report' (NEITI Reconciliation Report 2009-2011, p. 17).

The Table 3 below demonstrates how the materiality level was constructed for the NEITI report which perhaps opens up room for less openness on why there are differences in the flows of revenues between the extractive companies and the extractive governments and its agencies.

<table>
<thead>
<tr>
<th>Year</th>
<th>Aggregate Flows</th>
<th>0.5% of Aggregate Flows</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>$30 billion</td>
<td>$150 million</td>
</tr>
<tr>
<td>2010</td>
<td>$44 billion</td>
<td>$220 million</td>
</tr>
<tr>
<td>2011</td>
<td>$68 billion</td>
<td>$340 million</td>
</tr>
</tbody>
</table>

Source: Extracted from NEITI Reconciliation Report 2009-2011, p. 27

Extractive companies operate in societies marked by endemic corruption. The mere reconciliation of revenue paid and collected cannot be dissolved by traditional audit verification. Transparency without accountability will mean there are no substantive consequences for those
who have engaged in corruption, and, therefore, will undermine the entire intention of the EITI. Conducting reconciliation to produce EITI reports should not be considered sufficient: not even an end, but the means to achieve the big picture of extractive industries transparency and accountability – underpinning social and economic development. In this connection, the Tanzania reconciliation report I & II (2013) note that:

‘The recorded number of transactions frequencies may not tell much about the quality and applicability of the report but understanding the content and implication, which is only possible when report analysis is conducted to help interpret and show inherently concealed issues’ (p. 20).

The EITI allows inconsistent standards, limited to national boundaries, despite the international nature of multinational economic activity. The EITI system, for instance, provides national governments with choices that fragment the legitimacy and accuracy of conclusions. From the Tanzanian case, and specifically looking at the first TEITI report, what emerges is that the main problem seems to be related to the treatment of costs in tax accounts for each large-scale mine. There seemed to be a weak relationship between cost levels and implicit margins of the mines, and how much they actually paid in tax both overall and for corporate income tax only (Lundstøl, Raballand and Nyirongo, 2013).

It seems clear that there is a technical problem related to the treatment of costs, and that this affects the ability to tax the large-scale mines in Tanzania effectively, and most likely in Zambia as well. In Zambia the non-existent technical audit capacity, combined with, until 2008, only 2-3 tax auditors covering the entire mining sector (small and large), makes it obvious that the tax base was routinely reduced, most probably through both legal and illegal measures. This, combined with a weak tax regime and widespread exemptions, produced low mining revenue. It also provided a fertile ground for corruption, as the pay-off was very high, both for capital
interests and others (Lundstøl, Raballand and Nyirongo, 2013). Despite the comparative poor records of Nigeria, Tanzania and Zambia on corruption index, all the EITI reports examined provide a lot of positive figures about revenue payments and collections, but there is nothing about the effect of various clauses in the oil and mining agreement and revenue generation.

**Civil Society and Non Governmental Organisation**

The EITI places enormous reliance on civil society to demand accountability. Yet, little attention is paid to the nature, character and capacity of civil society in developing countries, particularly in Africa. A key expectation underlying the EITI is, that by exposing audit information to public scrutiny, civil society will be able to hold the government accountable and impact public policy. However, Keblusex (2010) notes that a complex audit report, posted on the internet in developing countries where frequently less than 20 per cent have reliable internet access, using sophisticated language and analysis in countries which often have significant levels of illiteracy, is unlikely to mobilise the citizens in a broad and meaningful way. While the media could play a role in translating the essential elements, journalists often lack the deeper understanding needed to analyse the intricate money flows – nor are their readers typically in a position to demand this type of information.

A number of extractive countries seem to have successfully implemented the EITI and published reports earning the recognition of being EITI compliant. However, there could be a number of issues stalling behind the scene – a weak civil society, government caring little, or not at all about civil society's significance in the EITI process. Others are ambivalent government representation in the MSG, opportunistic oriented profiteering mining companies, but above all,
a largely corrupt civil service little concerned about transparency and accountability ethics (Kaiza, 2013). The review of the involvement of the civil society/NGOs in the Zambia EITI Council (ZEC) demonstrates that ZEC was dominated by the government representatives who do not have the opposing view and only two members are from the civil society (one from the Trade Union and the other representing Transparency International, Zambia). For example, a Mozambican social activist, based in Zambia, states that:

'Apart from the reconciliation report, there is a need to reformulate the mandate of the Civil Society organizations that are represented in the Z-EITI council, since there is a feeling that though the process was transparent, it was not fair enough, since the CSOs that are part of the three-part stakeholders of the ZEITI council, do not carry any legitimate mandate of Zambian CSOs, but also there were not appointed by the whole structure of CSOs working under EI, the reason why there is no a CSOs platform of consultation to deliberate on the issues to be taken to the table of the ZEITI council meetings and from there get a due feedback of outcomes' (p. 2).

It has been argued that EITI is essentially a top-down process with a narrow scope (Idemudia, 2010). For example, the NEITI does not extend to state and local governments in Nigeria and the voices of the poor and the marginalised are hardly adequately represented. In addition, the NEITI reported that there is weak capacity of civil society groups to adequately carry out advocacy for reforms, based on the NEITI audit findings.

Summary and Conclusion

Over the last ten years, the significance of revenue governance in a sector, traditionally cloaked in secrecy, has risen to prominence, culminating in organised extractive industry transparency initiative to deal with 'resource curse' and translate natural resource wealth into genuine development for producing countries (Shaxson, 2009; Ölcet, 2009; Kaiza, 2010, 2013; Kabemba, 2010; Idemudia, 2010). This paper has sought to draw attention to the emerging discourse on transparency in the extractive sector and to some of the challenges that it poses for revenue
governance and equitable exchange between extractive countries and extractive companies (see Sikka, 2011). It has been argued that the neo-liberal ideology and crony capitalism has shaped the bilateral and multilateral investment agreements with transnational corporation in order to attract foreign direct investment into developing countries and policy has been heavily influenced by this broader context (Kang, 2002; Haber, 2002; Jossop, 2002; Harvey, 2005). Although research and a number of reports have dealt extensively with transparency’s huge impact on revenue governance in extractive countries (Shaxson, 2009; Ölcer, 2009; Kaiza, 2013; African Progress Panel Report, 2013), little scholarly attention has been paid to examining the role of the state, transnational corporation and Western countries in exacerbating unequal power relations, undermining the revenue base and capacity of extractive countries.

The paper has examined the extractive industry’s transparency initiative (EITI) practice in three extractive countries in Sub-Saharan Africa (Nigeria, Tanzania and Zambia) to illuminate how the various agreements, concessions and stabilisation clauses embedded in the extractive industry have acted as constraints in the realisation of the acclaimed transparency and accountability in the extractive sector. Foreign direct investment is an inevitable feature of contemporary neoliberalism and has strengthened the power of MNCs. The rise of corporation has compromised the autonomy of the state and constrained its ability to pursue policies that may promote public interest. One might look to government to control and regulate MNCs, but such prospects remain low, especially where oil and mining contracts and agreements contain a number of stabilisation clauses. Therefore, the underlying theories remain aligned with the interest of capital and the elite in power to the neglect of the social and public interest. As Idemudia (2010) notes:
The emergence of EITI in 2002 and the voluntary form it took can best be understood as the outcome of the reinvigorated old tension between capitalism and regulation driven by the process of globalisation. The dialectic nature of globalisation exposed the fact that while MNCs now enjoy new rights, powers and freedoms, their corresponding obligations and responsibilities to society have diminished with negative consequences for especially developing countries' (p. 13).

Hence, the EITI is assumed and often treated as ideologically neutral, and as if it is devoid of the existing power relations.

Numerous shortcomings in revenue administration have been identified in countries’ extractive industries transparency initiative financial audit reports. The quantity of oil and mining extractions that constitute the basis of all royalty and profits tax assessment are uncertain, as discussed above. Countries’ EITI reports show that government regulatory agencies production data often differ from the data provided by extractive companies and, hence, measurement of oil, gold and copper become problematic (Ocheje, 2006; Kaiza, 2010; Africa Progress Panel Report, 2013). In essence, companies have employed elaborate practices to appropriate returns due to society on its investment of social capital (Sikka, 2010). In sum, the evidence from the cases examined above has implicated MNCs in adopting a variety of schemes, such as transfer pricing, offshore tax havens, royalty programme, stabilisation clauses and complex carefully structured transactions are some of the techniques used by extractive companies to avoid taxes and social obligations, hide corporate returns to enhance corporate profits (see Kaiza, 2010; Africa Progress Panel Report, 2013). Despite MNCs’ claim and commitment to EITI standards, none of these issues was included in the EITI disclosure requirement, nor disclosed or explained in respect of the social consequences of these novel schemes. In the cases examined, the activities of extractive companies were influenced by growth in neoliberalism and globalisation and by the use of offshore structures for purpose of shifting profits out of Sub-Saharan Africa. Tax havens,
such as Switzerland, are essential to resource-seeking corporations operating in Africa: more than 85 per cent of asset portfolios for Sub-Saharan Africa pass through tax havens. For example, in Zambia, MCM's structure - like that of Vedanta and others, keenly utilises tax havens as vehicles for shell companies, able to access legal and financial opacity tools, including banking secrecy, thin capitalisation, little or no taxation, zero disclosure of company accounts, use of nominees, and - best of all - high-level client confidentiality, all of which are entirely legal (Sharife, 2011).

The governance vacuum surrounding companies operating from offshore centres is undermining reform in Africa. Evidence shows that foreign investors, dealing with state companies, are able to hide behind the secrecy surrounding offshore centres (Africa Progress Panel Report, 2013). Closing these loopholes and raising disclosure standards is vital for strengthened natural resource governance in Africa. All tax jurisdictions should be required to declare the beneficial ownership structure of registered companies. Without this provision, it is impossible for governments or civil society groups in Africa particularly in Sub-Saharan Africa, to determine whether or not concession trading has involved illicit payments.

A number of the extractive companies play such a game because the content of EITI disclosures/reports are mostly voluntary and they rarely disclose potential negative impact of their practices on revenue governance and its sustainability in developing countries. Thus, transparency is at the heart of the current debates about the legitimacy of the state and how accountable the corporations are to their claims and commitments. Therefore, contradictions between corporate commitments to transparency in the extractive countries and their embedded
practices are shrouded in secrecy, and this may present considerable challenges in bringing about long-term enduring transparency in revenue governance in developing countries. It has been argued that EITI, as a voluntary mechanism, can only be effective with the support and determination of the implementing countries (Kabemba, 2010).

The notion that, being EITI compliant extractive countries governs their mining, oil and gas resources transparently and accountably with ramification to prudent and efficient management of the country's economy, is, perhaps, a smoke screen. The illegal practice continues, not because it is difficult to stop it, but because the officials and the elite in government are themselves involved in the illegal contracts and practices (Kabemba, 2010; Idemudia, 2010; Kaiza, 2013). Further evidence shows that the extractive industry has been linked to the existence of powerful network of government officials involved in illegal and secret contracts and mining and oil agreements (Africa Progress Panel Report, 2013). A lot more is required for extractive countries to be really seen as compliant with EITI standards, though very narrow. Rigorous reforms should be instituted to change the mindset of government staff and political bureaucrats, governance structures and systems, relevant policy and laws, but above all, to build a competent civil society that will demand transparency and accountability to ensure that information on mining, oil and gas material is disclosed and publicly available for citizens to scrutinize the revenue the government receives from extractive companies.

Evidence, presented above, has abundantly shown that the EITI and, by extension, extractive countries’ EITI is more of an attempt to create accountability for accountability’s sake, as opposed to an attempt to create endurable accountability for sustainable development in
developing countries. This is because, while greater transparency and less corruption could increase government revenue, the crucial question with regards to sustainable development in Africa, particularly in Sub-Saharan Africa, is how governments spend revenue from the extractive industries. Idemudia (2010), therefore, suggests that any effort to connect accountability to sustainable development in Africa requires a more critical and holistic diagnosis of the 'governance failure complex' in Africa. Such an approach will reveal that the problem of inefficient utilisation of natural resources revenue is not rooted in the lack of accountability per se but rather, in the mismanagement of resource, shaped by crony capitalism (Idemudia, 2010). In spite of several hundred billion dollars in revenues from the oil and mining sector over the past decades, the existing system of governance and resource management in Sub-Saharan Africa has failed to ensure and advance the basic living standards for the broader society.

While greater transparency and less corruption could increase government revenue, the crucial question with regard to sustainable development in Sub-Saharan Africa is how government spends oil revenue. In a situation where the state is unable to protect resources, foreign and local players use the opportunity to extract resources to advance their pursuit of corporate profits and personal capital accumulations (Kabemba, 2010, Africa Progress Panel Report, 2013). Therefore, the problem that continues to undermine the effective use of transparency in resource revenue governance in Africa is attributable to weak institutional and technical capacities of the agencies that are supposed to provide checks and balances within African state. These capacity limitations are often exacerbated at local levels, which are also vulnerable to corruption and buy-offs.
Many governments of major oil and mining developing countries have little or no capacity or funding to carry out basic technical audits of production and export data in order to verify independently the production and export data, provided by extractive companies. As a consequence, there is widespread under-reporting, both of the main product and by-products. Unless government of extractive countries can get on top of this area, it does not really matter how robust the EITI audit may be. There is also the need to install a dedicated and specialised capacity in resource tax administration and regulatory functions. This can ensure that the tax base is maintained, correct tax assessments are carried out and that tax assessment and regulatory laws are enforced. The paper therefore advocates a reform of the tax and legal structures in the extractive sector in Sub-Saharan Africa, and internationally, to control the predatory behaviour of MNCs and their facilitators, currently undermining the needed transparency in developing countries. The paper has suggested that, if the gaps in the extractive industries are not closed, then, transparency and effective revenue governance will not be strengthened in Sub-Saharan Africa and, as a result, the continent may continue to lose billions of dollars, due to the activities of the extractive companies and those of their facilitators. As Sub-Saharan African countries, and other developing countries continue to drive their economy and the extractive sector through foreign direct investment, they should ensure that they do not lose their economic power to MNCs in the extractive sector.


