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TRANSPARENCY**

Analysis of EITI processes in Latin America and the Caribbean:
lessons and proposals

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Analysis of EITI processes in Latin America and the Caribbean:
lessons and proposals

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**TOWARDS SOCIO-ENVIRONMENTAL TRANSPARENCY.
ANALYSIS OF EITI PROCESSES IN LATIN AMERICA
AND THE CARIBBEAN: LESSONS AND PROPOSALS**

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PRESENTATION

The demand for socio-environmental information regarding extractive activities, in order to assess their real costs, inform the debate and strengthen public participation in decision-making on policies and mining, oil and gas projects is felt increasingly strong in Latin America. At the same time, several countries in the region are involved, in different stages and with varying degrees of participation and legitimacy, in the Extractive Industries Transparency Initiative (EITI) as an opportunity to improve access to information and governance in these sectors. In this context, national needs are necessarily permeating the EITI processes in the region, where there is a call to include specific commitments to socio-environmental information. However, in some instances, the inclusion of these commitments has been hampered by the fact that the international EITI standard does not specifically address this issue, although it recognizes the need for the initiative to adapt to national contexts.

Faced with the above situation, the Latin American Network on Extractive Industries¹ (RLIE in Spanish) undertook the completion of this study to deepen the knowledge of the national EITI processes in the region and the role that demands for socio-environmental information have played in such processes. From this further understanding, we present a number of recommendations for strengthening the EITI agenda and make it more relevant not only to the region, but also for other countries in the world, through the inclusion of a socio-environmental agenda. To do this, we analyzed the processes of Guatemala, Honduras, Colombia, Peru, Trinidad and Tobago, as well as the Philippines and Mongolia as examples of good practices.

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1 The RLIE is formed by 12 organizations from 8 countries in Latin America:

- Mexico: Fundar, Centro de Análisis e Investigación.
- Guatemala: Coordinación de ONGs y Cooperativas (CONGCOOP).
- Colombia: Foro Nacional por Colombia.
- Brazil: Instituto Brasileiro de Análises Sociais e Econômicas (IBASE).
- Ecuador: Centro de Derechos Económicos y Sociales (CDES) and Grupo Faro.
- Peru: Grupo Propuesta Ciudadana; Derecho, Ambiente y Recursos Naturales (DAR) and CooperAcción.
- Bolivia: Fundación Jubileo and Centro de Estudios para el Desarrollo Laboral y Agrario (CEDLA).
- Chile: Fundación Terram.

I. EXTRACTIVE INDUSTRIES IN LATIN AMERICA: TRANSPARENCY AS A REGIONAL AND GLOBAL GOVERNANCE TOOL

Latin America has been one of the regions in which extractive activities have increased and diversified in the last decades. The extractive industries have made important economic contributions, but they have also been tainted with problems like corruption, lack of clarity with respect to its contribution to the local sustainable development and by socio-environmental impact in the communities in which they operate. Additionally, the extractive industries have been accused of participating in the “resource curse” which is the *‘paradox between abundance of natural resources and economic development’* and of creating a dependency of the extractive income without promoting economic diversification. With the decrease in prices of minerals that reached its peak in 2012, Latin America is faced more than ever with the need to evaluate if the extractive income is really beneficial or not, and if it is, how to make a socially sustainable and environmentally conscious exercise of such income.

On the other hand, the agenda for sustainable development and climate change, which the global and domestic policies intend to emulate, like the Agenda for Sustainable Development 2013 and the Paris Agreement to address climate change,² provide a new context for transparency efforts in the extractive sector. Transparency and information should serve to make decisions on productive and socio-environmentally sustainable approaches, in order for the social and environmental information of the current productive activities, such as the extractive activities, to inform the debates and alternatives. This is, additionally, one of the main demands for information in the Latin American region, where society and the communities are asking for more and better social and environmental information regarding mining, petroleum and gas policies and projects.

In this context, governments, companies and some civil society organizations have used transparency initiatives as a tool to face these challenges and to visualize the benefits in economic, investment and extractive income growth in a national context. One of the transparency initiatives with major impact and dissemination in the region is the Extractive Industries Transparency Initiative (EITI), formed by, with different levels of legitimacy and participation, five countries of the region: Honduras, Guatemala, Trinidad and Tobago, Colombia and Peru. However, the civil society faces an urgent need to go beyond fiscal transparency, and obtain access to socio-environmental information of the industry, which allows for decision-making in a framework of sustainable development and fight against climate change. Meaning, information on the impact of extraction over the quality and quantity of natural resources and over the quality of life of its citizens. These demands are resonating in the

2 See, for example, the adaptation plans for climate change of Honduras, on <<http://cambioclimaticohn.org/>> and of Trinidad and Tobago, on <http://www.ema.co.tt/new/images/policies/climate_change_2011.pdf>.

national EITI processes of the countries in the region and other countries, with different levels of success, fruit of the obstacles that currently exist in order for the initiative to be an effective mechanism to respond to such needs for information of the extractive activities.

In this sense, the EITI, as a governance initiative in the extractive sector, has the advantage of bringing the parties together and producing quality information for decision-making. The initiative has two fundamental components: transparency and accountability processes on a domestic level. This last component must respond to the specific needs of the implementing country. Given that the most relevant needs for information in the extractive sector in Latin America and countries in other regions are related to socio-environmental issues, EITI must assume the challenge of including this type of information.

II. SOCIO-ENVIRONMENTAL TRANSPARENCY

What does socio-environmental transparency in the extractive sector mean?

The extractive sector is defined here as all commercial activities developed from the exploration, development and commercial use of natural resources. Extractive industries are those that carry out removal of metals, minerals and soil aggregates, traditionally, mining, gas and oil. Transparency in the extractive sector is a prerequisite for making decisions about how to use and exploit natural resources and the routes to generate socially and environmentally sustainable wealth. Socio-environmental transparency means producing and making available information on:

1 The forms of exploitation of natural resources

Natural resources can be used for various purposes ranging from full conservation to massive extraction including the moderate and sustainable use of them. Defining forms of exploitation of natural resources depends on national legal systems and, in some cases, regional systems that provide forms of zoning of land and forms of investment therein.

This means that the type of information that should be available and accessible is:

- Land use plans.
- Zoning plans.
- Environmental and social protections over territory and natural resources (reservation areas, natural parks, protected ecosystems, etc.).
- National, Regional and Local Development Plans.
- Investment Plans in the territories.
- Registration of land and rights of ownership and use.

2 The different forms of use of natural resources

Once you have established the purpose of land or possible forms of use, there are several possible forms of use, which must be public and available for civil society to make decisions and to act on them. Forms of extraction include exploration, exploitation and types of deposits and exploitation such as open pit mining, hydraulic fracturing or deep water.

This means access to information on forms of extraction, extraction permits and establishment of mining, oil, gas, agricultural and forest zones, among others.

3 The stakeholders that request and acquire the rights of use of natural resources

Once the forms of exploitation and uses of land and natural resources are established, stakeholders interested in exploiting them, who range from local communities to transnational corporations, must apply for a permit from the State.

The type of information that should be public and available includes:

- Applications for prospecting and exploration of natural resources.
- Requests for exploitation and use of natural resources.
- Adjudication of permits, concessions and contracts for exploration and exploitation of natural resources.
- Traditional and artisanal uses of natural resources accredited and recognized by the State.
- Information on actual beneficiaries of contracts and concessions for the use and extraction of natural resources.
- Information on owners, concessionaires, tenants and landowners.
- Contracts for exploration, exploitation and extraction of natural resources.
- Extraction area maps.
- General and specific policy papers on tax and fiscal rules that apply to extraction.
- Documents that regulate rights and obligations between the State, businesses and individuals for extraction contracts.

4 The way in which communities are involved in decisions about rights of use rights

The lack of participation in decision-making processes and lack of knowledge of them is an important risk of social conflict. That is why disclosing information about the different forms of participation of communities and civil society in decision-making over natural resources is crucial to building trust between the State, companies and civil society.

The type of information that should be public and available includes:

- Records of public hearings in legislative processes.
- Public hearings and reports of administrative decisions.
- Prior consultations, public, popular.
- Documents containing information on national and local decision-making processes (public hearings in legislative processes, public hearings and reports of administrative decisions, prior consultations, public, popular, national and local).

5 The impacts of use of natural resources on local communities, the environment and the cycle of resources

Extractive activities generate social and environmental impacts in both areas of operation as well as global environmental issues. The publication of this information, produced by companies and Governments in licensing processes and to update the operation of projects, is essential to build trust among stakeholders, provide accurate information to the public debate and make decisions about the sustainability and adequacy of extractive operations.

The type of information that should be public and available includes:

- Extraction survey and estimation studies.
- Strategic Environmental Assessment (SEA).
- The environmental impact assessment (EIA) of the extractive operation.
- The environmental management plans (PMA) from extractive activities.
- Plans to mitigate environmental impact (PMIA) operations.
- The social impact studies (EIS) of operations.
- Plans to mitigate social impacts (PMIS).
- Information on investment funds for environmental liabilities.
- Information on recovery plans and environmental rehabilitation.

6 Investments in operating activities of natural resources

This information includes:

- Investment Programs of utility companies.
- Social investment programs.
- Business development programs.
- Corporate social responsibility programs.
- Support programs for State social programs.

7 The production results –social and economic– of the use of natural resources

Regarding the COMPANIES, this means having access to:

- Financial returns of companies.
- Costs and earnings of extraction.
- Reports of commercialization of raw materials.
- Payment of royalties.
- Production volumes.

Regarding the GOVERNMENT, this means having access to:

- Fiscal and tributary contributions of the companies in the extractive sector.
- Collection and destination of royalties.
- All the information regarding the collection of extractive income.

8 Forms of distribution of extractive products

- Budgetary allocation of extractive income.
- Public expense derived from extractive income.

9 The use of proceeds derived from extraction

- Investment policies of extraction income.
- National, regional and local budgets with income from extraction.
- Diversification policies of the productive and energy structure derived from investments of the extractive income.

10 Environmental recovery is necessary in the post-extraction phase

- Policies for identification and treatment of environmental liabilities.
- Environmental recovery and rehabilitation investments.
- Social employment policies and income production for the communities in the post-extraction area.

11 Viability of projects with respect to climate change

Given the countries' commitments to address climate change, the Paris Agreement of 2015 determines a limit of increase in global temperature between 1.5 to 2°C, which requires that at least 80% of the world's hydrocarbon reserves be left in the new subsoil. Thus, many such projects are at risk of not being carried out, information which must be available to investors, governments and individuals, so that it can be used in making decisions related thereto. This implies the need for information on "climate risk" of extractive projects in light of the commitments of the Agreement.

III. EITI AND SOCIO-ENVIRONMENTAL TRANSPARENCY IN LATIN AMERICA: COMPARATIVE CASE STUDY

This section of the report provides a comparative study of the EITI processes in five countries in Latin America and the findings in the Philippines and Mongolia about the needs for socio-environmental information, highlighting the issues that society participants identified as crucial for the implementation and strengthening of EITI in domestic contexts. From this analysis, the report identifies a number of strategic lines of action to strengthen the EITI process in accordance with the national needs of organizations of civil society in the Latin American countries.

One of the main diagnostic conclusions presented in this report is that civil society organizations are demanding transparency in the socio-environmental information of the extractive industries. In this way, organizations of civil society involved in the EITI multi-stakeholder group in several countries in Latin America have taken their socio-environmental concerns to the tripartite group in national contexts. In Colombia, the group agreed to conduct a study on the environmental payments in the extractive sector in a national context and establish a methodology to include this information in the second EITI report. There is a proposal in the multi-stakeholder group in Trinidad and Tobago to include information on the emission of greenhouse gases in the extractive sector. In Honduras, there is an initiative for a joint platform of various initiatives of transparency and accountability that allows the integration of various types of information, among them, environmental information.

In other countries, such as Peru, there are specific proposals to link fiscal transparency of the EITI report with socio-environmental transparency, through the creation of a national transparency agency. This aims to inform the debate on the effects that mining has had on the population and on the environment, so they can make decisions at the termination of the mineral super-cycle.³ In Guatemala, the lack of information on decisions regarding the use of the lands for mining activities and the lack of discussion on the social and environmental impacts of extraction generated a sharp division among CSOs to the process of EITI. According to some CSOs, the success or failure of EITI in this country depends on the ability to respond to these concerns of civil society inside and outside the multi-stakeholder group.

Exploration and inclusion of socio-environmental information in EITI is not unique to Latin America. Currently, the inclusion of payments related to environmental issues has happened in eleven of the 48 EITI countries. Examples of the foregoing is the Philippines, who has managed to include in the EITI national information on payments associated with the use of natural resources and environmental management plans that companies presented as part of licensing processes. It also included information on processes of participation and advanced consultation with the communities living in extraction areas, which has helped to significantly improve relations between companies and the population. In other cases, such as Mongolia, the EITI report includes compiled data on payments made by mining companies to the environmental protection and mitigation fund (MEITI 2014).

³ See: Carlos Monge, NRGi, Intervention at the Panel on environmental transparency in the Open Government Partnership (OGP) Summit, Mexico D.F, 29 October, 2015.

Thus, the national EITI processes are moving in this specific line consistently with the principles of the standard and the requirement 1.4, whereby the tripartite groups in national processes should explore innovative approaches to ensure that the standard is as complete as possible. In addition, this approach is an innovative way to ensure the relevance of EITI in the Latin American context.

These advances, however, are likely to remain on paper if the global standard is not adapted to recognize and give it binding force between the parties. National agreements are the first step to include social and environmental information, however, on several occasions these agreements are not achieved or are not fulfilled by the parties because the global standard does not require them to do so. That is why it is essential that the global standard ratify and explicitly incorporate the need to include socio-environmental information so that specific agreements of multi-stakeholder groups in each country are strong and are requirements for validating EITI.

1 The relationship between the EITI and the national legislation

The relationship between the EITI and the national legislation and the international human rights standards constitutes one of the main aspects for inclusion of the socio-environmental information in the EITI reports and in the global standards. The five countries in Latin America and the Caribbean included in the study have transparency and access to information laws. In this axis of analysis, several ways were evaluated in which the CSOs perceive such added value for the inclusion of socio-environmental information required by society and the communities.

Accessibility is one of the aspects in which the EITI is perceived as a useful tool. In cases like Honduras, the transparency and access to information law provides that the citizens have the right to access public information. However, even though much of the information of the extractive industry is public, it is almost never accessible to the population. The transparency initiatives, including EITI, have assisted in centralizing and making information accessible to citizens through an electronic portal. This effect, referred to by the Secretary of the EITI's technical commission in Trinidad and Tobago and the CSOS of the multi-stakeholder group of EITI-Colombia, where the transparency and access to information laws are sometimes rendered defunct in practice. The contribution of the EITI in terms of accessibility of information from the extractive sector can be used to access socio-environmental information demanded by society. If EITI provides improvements in accessibility in tax matters of the extractive sector, it may also have such effect if it includes socio-environmental information and information of the specific contracts in the reports.

The EITI report presents the fiscal information of the extractive sector systematically and not fragmented, which represents an added value in order for citizens to be informed and participate in debates over the extractive sector. According to some civil society individuals in Peru, the systematization of information in the EITI report allows for informed debates on the policies of the extractive sector. The systematic organization of the EITI report and the accumulation of information that allows informed fiscal and budgetary debates could contribute in the same way to the evaluation of social and environmental aspects of extractive activities in Latin American countries.

The third added value of EITI with respect to legislation on transparency and access to information is that the governance model of EITI has the possibility to expand the information, due to the fact that the parties voluntarily supply information.

According to some individuals who participate in multi-stakeholder groups in Colombia and Honduras, considering all stakeholders have an interest in the production of the EITI report, companies and the Government provide the

information required by society more easily. To that extent, it has the possibility of generating structural changes in the ways information is produced for the extractive sector because, through agreements between stakeholders, it can generate comprehensive forms of access to information. A breakthrough in this regard is the agreement to maintain an updated mining map in Colombia through which you can obtain general information about mining projects in the country. The registration template of social and environmental information used by the multi-stakeholder group in the Philippines is also a good example of the possibility of creating stable mechanisms of production and consultation of socio-environmental information.

Finally, in some cases CSOs report that EITI can go beyond the law. In Colombia, for example, participants in the multi-stakeholder group see it as an initiative that allows more transparent information than that required by law. In Peru, OCS stress that thanks to EITI they have obtained information that by law is reserved to bank and tax secrets. In Trinidad and Tobago, the multi-stakeholder group has agreed that the report should include information on the total gas emissions of the extractive sector, even though the law does not provide such information as public. As this case shows, the EITI reports may include social and environmental information that, although its production and publication is not required by law, contributes to the governance of natural resources.

2 The relationship between EITI and the international commitments of governments and companies with respect to access to socio-environmental information

EITI is the leading global initiative for transparency in the extractive sector. However, transparency is a much broader agenda that has been developed in global forums where several EITI countries have made formal commitments to guarantee their citizens access to information. Examples of this are the discussion forums on development agendas such as the Post 2015 2030 Agenda for Sustainable Development and the United Nation Conferences on Climate Change. This broad framework for environmental transparency, however, is absent in the national EITI processes analyzed.

In this regard, the study shows that, in order to meet the society's information needs in each country, EITI should include all relevant information in the extractive sector (ie. it should include socio-environmental information in accordance with the Agenda for Sustainable Development, the Convention on Climate Change and Principle 10). Otherwise, EITI's relevance may be marginal in a region where the socio-environmental transparency processes are becoming protagonists.

As discussed, in Latin America the main process is the process coordinated by the United Nations Economic Commission for Latin America and the Caribbean (ECLAC) to implement Principle 10 of the Rio Declaration, which is a fundamental benchmark for EITI to advance on socio-environmental transparency. This Principle provides that citizens should have appropriate access to environmental information held by public authorities and be afforded the opportunity to participate in the decision-making processes related to the environment. Of the five countries in the region included in this study, Colombia, Peru and Trinidad and Tobago are part of the Declaration on the Implementation of Principle 10 of the Rio Declaration.⁴ This means that, at least in these three countries, EITI can

⁴ See, Santiago decision, available on <http://repositorio.cepal.org/bitstream/handle/11362/37213/S1420708_es.pdf?sequence=1>.

articulate this initiative, from the government and the society, to optimize the pursuit and publication of socio-environmental information.

The other group of commitments with respect to socio-environmental information held by governments in the region is constituted by the actions against climate change. The United Nations Framework Convention on Climate Change became effective in 1994 and has been ratified by 195 countries.⁵ In 1997, the Kyoto Protocol, a concrete and binding commitment by industrialized countries to stabilize greenhouse gas emissions, was adopted. This Protocol was replaced in 2015 by the Paris Agreement which sets limits on emissions not to exceed the 1.5 to 2° C scenario. Given the gas emissions generated by the exploration and exploitation of minerals and hydrocarbons, this Agreement establishes the need to take appropriate measures in this sector for countries to honor their commitments and obligations. Despite the relevance of this agenda, only Trinidad and Tobago includes relevant information in the EITI report. However, these commitments by governments have already generated socio-environmental information production dynamics in Latin America and the Caribbean and, therefore, if national EITI processes are articulated with them, they would thrive in quality of social and environmental information.

In addition, the five countries have commitments with other transparency initiatives, whose articulation with EITI may be important to deepen the extractive sector information available to the public. One such initiative is the Open Government Partnership (OGP), in which the government and the civil society work together in the publication of information with respect to government services and procedures rendered. For example, Honduras has a national transparency agency that coordinates OGP, EITI and Construction Sector Transparency Initiative (COST), so that the information produced by any of these initiatives may be utilized for the others.

On the other hand, companies are also focused on other transparency initiatives that produce and report social and environmental information. An example of this is the Global Reporting Initiative (GRI), the initiative for which organizations—including companies in the extractive sector—present sustainability reports with respect to their economic, social and environmental impacts. The socio-environmental information that companies produce for the GRI can be articulated with EITI reports in each country so that all relevant information is reported in the sector in order for citizens to exercise control and oversight over the role of extractives.

In addition, there are other initiatives that set standards for companies on human rights, such as the United Nations Guiding Principles on Business and Human Rights and the International Finance Corporation's Guide to Human Rights Impact Assessment and Management (HRIAM) to advance in respecting and implementing the right to consultation and free, prior and informed consent. While the EITI report may not necessarily include all of this information, it can use these initiatives and the information produced by companies for them, and make it available within the context information.

5 See: <http://unfccc.int/portal_espanol/informacion_basica/la_withvencion/items/6196.php>.

3 EITI International, National y Sub-national

The relationship between the international EITI standard, the arrangements of the national multi-stakeholder group and the sub-national transparency processes is an important factor for the consolidation of the initiative in the region, and an important point to strengthen to include socio-environmental information. The global standard enables multi-stakeholder groups in each country to include information that is not explicitly referenced in the global standard. In the experiences analyzed in this study, some of the national multi-stakeholder groups reached innovative arrangements to satisfy the society's need for socio-environmental information. The problem, however, appears when such arrangements are not honored by all the parties of the EITI multi-party group on the grounds that it is not required under the global standard.

This is the case of Colombia where the civil society reached an agreement in which a methodology to include environmental information would be discussed. However, this agreement has met resistance because the other parties consider that they have enough challenges to meet the global standard. The Philippines was a similar case. The multi-stakeholder group agreed to include social and environmental information in the EITI report, but in the process of complying with the agreement, the government and companies tried to postpone it because including such information was not required by the global standard.

These experiences make clear the need for a modification to the global standard to include the socio-environmental information as a requirement of the extractive sector. As discussed in this report, that is the greatest need for information from the civil society in Latin America and the Caribbean, so that in the application of the global standard requirement 1.4, EITI should recognize it. However, the reasons why the countries under study require this information vary. In Peru, the most urgent motivations have to do with the social conflict that arises from the lack of socio-environmental information, as well as the importance of discussing alternatives to diversify the economy before the end of the minerals' super-cycle. In Colombia, the concern of local and regional communities and organizations has to do with the need to assess the social and environmental impacts of extraction, as well as human rights violations around extractive activities.

The diversity in the reasons may lead to differences in the type of socio-environmental information that should be included in the national EITI reports. The best way to ensure that the global standard respect this need but, in turn, ratify the obligation to include socio-environmental information, is to modify the standard to establish that countries shall include socio-environmental information determined by the stakeholders participating in the national multi-stakeholder group. As a result, multi-stakeholder groups would be able to prioritize the information to be included depending on the context and, at the same time, be bound to comply with the agreement signed.

4 Governance structure: new stakeholders for environmental transparency

The governance structure of the EITI processes in the region is essential for the dialogue, the pursuit of information and the production of the EITI report. While all countries in the study the EITI commission brings together the three interested parties, the EITI commissions operate in different institutional structures.

EITI Trinidad and Tobago has a semi-autonomous structure in which the tripartite commission works in coordination with the government, but not under its hierarchical and direct supervision. To some extent, this relative independence has allowed them to agree within the tripartite group the inclusion of information on the EITI report that is not required by law or regulation. In the case of environmental information, the EITI Trinidad and Tobago commission has included the information on the total amount of gas emissions in the oil and gas sectors.

EITI Peru, Colombia and Guatemala have the traditional structure of the tripartite group whose leadership is at the head of a unit within the Ministry of Mines and Energy. This structure, according to some of the members of these commissions, has the advantage of the strong commitment by governments to promote the transparency agenda and serve as a hinge between companies and the CSOs. EITI Honduras, meanwhile, has a National Office for Transparency within the Secretary of State, which includes commitments with the OGP, COST contracts and EITI. This office coordinates these initiatives and follows them through with a technical committee that oversees the compliance with commitments.

The institutional structure within which the EITI commission operates in each of the cases analyzed proved to be crucial for the implementation and production of the report. On inclusion of environmental information, however, the three types of institutional structure work with mines and energy agencies and exclude members or representatives of agencies related to social and environmental matters. For that reason, it is necessary to incorporate from the government, the companies and the civil society agency stakeholders that can manage socio-environmental matters and that can contribute to the inclusion of such information in EITI.

5 Composition of the civil society and companies within the EITI commissions

In the cases under study there are various types of compositions of the EITI commissions. In the case of company participation, the first important element is whether all or only some of the relevant extractive industries in context participate in the commission. There are two models of participation by companies. The first model is the participation through industry unions and associations. This model has the advantage of low transaction costs for the tripartite committee, because the dialogue with companies is centralized. In addition, it contributes to achieving the materiality required by the transparency initiative. The second model is the direct participation of representatives of some companies, which facilitates the disaggregation of information by company and by contract.

The participation of the civil society in the EITI commissions differs from one country to another in density and type of organization. In Peru, for example, the group of organizations interested in the first stage of EITI was much larger than the current participating multi-stakeholder group. According to a representative of one of the CSOs involved in the EITI national commission, many organizations lost interest in the EITI process because its working agenda was not primarily in the extractive industry or in the area of transparency, and as a result they started focusing on their principal agendas. In Colombia, the initial call of civil society organizations convened an organization with experience in the extractive and construction of democratic tools sectors and then expanded to other sectors of the civil society. Organizations that decided to participate in the initiative are those who believed that EITI could be a useful tool to gain access to information and that did not have a confrontational position with

the extractive sector. In Guatemala, division and conflict among the organizations of the civil society participating in EITI and those who decided not to support the initiative was based on the latter believing that the initiative was associated with government actors with corruption charges, that was not legitimate and only tried to restore the reputation of companies that were accused of human rights violations. In Trinidad and Tobago, organizations of the civil society participating in the multi-stakeholder group can do so because they have the institutional capacity and resources to provide information and analysis for the report.

The density and composition of the civil society group in the EITI multi-stakeholder group is relevant for the inclusion of socio-environmental information because the diversity of expertise can contribute to the inclusion of non-tax information in the report. Therefore, it is necessary to consider ways of expanding the participation of CSOs in the multi-party group to the social and environmental sectors in each domestic context. It is also necessary to integrate the national EITI committees, state agencies that advance the Principle 10 agenda of the Rio Declaration and the plans and policies on climate change.

6 Institutional capacity: information production and management

The lack of institutional capacity in both the public sector and the civil society is a crucial point within the EITI processes worldwide and in Latin America. The expansion of the global standard and the national reports should be made so that the actual capacity that the national commissions would have to include socio-environmental information is not exceeded.

Several of the tripartite national committees are already having problems with procurement, systematization and analysis of the information required by the standard. This was expressed at the regional meeting of EITI multi-stakeholder participants from Honduras, who referred to the difficulties of completing the mining registry and maintaining it updated.⁶ This same concern is present in Colombia, where members of the multi-stakeholder group face many difficulties to centralize tax information that, given the institutional structure, is collected by agencies of different territorial scope (national, regional and local) and with different powers and authority.

With this in mind, the recommendations on mechanisms for a socio-environmental transparency agenda attempt not to create institutional needs or additional burdens. On the contrary, they strive to include socio-environmental information through connections with other initiatives and tools with the capacity to produce information. In that regard, EITI is intended to be a center that can attract information produced in other platforms and processes.

7 Dissemination of EITI reports and use of the EITI report

The dissemination and use of EITI reports phase is particularly challenging for a number of Latin American countries going through the implementation phase. To some extent, dissemination depends on the work of

⁶ Statement by a member of the civil society organizations of the multistakeholder group in Honduras, EITI Regional Conference in the Americas, Lima, Peru, 24 and 25 June, 2015.

CSOs by providing and disseminating information so other users have access to it. The other responsible party is the government by disseminating and making available to the public the EITI reports as a form of transparency in its administration.

The other crucial factor, according to study participants, is that the information is of interest to the civil society and local communities. It is at this point where the inclusion of socio-environmental information can be a key factor for communities and the general public to use the EITI report and for the report to achieve its ultimate goal of contributing to the debate of control over the extractive sector and public monitoring. In addition, the dissemination and use of information by the society can bring benefits for companies since it should work to prevent social and legal disputes arising from misinformation about their operations.

IV. RECOMMENDATIONS FOR THE INCLUSION OF SOCIO-ENVIRONMENTAL ELEMENTS IN EITI

This report includes two types of recommendations. The first group focuses on the mechanisms for the consolidation of EITI as an initiative that includes socio-environmental transparency. This group of recommendations derive from the main conclusion of the analysis of EITI experiences in Latin America and the Caribbean: the civil society demands the inclusion of socio-environmental information in the transparency initiative in the extractive sector. The recommendations suggest ways to include this information in EITI so that it becomes a useful transparency tool for the civil society in Latin America.

The second group of recommendations presents a classification of potential payments that the extractive industries make to governments and other stakeholders as part of its operation and that are related to socio-environmental matters. This second group suggests a basic mechanism for identifying specific payments that companies make in each national context and therefore could be incorporated as specific items in the EITI reports. Recommendations on socio-environmental payments demand that the report include all documents that contain ample information on them.

1 Mechanisms to include environmental elements in EITI processes

1.1 Articulation local laws and industry regulation

In Honduras and Peru, the EITI report includes tax information that is produced by companies and the government as part of the performance of their legal obligations, but that is not accessible to the public. In such cases, EITI works as a mechanism for accessibility. In various national contexts, the information produced by law includes socio-environmental information, therefore is information that already exists and for which EITI can become the platform for accessibility.

Moreover, this mechanism will allow reducing production times and disclosure of information which is an ongoing challenge for EITI, since it is not about new information, but to attract and re-organize existing information. This proposal can also strengthen the bargaining power of the civil society by linking EITI with legal obligations. On the other hand, in the case of governments and companies it has the clear benefit of positioning them as serious goal achievers regarding the administration of government and laws, without resulting in additional institutional burdens. For companies in particular, this mechanism allows them to use the information already produced in accordance with applicable law productively in their relationship with communities and CSOs.

1.2 Integration of EITI with monitoring processes of international environmental commitments

The international community is developing several processes to comply with commitments on sustainability and climate change. To this end, governments and the civil society in different countries in Latin America have set

up monitoring platforms for such commitments. Several of these commitments include obligations regarding transparency, publicity and accessibility of information on activities that deal directly with socio-environmental aspects of the extractive industries.

EITI can be integrated into these processes that have global, regional, national and sub-national dimensions in transparency and access to information. This mechanism allows, on the one hand, reducing the burden of production and management of socio-environmental information often reported by EITI commissions. On the other hand, incorporating socio-environmental information from other initiatives and reducing duplication of activities. Finally, it is an opportunity to reduce the need for additional funding from multi-party groups that can be incorporated into the existing dynamics and budgets.⁷

1.3 Articulation of EITI with other transparency initiatives in the global and national contexts

Latin American countries included in the study participate in several transparency initiatives. However, in most cases, these initiatives are not articulated in any way. Coordination between transparency initiatives reduces transaction costs and allows the flow of information of different types in joint platforms. On the other hand, it also tends to reduce transaction costs of negotiations on the multi-party group participation processes.⁸

In the global context, one of the initiatives that may make important contributions in social and environmental issues is the Global Reporting Initiative (GRI), which sustainability reports include much information about social and environmental aspects of companies in the extractive sector. The companies already produce social and environmental information required by GRI so it is possible to disaggregate it for Latin American countries to incorporate this information in the EITI report.

1.4 Institutional structure and participation of civil society

The institutional structure of the EITI commissions in the countries included in the study does not incorporate in any way the government agencies responsible for the socio-environmental issues. To achieve the inclusion of social and environmental information, it is important to involve the authorities and organizations of civil society experts in socio-environmental issues in the extractive sector to EITI processes.

As for the participation of civil society in the multi-party group, it is important to ensure that it can do so freely and independently, in order for demands that cause conflicts on a territorial level, such as social and environmental

7 See for example, the map of funding made by the Climate Finance Group for Latin America and the Caribbean, which details the cash flow of international and national funding for climate change in four countries in Latin America. Available on <<http://informes.gflac.org/>>.

8 The synergies between the EITI and the AGA began to be explored in 2014 by the boards of both initiatives at a meeting in Mexico. Westenberg, Erica. 2014. "Ogp and Eiti: Is the Whole Greater Than the Sum of Its Parts?". Open Government Partnership. Retrieved 2015 of <<http://www.opengovpartnership.org/blog/erica-westenberg/2014/08/08/ogp-and-eiti-whole-greater-sum-its-parts>>. At that time, 27 countries that are part of AGA and EITI were identified and where the broad agenda of AGA and sectoral EITI can be linked at national level to improve governance of natural resources *ibid*.

information, to be included in EITI. One way to do this is to use the EITI protocol of the civil society, which must be supplemented to incorporate the evaluation at the country level on the general state of persecution and harassment of leaders, communities and organizations in relation to extractive activities in Latin America.

1.5 Strengthening institutional capacity to EITI: information center

All previous proposals assume that EITI can function as a center of attraction of information. This reduces transaction costs, additional expenses for a process that is undergoing consolidation and financial costs to manage and produce information. The platform of environmental information in Chile is a good example of this. The Environmental Information System of Colombia (SIA) is another example of information that can be attracted to the EITI process and reconciled in the EITI commission.

1.6 The global standard and national EITI processes

The last articulation mechanism recommended is the ratification of national agreements on the global standard. As was shown in the comparative analysis of the cases, the agreements of the multi-party national groups tend to lack binding force when the agreed information is not required by the global standard. The EITI global standard must recognize the diversity of social and environmental information that each country needs and at the same time ensure that these needs are supported globally and verified in the validation process.

Therefore, it is recommended that the standard be amended by establishing a requirement for socio-environmental information, in the form, scale and format agreed to by multi-party national groups. Likewise, it is also recommended that the global standard provide a mechanism for the gradual incorporation of socio-environmental information, so that multi-party groups can give priority to the most urgent information needs, but always moving toward a comprehensive version of socio-environmental transparency in EITI.

2 Environmental fees, payments and fiscal environmental items in the extractive sector

In this last section a generic classification of tax items and potential payments is presented, which must be accompanied by the publication of supporting documents, that extractive industries create as part of their operation and which by nature, could be included in the EITI report. This second set of recommendations is intended as a guide for national EITI committees to begin operating the inclusion of socio-environmental payments in the report. The list of socio-environmental payments presented here is generic and not tailored to each national context. To have a group of fees and payments in each context, and the specific documents derived therefrom, it is necessary to construct a map of the specific tax and environmental legislation.

Taxes and environmental payments in the extractive sector can be divided into at least six types, with their corresponding supporting documents:

- a. **Environmental and social fees:** payments arising from compliance with tax obligations for the rights of use and exploitation of natural resources. They are payments made to Government entities.
- b. **Socio-environmental payments:** payments arising from compliance with social legal obligations and environmental non-tax obligations. In this group all the payments that companies must make in order to comply with the commitments of the social license and environmental license, environmental impact assessment and social and economic impact, and environmental and social management plan are included. These payments may be made to state entities (reconcilable) or to third parties.
- c. **Social and environmental remuneration fees:** payments arising from the environmental impact from the use of natural resources. These payments can be categorized by type of resource (for example, use of the atmosphere, soil or water) and by type of impact (eg contamination of surface water and groundwater or gas emissions). These payments are made to the State.
- d. **Mandatory environmental investments:** mandatory payments that are priced as a percentage of total investment activity, for environmental recovery. They are earmarked for environmental recovery and differ from environmental remuneration rates that are priced on investment rather than on impact. Payments are made to the State.
- e. **Voluntary expenses in social and environmental matters:** expenses made by companies for environmental prevention and recovery, and in response to the needs of the community, but not derived from any legal obligation. They are usually payments to third parties through civil, labor and commercial contracts.
- f. **Environmental penalties:** payments arising when companies are sanctioned by authorities for violations to environmental laws.

Of these tax items that relate to socio-environmental issues, five can easily be included in EITI reports through the mechanisms outlined in the first section of recommendations. Except for voluntary spending on social and environmental matters, other payments are legal obligations, which are mandatory, and both the companies, and the government keeps records of such payments and that could be attracted to the EITI report.

V. CONCLUSIONS

Socio-environmental transparency is a current need of civil society and States in Latin America that have decided to join the EITI. While this initiative has traditionally focused on fiscal issues, it is important for it to respond to the needs and demands of end users of information: socio-environmental aspects of the extractive industries.

National EITI processes in the region have already demonstrated a high degree of innovation by expanding and making flexible the global standard for economic, political and social contexts of each country. It is time to seek a common path to expand the agenda of transparency to socio-environmental issues that civil society demands and that can contribute to informed discussions on the use of natural resources and forms of environmentally and socially sustainable production. One route for this is the strengthening of national EITI processes seeking the inclusion of socio-environmental information. The global standard plays an essential role in such strengthening; it is the one that can give strength and enforceability between the parties to the agreements of national processes. Therefore, the findings of this study lead to the recommendation that the standard be amended by establishing a requirement for socio-environmental information, in the form, scale and format agreed upon by the multi-party national groups.



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