



**IMPLEMENTING THE EXTRACTIVE INDUSTRIES
TRANSPARENCY INITIATIVE (EITI): STAKEHOLDERS'
PERSPECTIVES IN THE CASE OF COLOMBIA**

MASTER THESIS

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Abstract

**IMPLEMENTING THE EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI):
STAKEHOLDERS PERSPECTIVES IN THE CASE OF COLOMBIA**

Supervisor: Monica Lindh de Montoya

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This thesis will address accountability and transparency issues in the Colombian Extractive Industry by assessing the eventual subscription of the country to the Extractive Industries Transparency Initiative (EITI). The EITI is an attempt to induce accountability and transparency in extractive revenues that eventually will foster the alleviation of poverty and instability in developing countries. The aim of the research is to explore the implementation of the EITI framework in Colombia by considering the stakeholders' points of view, their political and economic considerations regarding the issue and their level of commitment to the initiative. As a result, using a constructivist approach, this research wants to determine the incentives and constraints of endorsing the EITI as an alternative in the management of resource wealth in Colombia. It further addresses the problem of transparency and accountability in resource-rich countries by focusing on voluntary codes of conduct and the emerging debate about their legitimacy, reputation concerns and relation to the existing legal framework either at the government or the private dimension. It also discusses the deployment of the EITI in Colombia by considering the legal and institutional issues that encompass the resource management within the country. In this respect, special attention will be paid to the Royalties Reform of 2012, the extractive industry's chain production law and the contractual relation between the extractive companies and the government. Finally, by means of a SWOT analysis, it attempts to give some conclusions regarding the situation of the standard in the country and give some recommendations for improving its implementation in Colombia.

KEYWORDS: EITI, Accountability, Transparency, Good Governance, Colombia, Voluntary Codes of Conduct, Extractive Industries, Resource-rich country, stakeholders.

List of Acronyms:

ACP: Asociación Colombiana del Petróleo (Colombian Oil Association)

ANH: Agencia Nacional de Hidrocarburos (National Hydrocarbons Agency)

ANM: Agencia Nacional de Minería (National Mining Agency)

BPDC: Barrels per Calendar Day

CC: Codes of Conduct

CSOs: Civil Society Organizations

CSR: Corporate Social Responsibility

DNP: Departamento Nacional de Planeación (National Planning Department)

EITI: Extractive Industries Transparency Initiative

E&P: Exploration and Production Contract

IFIs: International Financial Institutions

IMF: International Monetary Fund

IOC: International Oil Companies

FARC: Fuerzas Armadas Revolucionarias de Colombia

FDI: Foreign Direct Investment

GIZ: Deutsche Gesellschaft für Internationale Zusammenarbeit

GGA: Good Governance Advisor

MMBO(ED): Million Barrels of Oil (equivalent per day)

MSG: Multi-Stakeholder Group

MDTF: Multi-Donor Trust Fund

NR: Natural Resources

NRG: Natural Resource Governance

OECD: Organization for Economic Co-operation and Development

SGR: Sistema General de Regalías (General System of Royalties)

SNG: Sub-National Governments

TEA: Technical Evaluation Contract

TNC: Transnational Companies

USCIB: United States Council for International Business

VCC: Voluntary Codes of Conduct

WB: World Bank

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**“Billions of dollars come out of the ground each year;
Yet our schools, our children, our clinics don’t benefit.
Where does the money go? We have the right to know.”**

(Testimony from a community member in Nigeria,
excerpted from OXFAM’s “Follow the Money” campaign)

I) Introduction and methodology

Section 1: Introduction

Taking into account the interdisciplinary approach at the School of Global Studies, this thesis will examine the links between development, good governance and transparency. Based on the specific case of the implementation of the Extractive Industries Transparency Initiative (EITI) in Colombia, the research will address the issues of accountability and economic development in a resource-rich country characterized by decades of armed conflict, corruption and large socio-economical inequalities. This introductory chapter introduces the reader to the research questions, and the aim and motivations for carrying out the research. It also explains the context of the study and its delineations.

Research Problem: Transparency and accountability in the management of resource wealth

The main issue that inspires me to undertake this research is the dilemma of underdevelopment in resource-rich countries. Whereas resources in rich, Western countries of Norway, Australia and Canada have brought wealth and stability to their people, the existence of oil, gold, gas, mining and other extractive activities in African and Latin American countries have led to the enrichment of companies and corrupt government officials, rather than eradicating poverty, social inequalities, and providing welfare for their citizens.¹

Box No 1

What is the resource-rich country?

The International Monetary Fund (IMF) draft *Guide on Resource Revenue Transparency* (December 2004) defines countries that are rich in hydrocarbons and/or mineral resources on the basis of the following criteria: (i) an average share of hydrocarbon and/or mineral fiscal revenues in total fiscal revenue of at least 25% during the previous three years; or (ii) an average share of hydrocarbon and/or mineral export proceeds in total export proceeds of at Least 25%.during the previous three years.

Own illustration, based on EITI Principles and Criteria

¹ Paul Collier, *The Bottom Billion* (New York: Oxford University Press, 2007), 25.

Box No 2

What is an Extractive Industry?

The EITI Board defines an Extractive Industry as the oil, gas and mining industries.

Own illustration, based on EITI Principles and Criteria

According to Oxford Professor Paul Collier, one fifth of the global population lives in what he describes as the “bottom billion countries”. The main feature of these nations is that they are stuck in four traps that hold up their road to development: 1) They are immersed in some kind of conflict or war -conflict trap- 2) they are resource-rich countries -natural resources curse- 3) they are landlocked countries or surrounded by bad neighbours -landlocked with bad neighbours trap-; 4) and they have questionable governance standards -bad governance in a small country trap-². The importance of the second and fourth trap and their connection with development in Colombia is the main concern of this dissertation.

Although the country is not included in the “bottom billion” described by Collier, Colombia is ranked 78th among 178 countries in the transparency index issued by Transparency International³. Moreover, it has abundant quantities of petroleum, natural gas, coal, iron ore, nickel, gold, copper, emeralds and hydropower⁴. As a result, corruption rises as a threat in the management of resource wealth, especially with the increasing power that illegal armed forces have on the regions where the resources are settled.

Additionally, Colombia has had a mining boom in recent years that has presented both opportunities and challenges. On the one hand, the resource abundance emerges as an excellent source of revenues that

² Collier, The Bottom Billion, p.25.

³ Transparency International. “Annual Report”. Retrieved February 26th, 2012, from <http://www.transparency.org/cpi2010/results>

⁴ Nationmaster. “Geography Statistics-Natural Resources (most recent) by country”. Retrieved February 26th 2012, from http://www.nationmaster.com/graph/geo_nat_res-geography-natural-resources

maintain the country's current economic growth levels. On the other hand, it represents a threat in terms of security, corruption and human rights - which might overshadow the benefits of the boom⁵.

In the example of challenges, the Colombian government and police have observed that emerging coltan-tantalite smuggling in the eastern part of the country is acting as an economic engine for the FARC and paramilitary groups⁶. Further, a discussion has developed around the way mining licenses were granted in previous governments and whether the resource-revenue streams are fairly set so they can eventually address national deficits, or effectively keep the domestic tax burden down.⁷

The windfall of natural resources is related to the so called "Dutch Disease", an economic term that reflects the relationship between the increase in exploitation of natural resources and the decrease of manufacturing activities⁸. This situation raises the value of the domestic currency, discouraging national production and concentrating all the factors of production in the extractive industry. Consequently, high resource revenues mixed with missing or imperfect markets and weak property rights could trigger, in extreme cases, devastating wars, or the "concentration of economic and political power in the hands of elites that, once in power, use the rent to placate their political supporters and thus secure their hold on power, with stunted or weakened democracy and slow growth as a result."⁹ Further, booms in resource royalties increase the likelihood of a dangerous strengthening of the national army that eventually inhibits economic growth through its adverse effects on resource allocation¹⁰.

Empirical evidence shows a link between corruption and a high concentration of natural resources in developing countries. For example, several economic models explain that extractive industries' revenues

⁵ Adriaan Alsema. "Colombia's mining boom overshadowed by Human Rights Violations: NGO". Retrieved February 18th 2012, from <http://colombiareports.com/colombia-news/news/21014-colombias-mining-boom-overshadowed-by-human-rights-violations-report.html>

⁶ Ignacio Gómez, "Amenaza en el Putumayo," *El Espectador*, February 26, 2012, p. 2.

⁷ Julio Fierro, "El debate sobre la minería en Colombia: aportes para la discusión de impactos ambientales, sociales y económicos," *Puentes análisis y noticias sobre comercio y desarrollo sostenible*, 12-4 (2011):p. 14-15.

⁸ Christine Ebrahim-Zadeh, "Back to Basics," *Finance and Development*, March, 2003.

⁹ Thorvaldur Gylfason, "Lessons from the Dutch Disease: Causes, Treatment and Cures" (Presented at Stat-Oil Conference Volume: The paradox of Plenty, March 22, 2001, p.6)

¹⁰ Gylfason, "Lessons from the Dutch Disease: Causes, Treatment and Cures," p. 7.

dim democratic societies and foster corruption if the level of institutionalism and the quality of democracy is poor¹¹. Also, the importance of transparency and trust in government has been highlighted recently in different texts. For instance Grimmelikhuijsen points out the overarching significance of trust as follows:

*“High levels of trust in government and among people in society are considered essential for societies to prosper and for governments to function well”*¹²

Hence, creating transparency initiatives which reinforce citizen's trust in their governments and that guarantee the correct distribution of natural resources' revenues to all of the population is a big challenge that the resource-rich developing world has to deal with.

The Extractive Industries Transparency Initiative (EITI) aims to solve part of this problem. Launched in 2002, the EITI is a response to a worldwide growing awareness of the need for transparency and accountability in oil, gas and mineral revenues as a core mechanism for reducing poverty and achieving economic growth in resource-rich countries¹³.

The EITI works as a voluntary multi-stakeholder initiative “comprised of governments, companies, civil society groups, investors and international organizations,”¹⁴ that involves the commitment of the state to publish information regarding what is received from extractive companies and likewise, how much these pay to the government. In this structure, civil society is engaged in the design, monitoring and evaluation of the process, which may contribute to the public debate afterwards¹⁵. Although both the candidate and

¹¹ Lisa Chauvet and Paul Collier, “Elections and Development Policy in Developing Countries”. Retrieved February 25, 2012, from <http://www.bepress.com/cgi/viewcontent.cgi?article=1315&context=csae>

¹² Stephan Grimmelikhuijsen, “Transparency and Trust: An experimental study of online disclosure and trust in government,” Utrecht: *Utrecht University*, 1984.

¹³ Revenue Watch Institute, “Eye on EITI, Civil Society perspectives and Recommendations on the Extractive Industries Transparency Initiative”: *Revenue Watch Institute*, 2008, p. 3.

¹⁴ Publish What You Pay, “Extractive Industries Transparency Initiative (EITI),” Retrieved February 28, 2012, from <http://www.publishwhatyoupay.org/activities/advocacy/extractive-industries-transparency-initiative>

¹⁵ Extractive Industries Transparency Initiative (EITI), “Compromiso con la Transparencia, Comisión de Trabajo para la Implementación de la Iniciativa para la Transparencia de las Industrias Extractivas -EITI-,” (Presented at conference in Perú, July 19, 2010).

compliant countries have to fulfill the principles and criteria according to EITI standards, the implementation process features a great deal of flexibility that considers the differences between the implementing countries.

The application of the EITI is also relevant because it deals with the emerging concerns about the royalties' management in Colombia. The country is currently receiving more than USD 1.700 million in extractive revenues, 70% of which are concentrated in 10 departments (states) that barely represent 11% of the Colombian population.¹⁶

Aim

This thesis will provide a contribution to the discussion about the management of resource revenues in developing countries. The purpose is to explore the possible future implementation of EITI in Colombia by considering the stakeholders' points of view and analyzing the incentives for, and the strengths and limitations that the implementation of EITI would have in the country. In order to draw some conclusions about the likely future of the initiative, I will also explore, based on the opinion of the Colombian stakeholders, how the scheme might be improved, or how it should be implemented in Colombia. Given the lack of documents, research and analysis that aims to provide a "state of the art" of the EITI in this South American country, I hope to make an important contribution to its future implementation in Colombia.

This research assumes that the lack of transparency and accountability in resource-rich countries is a poor model for long-term development. For that reason, considering the EITI as one of the possible mechanisms to deal with corruption and poverty in a country as complex as Colombia, is a starting point to analyze its effectiveness in putting the resource revenues on the path to development. Moreover, because the EITI has been implemented in other countries with the goal of creating transparency and thereby an improved use of resources in combating poverty, it is worthwhile exploring how it might work in the Colombian context. My conclusions will be guided by the voices of stakeholders with whom I have discussed the initiative and how it might be implemented.

¹⁶ Comités de Seguimiento a la Inversión en las Regalías (CSIR), "¿Qué son las regalías?" Retrieved July 11, 2012, from <http://csircolombia.org/quesonlasregalias.shtml>

Research Questions

Delimiting this research is extremely important, as the topic is a broad one. For example, the link between transparency, accountability and good government efforts applies to Colombia in different contexts. Hence, if we only focus on the armed conflict that has played out in the country during the last six decades, the relation of war and extractive industries should take into account the way in which the guerrilla, paramilitary groups and delinquency creates a framework of corruption within local governments in order to get money in their pockets. In that manner, the lack of transparency in extractive business could be analysed based on economic models that might show the incidence of corruption in blocking the benefits of natural resources.

Even though the examples described above are major issues whose examination would make an enormous contribution to the field of transparency, none of them are of the concern of this study. Instead, this thesis will make an assessment of the picture of the EITI in Colombia by determining the possible scenario that the initiative will have in the case of its implementation. It aims to look into the reasons that have blocked the development of the EITI and to reach conclusions in regards to its possible initiation in the near future, for example, during the government of the current president Juan Manuel Santos (2010-2014)¹⁷.

Using a deductive approach, the research questions are based on the following assumptions:

- Lack of transparency and accountability in resource-rich countries undermine long-term development and boost social inequalities as a consequence of the so-called “resources trap.” Nevertheless, transparency itself will not be a solution for development if it is not accompanied with good governance initiatives, both at the national and subnational levels.
- International norms can determine an effective framework that includes the signing of extractive contracts, the content of them, the transparency of the payments, and the public expenditures of extractive royalties. They also can be an effective way of pressuring countries

¹⁷ I limit in time this research to the government of Juan Manuel Santos (2010-2014), since the information I have gathered corresponds to current public officials whose vision about the EITI is limited by the perspective of the current presidency. Moreover, Santos has boosted the possibility that Colombia joins the Organization for Economic Cooperation and Development (OECD) that is consider a club of rich countries with good governance practice. Further discussion about this issue will be addressed on Section 6.

to undertake transparency initiatives in resource-rich territories with high levels of corruption.¹⁸

As a result, the research questions for this thesis are:

- 1) What are the incentives and limitations from the stakeholders that encourage or block the subscription of the EITI in Colombia?
 - How can the EITI be improved in the Colombian context?

Use of theory:

This research is based on a causal theoretical relationship.¹⁹ In this respect, the main problem deals with the implications of the management of resource-wealth in a developing country like Colombia and the consequences of an eventual resource curse in the country. As a result, the theories used here highlight “the set of assumptions, propositions, or accepted facts that attempt to provide a plausible and rational explanation (solution) of cause-and-effect (causal) relationship”²⁰ of an economical phenomenon known as the resource curse. Hence, the theories presented in this thesis are part of the set of academic and scientific assumptions that seek to provide a solution to the implications of the resource curse in a developing country.

Transparency, accountability, good governance, voluntary codes of conduct and Corporate Social Responsibility Initiatives are part of the set of theories aiming to avoid resource curse and provide a better alternative in the resource management in developing countries. Different scholars like Kauffman, Kurtzman, Islam and the IMF, advocate transparency as a “sine qua non condition of greater

¹⁸ Gimmelikhuijsen, “Transparency and Trust: An experimental study of online disclosure and trust in government,” Chapter 10.

¹⁹ A causal relationship is defined as the one in which “the values in one variable, produce the variables of another variable” (Lawrence, no date).

²⁰ Business Dictionary. “Theory,” Retrieved July 10th, 2012, from <http://www.businessdictionary.com/definition/theory.html>

accountability and better quality of government in the long term”²¹. Collier, adds good governance, accountability and international pressure in the way of Voluntary Codes of Conduct to the receipt. In his view, international pressure results in a better commitment from developing nations and private actors, since it gives the public exposure needed for complete understanding of accountability, and hence, reducing the implications of the resource curse.²²

Another interesting VCC theory is based on the increasing role that Transnational Corporations - TNC, have in the global economy. As it is argued by Koenig-Archibugi “what TNCs do (or not do) affects the lives of a substantial share of the world’s population.”²³. However, a recent research carried on by Min-Dong Paul Lee, from the University of South Florida, traced the link between CSR and Corporate Financial Performance (CFP). In his view, “the retrospection has revealed that, at least in theory, the relationship between CSR and CFP has progressively become tightly coupled.”²⁴ For that reason, the theoretical foundations of CSR are divided between the explicitly normative and ethics-oriented arguments and the implicitly normative and performance-oriented managerial studies²⁵.

The study of the EITI puts together all these discussions about development and resource curse, since it works as an international voluntary code of conduct, that seeks to provide transparency and accountability in the management of resource wealth, thus, it implies the participation of private oil, gas and mining stakeholders that usually endorse the EITI as a CSR initiative.

Graph No 1, sums up the main theoretical foundations behind the good management of resource wealth.

²¹ Monika Bauhr and Marcia Grimes, “What is Government Transparency? New Measures and Relevance for the Quality of Government,” In *The Quality of Government Institute* 16, 2012: 1-26.

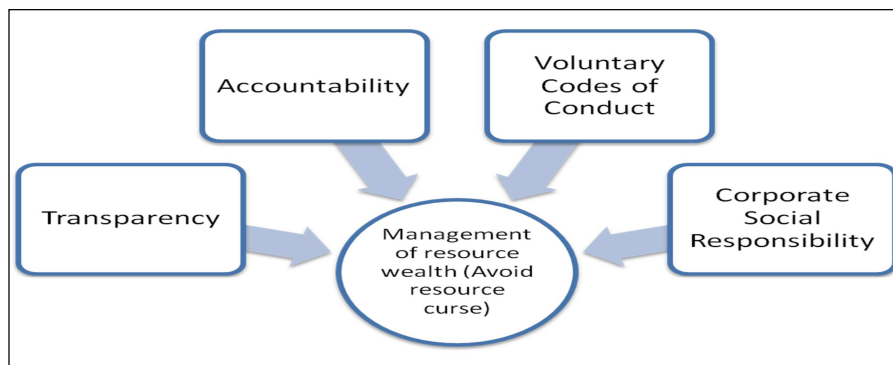
²² Collier, “The Bottom Billion,” 230-231.

²³ Mathias Koenig-Archibugi, “Transnational Corporations and Public Accountability,” in *Global Governance and Public Accountability*, Ed. David Held and Mathias Koenig-Archibugi (Oxford: Blackwell publishing, 2005), 110.

²⁴ Ming-Dong Paul Lee, “A review of the theories of corporate social responsibility: its evolutionary path and the road ahead,” *International Journal of Management Reviews*, 10-1-2008: 53-73.

²⁵ Collier, “The Bottom Billion,” 53.

Graph No 1 Theories used



Source: Own illustration

Ontology and Epistemology

This thesis is made following a constructivist approach. Thus, it will focus on the constructed meaning that Colombian Government²⁶, Civil Society and Extractive Companies have had in regard to the implementation of the EITI in the country. It will discuss the perspectives of the stakeholders and the complexity of their visions.

Context

Colombia is ranked among the upper middle-income countries according to the World Bank²⁷. Further, it has had an enormous security improvement that is reflected in the boom of foreign direct investment and employment that has recently made the economy one of the most successful in Latin America. In fact, after sustained economic growth during the last decade, it is considered the fourth largest economy in the

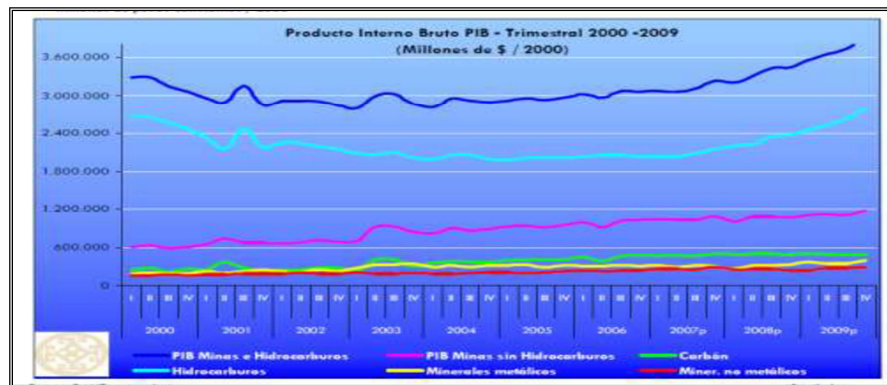
²⁶ Represented in this case by the Ministry of Mining and Energy, National Planning Department, the Presidency of the Republic and the ANH.

²⁷ The World Bank, "What are Middle-Income Countries?" Retrieved July 10, 2012, from <http://go.worldbank.org/BDZHSEY4J0>

region and by 2015 it is predicted to be the third after Brazil and Mexico²⁸. Nevertheless, despite all these improvements, the country has not yet been able to overcome the high levels of inequalities that have characterized it for decades. It is currently ranked among the most unequal countries in Latin America and the world²⁹.

The extractive sector, led by mining activities, has boosted Colombian economy during the last decade thanks to a combination of high international prices and production efficiency³⁰. As a result, the debate about the impact of extractive business has emerged within academia, media and advocacy sectors that aim to explain the economic benefits, and the environmental and social hazards that Colombian society is facing with the mining boom, particularly as the industry is capital- rather than labour-intensive.

Graph No 2 Three monthly Gross National Product (GNP) 2000-2009



Source: DANE

Thesis Outline:

The thesis is structured in two overarching parts. First, I will analyse the theoretical issues that explain or are highly linked to the implementation of the EITI in Colombia. Second, and in contrast, I will discuss a

²⁸ Central Intelligence Agency (CIA), "The world Factbook, Introduction-Colombia," Retrieved February 17 2012, from <https://www.cia.gov/library/publications/the-world-factbook/geos/co.html>

²⁹ Central Intelligence Agency (CIA), "The world Factbook, Introduction-Colombia," Retrieved February 17 2012, from <https://www.cia.gov/library/publications/the-world-factbook/geos/co.html>

³⁰ Camilo González-Posso, "La Renta Minera y el Plan de Desarrollo (2010-2014)," *Instituto de Estudios para el Desarrollo y la Paz (IDEPAZ)*, 2008, 14.

more practical applicability of the EITI, based on the responses and results obtained through the stakeholders' interviews.

The theoretical framework provide the reader with the information needed not only to understand the EITI as a standard, but also to contextualize the way it is related with other relevant issues. It highlights the theories, norms, laws and other specific mechanisms that might overlap with the implementation of the EITI in Colombia. Section 3 provides a discussion regarding the voluntary codes of conduct (VCC). It gives a background of their emergence as self-regulation alternatives, as well as a debate between those who see them as private legitimacy initiatives and those who defend VCC as corporate social responsibility actions. Moreover, it describes the reputational concerns, the national and the international pressure faced by the different stakeholders for engaging with the application of self-regulation standards. Section 4 describes the EITI by summarizing its features, its implementation process, its limitations and the benefits it offers. I emphasise the sub-national implementation of the EITI since it is the alternative that is described to be the most likely for the Colombian case.

Departing from this discussion, I explain, in Section 5, the Colombian extractive industries context, taking into account the history of its exploitation, as well as the legal framework that encompasses the management of resource wealth, both at the national and sub-national levels. In regard to this matter, I stress the on-going royalties' reform, approved during 2011, that aims to spread the extractive industries revenues benefits throughout the country.

Part 2 comprises section 6 and presents the stakeholders' perspectives towards the endorsement of the EITI in Colombia. It shows the main findings, common grounds and disagreements between and within the considered stakeholders. I also highlight the benefits of and arguments against the implementation of the standard in the country. In addition, I give some recommendations that might improve the effectiveness of the EITI and that embrace the perspectives of the Government, Civil Society and Extractive Companies. I also give a SWOT analysis that sums up the main points of the implementation of the EITI in Colombia³¹.

Finally, Section 7 will review the main findings, discussions and the essential concerns that might help to determine the real effectiveness of endorsing the EITI in Colombia.

³¹ For a further explanation of what is a SWOT analysis and why it is used here, please see section 6.

Section 2: Methods

This section gives the reader an overview of the selected methodological framework for this thesis. It explains why and how the research method is used.

Choice of method

This thesis follows a qualitative research approach. It is determined by the formulation of the two assumptions presented in the introduction of the study that aim to guide and delineate the research. Based on the proposed research questions and the objectives of the research, I selected the semi-structured interview as my method. I conducted 14 semi-structured interviews with representatives of civil society, and government and extractive companies' staff, in an attempt to unravel the stakeholders' points of view on the adherence of Colombia to the initiative. Since the EITI works as a voluntary code of conduct, the opinion of the possible stakeholders is a cornerstone of the study.

I had considered content analysis and discourse analysis as methods for my research. However, given the lack of information available, the lack of awareness about the EITI in Colombia and the secrecy regarding how the topic has been managed in the country³² I realized that the best way to obtain the information I needed in order to fulfil the aims of the study was to conduct semi-structured interviews. As argued by Alan Bryman, the semi-structured interview (S-SI) entails a high interest "in the interviewee's point of view" that deals with a more flexible methodology³³.

Furthermore, semi-structured interviews have some advantages that might be an asset for the objectives of this research. For instance, it reduces the incidence of pre-judgment³⁴ from the researcher, since "with few "pre-set questions" involved, the interviewer is not "pre-judging" what is and is not important information."³⁵ Likewise, given the complexity of the topic discussed in this

³² Some of the interviews among Colombian Government officials and Extractive Companies were easy to arrange, since they showed interested in the topic. However, in other cases I had to try insistently to get at least some minutes with the people involved, and in several cases my efforts were in vain.

³³ Alan Bryman, *Social Research Methods* (New York: Oxford University Press, 2008), 437.

³⁴ Although the risk of pre-judgment when conducting semi-structured interviews is less according to Cohen, it might represent a threat when political issues are involved. See ethical considerations below.

³⁵ Sociology. "Sociological Research Skills, Research Methods," Retrieved March 3rd, 2012, from <http://www.sociology.org.uk/methfi.pdf>

thesis, semi-structured interviews were a good mechanism to clarify the interviewees' answers, not to mention its facility for recording and taping the whole interviews, an act that helped me to transcribe in order to analyse, when this was needed. I recorded 11 out of 14 interviews³⁶.

Implementation of the research

I carried out **fourteen (14)** semi-structured interviews with **six (6)** civil society actors, **five (5)** Government officials, **two (2)** extractive companies and **one (1)** with the World Bank. As noted, there was a high interest within civil society regarding the implementation of the initiative in Colombia. Actually, the role that they have had in fostering the EITI in the country is remarkable and that involvement was shown in the willingness to be part of this research.

Unlike the civil society actors, the responsiveness among government officials and private companies was slow, but they both had enormous interest in contributing to this thesis. Within the government staff, most of the interviewees agreed on a meeting with me after several e-mails and phone calls. The main reason for their uncertainty might arise from the fact that I attempted to contact the highest ranking officials possible, and most of them maintained rather tight agendas that hindered the possibility of scheduling a time for an interview with me. I wanted as reliable information as possible, and getting feedback from high government officials involved with the EITI, oil-mining transparency initiatives, the struggle against corruption and/or royalties reform, might represent the official perspective of the stakeholder interviewed. In this respect, despite the difficulties, I succeeded in interviewing Carlos Fernando Galan, Transparency Secretary of the Presidential Transparency Program (commonly known in Colombia as Zar Anticorrupción). I also interviewed three ministerial advisors and one government expert in royalties' management in Colombia.

Regarding the extractive companies, I thought the possibilities of getting an interview would be easier among them, but in reality only two were willing to arrange a meeting to discuss the EITI. The explanation for that situation might be that these two corporations voluntarily signed the EITI despite the fact that Colombia has not officially declared its intention of doing so. Thus they are aware of the initiative and able to comment on it. Moreover, given the size of their business in Latin America, both

³⁶ I couldn't record the interview with Carlos Fernando Galán, since it was carried on at the presidential palace of Colombia. Therefore, given some security protocols I wasn't able to enter my recording machine. The other two interviews weren't recorded, because my interviewees didn't agree to it.

of them are engaged either in transparency initiatives or in voluntary codes of conduct that eventually could have a benefit to their reputational concerns.³⁷ At the end, I could interview only one of the representatives of these companies, because for agenda issues the other one couldn't attend a meeting with me. Nevertheless, I finally interviewed the representative of the largest oil union representation in Colombia.

Table No 1 shows the stakeholder's interviews done by company and position. In some cases their identity and workplace is confidential, since they agreed to contribute to the research, but not as spokesman for their organization.

Table No 1 List of stakeholder's interviews done by organization and position.

PERSON	COMPANY	STAKEHOLDER	POSITION
Executive Director	Partners Colombia	Civil Society	Chief
Alexandra Ospina	GIZ	Civil Society	Staff
Adriana Herrera	Presidential Programme for the Good Governance	Government	Chief Advisor
Ana Carolina González	Independent Researcher	Civil Society	PhD Student
Independent consultant	CME	Civil Society	Consultant
Luiz Sampaio	Petrobras	Extractive Company	Coordinator of Transparency
Javier Aguilar	World Bank	International Financial Corporations (IFC)	Program Manager
Arne Theisen	GIZ	Civil Society	Regional Cooperation Coordinator
Sandra Alzate	AECOM	Civil Society	
Government Official	National Planning Department (DNP)	Government	Confidential

³⁷ Reputational concerns will be further discussed in Section 3.

Government official	ANH	Government	Confidential
Carlos Fernando Galan	Transparency Secretariat	Government	Secretary
Oil companies representative	ACP	Extractive Company	
Government Official	Ministry of Mining	Government	Confidential

Source: Own illustration

According to Bryman (2008) and Boyle (1998), conducting semi-structured interviews is considered a hierarchical experience "...with the respondent subordinate to the interviewer."³⁸ Even though this statement is acceptable as a general fact for all the interviews, in some cases this subordination did not happen. When I was carrying out this research, there were three cases in which the interviewing experience was unsuccessful. In these cases the interviewees seemed to be rather interested in getting further information regarding the EITI, but they were not knowledgeable about the subject and thus unable to provide me with truthful data that could be useful for my research. As a result, I felt that I was teaching them about the EITI, since they barely knew the way the standard works. However, the organizations they were working for could have a major role as stakeholders in a possible implementation of the EITI in Colombia, which explains their interest in my research.

Two reasons might explain this situation. First, given the unfamiliarity with the EITI in Colombia, few stakeholders really understand the scope of the standard. Actually, its understanding has been limited to high government officials, specific Civil Society organizations, a small number of researchers and not too many extractive industries' CSR coordinators³⁹. Notwithstanding this situation, I completed the interviews I needed with experts on the topic within all the stakeholder groups and I could successfully dissipate the incidence of the three "failed" interviews⁴⁰. Second, the

³⁸ Paul Boyle, Keith Halfacree, and Vaughan Robinson, *Exploring contemporary migration* (London-New York: Addison Wesley, 1998), 54

³⁹ The lack of awareness within Colombian society will be further analyzed on Section 6.

⁴⁰ In this situation the hierarchical experience - respondent subordinate to the interviewee- becomes acceptable.

EITI has been studied separately by the different actors involved. In the case of the government, the absence of a superior mandatory request for institutional coordination in evaluating the strengths or failures of the initiative has made it difficult for the authorities involved to share their different perspectives regarding the issue. Consequently, I felt that the interviewees were expecting me to share information needed for their organization's work with them, instead of providing me with it. However, in the other eleven (11) interviews I not only received the feedback I had hoped, but also conducted more reciprocal conversations which both parties could gain from.

Another challenge that presented itself during the interviews was confidentiality. Some of my interviewees refused to talk on behalf of the organizations they worked for. If they agreed to share information and accepted to talk as stakeholders' officers, they often referred to their affirmations as personal opinions, "that should not be taken as the official position" of their companies. Hence, the data obtained by considering individual perceptions is, according to Jerczynski "... subjective and often difficult to use as a basis for generalization."⁴¹ As a result, two main problems arise from this situation.

First, the validity of the research could be questioned, since "the researcher has no real way of knowing if the respondent is lying."⁴² Second, the generalization constraints noted above make it difficult to assume that perspective as unquestionable and with external validity. However, by getting in touch with the officers' personal opinions regarding the EITI, even if one cannot generalize the company's official perspective, one can begin to approach it. I tried to solve the problem by reaching as high officials as possible in order to achieve an approach to the official perspective with regard to the EITI, as well as firsthand information about it. Moreover, although I can't present the "official positions" of my respondents organizations, by bringing up the issues my interviewees considered worth to discuss, I advance in getting different points of view about the EITI,

Regarding the interview questions, I followed a standard interview guide based on specific topic areas. The questionnaire changed somewhat depending on the interviewee, but there were fixed

⁴¹ Marek Jerczynski, "Patterns of Spatial Mobility of Citizens of the Former Soviet Union" in *In-Depth Studies on Migration in Central and Eastern Europe. The Case of Poland*, Ed. Tomas Frejka, Marek Okólski and K. Sword (New York: United Nations, 1998), 4.

⁴² Marek Jerczynski, "Patterns of Spatial Mobility of Citizens of the Former Soviet Union" 4.

questions that directly relate to the aim of the study and that rarely changed depending on the situation. As a general framework I conducted the interviews guided by the following topic scheme:

- a) **Introducing questions:** Name, position, age, number of years working in the position, responsibilities.
- b) **EITI awareness:** Knowledge of the EITI, background, role of the interviewed stakeholder with regard to the initiative, etcetera.
- c) **EITI effectiveness:** Perspectives about EITI's flaws and strengths, level of estimation of the initiative.
- d) **Legal framework and access to information:** Extractive industries deployment of information, contracts subscribed with the government, royalties liquidation, monitoring and evaluation, legal issues, private sector role, CSR, international pressure, among others.
- e) **Voluntary Initiatives:** Effectiveness of voluntary initiatives such as the EITI, auto regulation mechanisms, relation with formal law, role of them within private actors, etcetera.

Bryman suggests conducting pilot interviews “to test how well the interview flows... gain some experience... (and) be prepared for some unexpected contingencies that can arise in the course of an interview.”⁴³ For that reason, I chose to conduct at least one pilot interview before starting with the formal interview schedule. The experience gave me the opportunity to improve the interview guide draft that I had prepared beforehand and improve my skills as an interviewer. Moreover, I met with an expert on transparency initiatives in the extractive industries who had access to important information that vastly contributed to the design of this thesis outline.

Ethical Considerations

To analyze the EITI from a Colombian perspective is a rather challenging experience. Since the issue involves an important level of political and social concerns, the likelihood of prejudgment is high, especially when it is analyzed by a Colombian citizen. In the same way, given the involvement of public and private high-ranked officials in the interview process, the importance of

⁴³ Bryman, *Social Research Methods*, 443.

accessibility, gatekeepers and negotiation – renegotiation, concerns arise as a large information barrier. In this respect, Bryman defines gatekeepers as those “ who are concerned about the researchers motives: What the organization can gain from the investigation, what will lose by participating in the research in terms of staff time and other costs, and potential risks to its image... what kind of question can be asked”⁴⁴ and so on. On the other hand, the process of negotiating and renegotiating with the interviewee what is and what is not permissible to do in the research represents an important information inconvenience⁴⁵. In consequence, some relevant information could be missing and the independence of the research could be questioned if one access to omit something that might be important, just to accomplish the interview.

⁴⁴ Bryman, *Social Research Methods*, 131.

⁴⁵ Bryman, *Social Research Methods*, 131-132.

II) Theoretical Framework

Section 3: Voluntary Codes of Conduct (VCC)

This section discusses the emergence of Codes of Conduct (CC) and Voluntary Codes of Conduct (VCC), CSR, accountability and transparency mechanisms as core theoretical foundations of the EITI. It moreover discusses the background, theoretical discussions, legitimacy debates and reputational concerns that stakeholders face when endorsing these kinds of initiatives. In the same way, it gets specific emphasis on the emergency of VCC in extractive industries and the theoretical debate regarding the real motivations of this situation.

The role of Voluntary Codes of Conduct

There are many definitions of Codes of Conduct (CC). For instance, Carson, Baetz and McGill define them as “a set of principles and rules that govern the way social institutions should behave toward their stakeholders and the way stakeholders... should conduct themselves toward the institution and each other.”⁴⁶ Likewise, the United States Council for International Business (USCIB) describe VCC as “...commitments voluntarily made by companies, associations, or other organizations that put forth standards and principles of business conduct in the marketplace, and are thus primarily market-driven.”⁴⁷ Although the validity of the statement is contested, some authors often assume an implicit relationship between Corporate Social Responsibility (CSR) and the emergency of CC, with the latter a tool of the former.⁴⁸ However, three key factors are frequently recognized as common features of CC in most of the literature available.

First, they are considered self-regulatory mechanisms, some of them characterized for their voluntary nature. In this respect, a VCC is a type of CC in which its endorsement is not constrained by any kind of formal law.⁴⁹ Second, they aim to influence behavior of certain group/groups or communities by means of

⁴⁶ A. Scott Carson, Mark Baetz, and Shelley McGill, “Codes of Conduct in the Private Sector,” *Ethics Centre*, 2008, 2.

⁴⁷ United States Council for International Business, cited in Krista Bondy, Dirk Matten, and Jeremy Moon “MNC Codes of Conduct: CSR or Corporate Governance?” *International Centre for Corporate Social Responsibility. The University of Nottingham*, 2006.

⁴⁸ Bondy et al., “MNC Codes of Conduct: CSR or Corporate Governance?” 5.

⁴⁹ Bondy et al., “MNC Codes of Conduct: CSR or Corporate Governance?” 5.

the promotion of standards, rules or norms that tend to pursue any organizational objective⁵⁰. Third, they intend to define specific actions on certain issues, usually with a market perspective⁵¹. In other words, the income-driven outlook of any business is taken for granted, and therefore a trade-off analysis is often developed before any CSR commitment. In finance the static trade-off theory focuses on the benefits and cost for companies of issuing debt⁵². In this respect, Myers considers that “the optimal point can be attained when the marginal value of the benefits associated with debt issues exactly offsets the increase in the present value of the costs associated with issuing more debt.”⁵³ In other words, when the benefits compensate the costs of an action.

The link between CSR and the engagement of corporations with CC responds to worldwide concerns about the impact that private decisions have in the social arena, and the way companies assuage the negative social outcome of their business activities. In this respect, Jedrzej argues that “the rise of CSR can be traced directly back to globalization and a concomitant expectation that firms would fill gaps left behind by global governance failures, at the same time as it became easier for NGOs to expose corporate behavior in far-flung corners of the planet. As a result, firms have been pressured to 'do something' about the environment, community development or global warming.”⁵⁴ However, the pressure on corporations to get involved in social actions has been uneven and not had equal effects among all the companies. As it is further explained by Bartley & Child (2010), some specific private actors become major targets of anti-corporate campaigns, whereas others remain unexpectedly out of it⁵⁵.

⁵⁰ Göran Ahrne, and Nils Brunsson, *Meta-organizations* (Cheltenham; Northampton, MA: Edward Elgar, 2008). Nils Brunsson, and Bengt Jacobsson. *A World of Standards* (Oxford: Oxford University Press, 2000)

⁵¹ Bondy et al., “MNC Codes of Conduct: CSR or Corporate Governance?” 5.

⁵² Silvia Swinnen, Wim Voordeckers, and Sigrid Vandemaele, “Capital structure in SMEs: Pecking order versus static trade-off, bounded rationality and the behavioural principle” *Limburg University Center*, 2005, 3.

⁵³ Myers, cited in Swinnen et al., “Capital structure in SMEs: Pecking order versus static trade-off, bounded rationality and the behavioural principle” 3.

⁵⁴ George Jedrzej, “The False Developmental Promise of Corporate Social Responsibility: Evidence from Multinational Oil Companies,” *International Affairs*, 81-3, 2005: 581-598.

⁵⁵ Tim Bartley and Curtis Child, “Movements, Markets and Fields: The Effects of Anti-Sweatshop Campaigns on U.S. Firms, 1993-2000.” *Social Forces*, 2010. See for example the case of Shell, Mc Donald's, and Coca Cola.

In contrast, Milton Friedman, one of the main representatives of neoliberalism, states that CSR approaches “accept the socialist view that political mechanisms, not market mechanisms, are the appropriate way to determine the allocation of scarce resources to alternative uses.”⁵⁶ For that reason, he argues that insofar the businesses are responding to social concerns by using stockholders’ money, they are leaving aside the only and main responsibility of every business: increasing its profits. In his perspective, corporations should not engage in CSR, since that role should be fulfilled by the sovereign state.

Departing from a theoretical perspective and following games theory, Scalet argues that VCC raises the prisoner’s dilemma, “because they create situations where corporations who promote ethical behavior put themselves at a competitive disadvantage to those who do not.”⁵⁷ Therefore, the incentives to cooperate are not high enough to block the cost of subscribing to the code. Taking into account this perspective, the fact is that businesses do not have any obligation to subscribe to any CSR initiatives, no matter the social impact of their economic activities⁵⁸. However, it has been acknowledged that corporations use their CSR commitments as important profitable tools when their reputation is exposed in the stock market, when they succeeded in communicating “brand values” to consumers, or when they use their social responsibility standards as a “product of differentiation”⁵⁹. This last point is better explained by Siegel and Vitaliano, when they argue that “CSR is a form of product differentiation, a form of advertising to establish or sustain brand loyalty.”⁶⁰ In other words, companies respond to the demand of “social responsible” products by creating loyalty from their customers through CSR initiatives.

⁵⁶ Milton Friedman, “The Social Responsibility of Business is to Increase its Profits,” *The New York Time Magazine*, September 13, 1970.

⁵⁷ Carson et al., “Codes of Conduct in the Private Sector”.

⁵⁸ Bede Nwete, “Corporate Social Responsibility and Transparency in the Development of Energy and Mining projects in the Emerging Markets; Is soft law the answer?” *German Law Journal*, 8-4, 2006: 311-340.

⁵⁹ See: Abigail McWilliams and Donald Siegel, “Corporate Social Responsibility: A Theory of the Firm Perspective” *The Academy of Management Review*, 26-1, 2001: 117-127.

⁶⁰ Donald Siegel and Donald Vitaliano, “An Empirical Analysis of the Strategic Use of Corporate Social Responsibility” *Journal of Economics and Management Strategy*, 16-3, 2007: 776.

Nonetheless, the scope of analysis of VCC is not restricted to a corporate perspective. Down and Johns, for example, discuss the issue considering the state's motivations for subscribing to or defecting from an international standard. According to them, the likelihood of defection of a state to a given treaty will depend on the extra benefit of endorsing the rule.⁶¹ In their words, "... in general, states (1) will defect from low-net-benefit relationships more frequently than they will from high-benefit relationships and (2) will defect from low-benefit relationships whenever they defect from high-benefit relationships but not vice versa."⁶²

On the other hand, Collier recognizes the power of VCCs as a mechanism of pressure given the reputational concerns that they entail. In his words, "codes separate the sheep from the goats. By revealing those governments that are willing to comply with a particular set of standards, they also reveal those that are not. There is a strong incentive for governments not to reveal themselves as being in the latter category." As a result, VCCs are not mandatory but their effectiveness depends on their attraction capacity to persuade other actors to comply with the code⁶³. This vision is reminiscent of the mainstream political analysis that says that "a major - if not the major - reason why states keep commitments, even those that produce a lower level of returns than expected, is because they fear that any evidence of unreliability will damage their current cooperative relationships and lead other states to reduce their willingness to enter into future agreements."⁶⁴

VCC in the extractive sector: Private legitimacy regime and businesses self-regulation.

The literature found regarding the appearance of voluntary norms within the extractive industries shows that there are three main arguments that justify their inception and their rapid acceptance by oil and gas companies. First are the worldwide concerns about the impact of business on the environment, social

⁶¹ In this case treaty is considered as a Code of Conduct, in spite of the international legal power that the former has. Since a CC is an agreement that often entails more than one part the analogy to treaty is made.

⁶² George Downs and Michael Jones, "Reputation, Compliance, and International Law" *Journal of Legal Studies*, 31, 2002: s96

⁶³ Paul Collier, "Laws and Codes for the Resource Curse," Retrieved May 14, 2012, from <http://users.ox.ac.uk/econpco/research/pdfs/LawsandCodesforResourceCurse.pdf>

⁶⁴ Downs and Jones, "Reputation, Compliance, and International Law" s96.

communities and economic development. This situation has made oil, mining and gas companies more visible and put their CSR efforts “on the radar” of civil society organizations, customers and social movements fighting corruption in resource-rich nations. Hence, nowadays there is more embracement by extractive companies of world transparency and community development initiatives than there ever was before⁶⁵.

Second are the advocacy efforts of NGOs and other actors that seek to promote transparency in the extractive industries as a cornerstone for long-term development⁶⁶. In this respect, the causal logic reflects a directly proportional relation between the level of transparency and the level of welfare accomplished in a resource-rich nation thanks to the extractive activities. One of the main defenders of this theory is Paul Collier (2007), for whom the endorsement of VCC is a useful mechanism for pressing questioned stakeholders to be accountable of their conduct. In his words:

“A neglected type of assistance, which might be more helpful, is the promulgation of voluntary codes and laws specifically designed to improve the economic governance of resource rents...I have suggested how new codes and laws could address both the mistakes and the misaligned incentives that lead inexorably to the resource curse....Even where such codes are entirely voluntary, they can change behavior.”⁶⁷

A third element is proposed by Alexandra Gillies. She considers that the emergence of VCC in the extractive industries is a result of reputational concerns of international oil companies (IOC), international financial institutions (IFIs) and Western governments. This situation was boosted by the scrutiny of third actors with the power to damage the reputation of these institutions and therefore their profit procurement, votes or supporters. She argues that, “certain high-profile international actors began to perceive oil sector transparency as a useful tool for the protection of their public image. In other words, the need for several

⁶⁵ Jedrzej, “The False Developmental Promise of Corporate Social Responsibility: Evidence from Multinational Oil Companies,” 581.

⁶⁶ Finnemore & Sikkink, cited in Alexandra Gillies, “Reputational Concerns and the Emergence of Oil Sector Transparency as an International Norm” *University of Cambridge*, 2010, 104.

⁶⁷ Collier, “Laws and Codes for the Resource Curse,” 2-14.

key corporate, government, and IFI actors to protect their reputations motivated them to facilitate, or at least to permit, the norm's ascendance.”⁶⁸

Yet, the question that one could ask is to what extent the emergence of CC in the extractive industries, considered as “soft law”⁶⁹ approaches, are effectively responding to the growing international demands for corporate social involvement. This discussion questions the legitimacy of VCC and the way they are taking over the role of the state in promoting social assistance to the population⁷⁰. Some scholars claim the real solution for an effective CSR is the promulgation of mandatory commitments regulated by the state that force the subscription of companies to high impact social projects⁷¹. In other words, they see the solution as implementing a “hard law”⁷² approach in the regulation of CC.

In contrast, CSR is seen by many scholars as a self-regulation mechanism that in any circumstance should be considered as a mandatory requirement of business social commitment. This view considers that the role of state is to supply the basic needs of their citizens and that there is no justification for companies to take over that role⁷³. Nowadays, “oil companies now help to build schools and hospitals, launch micro-credit schemes for local people and assist youth employment programmes in developing countries.”⁷⁴ In other words, oil companies are going beyond their businesses and solving social needs that are supposed to be provided by the government.

⁶⁸ Gillies, “Reputational Concerns and the Emergence of Oil Sector Transparency as an International Norm,” 104.

⁶⁹ Soft law for the effects of this text is considered as, “rules of conduct that are laid down in instruments which have not been attributed legally binding force as such, but nevertheless may have certain - indirect - legal effects, and that are aimed at and may produce practical effects” Senden, 2004, p. 112

⁷⁰ Nwete, “Corporate Social Responsibility and Transparency in the Development of Energy and Mining projects in the Emerging Markets; Is soft law the answer?”.

⁷¹ Koenig –Archibugi, “Transnational Corporations and Public Accountability”.

⁷² Hard law is considered as “the traditional notion of law with its binding and penal effect” Nwete, 2006, p. 315

⁷³ Nwete, “Corporate Social Responsibility and Transparency in the Development of Energy and Mining projects in the Emerging Markets; Is soft law the answer?”.

⁷⁴ Jedrzej, “The False Developmental Promise of Corporate Social Responsibility: Evidence from Multinational Oil Companies,” 81.

However, the debate focuses on whether the use of VCC and other kinds of CSR initiatives are a means of private legitimization, instead of a genuine social engagement mechanism. Drawing on organizational legitimacy as "... a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions,"⁷⁵ the incidence of private self-regulation approaches is socially constructed, insofar it is a response of a spread social concern regarding the incidence of business in human life's. Moreover, given the social pressure on companies "to do something," the appearance of VCC could be considered as a way to minimize their bad reputation among certain audiences.

On the other hand, for Nwete, the emergence of self-regulation approaches could deal with green-wash problems, in which the companies want to be known as environmentally friendly and socially responsible, although in practice none of these principles are applied⁷⁶. He considers that "they (the companies) also want to be associated with the noble principles of transparency and CSR but will not be seen implementing them in their activities. So a lot of companies attract some benefits to their business bottom line by being associated with CSR and transparency principles, without actually putting them into practice."⁷⁷

Considering Nwete's perspective, is it possible to say that VCC in the extractive industries are in reality "green-washing" mechanisms⁷⁸? Are they responding to private legitimacy interest or are they genuine self-regulation initiatives?

⁷⁵ Suchman cited in Helen Keller, "Corporate Codes of Conduct and their Implementation: The Question of Legitimacy" *International Law*, 194, 2008: 219-298.

⁷⁶ The green wash problem is associated with the fact that a company wants to be presented as environmentally friendly. The web page Sins of Greenwashing defines it as: "the act of misleading consumers regarding the environmental practices of a company or the environmental benefits of a product or service" *Underwriters Laboratories*, 2011.

⁷⁷ Brackets added by the author. Nwete, "Corporate Social Responsibility and Transparency in the Development of Energy and Mining projects in the Emerging Markets; Is soft law the answer?" 330.

⁷⁸ The term greenwashing is used here as an analogy, given the non-existence of an exact term that discusses the legitimacy issues in CSR initiatives in the extractive industries.

The issue of private legitimacy interest is considered by Haslam as a constructivist regime. Based on Krasner's model of CSR movements, he argues that CSR works as a "legitimizing framework for self-regulated private capitalism."⁷⁹ As a result, the author describes the private legitimacy regime imposed by transnational companies considering the following three principles:

To summarize, the emergence of CC in the extractive industries responds to a worldwide concern regarding the social impact of business on the environment and human beings. This situation, considered from an economic perspective, deals with certain externalities that should be assuaged by the companies in order to get a "social license to operate." In this respect, the main discussion is centered on whether these CSR initiatives correspond to an effective self-regulation approach or emerge as private attempts to legitimize their extractive business activities. Moreover, some voices call for a regulatory framework in CSR, given the contested effectiveness of VCC in the extractive industries in solving the externalities caused by the oil, mining and gas companies. In this regard, Jedrzej says "the effectiveness of CSR initiatives in the oil, gas and mining sectors has been increasingly questioned, and there is mounting evidence of a gap between the stated intentions of business leaders and their actual behavior and impact in the real world."⁸⁰

Likewise, the globalization of production makes transnational companies (TNC) more accountable for their social behavior⁸¹. This situation is stronger for extractive companies because their environmental and social impact is more visible and they are often subject of the scrutiny of civil society and media. Moreover, following the neoliberal ideas imposed by IFIs, most of the governments in resource-rich developing nations tend to favor the prosecution of foreign direct investment (FDI) from the extractive companies for the exploitation of their natural resources.

⁷⁹ P.A. Haslam, "Is Corporate Social Responsibility a Constructivist Regime? Evidence from Latin America" *Global Society*, 21-2, 2007: 280.

⁸⁰ Jedrzej, "The False Developmental Promise of Corporate Social Responsibility: Evidence from Multinational Oil Companies," 581.

⁸¹ Koenig –Archibugi, "Transnational Corporations and Public Accountability," Chapter 6.

Table No 2: CSR Regime Principles

Principle	Evidence
Private self-regulation	Businesses, not governments, are best suited to decide how to organize capitalist production.
Private social license to operate	Businesses have some responsibilities to a broader community of stakeholders affected by the firm's activities beyond shareholders.
Reputational concerns and risks	Failure to manage negative externalities of doing business will result in loss of community support, increase political risk, increase the probability of government regulation of activities and possibly cause a loss of shareholder value and new business opportunities—in short the loss of its social license to operate.

Own illustration based on Haslam, 2007. P. 280

Section 4: Describing the EITI

Defining the EITI

The Extractive Industries Transparency Initiative (EITI) emerges as part of the proliferation of global initiatives that came about at the beginning of the century and seek to promote a transparent management of natural resources revenues. In this context, the effects of the so-called resource curse received international attention as a key development issue. Several “scholars and civil society activists have brought the resource-curse to public attention”⁸² and try to explain the need for an international commitment that might help to overcome the corruption, big inequalities, weak institutions, lack of accountability and transparency that characterized many resource-rich nations⁸³. Moreover, different researchers have acknowledged the inversely proportional relationship that is present in many developing countries between the level of development, per-capita income, growth rates and the existence of natural resources⁸⁴. For example, as Jeffrey Sachs sums up:

“One of the surprising features of modern economic growth is that economies abundant in natural resources have tended to grow slower than economies without substantial natural resources”⁸⁵

Likewise, the significant increases in commodity prices that have benefited the developing world have influenced the global agenda for the deployment of transparency initiatives in resource-rich countries. In this sense, Mejia reckoned the capacity and governance gaps as major issues that justified the urgency of global transparency standards. In his words, “in many resource-rich countries, the expectations and

⁸² Susan Ariel Aaronson, “Limited partnership: Business, government, civil society, and the public in the Extractive Industries Transparency Initiative (EITI)” *Public Administration and Development*, 31-1, 2011: 52.

⁸³ Aaronson, “Limited partnership: Business, government, civil society, and the public in the Extractive Industries Transparency Initiative (EITI),” 50.

⁸⁴ Ross, 1999; Sachs & Warner, 1995; Karl, 1997, cited in Andrés Mejia, “Impacts and Effectiveness, Natural Resource Governance Annex 4” *London: Institute of Development Studies*, 2010, 5.

⁸⁵ Jeffrey Sachs and Andrew Warner, “Natural Resource Abundance and Economic Growth” *Cambridge MA: Center for International Development and Harvard Institute for International Development*, 1997, 1.

demands of citizens to benefit from the new wealth exceeded the technical and bureaucratic capacity of states to make the best out of natural resource revenues.”⁸⁶

Responding to all these worldwide concerns and considering the state of poverty and underdevelopment that many resource-rich countries (specially African) feature, the EITI was launched during the World Summit for Sustainable Development in 2002 as a voluntary initiative whose main purpose is to create transparency and accountability “around the payments that companies are making to governments, and the revenues that governments are receiving from those companies.”⁸⁷ Its challenging mission is to bring wealth and prosperity to resource-rich countries in an attempt to reduce the incidence of poverty, conflict, corruption and other associated features of the resource curse. In that matter, the EITI principles acknowledge that:

“By encouraging greater transparency and accountability in countries dependent on the revenues from oil, gas and mining, the potential negative impacts of mismanaged revenues can be mitigated, and these revenues can instead become an important engine for long-term economic growth that contributes to sustainable development and poverty reduction.”⁸⁸

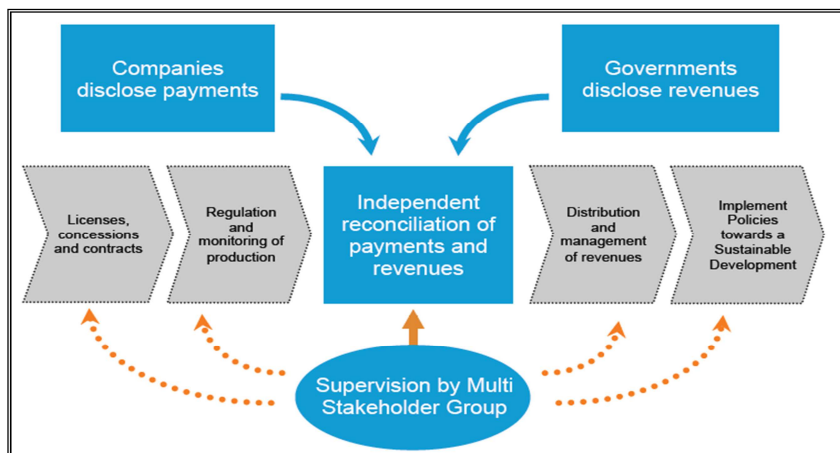
The independence of the process is guaranteed by the independent verification and reconciliation of payments and revenues. To accomplish this, the EITI includes a participative multi-stakeholder group (MSG) that overviews implementation. The composition of the MSG is not restricted by the EITI board, but it often has to include a representative number of representatives from the groups affected by the standard. It generally comprises government, civil society and extractive industry companies, in what is considered a tripartite system. In this respect, the EITI defines a stakeholder: *“As an individual, community, group or organisation with an interest in the outcome of the EITI, including both those who are affected by it (positively or negatively) and those who are able to influence it (in a positive or negative way)”*. Table No. 3 shows stakeholders typically involved within the EITI.

⁸⁶ Mejía, “Impacts and Effectiveness, Natural Resource Governance Annex 4,” 5.

⁸⁷ Extractive Industries Transparency Initiative (EITI), *Extractive Industries Transparency Initiative Source book* (London: Department for International Development, 2005), 2.

⁸⁸ EITI, *Extractive Industries Transparency Initiative Source book*, 4.

Graph No. 3: EITI Key Elements



Source: Kreibich (2011)

Table No 3: Stakeholders in the EITI

Who might the EITI Stakeholders include?		
Public Institutions	Executive	Agencies responsible for the management of Natural Resources
		Agencies responsible for revenue collection and management
	Legislature	Agencies responsible for economic development, private sector regulation and public administration
		Budgetary and/or natural resources committees.
Other	Sub-national levels of government	
	Supreme audit institutions	
Private Sector	Companies in the country	Domestic state-owned companies
		International state-owned companies
	Investors	Domestic private companies
		International private companies
Business associations		
Civil Society	Community based organizations	
	National Non-governmental Organizations (NGOs)	
	International NGOs and their local affiliates	
EITI Implementers	Media, trades unions, academic and research institutions	
	Administrators, auditors and disclosure agencies	
International partners	International Institutions	FMI, World Bank, United Nations
	Donors	

Source: own illustration based on EITI source book 2005.

The EITI is also support by a Multi-Donor Trust Fund (MDTF) established and administered by the World Bank since 2004 that includes the commitment of 17 donor countries and the European

Commission⁸⁹. Its goal is to provide technical and financial assistance to countries “seeking to implement or considering implementation of the EITI principles and criteria.”⁹⁰ This support includes the availability of EITI advisors and consultants for implementation assistance to governments that require it; “sharing international best practices; and providing grants to governments to help support EITI implementation.”⁹¹

○ **EITI Principles and criteria:**

During the 2003 Lancaster House conference the EITI principles were established as a core of the initiative. Later on, in 2005, a representative group of stakeholders agreed upon the “EITI criteria” constituted “as a succinct description of the outcomes of an EITI process.”⁹²

Box No. 3: The EITI principles

The EITI Principles	
1.	We share a belief that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts.
2.	We affirm that management of natural resource wealth for the benefit of a country's citizens is in the domain of sovereign governments to be exercised in the interests of their national development.
3.	We recognise that the benefits of resource extraction occur as revenue streams over many years and can be highly price dependent.
4.	We recognise that a public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development.
5.	We underline the importance of transparency by governments and companies in the extractive industries and the need to enhance public financial management and accountability.
6.	We recognise that achievement of greater transparency must be set in the context of respect for contracts and laws.

⁸⁹ EITI, “Compromiso con la Transparencia, Comisión de Trabajo para la Implementación de la Iniciativa para la Transparencia de las Industrias Extractivas”.

⁹⁰ Independent Evaluation Group (IEG), “Multi-Donor Trust Fund for the Extractive Industries Transparency Initiative” *Global Program Review*, 2011.

⁹¹ EITI, “Compromiso con la Transparencia, Comisión de Trabajo para la Implementación de la Iniciativa para la Transparencia de las Industrias Extractivas”.

⁹² Javier Aguilar, George Caspary and Viesna Seiler, “Implementing EITI at the Subnational Level, Emerging Experience and Operational Framework” *The World Bank*, 2011, 3.

7. We recognise the enhanced environment for domestic and foreign direct investment that financial transparency may bring.
8. We believe in the principle and practice of accountability by government to all citizens for the stewardship of revenue streams and public expenditure.
9. We are committed to encouraging high standards of transparency and accountability in public life, government operations and in business,
10. We believe that a broadly consistent and workable approach to the disclosure of payments and revenues is required, which is simple to undertake and to use.
11. We believe that payments' disclosure in a given country should involve all extractive industry companies operating in that country.
12. In seeking solutions, we believe that all stakeholders have important and relevant contributions to make – including governments and their agencies, extractive industry companies, service companies, multilateral organisations, financial organisations, investors, and non-governmental organisations.

Source: EITI Sourcebook 2005 p. 8

Box No 4: THE EITI CRITERIA

The EITI Criteria

1. Regular publication of all material oil, gas and mining payments by companies to governments ("payments") and all material revenues received by governments from oil, gas and mining companies ("revenues") to a wide audience in a publicly accessible, comprehensive and comprehensible manner.
2. Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards.
3. Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards and with publication of the administrator's opinion regarding that reconciliation including discrepancies, should any be identified.
4. This approach is extended to all companies including state-owned enterprises.
5. Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate.
6. A public, financially sustainable work plan for all the above is developed by the host government, with assistance from the international financial institutions where required, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints.

Source: EITI sourcebook 2005, p.9

o **Materiality:**

The criteria No. 1 requires “the regular publication of all **material** oil, gas and mining payments by companies to governments (“payments”) and all material revenues received by governments from oil, gas and mining companies (“revenues”) to a wide audience in a publicly accessible, comprehensive and comprehensible manner” (EITI source book, p.9, highlighted by the author). Furthermore, the EITI requirements 9, 11, 14 and 15 also consider the materiality issue within the implementation process and highlight the importance of the publication of all relevant companies’ and government entities’ income streams in the report⁹³. Bearing in mind this situation, one would ask then: What is considered as material? And thereby, what should be reported?

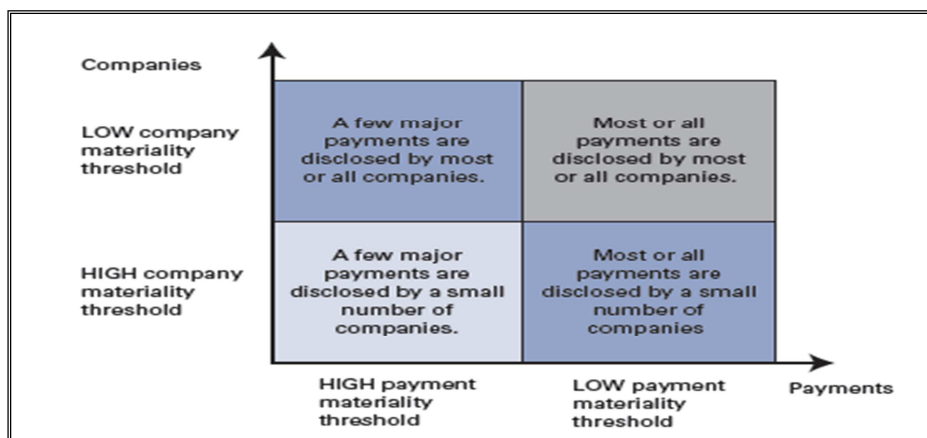
There is no right answer for this question, since the definition of whether a payment or revenue is material or immaterial is a matter of the MSG and varies depending on the country. Nonetheless, the EITI board set a threshold to determine the appropriate levels of materiality that states that if the omission or misstatement of the data could materially affect the final EITI report, then the payment is material⁹⁴. In consequence, most of the implementing countries consider the extra costs implied when taking into account small transactions and small companies in their materiality definitions. In practice, some countries might disclose only those revenue streams that contribute the most to the government’s overall revenue and exclude the streams that contribute very little⁹⁵. Likewise, the EITI Implementing Guide states that the country can set the materiality level by considering the extractive companies’ size. For example, “five large companies might be responsible for paying 99 percent of all extractive industry revenues, while the remaining 1 percent is paid by 10 small companies.

⁹³ EITI, *EITI Rules. Including the validation guide* (Oslo: The EITI International Secretariat, 2011), 21+23+26.

⁹⁴ Aguilar et al., “Implementing EITI at the Subnational Level, Emerging Experience and Operational Framework,” 31.

⁹⁵ Aguilar et al., “Implementing EITI at the Subnational Level, Emerging Experience and Operational Framework,” 31.

Graph No 4: Company and Payment Materiality Thresholds



Source: EITI, Implementing the EITI (2008)

○ **Benefits of EITI implementation:**

Setting aside the EITI board's official declaration of benefits, several authors have acknowledged the incentives whereby policymakers and extractive companies should endorse the initiative. Aaronson, for instance, stresses that EITI offers an opportunity rarely seen, in which business interest and public interests match. In her words, "trade is supposed to be about mutual benefit; the EITI provides a means to ensure that the citizens of petro-states reap the benefits of trade in oil."⁹⁶ She also argues that countries with a weak political system, instable, corrupt or with a poor record of accountability and transparency, might see an opportunity of giving the market signals that they are willing to change, or if the situation is so bad and the country needs outside forces, the EITI offers a "feedback loop to force change."⁹⁷

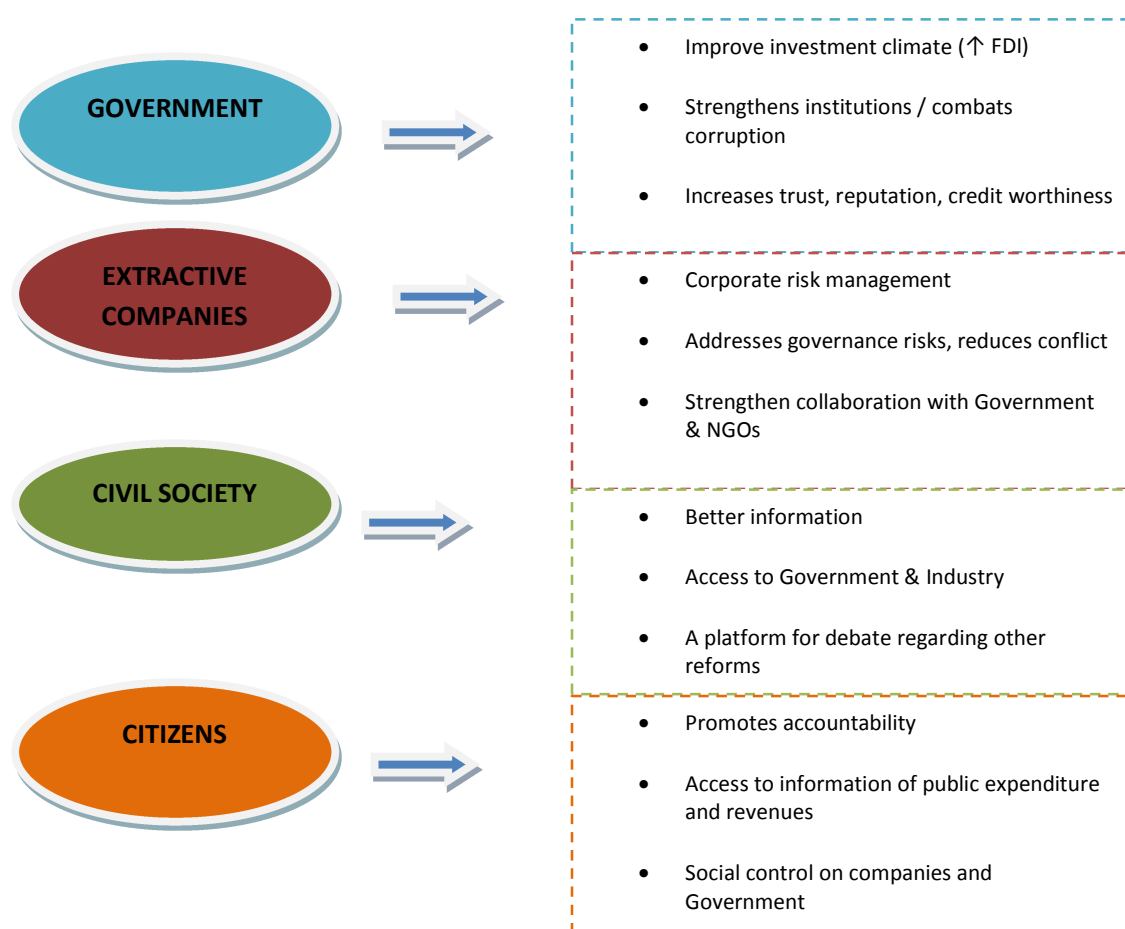
This perception is supported by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), the German Society for International Cooperation. According to the agency, "next to government and civil

⁹⁶ Susan Ariel Aaronson, "Oil and the Public Interest Vox" Retrieved May 8, 2012, from <http://voxeu.org/index.php?q=node/1395>

⁹⁷ Aaronson, "Oil and the Public Interest Vox"

society capacity, EITI improves international credibility and improves investment climate in countries.”⁹⁸ Moreover, it highlights the improvement of the dialogue between stakeholders, since the implementation of the EITI “has resulted in better government accountability and a strengthened role of civil society actors.”⁹⁹ On Graph No. 5 I try to sum up the benefits of implementing the EITI

Graph No 5. Benefits and Incentives of the EITI



Source: Own illustration. Adapted from Bartlett (2010)

⁹⁸ Gesellschaft für Internationale Zusammenarbeit (GIZ), “Resource Revenue Transparency and the Extractive Industries Transparency Initiative (EITI)” Retrieved May 8th 2012, from <http://www.gtz.de/de/dokumente/gtz2010-en-factsheet-EITI.pdf>

⁹⁹ GIZ, “Resource Revenue Transparency and the Extractive Industries Transparency Initiative (EITI),” 1.

Implementing the EITI

No procedure is provided for implementing the EITI. Nonetheless, the signed countries commit to follow the principles and criteria established by the EITI board. In practice, once a country officially manifests its intention to implement the EITI, by an “unequivocal public statement,” the following steps include the commitment to work with the civil society and extractive companies; the appointment of a single individual that will lead the process and oversee the multi-stakeholder steering group; and the definition of a national work plan that includes measurable targets, actions, processes, timetables, the individuals or institutions responsible, and funding. This process is known as the signing-up phase.¹⁰⁰

Likewise, based on the participatory nature of the EITI, the designation of a representative multi-stakeholder steering group is required for implementing the standard. The considerations that guide the composition and governance of steering groups are singular, and in most of the cases reflect the particular situation of the implementing country. As a result, no formula is given regarding the size, membership or duration of the groups¹⁰¹. However, experience has showed that “successful EITI programs are those that have allowed different stakeholder “constituencies” to select their own representatives. When governments directly appoint members of steering groups, it is more difficult for governments to demonstrate that civil society representatives are operating independently.”¹⁰²

o Scope of the programme

The implementation of the EITI presents big challenges when it comes to determining the scope of the standard when it is applied on the ground. Bearing in mind that the EITI presents enough flexibility to address the particular circumstances of the implementing country, again, no recipe is given to achieve the proposed goals. Decisions regarding this issue come after a big debate among the different stakeholders and usually aim to provide the best trade-off for the country. The assessment of the cost of producing the data and the benefit derived from it will guide the scope of the EITI as well as the way the EITI is going

¹⁰⁰ GIZ, “Resource Revenue Transparency and the Extractive Industries Transparency Initiative (EITI),” 11.

¹⁰¹ GIZ, “Resource Revenue Transparency and the Extractive Industries Transparency Initiative (EITI),” 11.

¹⁰² Aguilar et al., “Implementing EITI at the Subnational Level, Emerging Experience and Operational Framework,” 17.

to be conducted in the country. For instance, “some countries have struggled to find a balance between the scope of the EITI program they want and the scope of the EITI program achievable through available resources...Thus, some countries have often found it useful to start an EITI program that is limited in scope, and then progress to a broader program after the first report has been produced.”¹⁰³

The discussion about the scope of the EITI is also one of the most controversial. Gillies, for example considers that one of the flaws of the initiative is the lack of specification regarding how the disclosures should be made.¹⁰⁴ She criticizes the EITI, pointing out that it overlooks the complete picture of the extractive business production, focusing on disclosure as the main component of the chain. In her words:

*“Oil production involves a long and complex series of stages: bidding rounds to allocate exploration and production rights, contracts to regulate how companies and governments divide revenues, the marketing and sale of the oil on international markets, government decisions regarding revenue management, and the eventual expenditure of these revenues. EITI seeks disclosure at a single link in this chain: the transfer of funds from oil companies to host governments. What’s more, EITI lacks specification about how these disclosures should be made.”*¹⁰⁵

However, there are five core issues that most of the implementing countries must face when defining the scope of their EITI processes:¹⁰⁶

- 1. Reconciliation process vs. an audit process:** To what extent the EITI report will include a reconciliation of payments and revenues or the audited payments and revenue data according to international auditing standards.

¹⁰³ Aguilar et al., “Implementing EITI at the Subnational Level, Emerging Experience and Operational Framework,” 27.

¹⁰⁴ Gillies, “Reputational Concerns and the Emergence of Oil Sector Transparency as an International Norm,” 120.

¹⁰⁵ Gillies, “Reputational Concerns and the Emergence of Oil Sector Transparency as an International Norm,” 120.

¹⁰⁶ Aguilar et al., “Implementing EITI at the Subnational Level, Emerging Experience and Operational Framework,” 23-24.

2. **Materiality level or company participation:** See Graph 3.
 3. **Degree of aggregation of data disclosure in EITI reports:** “How detailed and how much information is provided in the final published EITI report.”¹⁰⁷ Nevertheless, this issue is only practical for the punctual information published in the EITI report, since during the reconciliation and audit process, companies must provide disaggregated data to the administrator/auditor in order to fulfill the requirements of an accurate comparison with the information provided by the government.
 4. **Inclusion of sub-national or other social/ community payments:** Whether to include or not all the discretionary or mandatory payments to sub-national entities. This issue is often solved by considering the materiality of these payments.
 5. **Inclusion of other sectors and/or non production-related transactions:** This relates to the debate around the inclusion of fishery, forestry or other non-related industries to oil, gas or mining industries. It also discusses the possibility of embracing the scope of the EITI, so that it includes the refining, transport and processing of extractive industries, rather than focus on the exploration and production only. Moreover, it discusses the possibility of considering other stages of production, such as public expenditures, contracts, awarding of extractive licenses and so on and so forth.
- o **Review phase: reports**

The process of review is one of the most important stages when implementing the EITI. It not only includes the selection of an independent administrator by the MSG, but also the report of information, the reconciliation of data and the publication of reports. As was explained earlier, whether the administrator goes further in the reconciliation process is determined by the scope of the EITI process in the country. For that reason, in countries that don't implement a more extensive audit, administrators assume that the financial information provided by the government and the companies is reliable¹⁰⁸. In contrast, when a full audit is conducted, administrators might

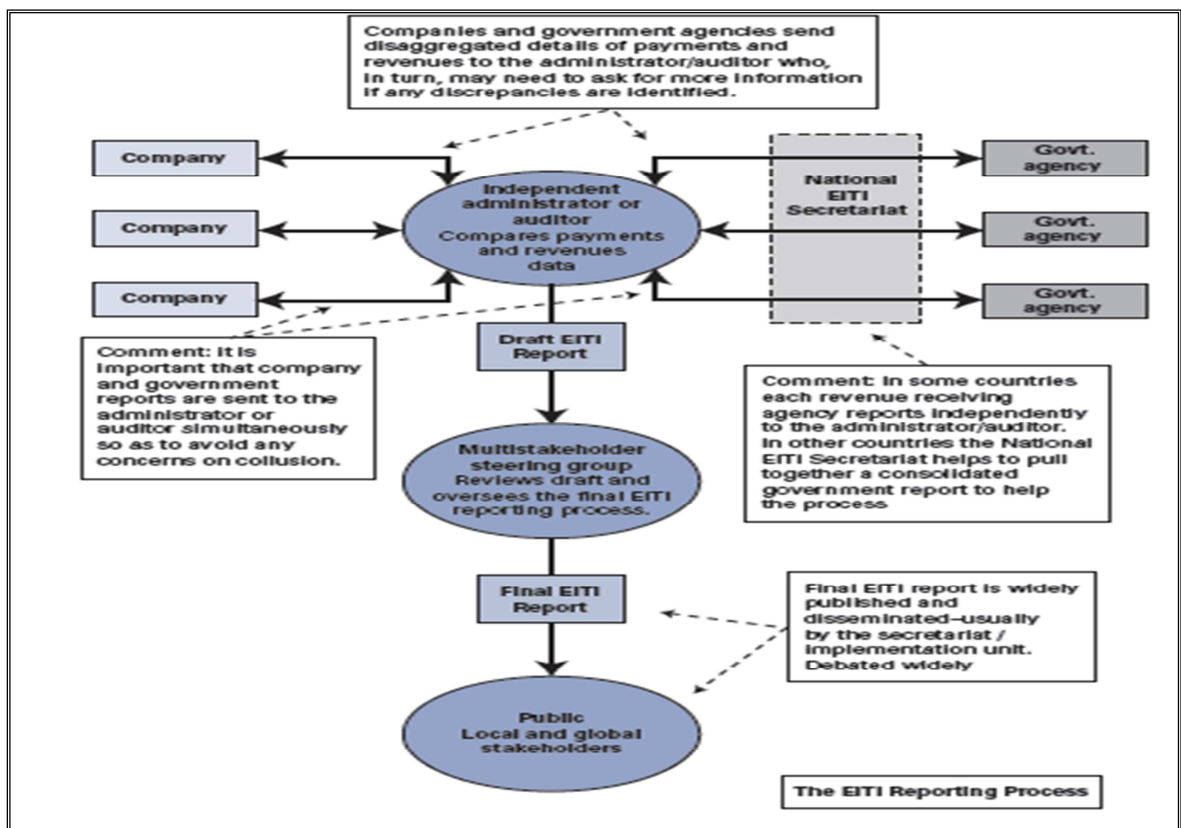
¹⁰⁷ Aguilar et al., “Implementing EITI at the Subnational Level, Emerging Experience and Operational Framework,” 23-24.

¹⁰⁸ Aguilar et al., “Implementing EITI at the Subnational Level, Emerging Experience and Operational Framework,” 61.

be allowed to access the official and company records to certify the accuracy of the financial and production information. Moreover, the audit process can include fiscal, physical or sector processes if so is decided by the MSG.

Graph No. 6 shows the flow of the regular EITI reporting process.

Graph 6: The EITI reporting process



Source: EITI, *Implementing the EITI* (2008)

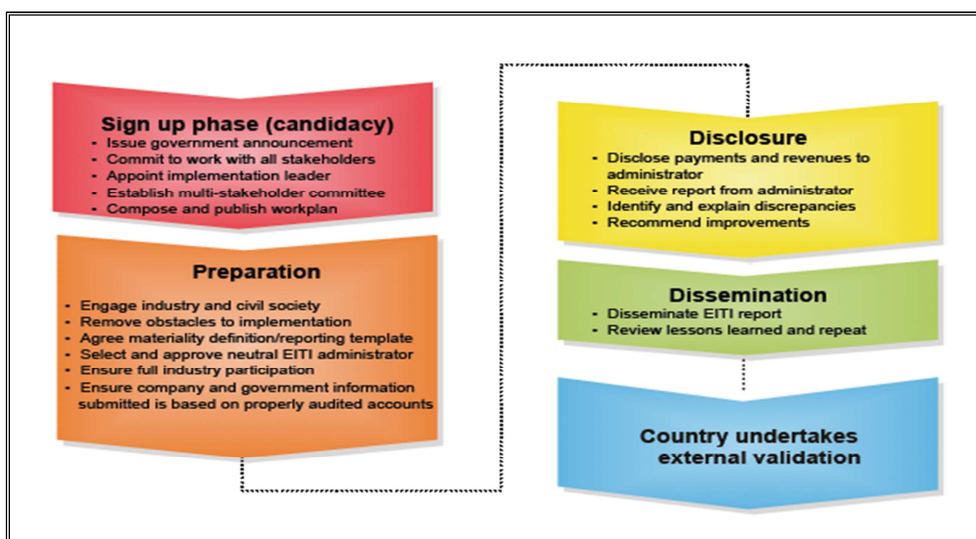
Once the reconciliation is finished, the administrator should present the financial information in a report in an understandable way so that its results are accessible and comprehensive to all the people who might read it. This is important considering that the focus of the EITI is “not just on the production of payments and revenue data and on a multi-stakeholder process, but also on

assuring accountability by ensuring that citizens know about, understand, and have a stake in the overall EITI program and the information it generates.”¹⁰⁹

Finally, after the publication of the report, most of the countries start a process of monitoring and evaluating the results of the EITI. The idea is to ensure that the impact of the obtained outcomes correspond to the objectives expected. This process is important, since it is the opportunity to correct weakness or strengthen the influence of the EITI within the country.

Graph No. 7 sums up the common EITI implanting process.

Graph No 7: Implementation process



Source: Kreibich 2011

EITI at the Sub-national level

Several scholars of the EITI like Aguilar, Caspary and Seiler (2011) consider that “by implementing EITI at the subnational level, countries could reduce opportunities for mismanagement or diversion of funds from sustainable development purposes, especially for prominent oil, gas, or mining regions.”¹¹⁰ Hence,

¹⁰⁹ Aguilar et al., “Implementing EITI at the Subnational Level, Emerging Experience and Operational Framework,” 65.

¹¹⁰ Aguilar et al., “Implementing EITI at the Subnational Level, Emerging Experience and Operational Framework,” vii.

this thesis highlights the significance of the EITI at the sub-national level given the resource–revenue-sharing system that applies in Colombia. Considering that the country encompasses elements of both direct and indirect payments to sub-national governments (SNGs), they emerge as highly important stakeholders within the possible implementation of the EITI in Colombia¹¹¹.

The issues to be considered when determining whether to expand the EITI at the Sub-national level depends on the type of state organization, the concept of materiality defined by the MSG, the resource-revenue-sharing system of the country and the likelihood of corruption and mismanagement among SNGs¹¹².

First, the way a state is organized will determine the form by which its revenues are shared. It is not the same if the country is federal or if it works as a unitary state. In part, how the state is structured will guide the resource-revenue-sharing system of the country and thereby the importance that the SNG might have when implementing the EITI. Second, the core concept of materiality priority established by the MSG will guide whether to disclose, or not specify, revenues received by the sub-national entities. However, to understand this point, we should bear in mind the difference between the direct payments and the indirect payments to SNG. The first ones are those revenue flows that operate as local payments assigned by legislation to SNG. In this case, the law allows sub-national entities with some specific collection responsibilities¹¹³. Indirect payments, in contrast, work as transfers from the national government to the SNG.¹¹⁴ As a result, following the concept of materiality, a revenue flow to SNG, if “material” “...should be included in the EITI national report. Otherwise, the disclosed data will be inaccurate and partial (and) its omission will deal with inaccurate data or affect the national EITI report.”¹¹⁵

¹¹¹ The reader will find more information about this issue in the following chapter.

¹¹² Extractive Industries Transparency Initiative (EITI). *Sub-National Implementation of the Extractive Industries Transparency Initiative (EITI)* (London: Overseas Development Institute, 2006).

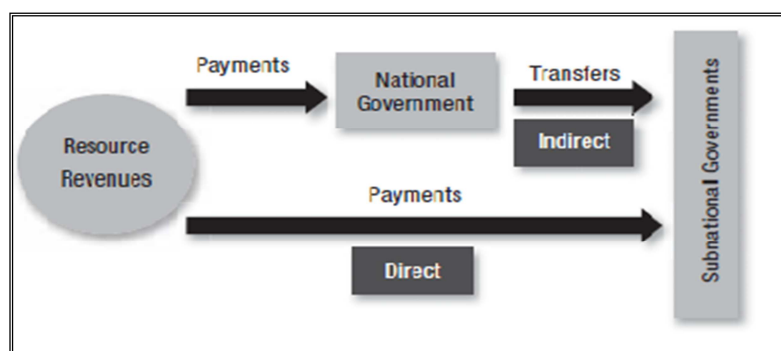
¹¹³ Aguilar et al., “Implementing EITI at the Subnational Level, Emerging Experience and Operational Framework,” 11.

¹¹⁴ Aguilar et al., “Implementing EITI at the Subnational Level, Emerging Experience and Operational Framework,” 11.

¹¹⁵ Aguilar et al., “Implementing EITI at the Subnational Level, Emerging Experience and Operational Framework,” viii.

Third, the incidence of corruption or mismanagement within SNG should be an issue to consider when implementing a sub-national approach of the EITI. In this respect, it is necessary to expand the concept of materiality to a broader one that embraces “not only the the relative, dollarized, volume of Natural Resources (NR) attributable or not attributable revenues in relation to intra-governmental transfers, but to also... the level of risk associated with NR revenue transfers that are not transparent and accountable in terms of the potential for mismanagement, corruption, worsened poverty and political insecurity.”¹¹⁶

Graph No. 8: SNG Access to Resource-Revenues



Source: Aguilar et al

Limitations of the EITI.

Currently, the EITI is perceived to be an interesting approach to make extractive companies and governments more accountable. The reasons for endorsing the initiative are diverse, and go beyond the pure desire of doing the “right thing.” In that regard, Nwette suggests that the EITI and other voluntary mechanisms are not effective since they lack any normative regulation, which means “that it is not illegal to ignore them (the CC) because no retribution is attached to them.” This perspective is shared by Aaronson, for whom the voluntary nature of the EITI emerges as its most important flaw. In her words, “because it is voluntary, participating governments can ignore, abandon, or implement EITI

¹¹⁶ Michael Warner and Kyle Alexander, “Subnational Implementation of the Extractive Industries Transparency Initiative (EITI)” *EITI Secretariat, Department of International Development & Overseas Development Institute*, 2006.

selectively.”¹¹⁷ Moreover, she questions the effectiveness of the initiative from a trade-off perspective, since in her opinion there is no clear cost for governments that don't comply with the standard. As a result, the “EITI has no teeth to ensure that governments with broader resistance to democratic practices feel the true penalties of non-compliance.”¹¹⁸

For Alexandra Gillies, there are two main challenges to be faced by the EITI in order to accomplish its desired impact. The first risk is the usefulness of the norm across extractive industry actors. In her view, “oil sector transparency rose to prominence only within “the West,” an amorphous community which shares certain norms.”¹¹⁹ This situation questions the effectiveness of the EITI within some Chinese and other non-western companies, whose reputation is not at risk for not endorsing the initiative. In her words, “for Western-based companies with high public profiles, transparency was grasped as a tool to mitigate reputational risk—when asked what they were doing to help poor countries avoid the resource curse, these actors could hold up the newly minted norm to diffuse criticism and defend their oil sector involvement. For industry actors with different audience profiles, norm promotion was a less essential behaviour.”¹²⁰

The second risk of the EITI is related to the self-interest of the stakeholders involved in the initiative. Gillies argues that “reputational concerns brought to the table several international actors whose self-interests do not favour the assertive application of the new norm.”¹²¹ In other words, the EITI could function as a way of legitimization for TNCs, IFIs and governments, rather than imply a genuine commitment from them.

¹¹⁷ Aaronson, “Limited partnership: Business, government, civil society, and the public in the Extractive Industries Transparency Initiative (EITI),” 57.

¹¹⁸ Aaronson, “Limited partnership: Business, government, civil society, and the public in the Extractive Industries Transparency Initiative (EITI),” 57.

¹¹⁹ Gillies, “Reputational Concerns and the Emergence of Oil Sector Transparency as an International Norm,” 123.

¹²⁰ Gillies, “Reputational Concerns and the Emergence of Oil Sector Transparency as an International Norm,” 123.

¹²¹ Gillies, “Reputational Concerns and the Emergence of Oil Sector Transparency as an International Norm,” 123.

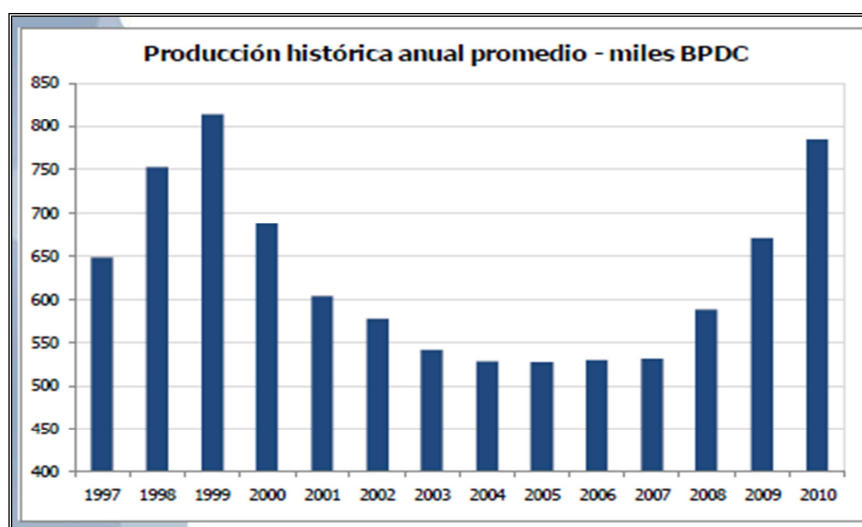
III) Background

Section 5: The Colombian situation

History: The Evolution of the Extractive Industries in Colombia

The research on the history of the extractive industries in Colombia is foremost dominated by the studies about the impact of oil, and more recently of mining. This situation is explained by the crucial impact that the oil sector has had on the Colombian economy. In 2007, for example, “oil exports soared 15.6 %, to 7.3 million, while export volume was up just 0.3%. Oil exports still represent more than half of non-traditional exports, and just under a quarter of total exports.”¹²² Likewise, the importance of the mining is reflected in the so called “mining locomotive”, which is being boosted by Colombian President Juan Manuel Santos (2010-2014) as part of his Economic Development Agenda.¹²³

Graph No 9: Colombian Annual Historic Oil Production –thousands BPCD



Source: Colombian Ministry of Mines and Energy, ANH and ACP

¹²² Juan Carlos Echeverry et al., “Oil in Colombia : History, Regulation and Macroeconomic Impact,” Retrieved July 3, 2012, from http://economia.uniandes.edu.co/investigaciones_y_publicaciones/CEDE/Publicaciones/documentos_cede/2009/oil_in_colombia_history_regulation_and_macroeconomic_impact, 31.

¹²³ González-Posso, “La Renta Minera y el Plan de Desarrollo (2010-2014),” 6.

Regarding the history of oil exploitation in Colombia, Echeverry et al. divided it in three main periods.¹²⁴

- a) **1918-1969:** This period marks the beginning of the oil industry in Colombia. The creation in 1951 of state owned oil company Ecopetrol and the investment by Exxon, Shell, Chevron, Phillips and Mobil, among others, in the country reflects the favorable contractual conditions for FDI in Colombia¹²⁵.
- b) **1970-1994:** This period is marked by important reserve discoveries (over 500 MMBO) that triggered intensive exploratory activities¹²⁶. Nevertheless, the contractual conditions were unfavourable for the companies, following an increased nationalism by the government that raised the state-take¹²⁷.
- c) **1995-2008:** This period is characterized by an important reduction of the state-take in an attempt to boost foreign investment and increase of exploration. As a result, several modifications were made in oil regulation, tending to provide a more stable legal framework for companies willing to invest in the country¹²⁸. It also witnessed the creation of the National Hydrocarbons Agency (ANH) as part of the restructuring of the extractive sector¹²⁹.

Regarding the oil contracts regulation, the investment conditions have been improved during the last decade. According to Echeverry, Navas, Navas and Gomez, although “the drilling activity and investment in the Colombian oil sector have soared...the same is not true for oil wells drilled which all have been

¹²⁴ Echeverry et al., “Oil in Colombia : History, Regulation and Macroeconomic Impact,” 5.

¹²⁵ Echeverry et al., “Oil in Colombia : History, Regulation and Macroeconomic Impact,” 5.

¹²⁶ Echeverry et al., “Oil in Colombia : History, Regulation and Macroeconomic Impact,” 6.

¹²⁷ State-take is defined as the government take plus the participation of the State owned company (Ecopetrol, 2011). In this respect, the government take is “the total amount of revenue that a host government receives from production. This amount can include taxes, royalties and government participation.” Schlumberger Limited. “Oil Field Glossary,” Retrieved July 10th, 2012, from <http://www.glossary.oilfield.slb.com/Display.cfm?Term=government%20take>

¹²⁸ Alejandro Martínez-Villegas. “Estabilidad en las reglas del juego, VII Congreso Internacional de Minería, Petróleo y Energía, Cartagena-Colombia” *Asociación Colombiana del Petróleo-ACP*, 2011.

¹²⁹ Echeverry et al., “Oil in Colombia : History, Regulation and Macroeconomic Impact,” 4.

insignificant in terms of new reserves. This encouraged Colombian policy makers to improve fiscal conditions for private participants in order to attract more investment into the sector.”¹³⁰ This situation represents a shift from the former “association contract” (1974-2007) to the “modern concession contract”.

- **The association contract (1974-2007):** Taking into account that in Colombia the nonrenewable natural resources are property of the nation, the expedition of decree 2310 of 1974 established the exclusive rights of exploration and exploitation to Ecopetrol¹³¹. In words of Echeverry et al. “The association contract in Colombia worked as a joint venture between Ecopetrol and the foreign company (in which) the company assumed 100% of the exploration risk and costs and Ecopetrol shared past and future costs, once the field was declared commercial.”¹³² This situation hindered the oil production in the country during the 70s and early 80s, given the adverse contract conditions for the companies.¹³³ Nevertheless, Colombian oil production reached its peak during the late 80s and 90s thanks to the important field discoveries of Caño Limón (1984), Cusiana (1988) and Cupiagua (1993) - facts that increased “Colombian oil reserves to a record level of 3.2 billion barrels in 1998.”¹³⁴

¹³⁰ Echeverry et al., “Oil in Colombia : History, Regulation and Macroeconomic Impact,” 7.

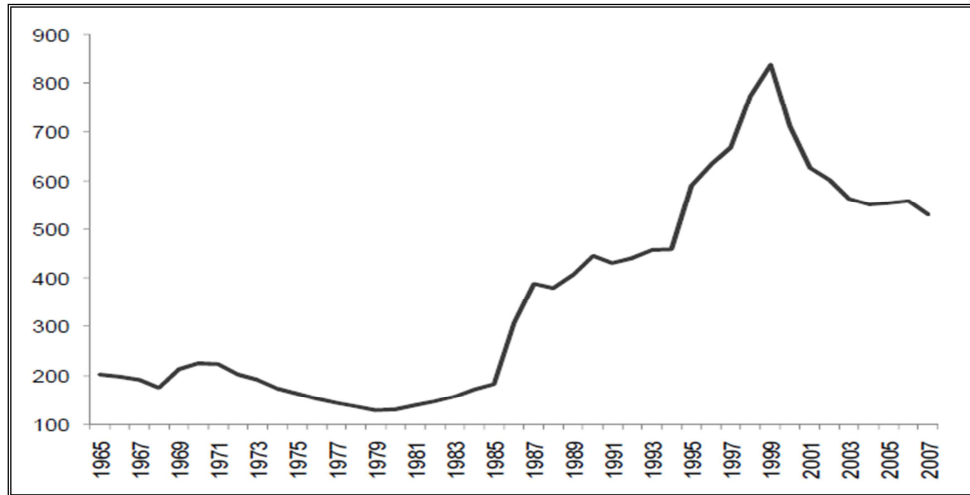
¹³¹ David Arce-Rojas, “Colombia-Towards a new contractual petroleum regime, International Law” *Revista colombiana de derecho internacional*, 3, 2004: 256.

¹³² Brackets added by the author. Echeverry et al., “Oil in Colombia : History, Regulation and Macroeconomic Impact,” 9.

¹³³ Barrios, 2003 cited in Echeverry et al., “Oil in Colombia : History, Regulation and Macroeconomic Impact,” 8.

¹³⁴ Echeverry et al., “Oil in Colombia : History, Regulation and Macroeconomic Impact,” 8.

Graph No 10: Oil Production in Colombia 1965-2007 (thousand barrels per day)



Source: British Petroleum and Echeverry et al, 2009

Another feature of association contracts were the constant fiscal terms changes. Echeverry et.al identifies at least four separate types of contractual relationships, as described in graph No 10. In contract type A (1974-1989), for instance, the foreign company took all the exploration risk, and when an important field discovery was made, a 20% royalties of the total hydrocarbons produced was set. Also, both Ecopetrol and the foreign partner shared 50% participation over the field's production.¹³⁵

So called, "sliding scale association contract" (type B) was introduced in 1990, trying to distribute the production considering the size of the field. As a result, an increase in production raised the participation of Ecopetrol in it. Contract type C, added the R factor in an attempt to consider the cost, the prices and the field's total production. In this model, "the participation rate increased when the production surpassed 60 million barrels; however, the rate depended on the company's revenues and costs, according to the R factor."

¹³⁵ Echeverry et al., "Oil in Colombia : History, Regulation and Macroeconomic Impact," 9.

Box No 5: The R factor

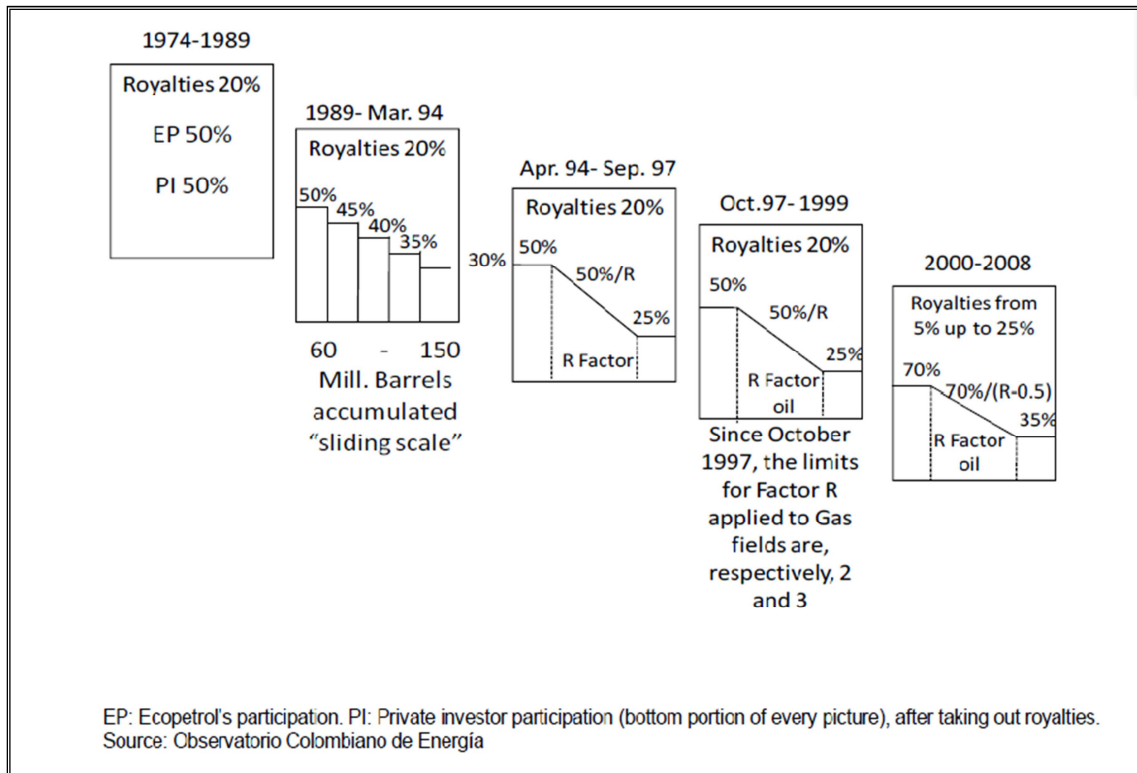
The R Factor	
$R = \frac{AR}{ID + GO + A - B} = \frac{\text{Accumulated Revenues}}{\text{Accumulated Costs}}$	<div style="border: 1px solid black; display: inline-block; padding: 5px; margin-left: 20px;"> Of the associate in each oil field </div>
<p>Where:</p> <p>AR: Associate's accumulated revenues (volume x price)</p> <p>ID: Accumulated Investment</p> <p>GO: Accumulated operational costs</p> <p>A: Direct association costs financed entirely by the associate</p> <p>B: Accumulated costs refund</p>	

Source: Own illustration, based on Echeverry et al. (2009), p. 12

When type contract D was introduced in 1999 Ecopetrol's take decreased from 50% to 30%. This shift represented an important advance that aims to encourage investment and new exploration by means of the acceleration of investors' cost recovery¹³⁶. Likewise, the rate of royalties was set according to the production, instead of the former constant 20% rate.

¹³⁶ Echeverry et al., "Oil in Colombia : History, Regulation and Macroeconomic Impact," 14.

Graph. No 11 : Oil production-distribution regulation in Colombia (1974-2008)



Source: Observatorio Colombiano de Energía and Echeverry et. al (2009)

o **The modern concession contract:**

In 2003, Colombia changed its natural resources management legislation towards the modern concession contract. According to Arce-Rojas, these kinds of contracts are characterized by two essential elements. First, “the property right of the natural resource and the right to explore and to exploit hydrocarbons are in the hands of State. The venture capital takes the risk and the costs of exploration.”¹³⁷ Second, the recent trend is to deregulate and privatize the industry, even though all these contracts used to have clauses that increased the control of the State¹³⁸. As a result, as noted above, the creation of the ANH aims to “design,

¹³⁷ Arce-Rojas, “Colombia-Towards a new contractual petroleum regime, International Law,” 260.

¹³⁸ Arce-Rojas, “Colombia-Towards a new contractual petroleum regime, International Law,” 260.

promote, negotiate, celebrate, follow up and manage the new hydrocarbons exploration and production contracts in Colombia.”¹³⁹

Two objectives were pursued when the government decided to begin with the concession contract. First, given the lack of significant oil field discoveries, the new legal framework wanted to encourage exploration and increment proven reserves and production. Second, it aimed “to become self-sufficient with respect of the domestic fuel demand and to generate a production surplus for export.”¹⁴⁰ Likewise, two types of concession contracts were introduced: Exploration and Production Contract (E&P) and the Technical Evaluation Contract (TEA)¹⁴¹. Tables 4 and 5 and Graph No 12 sum up the main changes in the reform as well as the royalties scheme applied to it.

Table No 4: E&P contract features

Exploration and Production contract (E&P)	
State take	Royalties and taxes
Royalties	Staggered 5% for field up to 5 MBOED 5%-20% for fields between 5-125 MBOED 20% for fields between 125-400 MBOED 25% for fields >600 MBOED

¹³⁹ Arce-Rojas, “Colombia-Towards a new contractual petroleum regime, International Law,” 252.

¹⁴⁰ Arce-Rojas, “Colombia-Towards a new contractual petroleum regime, International Law,” 271.

¹⁴¹ Benavides in Alfonso Amaya et al., “Libro 60 años” In *De los contratos de asociación a los contratos de concesión en Colombia: La perspectiva económica*, Ed. Juan Benavides, Ecopetrol, 2011, chapter 11.

Exploration period	6 years (renewable 4 years more)
Evaluation period	2 years (renewable 2 years more)
Notes	In case of high prices or windfall production a royalty of 30% of the value of total production, multiplied by the percentage deviation of the current price with respect to the baseline price is applied (which in turn depends on the quality of the crude oil discovered, is applied) Benavides, 2011

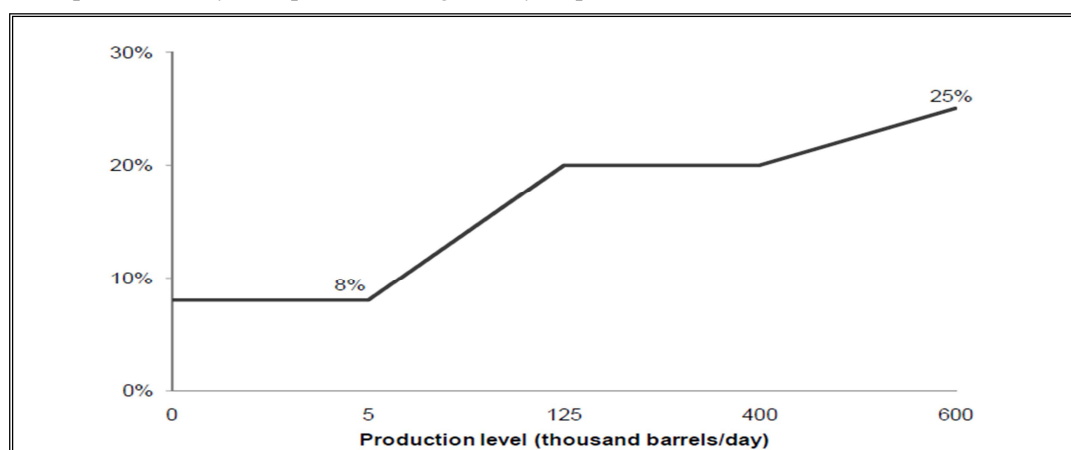
Source: Own illustration based on Benavides (2011)

Table No 5: TEA contract features

Technical Evaluation Contract (TEA)
According to Benavides (2011), the TEA contract is designed to evaluate hydrocarbon potential in special areas under the responsibility of the contractor. It can have a maximum of 18 months in continental areas and a maximum of 24 months in offshore areas.

Source: Own illustration based on Benavides (2011)

Graph No 12: Royalties paid according to daily oil production, 2008



Source: ANH and Echeverry et al (2009)

Management

Management Bureaucracy

The management of the resource revenues in Colombia is charged to different institutions, agencies and governmental entities that all together, are designed to collect, distribute, supervise, invigilate and control the extractive industries royalties and taxes paid to the State. Table No 6 describes the entities in charge and their main responsibilities in the system.

Table No. 6: Resource management bureaucracy

Entity	Function
Ministry of Mines and Energy	Policy design. Supervision, oversight, control and liquidation of royalties
ANH	Liquidation, collection and transference of hydrocarbon royalties. Administration of oil resources of the nation.
ANM	Liquidation, collection and transference of mining royalties.
DNP	Distribution of royalties
Ministry of Finance and Public Credit	Royalties order

Source: Own Illustration

Royalties Reform 2012.

Even though government's royalties revenues has increased by nearly 70% over the last 5 years thanks to the expansion of extractive industries business in Colombia, the distribution of these revenues was unequally allocated¹⁴². As a result, just seven out of 32 provinces in Colombia, that barely represent 11% of the total population, received nearly 80% of the total revenues¹⁴³. This situation led to the formulation of a more comprehensive royalties system that uses the revenue flow in the advancement of the country's social and macroeconomic stability. Moreover, the proposed reform aimed to follow the principles of social and economic fairness; regional competitiveness; good governance; and use of these resources for future contingencies¹⁴⁴.

With the creation of the General System of Royalties (SGR) the government of President Juan Manuel Santos (2010-2014) seeks to promote a more equal distribution of royalties among all regions in the country, as well as the promotion of autonomy and investment decentralization¹⁴⁵. In words of Santo's Ministry of Finance, Juan Carlos Echeverry, the new model will "spread the marmalade on the country's toast, and put more marmalade on the edges that are the coastal and border areas, which are the poorest."¹⁴⁶ Nevertheless, the reform is regarding the distribution of royalties, not to their generation, because the state-take will be the same. The SGR is comprised of six allocating mechanisms:

¹⁴² Embassy of Colombia in Washington, "Colombian Royalties Reform, Fueling Fairness, Saving an Equitable Growth," Retrieved July 11, 2012, from [http://www.colombiaemb.org/sites/default/files/factsheets/Colombia's%20Royalties%20Reform%20-%20July%202011%20\(2\).pdf](http://www.colombiaemb.org/sites/default/files/factsheets/Colombia's%20Royalties%20Reform%20-%20July%202011%20(2).pdf)

¹⁴³ CSIR, ¿Qué son las regalías?

¹⁴⁴ Embassy of Colombia in Washington, "Colombian Royalties Reform, Fueling Fairness, Saving an Equitable Growth," 1.

¹⁴⁵ Embassy of Colombia in Washington, "Colombian Royalties Reform, Fueling Fairness, Saving an Equitable Growth," 1.

¹⁴⁶ Juan Carlos Echeverry Interviewed by Alexandra Santamaría et al., [written] "The fuel for the Minister of Finance's drivers: Save now or never" *Carta Petrolera*, 124, 2010.

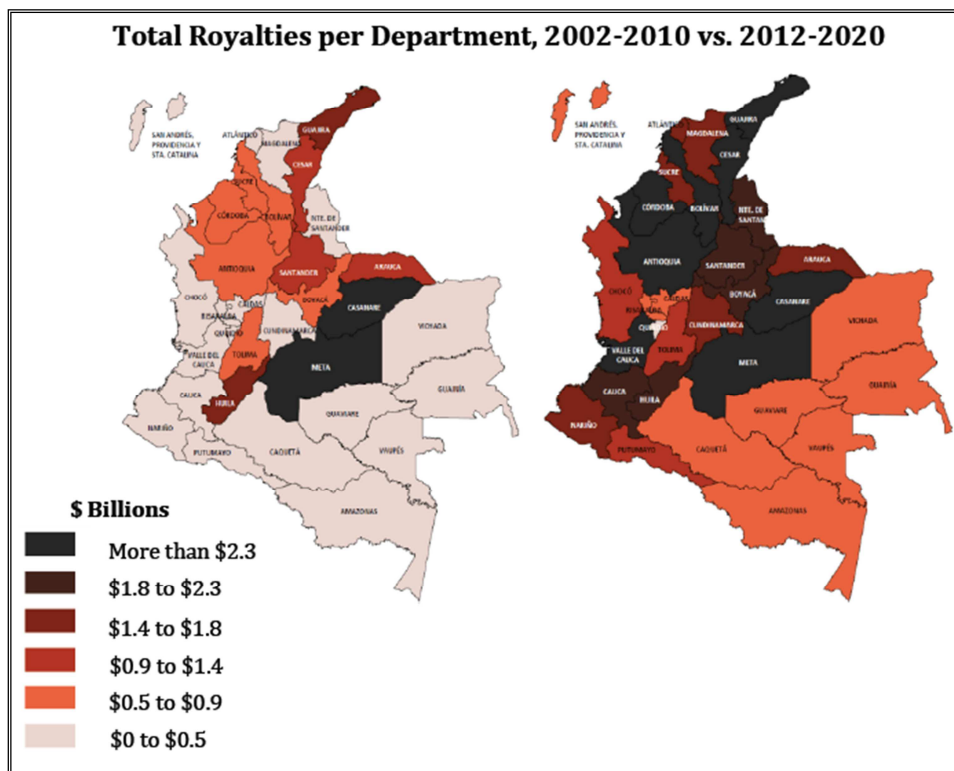
- **Saving and Stabilization Fund:** Designed to “reduce royalty revenue volatility and foster macroeconomic stability.”¹⁴⁷ It is part of the saving component of the system and it is administrated by the Central Bank.
- **Territorial Pension Fund:** It is designed as an attempt to decrease the pension charge of territorial entities.
- **Participation of Producing Territorial Entities:** It aims to promote economic development, welfare and competitiveness among regions where natural resources are extracted or where transport ports are located by means of the direct sub-national payments¹⁴⁸.
- **Regional Development Fund:** This fund will be used to benefit the most vulnerable populations in the country. The idea is to finance projects that aim to advance welfare and employment in a specific region. All the projects will be approved considering the technical criteria of so called collegial bodies, comprised by representatives of the national and local authorities.
- **Regional Compensation Fund:** Designed to promote projects with high social impact in the poorest regions. As a result, funds will be allocated primarily towards marginal communities in the coast and to Afro Colombian and Indigenous populations.
- **Science, Technology and Innovation Fund:** It is designed to finance projects that foster science, technology and innovation.

Graph 13 compares the improvements in geographic distribution of the royalties' revenues.

¹⁴⁷ Embassy of Colombia in Washington, “Colombian Royalties Reform, Fueling Fairness, Saving an Equitable Growth,” 1.

¹⁴⁸ Presidencia de la república de Colombia, “Decreto 4923 de 2011” *Diario Oficial 48294 (Vol. 4923 de 2011)*.

Graph No 13: Total Royalties per Department, 2002-2010 vs. 2012-2020



Source: DNP and Colombian Embassy in Washington

o **Critics to the royalties reform**

According to the government, the previous royalties system in Colombia was inequitable, inefficient and it was not designed for facing the macroeconomic effects of a possible mining boom in the country¹⁴⁹. These effects are related with the "Dutch disease" and "resource curse" concepts that were described before. Nevertheless, the 1991 Colombian Constitution advanced in the decentralization of the State by means of the design of a royalty's scheme that allows the direct payments to the regions with high levels of NR exploitation. This situation, according to the government, produced big inequalities with the

¹⁴⁹ Miguel Silva, "¡Regalías para todos! Entre la descentralización y la estrategia," *UN Periódico*, 2012. Also see the complete government's exposure of reasons for the royalties reform before the Colombian Congress at: <http://www.colombialider.org/wp-content/uploads/2011/03/Proyecto-de-Acto-Legislativo-No-13-de-2010-del-Senado-de-la-Rep%C3%BAblica.pdf>

departments that don't receive much royalty's payments¹⁵⁰. However, several legislators in Colombia argued that the royalties' reform is a clear violation to the decentralization precepts of the countries' Constitution¹⁵¹. Actually, representatives and politicians from the oil regions are the ones who have questioned the most, the impact of the reform in their territories. In words of Jorge Villamizar, a politician from Santander department, "the royalties reform is a clear deceit to the Colombian provinces and the strengthen of the opprobrious centralism."¹⁵² As a result, the main debates about the royalties in Colombia are with regard to its distribution, and whether this money is spent in accomplish economic development in the regions that receive the best part of those resources.

¹⁵⁰ Miguel Silva, "¡Regalías para todos! Entre la descentralización y la estrategia," The former royalties' scheme creates the Fondo Nacional de Regalías, which was charged of distributing part of the royalties' income to the not producing regions.

¹⁵¹ Redacción Política, "Representantes critican a Gobierno por redistribución de regalías," *EL TIEMPO*, March 20, 2012.

¹⁵² Jorge Gómez Villamizar, May 23, 2011, commented on Jorge Gómez Villamizar, "Reforma a las regalías, engaño a la provincia colombiana," *Congreso Visible*, Retrieved August 2, 2012
<http://congresovisible.org/agora/post/reforma-a-las-regalias-engano-a-la-provincia-colombiana/1586/>

IV) Analysis: Colombian stakeholders' incentives and constrains for endorsing to the EITI

Section 6: Stakeholders' perspectives

Government Perspectives

I interviewed five high government officials, three from oil, mining or gas management, and the remaining two from the presidential transparency initiatives. I will discuss the groups separately and then try to determine coincidences and differences regarding the EITI.

The level of awareness of the EITI was differed considerably among the transparency and good governance officials. For instance, the transparency secretariat Carlos Fernando Galan had a broad knowledge of the initiative and was really interested in promoting it in Colombia. He considers the EITI to be an “*interesting transparency initiative for the country, whose approval still needs to be studied, but in which the president has a lot of interest.*” In contrast, my informant at the Presidential Programme for Good Governance had an excellent understanding of many other transparency and accountability initiatives the government has signed up or is willing to join, but had limited awareness about the EITI in particular. However, she suggested that I contact another officer whom she considered to have better information about the EITI. An interesting point here is that the phone number she gave me was the same as one of Mr. Galan advisors, who at the end was very helpful in accomplishing the interview with the transparency secretariat.

In both cases I realized that the government had an interest in boosting transparency initiatives in Colombia. President Juan Manuel Santos considers accountability and good governance a major issue for the development of the country, and this has been expressed in his government agenda. Thus, with the creation and formulation of an integral policy against corruption that includes both the public and private sector, and the creation of the so-called “urna de cristal” (crystal box) aiming to provide information to the citizens about the government’s spending and investment, Santos has shown interest in improving the country’s transparency standards¹⁵³. In fact, when asked about the governmental willingness to endorsement the EITI, the Good Governance Advisor (GGA) informant said:

¹⁵³ Juan Manuel Santos, “Palabras del Presidente Juan Manuel Santos en la sanción del Estatuto Anticorrupción” Retrieved March 1st, 2012, from <http://wsp.presidencia.gov.co/Discursos/2011/Paginas/Julio.aspx> pp. 1-8.

GGA: *“I cannot say anything in the specific case of the EITI, but if you are asking me if the government is aware of the problem of corruption and is willing to encourage transparency initiatives trying to solve it, the answer is yes... The corruption struggle and improvement of accountability standards is one of the main objectives of the President... That is something that is really concerning to him”*

Mr. Galan also highlighted the interest of the government in advancing transparency and accountability, but he mentioned another interesting point that might be an incentive for the subscription of Colombia to the EITI or to any other transparency standard. He considers that the *“EITI represents a step forward if the country wants to be perceived as transparent in the ongoing process of joining the Organization for Economic Co-operation and Development (OECD).”* The OECD is an international forum that, according to its webpage, aims *“to promote policies that will improve the economic and social well-being of people around the world.”*¹⁵⁴ This organization is known as the *“rich countries club”* by some specialists, even though this label is denied by some of its delegates, who see it as *“just one club for some countries.”*¹⁵⁵ As a result, the interest that Colombia could ever have in the EITI might be explained by a lobbying strategy to accomplish its OECD membership.

Regarding the government's oil, gas or mining officials, the situation was slightly different. I interviewed three royalties' management specialists or mining- and energy-involved policy specialists from the ANH, DNP and the Ministry of Mines. These respondents had high levels of awareness about the EITI, but most of them were more skeptical about the benefits of subscribing to the standard. None of my respondents questioned either the importance of the EITI, or the benefits it afforded as a transparency initiative; they were more concerned about the possible mode of implementation in Colombia than in other theoretical issues regarding the EITI. One of the interviewed government officials referred as follows to the standard:

¹⁵⁴ Organization for Economic Co-operation and Development (OECD), *“Our mission: main menu,”* Retrieved July 30, 2012, from <http://www.oecd.org/about/>

¹⁵⁵ James Arnold. *“What is the OECD for?”* *BBC news* Retrieved July 30, 2012, from <http://news.bbc.co.uk/2/hi/business/2987887.stm>

Government Official: *“...The proposal was excellent. The mission of the ANH is to harmonize the interests of the government, civil society and the extractive industries. In that manner the initiative is useful, but we definitely have to adapt it to the specific needs in Colombia.*

My informant at the Ministry of Mines had a similar view but also pointed out the trade-off issue of subscribing the EITI for Colombia. In her vision, *“...the implementation of the EITI in the country has many strengths and benefits for it. Nevertheless, the impact of those benefits depends of the way the EITI is implemented. The endorsement of the initiative includes high administrative, reputational and financial charges for the government, so it has to make sure to receive the best trade-off from it.”* Hence, reputational concerns when joining a VCC are a big issue that is currently being analyzed by Colombian authorities in order to make the best decision. In the words of my ministry interviewee, *“If we commit to the EITI, we should make sure that we can fulfill all the requirements, otherwise the image of Colombia in the world that is at risk”.*

My informant at the DNP had a similar view; he stressed the issue of reputation and visibility, for both the government and the extractive business, and pointed out why big extractive companies are facing more public scrutiny than smaller ones. In his words,

Informant DNP: *“The analysis one makes regarding the EITI is different depending on the size of the extractive company. If the company is bigger, the subscription to the EITI is not a problem. They are big and they have the capacity to disclose their payments to the government and could manage the costs of subscribing to the initiative. Moreover, if they want to hide questionable businesses, the EITI or other VCC will not block that, because they are enough big and have enough power to do what they want. Nevertheless, it reports a big tradeoff in terms of visibility and public image that could result very profitable for their business.”*

When asked about the incentives for subscribing to the EITI some of my respondents found the current situation positive, but agreed on the necessity of broadening the scope of the EITI so that it considers not only the publication of payments, but also the control, use and distribution of royalties. For instance, my interviewee at the DNP argues that: *“I think the most important thing about transparency is CONTROL... It happens that some companies report that they have produced X quantity in order to improve their stock performance but when it comes to reporting to the state what they have produced, the reported quantity is less... To be effective in Colombia the EITI has to consider this.”*

My interviewee at the ANH also mentioned the importance of considering some changes at the EITI before introducing it in Colombia. In his view, *“we definitely have to adapt it (The EITI) to the specific needs we have. The main concern of any Colombian citizen is how the royalties’ resources are invested, not in how much is paid ... We have had several meetings to discuss that issue and the conclusion was the same: We need to adapt it to the Colombian situation.”* He also added the possibility of considering the implementation of the EITI at the subnational level.

Me: *So, what would you suggest to improve the EITI to the situation of Colombia?*

Informant ANH: *“I would say the implementation of the EITI at the sub-national level. With the new royalties norm, we need to check again how the EITI could fit there, because the job of publication and verification is already considered by Colombian law... We know as a ANH (in my office) that the companies are paying royalties and that the government is transferring those resources to the regions.”*

I also asked my interviewees about the access to public information regarding payments to the government and disbursements from extractive companies. The answer I got from them was unanimous, they all agreed that the information from the royalties payments made by the extractive companies to the government of Colombia is available, and that problem is not about publication, but about access to this information. For instance, my respondent from the Ministry of Mines declared: *“I think the EITI could be useful as a mechanism for tracking the available information of liquidation and control of royalties. As I said, the information is already available, even though we have some problems for the accessibility. The EITI could be useful as verification mechanism.”*

A similar situation was accepted by one of my other government respondents.

Me: *How can you verify that what the company says to have paid was in fact what the government has received?*

Government Official: *“The designed scheme makes it mandatory for companies to report their production. It is the mission of the Ministry of Mines to certify and validate, by means of some technical measurements, that the reported production was in fact the real one. Then the sub-national entities also verify the production on their territories. Moreover, the DNP certifies that the liquidation of the royalties is reliable.”*

Me: Is this information available to the public?

GO: *I don't really know.*

Civil Society Perspectives

As representatives of civil society, I interviewed six persons working with NGOs, cooperation agencies or as independent researchers or consultants. Although the supporting role of the WB in the EITI is not formally included as civil society, I have integrated the interview with Javier Aguilar within this section¹⁵⁶.

I recognized three main trends in these interviewees' perspectives on the EITI in Colombia. First, they all consider that the government's reluctance to endorse the standard so far is due to EITI's lack of a position on the use of royalties, which is considered to be the major problem in the country. Secondly, they all see an important role for civil society within the process, but also see the need for an appropriate definition of who is considered to be civil society during the EITI implementation. Thirdly, they all agree on the positive perspectives for discussing international transparency initiatives during the current government of Juan Manuel Santos.

Regarding the first issue, one of my respondents, a well-known independent consultant with notable experience in extractive industries management, considered that the EITI is an interesting initiative for a problem that Colombia does not have. In his words:

"...Once you have studied the EITI you realize that it would not provide any solution, because it focuses on only one part of the problem, that is the verification of payments by the extractive companies to the national government. This is important, I don't doubt it, but it doesn't solve the problems of the royalties' management in Colombia. As I said, the core problems emerge in the use, liquidation and distribution of royalties, none of which is embraced by the EITI."

¹⁵⁶ My interviewee's opinion should be considered as personal and should not in any sense be taken as official from the World Bank.

Likewise, Oscar Gaitán, Executive Director of Partners Colombia¹⁵⁷, an international organization that in 2009 was promoting the discussions about the EITI with the government of Alvaro Uribe, stresses:

“Two main reasons were argued by the government for its reluctance towards the EITI. First, it considered that the main problem in resource wealth management was not in the publication but in the use of those resources. Second, the EITI didn't give any extra benefit to the government to compensate the effort and the resources invested in the initiative. In other words, the initiative's advantages for the government were not clear.”

Javier Aguilar at the World Bank has a similar view¹⁵⁸. For him, the reason why Colombian authorities are reluctant to subscribe the initiative is because *“they (the government) don't see that the EITI gives any additional advantage for the country. I mean, they believe that the EITI doesn't provide an outcome that can be useful for the context of Colombia, where the information is easily available. Moreover, they argue that in the case of Colombia, one won't find many discrepancies between what is published as being received by the government and what the companies say they have paid.”*

My interviewees also noted an important consideration about the role of Civil Society Organizations (CSOs) in the EITI. For them, it should be clearly defined who will be considered to be civil society stakeholders during the implementation process, given civil society's varied nature, composition and its quite broad definition¹⁵⁹. Their main concern is that the important role that civil society has within the EITI scheme could be usurped by the participation of false organizations that represent the interests of an interested actor, rather than civil society as a whole. Further, considering the conflict

¹⁵⁷ My interviewee's opinion should be considered as personal and should not in any sense be taken as official from Partners Colombia.

¹⁵⁹ I use the definition made by the World Bank that describes CSOs as: non-governmental and not-for-profit organizations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. Civil Society Organizations (CSOs) therefore refer to a wide of array of organizations: community groups, non-governmental organizations (NGOs), labor unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations.” The World Bank, 2012.

situation in Colombia, either paramilitary groups or guerrillas could find an opportunity to influence in the EITI process by the creation of false NGOs or other CSOs.

In words of the independent consultant I interviewed, *“The selection of the civil society stakeholders should be done carefully. They should be independent of course, but my main concern is that the concept of civil society is not well defined in some cases, and that could provide opportunities for some fake NGOs that work for the illegal armed groups to enter in the process.”*

Oscar Gaitán has a similar opinion. In his words, *“There was some resistance among some civil society organizations to support the endorsement of Colombia to the EITI. This was explained by its fear that the EITI could be used as a legitimization mechanism by the extractive companies, and therefore as a way of hiding the cases of HH.RR violations or other questioned behaviors.”*

Finally, my respondents share the feeling that there is an opening for the EITI in current government of Juan Manuel Santos (2010-14). Gaitán, for instance, considers that given the inclusion of transparency and accountability issues as major components in the official development agenda, the possibilities of considering the EITI are higher than in the past.

Me: *Do you think that with the new government the EITI could have a second chance in the country, taking into account that Santos has publicly manifest his willingness to advance in good governance mechanisms, transparency and accountability?*

OG: *“I think that yes, for two reasons. First, the transparency and good governance issues are included at Santos government agenda. Second, it is included at the USAID agenda also, which is an important supporter too. So, the WB has also resources for boosting transparency initiatives.”*

Extractive Industries Perspectives

A positive response towards the EITI was the main feature of my interviews with extractive companies. Although I would have liked to interview representatives for a broader number of companies working in Colombia¹⁶⁰, I succeed in interviewing Petrobras, one of the largest oil

¹⁶⁰ I would have liked to interview small extractive companies with less impact on the industries. Although, I tried several times to reach one of those companies, my efforts were not successful.

companies in Latin America, and Asociación Colombiana del Petróleo (ACP), the main oil companies' association in the country.

Although Colombia is not officially an EITI member, Petrobras unilaterally joined the initiative since 2005¹⁶¹. Luis Claudio Sampaio, Coordinator of Transparency in the Petrobras Ombudsman Office, explains the company's supporting role as follows, "*Petrobras is very concerned about transparency and ethics, which is one of the values of the Company. Our business, actions, commitments and other relations are guided by the ethical principles of the Petrobras Group. Moreover, in my opinion, transparency initiatives are fundamental in the exchange of experiences and best practices in combating corruption and fraud.*"

A similar view is shared by my interviewee at ACP who says that the EITI has been received as an excellent CSR alternative by the 57 companies that make up the organization. Moreover, in the EITI he sees a good possibility for divulging the little known CSR initiatives to which oil companies in Colombia are committed. In his words, "*Unfortunately, the oil sector is taking over the state responsibilities in many ways, so, we would like the Colombian citizens to know about our work with the communities where our businesses are settled. Sometimes we are accused of social insensitivity, when in reality we are engaged in many local initiatives and VCC.*"

I asked my respondents about the strengths and flaws they see in the EITI's methodology. Sampaio, for instance, highlights the importance that the standard has on "*the mitigation of political and reputational risks for companies and on the political instability caused by opaque governance which is a clear threat to investments. In extractive industries, where investments are capital intensive and dependent on long-term stability to generate returns, reducing such instability is beneficial for business. Moreover, it can also help to demonstrate the contribution that a company investment makes to a country.*"

When asked about the flaws of the initiative his answer was:

¹⁶¹ Petrobras. "Investor relations," Retrieved August 9, 2012, from http://www.investidorpetrobras.com.br/main.jsp?lumPageId=8AC8970132A5C3650132A5FE95C305E6&lumA=1&lumI=8AC8970132A5C3650132A5FE964005ED&locale=en_US&doui_processActionId=setLocaleProcessAction

“(First), the risk that interest in the EITI will fade in some compliant countries if they have no goals to aim for beyond continuing to produce reports. Second, the EITI does not cover problematic areas where corruption is known to be rife in some countries, for example, licensing, the marketing of oil or minerals, public spending. Finally, data quality may undermine the credibility of the EITI in some countries.”

I also asked my respondents about a full disclosure of contracts and a larger embracement of the EITI. At this regard, Mr Sampaio took into consideration the trade-off of this decision and the impact on the confidential commercial terms: *“I agree that citizens would like to be informed about how much money governments actually receive from resource extraction, but in my opinion there is no need to specify the amount of each contract. I believe that the disclosure of payment information on a per country basis achieves the purpose of improving transparency in countries rich in oil, gas, and mineral resources. The costs related to tracking, collecting and disclosing information at a more detailed level would exceed the related benefits. Moreover, those contracts have confidential commercial terms.”*

Findings

o Incentives for implementing the EITI in Colombia

Merging the perspectives of the three stakeholders analyzed with the theory used, one could say that they all share a positive image of the EITI as a transparency standard. As a result, there is a positive environment for discussing the initiative in Colombia.

From the government's side, there is clear engagement with transparency and accountability initiatives that is reflected in a specific chapter within the countries' developing agenda¹⁶², and the possible entrance of Colombia to the OECD. This indicates the desire of the government to project a positive image internationally. In this respect, bringing back the theory of VCC this

¹⁶² For a complete version of Colombia's National Development Plan, please see: <http://www.dnp.gov.co/PND/PND20102014.aspx> (Spanish version)

situation shows the incidence of green-washing, reputational concerns and international pressure, which might encourage a country to join the EITI¹⁶³.

From the private perspective (the extraction companies), the EITI works as a social license to operate, meaning that it legitimizes businesses in extraction industries through the provision of the possibility of public scrutiny, since it communicates the benefits the country is receiving through these operations.

Finally, from the point of view of civil society, there is a clear engagement with transparency initiatives, even though a specific definition of its' organizations' possible role in the EITI should be clarified. In the same way, CSOs related to the initiative are the most aware about the EITI in particular, and have the necessary experience for contributing to a possible implementation of the standard in the future. However, if one bring back evidence of the EITI in other countries, the case of Nigeria, shows that without a clear engagement from civil society actors, the existence of useful feedback from them would remain limited¹⁶⁴.

○ **Arguments against the EITI in Colombia**

From the stakeholders' perspective, the main concern about the implementation of the EITI is the scope that the initiative might have in the country. There is a clear agreement among my interviewees that the EITI in Colombia should go beyond the publication of payments and cover the use of the royalties as well. Additionally, the distribution, liquidation and the discussion about the way the state-take is calculated in the country is considered an important issue, especially by some of the civil society actors I interviewed.

From the governments' side, the EITI is understood as an important transparency mechanism, but there are questions regarding the extra benefit of endorsing it, since according to the

¹⁶³ Paul Ocheje, "The Extractive Industries Transparency Initiative (EITI): Voluntary Codes of Conduct, Poverty and Accountability in Africa" *Journal of Sustainable Development in Africa*, 8-3, 2006: 236.

¹⁶⁴ Paul Ocheje, "The Extractive Industries Transparency Initiative (EITI): Voluntary Codes of Conduct, Poverty and Accountability in Africa" *Journal of Sustainable Development in Africa*, 8-3, 2006: 236.

governmental officers I contacted, the publication of payments from the extractive companies is already fulfilled. Moreover, the authorities in Colombia would not like to commit in an international standard that could undermine the country's global image in the future, nor would they commit to the EITI without analyzing it carefully and ensuring that the costs and the time they would invest in it would produce appropriate benefits for the country.

The extractive companies, on the other hand, would like to have a clear commitment from government that stipulates the way the EITI will be implemented in Colombia. This is important to them because of their concern about the reliability of the data published in the reports, and the possibility that subscription to the standard could lead to the publication of sensitive confidential information. This situation was prior considered by Nigerian professor Paul Ocheje for whom “full implementation of the initiative might involve renegotiation of contracts or application of sanctions for delinquency.”¹⁶⁵

SWOT Analysis on the EITI in Colombia

The SWOT analysis is a tool used in business to analyze internal and external factors that might affect their market performance. According to Kaplan, Norton and Barrows, from the Harvard Business School, “SWOT analysis is the earliest and most fundamental of all strategy analysis tools. (Its) analysis identifies the company's existing strengths and weaknesses (internal attributes) and emerging opportunities and worrisome threats (external attributes).”¹⁶⁶ As a result, this section takes this strategic tool as a way to understand the key issues the EITI is facing before its implementation in Colombia. It presents and summarizes part of the main findings of this research.

¹⁶⁵ Paul Ocheje, “The Extractive Industries Transparency Initiative (EITI): Voluntary Codes of Conduct, Poverty and Accountability in Africa” *Journal of Sustainable Development in Africa*, 8-3, 2006: 236.

¹⁶⁶ Robert S. Kaplan, David P. Norton and Edward Barrows Jr., “Developing the strategy” *Vision, value gaps, and analysis*, 2008.

Table No 7. SWOT Analysis on the EITI in Colombia –

STRENGTHS	WEAKENESS
<p>Transparency and accountability are within the official agenda in Colombia.</p> <p>Awareness of the EITI methodologies among CSOs, high governmental officers and big extractive business.</p> <p>Willingness of the government to study the implementation of the initiative.</p> <p>Willingness of the extractive companies to join the initiative.</p> <p>Support from the WB to develop the methodologies and start the discussions of the EITI.</p>	<p>Disarticulation within the public entities related to the extractive sector.</p> <p>Lack of a leadership or formulation of a leading team exclusively working on studying the implementation of the standard.</p> <p>The advantages of endorsing to the initiative are not clear in the case of Colombia.</p> <p>The EITI seems to be interesting for big extractive companies, not for small ones with less reputational concerns involved</p> <p>There is not a clear trade-off for the government for subscribing the initiative.</p>
OPPORTUNITIES	THREATS
<p>The EITI could work as social license to operate for the companies, as an empowerment tool for the CSOs and as positive international image builder for the government.</p> <p>It gives an international “certification” to Colombia regarding its advance in transparency and on accountability standards that eventually might help gain membership in the OECD.</p> <p>Better stock performance for the extractive companies committed to the initiative, as well as gains in national and international reputation.</p> <p>Human and economic assistance from the WB in the process.</p> <p>The EITI could be improved in the case of</p>	<p>The EITI doesn’t embrace the main concerns of the government and some CSOs: The use, distribution and liquidation of royalties.</p> <p>An unclear definition of civil society that could permit the participation of false CSOs.</p> <p>The EITI implies a big government investment in human resources and logistics to present the reports, which if not fulfilled, could put the image of the country in risk.</p> <p>The EITI lacks clear methodologies for implementation, according to some government officials.</p> <p>The subscription to the EITI should be accompanied by a real willingness from the</p>

Colombia if it considers not only the publication of payments but the use and investment of royalties	Colombian government, not only by its aim of joining the OECD; otherwise the impact of the initiative in the long term could be questioned.
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Own illustration

Further research

This thesis presents the perspectives in terms of incentives and constraints that the stakeholders in Colombia have for endorsing to the EITI. However, given the space limits for this thesis many issues could not be covered.

An important aspect for further discussion is a deep analysis about the relationship between the conflict in Colombia and the EITI, especially in the regions with presence of guerrilla or other illegal armed forces. This research could be useful for solving the concerns about the influence that these groups could have in the EITI with the creation of false CSOs. Likewise, research on the experience of the EITI in countries with similar levels of development as Colombia might be useful. Peru, for example, presents important implementation advances that could be analyzed in depth. Moreover, the WB has advanced on the implementation methodology of the EITI at the sub-national level, which should be further discussed by Colombian authorities in the future. Also, an economic analysis of the opportunity cost of subscribing or not subscribing the EITI in Colombia could be developed by specialist on the topic¹⁶⁷.

Another important issue is the role that small companies might have in the initiative. Based on the literature review about VCC, the reputational concern of smaller extractive companies is irrelevant. As a result, further discussion regarding the materiality of the EITI in Colombia is needed. Shall the reports in an eventual subscription include small companies, or should it just focus on the relevant ones? What is the impact, in economic, environmental and political terms of those small companies in the extractive business? These are some of the questions that could be discussed further on.

¹⁶⁷ The Opportunity cost is defined as: "is the highest-valued alternative forgone. The action that you choose not to take-the highest-valued alternative forgone-is the cost of the action that you choose to take". Michael Parkin, "Organizing Production" *CFA Program Curriculum*, 2008, Reading 16: 97.

As noted earlier, according to the government and some of the CSOs stakeholders I interviewed, the publication of the payments received by the extractive companies is already fulfilled. In this respect, it would be useful to verify if the access to this information is restricted, and whether it is available for consultation and discussion by citizens. Also, it would be useful to determine the way the EITI could be adapted to the available royalties' control mechanisms in the country, in order to have a broader hold on the extractive industries production chain.

Further, the royalties' reform of 2012 opens the door for the discussion concerning the distribution of royalties in Colombia. Nonetheless, a complete reform in the natural resources revenues management in the country should embrace a fair liquidation of royalties and payments. This discussion should be conducted carefully, considering the sensitivity of the topic and the amount of money involved, so that the competitiveness of the country to attract further oil exploration and mining investment is not put at risk. However, a complete and detailed analysis of the matter could balance public and the private interest, keeping in mind the priority that by Colombian law gives to the former.

Section 7: Conclusions:

Departing from the theory of VCC and the emerging debate about the importance of transparency and accountability in the management of resource wealth as a way to avoid the effects of the resource curse and the Dutch disease in resource-rich developing countries, I have provided civil society's, extractive companies' and government officials' perspectives regarding the implementation of the EITI in Colombia. I have also tried to draw some conclusions about the way the standard could be improved in the Colombian context. Although some of the opinions I quote are personal and do not represent the official viewpoint, they give some important leads regarding the way that some of the possible stakeholders in the process see the initiative. The main points of view are indicated using a SWOT analysis as way to summarize the main findings.

Although this thesis focuses on the specific case of Colombia, it brought up the discussion about transparency and accountability VCC and CSR initiatives. In this sense, if one takes the EITI as a global good governance initiative willing to make governments and companies accountable for the management of resource wealth, the incidence in development of VCC and CSR, in today's interconnected world is very high. This situation has a strong theoretical foundation on the discussion about the reputational concerns derived from a voluntary CSR mechanism, and the genuine private willingness of getting a social input. Departing from this point, this research acknowledge the interesting discussion between those authors that share the view of VCC as "market-driven" initiatives (For ex Rahman; Guilles; Siegel and Vitalino)¹⁶⁸, and those who validate Collier's perspective of VCC as "useful mechanisms for pressing questioned stakeholders to be accountable of their conduct"¹⁶⁹

On the other hand, Colombian government perspective could be analyzed considering both; the incentives for joining the EITI and the constraints for do not. The first ones are related with Collier's international pressure theory (and therefore reputational concerns), and the second ones with Down and Johns argument regarding the extra benefit for a State of endorsing a rule. This

¹⁶⁸ See Section 3 references for examples.

¹⁶⁹ See Section 3, Collier "Laws and Codes for the Resource Curse," 2-14 citation.

last point is considered by those skeptical officers for whom the EITI should embrace more than the solely disclosure of payments and seek an extra-benefit for the country. As a result, the subscription of the EITI in Colombia is based on circumstantial and political incentives that might block or encourage its endorsement.

The circumstantial facts are related with the possible entrance to OECD and current's president Santos commitment with transparency and accountability initiatives. The political incentives, on the other hand, are related with the role that civil society stakeholders could have in the EITI and the impact of the standard in regional royalties. A long time agreement among stakeholders about the EITI in Colombia is more connected with the last topic than with the former. However further research should be done in order to clarify those issues.

Regarding the improvements that the EITI could have in Colombia before it is implemented, the main concern among my interviewees was related with the way the EITI was going to embrace the question of sub-national royalties. In view of some of my respondents, the actual design of the EITI is only focused on the disclosure payments and it is not considering the complete extractive industries chain (production, distribution, royalties' payment and investment of payments). This view is supported by some critics of the initiative, like Gillies.¹⁷⁰ As it was explained, a similar position is shared among the authors that are against CSR initiatives, and those for whom they (CSR initiatives) hide an economic interest instead of a real social attitude from business.

As it was mentioned before, despite the particularities referred to Colombia in this research, the above conclusions could be in some extent applied to other countries. Thus, given the interdisciplinary approach of the School of Global Studies, the incidence of transparency, accountability or private auto regulation mechanisms (such as VCC and CSR) and its relation with a global issue, like economic development in resource rich countries its addressed in this thesis. Moreover, it tries to discuss the EITI not only as an international transparency initiative, but as a theoretical support mechanism to avoid the incidence of the Dutch disease and the resource curse.

¹⁷⁰ Gillies, "Reputational Concerns and the Emergence of Oil Sector Transparency as an International Norm," 120-122.

V) List of References and Annexes

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ANNEXES

Interview Guide:

This is a guide. The order of the questions could change. Also, some questions could be added or skipped depending of the interviewee stakeholder.

TOPICS:

1) Introducing Questions

- Can you tell us a little bit about what your job at.... is?
- Years of experience in the extractive sector?

2) EITI awareness

- Can you tell me what you know about the EITI?
- What has been the role of your office with regard to the EITI?
- What do you know about the EITI in Colombia?
- Do you think that the implementation of the EITI is within the agenda in Colombia?
- Do you think that the EITI framework could be a useful mechanism in undermining the incidence of corruption in extractive industries in the country and foster development?

3) EITI implementation:

- Which do you think are the most important strengths that the EITI framework has?
- Which do you think are the flaws that EITI framework has? (In terms of implementation or validation)
- What would you suggest for improving a possible implementation of the EITI in Colombia?
- How is your office boosting the subscription of the EITI?
- The EITI involves a broad difference between the countries that have signed up to it. For example, on the one hand, it includes developed and transparent countries such as Norway or Australia, and on the other hand, countries in Africa like Nigeria, Mali or Central African Republic, that have a discreditable record in either transparency or development. Why do

you think that Colombia has not signed-up to the Extractive Industries Transparency Initiative (EITI), despite the high levels of poverty, corruption and underdevelopment that has featured this resource-rich country?

4) Legal framework and information

- Which do you think is the main problem in the management of resource revenues in Colombia?
- How do you think the royalties system in Colombia can be improved in order to be more transparent, efficient and to solve the problems of poverty in the country?
- Do you think it should be a public disclosure of extractive industry contracts to fulfill the citizen's right to know how much money do actually governments receive from resource extraction?
- Should the payment of royalties change when there is a boom on the prices?

5) Voluntary codes of conduct:

- i) Is voluntary law an alternative to State regulation or do you think they complement each other?
 - ii) Is there a lack of commitment regarding the implementation of the EITI framework by the stakeholders?
 - iii) Why could some other voluntary mechanisms be effective and some others not?
- I would like to know if you have any other comments you might like to say.