

This note has been issued by the EITI International Secretariat to provide guidance to implementing countries on meeting the requirements in the EITI Standard. Readers are advised to refer to the EITI Standard directly, and to contact the International Secretariat to seek further clarification. Contact details can be found at www.eiti.org.

Guidance note 1: How to become a Candidate country

Guide to the EITI sign-up process

EITI Sign-up: Steps for becoming an EITI Candidate country

The EITI Standard sets out four steps that need to be satisfied in order to become an EITI Candidate country:

- The government is required to issue an unequivocal public statement of its intention to implement the EITI.
- The government is required to appoint a senior individual to lead the implementation of the EITI.
- The government is required to commit to work with civil society and companies, and establish a multi-stakeholder group to oversee the implementation of the EITI.
- The multi-stakeholder group is required to maintain a current workplan, fully costed and aligned with the reporting and Validation deadlines established by the EITI Board.

The “sign-up” steps are described in more detail in the Requirements 1.1 – 1.4 of the EITI Standard.

Applying to become an EITI Candidate

When a country has completed the “sign-up” steps and wishes to seek EITI candidature, the government should submit an EITI Candidate Application¹, endorsed by the multi-stakeholder group, to the EITI Board. The application should describe the activities undertaken to date and provide evidence demonstrating that each of the sign-up steps have been completed. The application should include contact details for government, civil society and private sector stakeholders involved in the preparations for implementing the EITI.

Once submitted, the application will be made publically available on the EITI website. The EITI Board, working through the Outreach and Candidature Committee, will review the application and assess whether the sign-up steps have been completed. The International Secretariat will work closely with the senior individual appointed by the government to lead on EITI implementation in order to clarify any outstanding issues. Based on this and any other available information, the EITI Board’s Outreach and Candidature Committee will make a recommendation to the EITI Board on whether a country’s application should be accepted. The EITI Board takes the final decision.

¹ A standardised application form is available from the International Secretariat.

The EITI Board aims to process applications within 8 weeks of receiving the application. The EITI Board prefers to make decisions on admitting an EITI Candidate country at EITI Board meetings, although may consider taking a decision via Board circular between meetings where appropriate.

When the EITI Board admits an EITI Candidate, it also establishes deadlines for publishing the first EITI Report and undertaking Validation. An implementing country's first EITI Report must be published within 18 months from the date that the country was admitted as an EITI Candidate. EITI Candidate countries will be required to commence Validation within two and a half years of becoming an EITI Candidate. Further information on deadline policies is available in Requirement 1.6 of the EITI Standard.

Where Can I Find Support?

The EITI International Secretariat provides support to countries considering implementation, including:

- Guidance and training on the EITI Standard and the sign-up requirements.
- Advice on good practice from other implementing countries and facilitation of peer learning, e.g., on MSG terms of reference, establishment of national EITI Secretariats, the development of workplans.
- Advice on accessing technical and financial assistance.

The International Secretariat does not provide financial support. Direct, medium-term technical and financial assistance to support implementation is usually led by stakeholders other than the International Secretariat – typically, the World Bank (supported by the donor-provided Multi-Donor Trust Fund – EITI MDTF), regional development banks, other international development agencies, bilateral agencies, and international civil society organisations.

Depending on their respective priorities for partnerships and collaboration with EITI countries and stakeholders areas, the thematic areas which technical advisors might support include all or part of the following:

- Political encouragement.
- Awareness raising workshops for outreach countries – making the case for EITI.
- Provision of technical support for countries exploring potential EITI commitment, e.g. support to feasibility studies.
- Embedding EITI as part of broader policy dialogue with country or stakeholders.
- Feasibility studies.
- Governance studies to advice on the functioning and management of the multi-stakeholder group and national secretariat.
- Scoping studies on what sectors and materiality EITI might cover.
- Legal and other constraints studies.
- Launch workshops.
- Needs assessment of financial and technical requirements.

This note has been issued by the EITI International Secretariat in association with GLZ. The purpose of the note is to provide guidance to implementing countries on developing a workplan in accordance with the EITI Standard. Readers are advised to refer to the EITI Standard directly, and to contact the International Secretariat to seek further clarification. Contact details can be found at www.eiti.org.

Guidance note 2: Developing an EITI Workplan

Requirement 1.4

Requirement 1.4 of the Standard requires that the multi-stakeholder group maintains a current workplan, fully costed and aligned with the EITI reporting and Validation deadlines established by the EITI Board. The workplan must:

- a) Set EITI implementation objectives that are linked to the EITI Principles and reflect national priorities for the extractive industries. The multi-stakeholder group is encouraged to explore innovative approaches to extending EITI implementation to increase the comprehensiveness of EITI reporting and public understanding of revenues, and encourage high standards of transparency and accountability in public life, government operations and in business.
- b) Reflect the results of consultations with key stakeholders, and be endorsed by the multi-stakeholder group.
- c) Include measurable and time bound activities to achieve the agreed objectives. The scope of EITI implementation should be tailored to contribute to the desired outcomes and impact that have been identified during the consultation process. The workplan must:
 - i. assess and outline plans to address any potential capacity constraints in government agencies, companies and civil society that may be an obstacle to effective EITI implementation;
 - ii. address the scope of EITI reporting, including plans for addressing technical aspects of reporting, such as comprehensiveness and data reliability (Requirements 4 and 5); and
 - iii. identify and outline plans to address any potential legal or regulatory obstacles to EITI implementation, including, if applicable, any plans to incorporate the EITI Requirements within national legislation or regulation.
- d) Identify domestic and external sources of funding and technical assistance where appropriate in order to ensure timely implementation of the agreed workplan.
- e) Be made widely available to the public, for example published on the national EITI website and/or other relevant ministry and agency websites, in print media or in places that are easily accessible to the public.
- f) Be reviewed and updated annually. In reviewing the workplan, the multi-stakeholder group should consider extending the detail and scope of EITI reporting including addressing issues such as revenue management and expenditure (3.7-3.8), transportation payments (4.1.f), discretionary social expenditures (4.1.e), ad-hoc subnational transfers (4.2.e), beneficial ownership (3.11) and contracts (3.12). In accordance with Requirement 1.3 (g)(viii), the multi-stakeholder group is required to document its discussion and decisions.
- g) Include a timetable for implementation that is aligned with the reporting and Validation deadlines established by the EITI Board (see 1.6, below) and that takes into account administrative requirements such as procurement processes and funding.

Source: EITI Standard, p. 14-15

Introduction

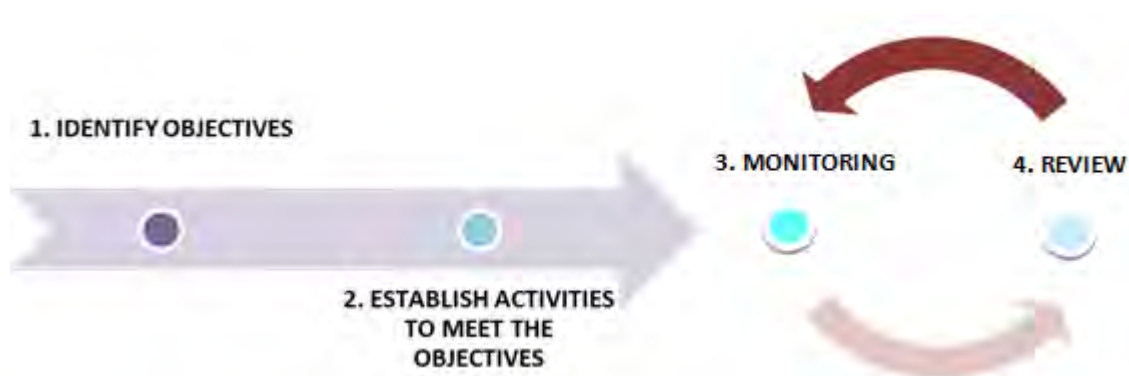
The EITI workplan forms the foundation for implementing the EITI and ensuring that implementation activities are targeted to deliver the results desired by stakeholders. Based on the EITI Standard and discussions about challenges and priorities for the extractive industries, the multi-stakeholder group, in consultation with key stakeholders, should develop a workplan that sets out why the EITI is being implemented and what issues the EITI process will seek to address. The EITI is relevant in different ways in different countries. Is it implemented to address specific concerns about corruption, lack of trust, or to attract foreign direct investment.

The key phases for creating a workplan are:

- identify policy objectives related to governance of natural resources;
- define implementation activities expected to meet the objectives and within those what are suitable for implementation by EITI bodies and what by other institutions. For those to be undertaken by the EITI bodies:
 - consider the specific context and political risks;
 - identify capacity gaps (and the corresponding assistance needs);
 - identify cooperation partners;
 - identify funding; and
 - make the workplan public.
- prepare a monitoring mechanism
 - identify indicators for the objectives in the workplan and provide a framework for regularly monitoring progress towards the desired outcomes and impact (this is closely connected to requirement 7.2 on an annual activity report; see chapter 5.on Monitoring below) .
- revise workplan and indicators regularly.

These phases are visualised in figure 1 and will be explained in the following:

Figure 1: Steps for creating a worplan



1. Identify objectives for EITI implementation

Deliberations on the workplan usually start with MSG representatives consulting EITI stakeholders regarding their views on the priorities for the management of the extractives sector and how best to achieve these results. The MSG should come to a common strategic vision on the desired objectives EITI should contribute to in their country. It is important that the stakeholder consultation process be broad, including government, extractive companies and industry associations and with respect to input from across the civil society constituency which may face obstacles and constraints affecting its engagement in the EITI. The MSG may consider holding one or more workshops to gather feedback from stakeholders.

Considering limited resources, the MSG may need to prioritize the objectives and concentrate on those that are achievable by EITI. It may be that for political, practical or resource reasons, that some activities are better fulfilled by other institutions.

Questions to help identify objectives for implementation:

- *When would participants consider the EITI a success? What do participants expect of the implementation of the EITI? What activities would contribute to the realization of the EITI Principles?*
- *What is needed to transform transparency into the expectations expressed?*
- *Can participants show the path that leads from the creation of the MSG to their expectations?*
- *Looking at the available resources, how many objectives can the EITI realistically pursue?*
- *What is the most pressing objective EITI can achieve?*
- *What is the most pressing objective EITI can contribute to?*

2. Define EITI implementation activities expected to meet the objectives

The MSG will need to establish activities to meet the prioritised objectives. These should take into account those items within the EITI Standard that are 'required' and those which are 'encouraged', such as contract transparency and beneficial ownership. If the MSG decides to cooperate with other organizations or to embed the implementation process in a wider national reform process, it might be helpful to point out the specific links in the workplan. Furthermore, the workplan should include an assessment of capacity constraints (the corresponding assistance needs), and key dates or a timetable for implementation. It should then be fully and realistically costed. The MSG should discuss and consider funding sources.

The MSG may find it helpful to organise all or a portion of the workplan in a more visual format, such as a table or a diagram, as shown in table 1.

Table 1: Proposed structure for a workplan

Prioritised objectives (explained)	Context: Preconditions and Risks	Capacity constraints	Activities	Cooperation partners and links to other reform processes	Timeline	Costs and Funding

Once they have done this, the MSG should be able to identify the scope of information to include in the EITI report and in complementary reports, how this relates to EITI requirements, how to ensure that the data are comprehensive and reliable, how to promote public debate, and the activities required to deliver the outcomes. Communication is seen as one of the main means of the MSG to work for achievement of their objectives. Considering limited resources the MSG may consider focusing communication activities on specific target groups, which are relevant for the achievement of the prioritized objectives. (MSG might want to consider the EITI publication “Talking Matters” to get more ideas on targeted communication strategies).

The MSG is encouraged to make the draft workplan widely available to the public, for example through publication on the national EITI website and/or other relevant ministries and agencies websites, in print media or in places that are easily accessible to the public. Stakeholders would then be given sufficient time to review the draft workplan in order to validate its content and its applicability with respect to both the local context and the EITI requirements. Funding commitments should be confirmed in conjunction with the final workplan being endorsed by the MSG.

Questions to help define EITI implementation activities expected to meet the objectives:

- *Is there a joint understanding of the prioritised objectives, e.g. “accountability”?*
- *What are the existing political and capacity constraints?*
- *Are the activities really targeting the prioritised objectives?*
- *Do participants believe that the prioritised objectives are achievable given the preconditions required and the cooperation partners’ capacities?*
- *Are there on-going reform processes in the area of resource governance or public finances that the EITI could contribute to?*
- *Is the timeline realistic?*
- *How much money is needed to implement the workplan and where could the funding for the defined activities come from?*

3. Monitoring

The establishment and use of a monitoring system is closely connected to the requirement of an annual activity report which should assess progress with achieving the objectives set out in the workplan (Requirement 7.2.iv).

The MSG may wish to consider establishing a monitoring system using measurable indicators to determine progress towards the prioritised objectives defined in the workplan. The MSG may find it helpful to organise the development of indicators and its monitoring in a table likewise the one shown in table 2:

Table 2: Example structure for a monitoring mechanism

Prioritised objectives	Indicators	Data Sources	Frequency of data collection	Responsibility for data collection	Baselines	Progress towards objectives

It is a requirement that the annual activity report documenting progress is made publicly available (Requirement 7.2). The MSG may wish to make any additional monitoring results publicly available to show progress to the interested public.

Questions to help monitoring:

- What data is available to the MSG?
- Which organisation could help in data collection (e.g. Universities, NGOs, Anti-Corruption Commissions)?
- How many and which indicators do the participants want to report on in the annual assessment?

4. Revision

The country conditions in which EITI is implemented are subjects to constant change. Based on the results of the monitoring and in light of the evolving policy objectives, the workplan must be reviewed and updated annually (Requirement 1.4.f). MSGs are encouraged to continuously refine and improve the workplan.

Questions to help revision:

- Is a group within the MSG assigned to follow up the monitoring?
- Did the context of EITI implementation change?
- Are revisions of the vision of success and the workplan done regularly?
- Are the results of the monitoring exercise used to fulfill EITI Requirement 7.2?
- Are the results of the monitoring exercise accessible to the wider public?

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Guidance note 3: License registers

Requirement 3.9

Summary

The majority of resource rich countries have registry databases to help them manage their extractive industry licensing systems. Publication of license registers and related information on extractive rights enable citizens to see which companies have been awarded rights to exploit their natural resources. Keeping an accurate registry system is also essential to encourage investment, to optimise the sector's contribution to the country, to clarify property rights, and to avoid conflicts over the ownership and location of tenements.

The EITI requires that implementing countries maintain up-to-date and comprehensive license registers (Requirement 3.9). Requirement 3.9(b) lists the information that must be included. Requirement 3.9(c) notes that "where [this] information ... is already publicly available, it is sufficient to include a reference or link in the EITI Report". The detailed requirements are set out in full below. This note provides guidance to multi-stakeholder groups on how to address these issues as part of the EITI implementation process.

Some EITI implementing countries, like Mongolia and Togo, already include disclosure of all extractive industries' permits in their EITI Reports. In many implementing countries, this information is available from government agencies or online databases. These databases vary from simple Excel spreadsheets to sophisticated, online systems including a GIS interface for plotting the coordinates of the tenements, geological data, and other information regarding the licensing system.

Requirement 3.9. set out the requirements for license registers:

3.9 Register of licenses

- a) The term license in this context refers to any license, lease, title, permit, or concession by which the government confers on a company(ies) or individual(s) rights to explore or exploit oil, gas and/or mineral resources.
- b) Implementing countries are required to maintain a publicly available register or cadastre system(s) with the following timely and comprehensive information regarding each of the licenses pertaining to companies covered in the EITI Report:
 - i. License holder(s).
 - ii. Coordinates of the license area.
 - iii. Date of application, date of award and duration of the license.
 - iv. In the case of production licenses, the commodity being produced.

It is expected that the license register or cadastre includes information about licenses held by all entities, including companies and individuals or groups that are not included in the EITI Report, i.e. where their payments fall below the agreed materiality threshold. Where there are significant legal or practical barriers preventing such comprehensive disclosure, this should be documented and explained in the EITI Report, including an account of government plans for seeking to overcome such barriers and the anticipated timescale for achieving them.

- c) Where the information set out in 3.9(b) above is already publicly available, it is sufficient to include a reference or link in the EITI Report. Where such registers or cadastres do not exist or are incomplete, the EITI Report should disclose any gaps in the publicly available information and document efforts to strengthen these systems. In the interim, the EITI Report itself should include the information set out in 3.9(b) above.

Source: EITI Standard, p. 23

Guidance

The EITI International Secretariat recommends the following step-by-step approach to MSGs for addressing Requirement 3.9:

1. **Understanding the licensing system.** In accordance with Requirement 3.9(b), implementing countries are required to maintain a publicly available register or cadastre system. The multi-stakeholder group is advised to approach this requirement by first reviewing and gaining an understanding of the currently available information about the licensing system.

Guiding questions:

- Are oil, gas and mineral rights addressed in the Constitution, placing ownership of natural resources with the nation and its people, and/ or in sector specific legislation?
- Which agencies are authorised to grant hydrocarbon and mineral rights or licenses?
- Are these agencies currently engaged in the EITI process?
- Is there a publicly available register/cadastre system?
(NB: There may be more than one system, e.g. systems at national, regional and local levels and, if so, is there a clear delineation of competences between them and if not how disputes are typically resolved)
- How often is the register(s) updated, and who undertakes this work?
- Are there any reforms underway to the current licensing system?

2. **Assessing the completeness of the information about licenses.** It is expected that the register or cadastre include information about all licenses applicable to the extractive sector (Requirement 3.9(b)). Where there are significant legal or practical barriers preventing such comprehensive disclosure, this should be documented and explained in the EITI Report, including an account of government plans for seeking to overcome such barriers and the anticipated timescale for achieving them (Requirement 3.9(b)). The multi-stakeholder group is therefore advised to analyse the completeness of the available information, for example by assessing whether:
 - a) The license registry is complete and up to date, i.e. does it cover all active extractive industry licenses? If not:
 - Does it include the licenses held by the companies covered in the EITI Report? If not what percentage of licences are covered?
 - What, if any, legal and practical barriers exist that may prevent disclosure of information about all extractive industry licenses?
 - What type of system currently exists i.e. manual or computer based?
 - Is the system up to date i.e. how accurately does it reflect current licence ownership? Is there a means to access changes in licence ownership not recorded in the register?
 - Are there reforms underway seeking to address the comprehensiveness of the license cadastre, and if so what are the anticipated timeframes?
 - b) The license registry contains the necessary information as per Requirement 3.9(b):
 - Who are the license holder(s)?
 - What are the coordinates of the license area?
 - What is the duration of the license (date of application, date of award and duration of the license)?
 - In the case of production licenses, which commodity is being produced?
3. **Ensuring that the information is publicly available.** Based on the above analysis, the multi-stakeholder group is advised to agree how to include this information in the EITI Report. Requirement 3.9(c) notes that “where the information set out in 3.9(b) above is already publicly available, it is sufficient to include a reference or link in the EITI Report. Where such registers or cadastrals do not exist or are incomplete, the EITI Report should disclose any gaps in the publicly available information and document efforts to strengthen these systems. In the interim, the EITI Report itself should include the information set out in 3.9(b) above”. Thus, the multi-stakeholder group is advised to consider:
 - Incorporating a short summary of the above assessment in the EITI Report, including an overview of licensing activity in the period covered by the EITI Report.
 - Where the license information is timely, comprehensive and publicly available online, providing a link to the license registry in the EITI Report.
 - Where there are weaknesses in the information that is available, including a table in the EITI Report or on the EITI website with the required information.

Note: It is typically beyond the scope of the MSG to become a proxy licence registry where country systems are incomplete or inaccurate. The MSG may wish consider how their actions can identify gaps or weaknesses in country licencing systems and encourage practical and long term solutions to making accurate up to date licencing information publicly available.

3. Examples

Norway's Petroleum Register is maintained by the Norwegian Petroleum Directorate. Data is entered in the Petroleum register on an on-going basis, and is copied daily to the [online FactPages](#).

General information

Production licence	001
NPDID production licence	20756
Fact map	link
Status	ACTIVE
Main area	North sea
Licensing activity	1-A
Date granted	01.09.1965
Date valid to	01.03.2030
Original area [km2]	2145.855
Current area [km2]	100.779

Phases

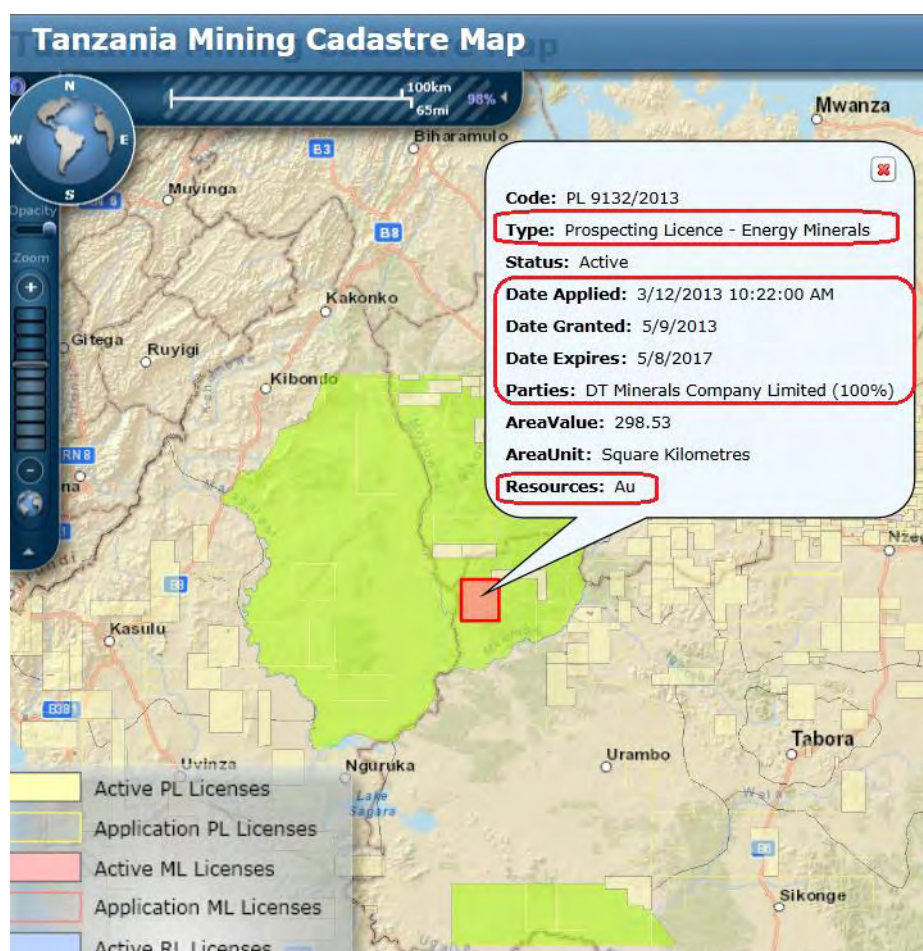
Date phase valid from	Date phase valid to	Phase
01.09.1965	31.08.1971	INITIAL
01.09.1971	31.08.2011	PRODUCTION
01.09.2011	01.03.2030	PRODUCTION EXTENDED

Licensees - current

Date valid from	Company longname	Interest [%]
01.10.2004	ExxonMobil Exploration & Production Norway AS	100.00000

Source: Norwegian Petroleum Directorate, <http://factpages.npd.no/factpages/default.aspx>

The Tanzania Ministry of Energy and Minerals is together with Spatial Dimension developing an [online cadastre](#).



Source: Tanzania Ministry of Energy and Minerals and Spatial Dimension Pty Ltd-SD, <http://www.flexicadastre.com/tanzania/>

In its 2011 EITI Report, Togo included an overview of all licenses held by the companies covered in the EITI Report, including information such as the commodity being explored and/or produced, license reference numbers, and the duration of the license.

Société	Substance principale	Type du permis	Référence du titre	Date d'octroi	Durée (année)	Superficie (en km2)	Localité
SNPT	Phosphate	Exploitation à grande échelle	97-068/PR	29/04/1997	20	24.42	Hahotoe (Vo)
	Phosphate	Exploitation à grande échelle	97-069/PR	29/04/1997	20	15.46	Kpogamé (Zio)
WACEM	Calcaire	Exploitation à grande échelle	96-167/PR	30/12/1996	20	20	Tabligbo (Yoto)
	Calcaire	Exploitation à grande échelle	2009-177/PR	12/08/2009	20	5.5	Tabligbo (Yoto)
MM Mining (*)	Fer	Exploitation à grande échelle	2008-021/PR	12/02/2008	20	NC	Bassar (Bassar)
Scantogo Mines	Calcaire	Exploitation à grande échelle	2009-178/PR	12/08/2009	20	14.1	Tabligbo (Yoto)
POMAR	Marbre	Exploitation à grande échelle	2010-144/PR	24/11/2010	20	12.4	Blitta
	Phosphate	Recherche	012/08/MMEE/DGMG/DRGM	02/04/2008	3	194.19	Bassar (Bassar)
	Phosphate	Recherche	013/08/MMEE/DGMG/DRGM	02/04/2008	3	199.52	Bassar (Bassar)
	Phosphate	Recherche	014/08/MMEE/DGMG/DRGM	02/04/2008	3	192.09	Bassar (Bassar)

Source: Togo 2011 EITI Report, <http://www.itietogo.org/>

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Guidance note 4: License allocations

Requirement 3.10

Summary

The majority of resource rich countries have established systems for allocating licenses to explore and exploit oil, gas and minerals. In most countries these bidding and license allocation procedures are defined in publicly available legislation and regulations that set out how and on what conditions companies are granted rights. In other countries, these procedures are ad hoc, are being revised, or are simply not clearly articulated. Disclosing information about license allocation systems enables citizens to access essential information about how the country's natural resources are being developed. It is also a first step towards ensuring that licenses are not obtained through inefficient or corrupt practices or acquired by politically connected individuals. Where disclosure reveals deficiencies in the licensing system, stakeholders can use this information to press for reforms to ensure more transparent and efficient licensing systems, which in turn will tend to enhance the investment climate and the potential for developing the extractives industries.

The EITI requires that implementing countries disclose information about license awards and transfers associated with the companies covered in the EITI Report (Requirement 3.10). This information should include a description of the process for awarding licenses, the criteria used, and deviations from the legal framework and policies on license allocations (Requirement 3.10a). Countries may also include additional information on the licensing process, such as commentary on the efficiency and effectiveness of these systems (Requirement 3.10d). In some implementing countries information about license allocations is readily available from government websites. In other countries there is little information about how and on what grounds companies have been awarded licenses. This note provides guidance to multi-stakeholder groups on how to address these issues as part of the EITI implementation process. It should be read alongside the guidance note on [license registers](#).

Requirement 3.10 sets out the reporting requirements related to license allocations:

3.10 Allocation of licenses

- a) Implementing countries are required to disclose information related to the award or transfer of licenses pertaining to the companies covered in the EITI Report, including: a description of the process for transferring or awarding the license; the technical and financial criteria used; information about the recipient(s) of the license that has been transferred or awarded, including consortium members where applicable; and any non-trivial deviations from the applicable legal and regulatory framework governing license transfers and awards.
- b) Where licenses are awarded through a bidding process during the accounting period covered by the EITI Report, the government is required to disclose the list of applicants and the bid criteria.
- c) Where the requisite information set out in 3.10(a) and 3.10(b) above is already publicly available, it is sufficient to include a reference or link in the EITI Report.
- d) The multi-stakeholder group may wish to include additional information on the allocation of licenses in the EITI Report, including commentary on the efficiency and effectiveness of these systems.

Source: EITI Standard, p. 24.

Guidance

The EITI International Secretariat recommends the following step-by-step approach to MSGs for addressing this requirement:

1. **In order to ensure that the EITI Report includes a description of the process for transferring or awarding licenses (Requirement 3.10(a)), the multi-stakeholder group is advised to gain an understanding of how licenses are allocated, for example by investigating the following:**
 - Do laws and regulations specify the procedures for license applications and the process by which licenses will be issued and approved?
 - What licensing practices does the government commonly follow? Bidding rounds, auctions, direct negotiations or awards on a 'first come first serve' basis? Note: the processes may be different for mining and oil and gas and these may need to be noted separately.
 - Which institution(s) has authority to grant oil, gas and mineral licenses?
 - Are decisions to award licenses made based on established, consistent and clearly understood criteria/parameters and are these publicly announced for each license? This may include technical and financial qualifications needed to hold an oil, gas or mineral right, legal criteria, criteria for health, safety and environment, work programs etc.
 - Are there any reforms underway to the current licensing system?
 - Do the licensing procedures ensure follow-on title as between exploration and development rights in the event of a discovery being made?
2. **In accordance with Requirement 3.10(a), information related to the award of licenses or transfer of licenses to/from the companies covered in the EITI Report should be disclosed. The multi-stakeholder group is advised to investigate whether such awards or transfers have taken place, and include a summary of these processes in the EITI Report. The summary should include (Requirement 3.10(a)):**
 - A description about the process by which the license(s) was awarded or transferred. Where this information is publicly available, it is sufficient to include a link or reference to where this information can be accessed.
 - Details about the technical and financial criteria used for awarding or transferring the license(s). Where this information is publicly available, it is sufficient to include a link or reference to where this information can be accessed.
 - Information about the recipient(s) of the license(s). This could for example be done by including a reference or link to a publicly accessible register or cadastre system that contains this information. Where such registers/cadastrals do not contain the necessary information, multi-stakeholder groups should ensure that the information is made publicly accessible, for example by providing the details in attachment to the EITI Report or making it available on the national EITI website. As per Requirement 3.9 (b), information about the recipient(s) should include:
 - the license holder(s), including consortia members where applicable;
 - the coordinates of the license area;
 - the duration of the license (date of application, date of award and duration of the license); and
 - in the case of production licenses, the type of commodity being produced.
 - An assessment of whether the process for awarding or transferring the license(s) followed the procedures set out in applicable legislation and regulations. Any substantive deviations should be noted. This might include cases where the license(s) was awarded using a different licensing practice than the one commonly followed, deviations from standard criteria, including contract terms, etc.

3. **The multi-stakeholder group should, in accordance with Requirement 3.1(b), investigate whether any licenses have been awarded through a bidding process during the accounting period covered by the EITI Report.** Where such bidding processes have taken place, the EITI Report should include or provide a link to:
 - the list of applicants; and
 - details about the bid criteria.
4. **The multi-stakeholder group may wish to include additional information on the allocation of licenses in the EITI Report (Requirement 3.10(d)). Multi-stakeholder group may for example wish to look at and include:**
 - Commentary on the efficiency and effectiveness of these systems. This might include
 - the duration of the licensing process, including deviations from the deadlines set in the legal framework or guidelines;
 - the percentage of rejected license applications during the accounting year covered in the EITI Report;
 - the percentage of empty tenders or annulled auctions during the accounting year covered in the EITI Report;
 - the percentage of occupied land/blocks as a percentage of the total land/blocs open for extractive industry activity; and
 - the percentage of disputes regarding applications or tender bid procedures during the accounting year covered in the EITI Report and how these were resolved.
 - Information about number of revoked/cancelled licenses during the accounting year covered in the EITI Report, including reasons for the cancellations.
 - Information about changes in ownership of license holders during the accounting year covered in the EITI Report.
 - The general availability of licensing information and ease of access to this information, reliability of and confidence in data obtained.

Examples

In **Liberia**, LEITI has conducted a full post-award audit of the processes for awarding concessions, contracts, licenses, permits and other rights to exploit natural resources in the period July 2009 to December 2011. The purpose of the audit was to ascertain whether the licensing processes were in compliance with applicable Liberian Laws at the time of award. The audit is available from:

http://www.leiti.org.lr/uploads/2/1/5/6/21569928/leiti_post_award_process_audit_final_report.pdf

Mongolia's EITI Report includes an overview of changes in licenses held by companies covered in the EITI Report.

Appendix K—Survey on exploration and exploitation licenses

#	Company name	Number of exploitation licenses				Number of exploration licenses				Comment
		Beginning bal of 2010	Purchased	Deducted	Ending bal of 2010	Beginning bal of 2010	Purchased	Deducted	Ending bal of 2010	
1	Agit Khangai LLC	1			1	1			1	
2	Agm Mining LLC	1			1	2			2	
3	Adamas Mining LLC	1		1	0	16		8	8	1 was returned partially and others were expired and cancelled
4	Adamas Mounty LLC				0	15		10	5	expired and cancelled
5	Adil Och LLC	1			1	1		1	0	cancelled

Source: Mongolia 2010 EITI Report, available from <http://eiti.org/report/mongolia/2010>

In **Norway**, information about licensing procedures is published at the website of the Norwegian Petroleum Directorate.

Relevant links:

- ♦ [Invitation to apply for petroleum production license \(pdf\)](#)
- ♦ [Ministry of Petroleum and Energy](#)

Guidelines:

- ♦ [Guidelines for applying to the 22nd licensing round \(pdf\)](#)
- ♦ [Guidelines for reporting company information \(pdf\)](#)
- ♦ [Guidelines for application letter \(pdf\)](#)

Forms that must be filled out:

- ♦ [Application letter table \(MS Excel\)](#)
- ♦ [Form 1 \(MS Excel\)](#)
- ♦ [Form 2 \(MS Excel\)](#)
- ♦ [Form 3 \(MS Excel\)](#)
- ♦ [Form 4 \(MS Excel\)](#) Updatet 23.10.2012
- ♦ [Form 5 \(MS Excel\)](#)
- ♦ [Form 6 \(MS Excel\)](#)
- ♦ [Form 7 \(MS Excel\)](#)
- ♦ [Form 8 \(MS Excel\)](#)

Other application information:

- ♦ [Form 4 attachment\(MS Excel\)](#)
- ♦ [Map of announced blocks 22. Licensing Round \(pdf\)](#)
- ♦ [Block coordinates for announced blocks](#)

Source: Norwegian Petroleum Directorate, <http://www.npd.no/en/Topics/Production-licences/Theme-articles/Licensing-rounds/22-nd-Licensing-round/22st-licensing-round-announcement>

In **Trinidad & Tobago**, the Ministry of Energy and Energy Affairs publishes detailed information about licensing procedures on its website.

Source: Ministry of Energy and Energy Affairs, <http://www.energy.gov.tt/investors.php?mid=208>

This note has been issued by the EITI International Secretariat to provide guidance to implementing countries on meeting the requirements in the EITI Standard. Readers are advised to refer to the EITI Standard directly, and to contact the International Secretariat to seek further clarification. Contact details can be found at www.eiti.org.

Guidance note 5: Annual activity reports

Requirement 7.2

Requirement 7.2 states that the multi-stakeholder group is required to review the outcomes and impact of EITI implementation on natural resource governance.

- a) The multi-stakeholder group is required to publish annual activity reports. The annual activity reports must include:
 - i. A summary of EITI activities undertaken in the previous year;
 - ii. An assessment of progress with meeting and maintaining compliance with each EITI requirement and any steps taken to exceed the requirements. This should include any actions undertaken to address issues such as revenue management and expenditure (3.7-3.8), transportation payments (4.1.f), discretionary social expenditures (4.1.e), ad-hoc subnational transfers (4.2.e), beneficial ownership (3.11) and contracts (3.12);
 - iii. An overview of the multi-stakeholder group's responses to and progress made in addressing the recommendations from reconciliation and Validation in accordance with provision 7.1.a. The multi-stakeholder group is encouraged to list each recommendation and the corresponding activities that have been undertaken to address the recommendations;
 - iv. An assessment of progress with achieving the objectives set out in its workplan (Requirement 1.4), including the impact and outcomes of the stated objectives;
 - v. A narrative account of efforts to strengthen EITI implementation including any actions to extend the detail and scope of EITI reporting or to increase engagement with stakeholders.
- b) All stakeholders should be able to participate in the production of the annual activity report and reviewing the impact of EITI implementation. Civil society groups and industry involved in EITI, particularly, but not only those serving on the multi-stakeholder group, should be able to provide feedback on the process and have their views reflected in the annual activity report.

Source: EITI Standard, p. 33-34

As noted in requirement 7.2(a), the multi-stakeholder group is required to publish annual activity reports. The purpose of the activity report is to communicate efforts undertaken to meet and/or maintain compliance with EITI requirements, including progress in achieving the objectives set out in the workplan and to document the impact of the EITI.

The EITI Standard (Requirement 1.6(c)) further states that, 'the activity report on the previous year's activities must be published by 1 July of the following year'. For example, the activity report for 2013 must be published by 1 July 2014. The EITI Board will establish appropriate deadlines for new EITI Candidate countries. Requirement 1.6(c) further states that 'if the annual activity report is not published within six months of this deadline, i.e. by 31 December the following year, the country will be suspended until the EITI Board is satisfied that the outstanding activity report has been published'.

A template for the annual activity report could look as follows:

<Country> EITI Annual Activity Report <year>

1. General assessment of year's performance

In accordance with requirement 7.2(a)(i), provide a short summary of EITI activities undertaken in the previous year. The multi-stakeholder group may wish to outline how these activities relate to the objectives in the workplan.

2. Assessment of performance against targets and activities set out in the workplan

Provide an assessment of progress with achieving the objectives set out in its workplan (Requirement 1.4), including the impact and outcomes of the stated objectives (requirement 7.2(a)(iv)).

The multi-stakeholder group may wish to

- *List the objectives and targets set out in the workplan, and indicate progress in achieving these.*
- *Outline the activities in the workplan, including a description of whether these activities were fulfilled. Include any further activities that were not foreseen in the workplan but contributed to the wider targets.*

3. Assessment of performance against EITI requirements

Provide an assessment of progress in meeting and/or maintaining compliance with each of the EITI requirements (requirement 7.2(a)(ii)). This should include any actions undertaken to prepare for implementation of the EITI Standard, including addressing issues such as revenue management and expenditure (3.7-3.8), transportation payments (4.1.f), discretionary social expenditures (4.1.e), ad-hoc subnational transfers (4.2.e), beneficial ownership (3.11) and contracts (3.12).

The multi-stakeholder group may wish to conduct a requirement-by-requirement assessment using the table below.

Requirements:	Progress:

4. Overview of the multi-stakeholder group's responses to the recommendations from reconciliation and Validation, if applicable

In accordance with requirement 7.2(a)(iii), provide an overview of the multi-stakeholder group's responses to and progress made in addressing the recommendations from reconciliation and Validation in accordance with requirement 7.1. The multi-stakeholder group is encouraged to list each recommendation and the corresponding activities that have been undertaken to address the recommendations.

The multi-stakeholder group may also wish to identify how the workplan has been updated to incorporate the recommendations.

5. Any specific strengths or weaknesses identified in the EITI process

Provide a narrative account of efforts to strengthen EITI implementation, including any actions to extend the detail and scope of EITI reporting or to increase engagement with stakeholders (requirement 7.2(a)(v)). The multi-stakeholder group may wish to include information about

- *how the scope of EITI reporting has been expanded to meet the objectives set out in the workplan;*
- *efforts to ensure that the EITI Report contributes to increased public awareness in particular regarding the fiscal contribution of the extractives industry and how those revenues are allocated and spent ;*
- *efforts to build awareness and support, and to build capacity of the stakeholders; and*
- *any weaknesses identified in the EITI process and any actions to address these.*

6. Total costs of implementation

The multi-stakeholder group may wish to include information about costs of implementation. This could include a comparison of outturn costs with the workplan costs, broken down by contributor and budget lines. It could also include information about the number of staff in the national secretariat.

7. Any additional comments

8. Has this activity report been discussed beyond the MSG?

In accordance with requirement 7.2.b, all stakeholders should be able to participate in the production of the annual activity report and reviewing the impact of EITI implementation. Civil society groups and industry involved in EITI, particularly, but not only those serving on the multi-stakeholder group, should be able to provide feedback on the process and have their views reflected in the annual activity report.

This is an opportunity for MSGs to improve ownership of their process and to ensure that the EITI becomes more firmly rooted in broader country reform processes. Countries may wish to outline any broader exercises involving other stakeholders including civil society and companies, and how they were invited to feedback on the process and ensure that their views were reflected in the review.

9. Details of membership of the MSG during the period (including details of the number of meetings held and attendance record)

Approved by MSG:

Date:

This document has been issued by the EITI International Secretariat as a model Terms of Reference (TOR) for implementing countries that wish to conduct a scoping study to inform scoping decisions related to preparation of their EITI reports. Countries may wish to use parts of or the entire TOR depending on the scoping needs. The text [in brackets] provides guidance for completing the TOR. This text should not appear in the final draft. Questions about this note can be directed to the International Secretariat.

Guidance note 6: Terms of Reference for a scoping study for [year] EITI Report, [country], [date]

Background

The Extractive Industries Transparency Initiative (EITI) is a global standard that promotes revenue transparency and accountability in the extractive sector. It has a robust yet flexible methodology for monitoring and reconciling company payments and government revenues from oil, gas and mining at the country level. Each implementing country creates its own EITI process adapted to the specific needs of the country. EITI implementation has two core components:

- **Transparency:** Oil, gas and mining companies disclose their payments to the government, and the government discloses its receipts. The figures are reconciled and published in annual EITI Reports alongside contextual information about the extractive sector.
- **Accountability:** A multi-stakeholder group with representatives from government, companies and civil society is established to oversee the process and communicate the findings of the EITI Report.

The requirements for implementing countries are set out in the EITI Standard¹. For further information, please see www.eiti.org

*[This section should provide further general background information on EITI implementation in the country. This should include **clearly specifying the EITI's objectives**, as agreed by the MSG, and as elaborated in the EITI workplan. A link should be provided to the EITI workplan, with additional commentary as required on the current status of EITI Reporting.]*

In this regard the [contracting party] seeks a competent and credible firm or individual to undertake the scoping study in accordance with these Terms of Reference.

Objective of the assignment

The objective of the assignment is to produce a report which will inform the MSG's discussions regarding the scope of the [year] EITI Report, including recommendations relating to:

¹ http://eiti.org/files/English_EITI%20STANDARD_11July_0.pdf

- collating the necessary contextual information given the MSG's objectives and workplan, and the EITI's requirements (EITI Requirement 3);
- the payments and revenues streams to be reported, including appropriate materiality thresholds where applicable (EITI Requirement 4.1);
- additional benefit streams from the extractive sector to be reported (EITI Requirement 4.2)
- the companies, state-owned enterprises and government entities expected to report (EITI Requirement 4.3);
- an overview of the auditing practices and the assurances to be provided by the reporting entities (EITI Requirement 5); and
- addressing any barriers to disclosure of the requisite information.

In addressing these points, the consultant may wish to set out options available to the MSG, taking into account the overall objectives, the EITI requirements, and the resources available. The multi-stakeholder group and the Independent Administrator will draw on the scoping study in agreeing the scope of the reporting process, in accordance with the 'agreed upon procedure for EITI Reports' (requirement 5.2). This may include modifications and refinements to the scope of the reporting process recommended by the consultant.

The consultant's report will be submitted to the MSG and made publically available.

Scope of work

The consultant will be expected to undertake the following tasks:

1. Examine the MSG's workplan in order to gain a clear understanding of the objectives and scope of [country's] EITI implementation. The consultant should also review any annual activity reports that have been produced by the MSG to see the progress made in achieving the objectives and review any actions undertaken by the MSG to address recommendations from any previous EITI reporting exercises and validations.
2. Where applicable, undertake a review of all past EITI Reports and Validation report/s to gain an understanding of the current scope and state of EITI reporting process in [country] and assess areas where further improvement is needed;

Contextual information

3. Review [and summarise] the legal framework governing the extractive industries (EITI Requirement 3.2).
4. Provide an overview of key features of the extractive sector (EITI Requirement 3.3).
5. In accordance with EITI Requirement 3.4, prepare a summary of the contribution of the extractive industries to the economy for [year].
6. Identify sources of information about production data and comment on the quality and reliability of the data with a view to inform the MSGs approach to EITI Requirement 3.5.
7. Where applicable and in accordance with EITI Requirement 3.6, investigate the role of state-owned companies in the extractive sector and suggest an approach for reporting on financial relationships between the government and the SOE, quasi-fiscal expenditures, and government ownership in oil, gas and mining companies operating in [country]. This should include identifying any barriers to comprehensive disclosure.
8. Propose a framework for reporting on revenue allocations and distribution of revenues in accordance with EITI Requirements 3.7 and 3.8.

9. Review the currently available information about license registers and license allocations assess the completeness and timeliness of the information, and propose a mechanism for reporting and disclosure in accordance with EITI Requirements 3.9 and 3.10.
10. In accordance with EITI Requirement 3.12(b), review [country's] policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals. This should include a summary of relevant legal provisions, actual disclosure practices and any reforms that are planned or underway.
11. *[Where the MSG's objectives and workplan require the collection of additional contextual information, this should be specified here.]*
12. Identify any barriers to disclosure of contextual information set out above, and set out options and make recommendations for addressing these barriers.

EITI reconciliation

- 13 Undertake a comprehensive analysis of the payments and government revenue streams related to the extractive sector, noting in particular the revenues streams that must be covered in accordance with EITI Requirement 4.1(b). The analysis should also cover revenues related to the sale of the state's share of production or other revenues collected in-kind (4.1.c), infrastructure provisions and other barter arrangements (4.1.d), mandatory and voluntary social expenditures (4.1.e), and transportation payments (4.1.f).
- 14 Taking into account the findings of (13) above, review cadastre and revenue data from [year] and make recommendations as to which of these tax payments and government revenues streams should be considered material, including suggesting materiality thresholds for company disclosure if appropriate (with reference to the guidance note² and EITI requirement 4.1).
- 15 Based on the proposed materiality definition, develop a preliminary list of the companies that make material payments and should be covered in the EITI Report (EITI requirement 4.2.a). Where materiality thresholds are proposed, this should include an estimate of coverage of company payments that will be disclosed relative to total government revenues from the sector. It should also identify the total contribution of companies not required to report (i.e. those that fall below the materiality threshold), with a clear indication of the relative size of each company. (This information will inform the assessment of the comprehensiveness of the EITI Report as per Requirement 5.3.c.)
- 16 For each company, identify where available :
 - a. Company's Tax Payer Identification Number
 - b. Sector and phase of operation, i.e. exploration, production, oil, gas, mining etc.
 - c. Type of license(s) held and the license number(s).
- 17 Based on the proposed materiality definition, identify which government entities should be required to report. It should be noted that the government is required to disclose all revenues, regardless of the materiality (EITI Requirement 4.2.b). Thus where materiality thresholds for company disclosures are established, a reconciliation of the company payments and government revenues in accordance with the materiality threshold would be appropriate. Any additional government revenues (i.e. from companies below the materiality threshold) would also need to be disclosed in the EITI Report as per Requirement 4.2.b.

² Guidance note on defining materiality : <http://eiti.org/document/guidance-notes>

18. In considering which government entities should be disclosed, the consultant should identify whether sub-national government entities receive direct or indirect revenues from the extractive sector in accordance with Requirement 4.2(d) and Requirement 4.2(e).
19. Identify any legal, regulatory, administrative or practical barriers to comprehensive disclosure, and if necessary set out options and make recommendations for addressing these barriers.

Issues requiring specific attention

[If there are specific issues in the EITI reporting process that need more detailed scoping such as i.e. oil sales, transit etc. specific tasks should be added here, with reference to appropriate supporting documentation.]

Data quality

20. Where EITI Reports have already been produced, review previous approaches for addressing data quality, including any recommendations by the Independent Administrator or Validator for strengthening the process. [Add any references to MSG discussions and agreed actions on these issues.]
21. In accordance with EITI Requirement 5.2(b), examine the audit and assurance procedures in companies and government entities that are likely to participate in the EITI reporting process, including the relevant laws and regulations, any reforms that are planned or underway, and whether these procedures are in line with international standards.
22. In accordance with EITI Requirement 5.2(c), propose assurances to be provided by reporting entities to the Independent Administrator.

Presentation

23. Prepare and present the draft scoping study to the MSG, the [contracting party] and the International Secretariat for review and comment;
24. Prepare a final scoping study to the MSG and provide recommendations for the [year] EITI report;
25. Recommend how future scoping reports can be improved.

Deliverables

[Add information about outputs (i.e. inception report, draft report, final report) and timeline.]

Consultant requirements

The Consultant will need to demonstrate:

- Technical and financial skills, including knowledge and work on transparency and governance, public finance and financial accountability, and multi-stakeholder dialogue. Preferably, proven experience related to the EITI.
- Knowledge of the oil, gas and mining sectors or other natural resources sectors, preferably in [country].
- A demonstrable track record in similar work.

[Add information about any other skills and competencies required, staff days etc.]

Administrative arrangements

[Add information about reporting lines, support to the consultant during the assignment, other logistical and administrative arrangements.]

Reference materials:

- **The EITI Standard**, in particular Requirements 2 -5, <http://eiti.org/document/standard>;
- **EITI implementation guidance notes** issued by the International Secretariat, <http://eiti.org/document/guidance-notes>, in particular the guidance notes on scoping and defining materiality. The Consultant is advised to contact the EITI International Secretariat for any questions or clarifications related to the EITI Standard and the implementation of the EITI requirements;
- **Agreed upon procedures for Independent Administrators**, including standard EITI reporting templates, available from the International Secretariat;
- **[Implementing EITI for Impact: A Handbook for Policymakers and Stakeholders](#)**, in particular chapters 4 and 5;
- Examples of Scoping Studies, available from the International Secretariat; and
- *[Add other relevant sources of information, including links to EITI Reports, information about licensing systems etc.]*

This note has been issued by the EITI International Secretariat to provide guidance to implementing countries on meeting the requirements in the EITI Standard. Readers are advised to refer to the EITI Standard directly, and to contact the International Secretariat to seek further clarification. Contact details can be found at www.eiti.org

Guidance note 7: Contract transparency

Requirement 3.12

1. Summary

Contracts, licenses and associated agreements establish many of the commitments between government and companies in the extractive industries¹. In some cases, the terms of these contracts and licences may be standard and complemented by taxation regimes. In other cases, these contracts, licenses and agreements include detailed terms for how resource owners and companies agree to share risk and reward over the life of long-term resource extraction projects. Fiscal terms will address how costs and profits are shared between the parties and how taxes, royalties and other extraction related fees are to be calculated and paid.

EITI Principle 6 recognises that achievement of greater transparency must be set in the context of respect for contracts and laws. The EITI Standard requires that the EITI Report documents the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals (requirement 3.12b). The EITI Standard also encourages implementing countries to disclose contracts and agreements that establish the terms for the exploitation of oil, gas and minerals (requirement 3.12a). The EITI Requirements are set out in full in box 1.

This guidance note sets forth issues the MSG should consider to help it meet its requirements of documenting the government's disclosure policy and practices. The guidance note also outlines some possible options for how the MSG could structure a contract disclosure system should the MSG decide to address contract transparency.

Some EITI implementing countries (Niger, Sao Tome and Principe, and Sierra Leone) have passed legislation that requires publication of contracts. Others (Afghanistan, Azerbaijan, the Democratic Republic of Congo, Liberia, Guinea, Peru, Republic of Congo, and Timor Leste) have published all or some of their extractive industry contracts. In some implementing countries contracts are stated to be confidential and are therefore not disclosed. For those countries that do publish, the contracts are typically available on a government website. Some companies have also proactively sought to make their contractual terms available for scrutiny..

As contract transparency is a relatively new area within the EITI, this note will likely be revised reflecting emerging practice. Given that disclosure of contracts can be commercially sensitive, the International Secretariat encourages implementing countries that wish to address this issue to consult widely with all stakeholders, including stakeholders outside the MSG, and strive towards consensus regarding any decisions related to contract transparency.

¹ The terms 'contract' and 'license' are used here as defined in requirement 3.12(c) and 3.12(d) set out below.

Box 1 – Coverage of contract transparency in the EITI Standard

Requirement 3.12 sets out the reporting requirements related to contracts:

- a) Implementing countries are encouraged to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals.
- b) It is a requirement that the EITI Report documents the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals. This should include relevant legal provisions, actual disclosure practices and any reforms that are planned or underway. Where applicable, the EITI Report should provide an overview of the contracts and licenses that are publicly available, and include a reference or link to the location where these are published.
- c) The term contract in 3.12(a) means:
 - The full text of any contract, concession, production-sharing agreement or other agreement granted by, or entered into by, the government which provides the terms attached to the exploitation of oil gas and mineral resources.;
 - The full text of any annex, addendum or rider which establishes details relevant to the exploitation rights described in 3.12(c)(i) or the execution thereof; and.
 - The full text of any alteration or amendment to the documents described in 3.12(c)(i) and 3.12(c)(ii).
- d) The term license in 3.12(a) means:
 - The full text of any license, lease, title or permit by which a government confers on a company(ies) or individual(s) rights to exploit oil, gas and/or mineral resources.;
 - The full text of any annex, addendum or rider that establishes details relevant to the exploitation rights described in in 3.12(d)(i) or the execution thereof; and.
 - The full text of any alteration or amendment to the documents described in 3.12(d)(i) and 3.12(d)(ii).

Source: EITI Standard, p. 25.

2. Guidance

The EITI International Secretariat recommends the following step-by-step approach to MSGs for addressing the encouragement of contract transparency:

- 1. In order to ensure that the EITI Report documents the government's policy on contract disclosure (as required in 3.12.b), the multi-stakeholder group is advised to identify relevant laws, regulations and financial systems that govern the extractive sector and determine whether or not they contain disclosure provisions and what these say about disclosure.**

Questions to help document the government's policy on contract disclosure:

- What are the relevant national and subnational laws and regulations? Note that Requirement 3.2 states that "The EITI Report must describe the legal framework and fiscal regime governing the extractives industries."
- Which terms applicable to oil, gas and mining contracts are stipulated in legislation and regulations? Are these laws and regulations publicly accessible?
- Is there a tax/royalty system (licenses and concessions) or a contract system (PSA, service contract, etc.)?
- Can the agency(ies) responsible for allocating licenses or negotiating and signing oil, gas and mining contracts be identified?
- Can the agency(ies) monitoring implementation of oil, gas and mining contracts be identified?
- Can any legal impediments to or restrictions on the disclosure of contracts be identified?
- Does the government have a model contract for oil, gas and mining exploration and exploitation? Is this model followed for all contracts ?

- Are there any reforms underway that may affect public access to contracts?

2. In some cases, laws and regulations may provide for contract disclosure, but this may not be reflected in actual disclosure practice. In other cases, contracts may be disclosed in practice, even if laws and regulations do not provide for it. In some cases, contracts may be stated to be confidential and disclosure prohibited. Other laws and contracts may be silent on this issue. In accordance with requirement 3.12.b, the EITI report should document actual disclosure practice. In addressing this requirement, the multi-stakeholder group may find it helpful to assess whether:

- all contracts are disclosed, regardless of the type
- the contracts are disclosed in full, including any addendums
- the contracts are disclosed in a timely manner
- the contracts are made available in an easily accessible manner
- the key terms or a summary of such contracts are disclosed
- the contracts are disclosed, except for the redaction of sensitive commercial or technical information
- contracts completed after some specified and consistent date are disclosed

3. In accordance with requirement 1.4.f, the multi-stakeholder group should consider addressing issues such as contract disclosure when reviewing the EITI workplan. Implementing countries are encouraged to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals (requirement 3.12(a). Where the government's policy does not explicitly address contract disclosure, but this is something the multi-stakeholder group wishes to address, the following methods for a contract disclosure system might be considered, bearing in mind the rights of the contracting parties and the interests of the public:

- Disclosure of contracts that contribute or are expected to contribute more than a certain percentage of total government revenues or exceed a given investment or production volume threshold.
- Disclosure of certain terms within a contract that are of particular interest to stakeholders, i.e. financial terms or social and environmental obligations,
- Disclosure of any future contracts (i.e., contracts signed after a fixed date).
- Disclosure of a summary of the key terms and conditions under which the resource is being developed. This summary could for example include the life of the contract; any material payments due to government made under it; other material fiscal terms and conditions; and a summary of any significant stabilization clauses.
- Possibilities for redacting commercially sensitive information
- Full contract disclosure.

4. After considering the issues outlined above, the multi-stakeholder group needs to agree what specific information it will include about contract transparency in the EITI Report, and the format for providing that information. At a minimum, the report should include the following (requirement 3.12.b):

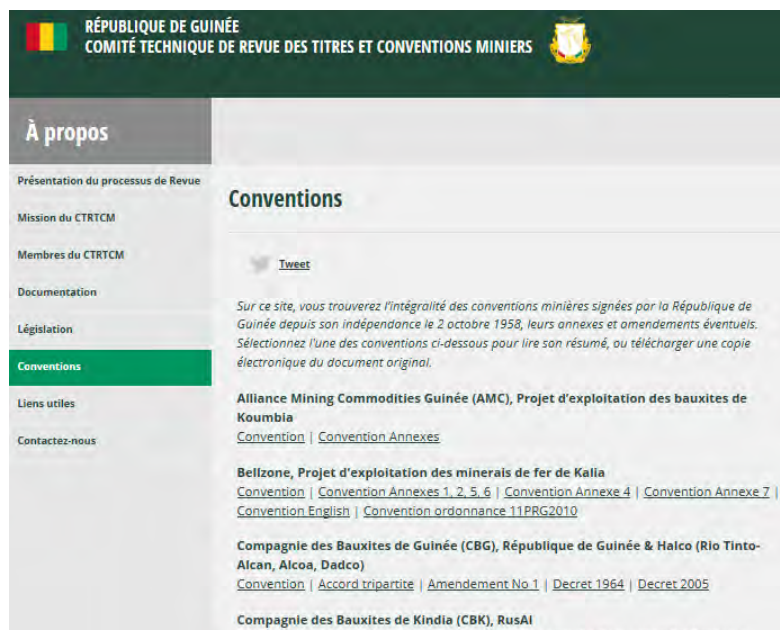
- A short summary of the government's policy on contract disclosure in the EITI Report, including commentary on relevant legal provisions, actual disclosure practices and any reforms that are planned or underway. The multi-stakeholder group may also wish to add an overview of any contracts issued in the period covered by the EITI Report that are likely to generate significant revenues.

- Where contracts are disclosed, an overview of the contracts and license s that are publicly available, and a reference or link to where these can be accessed.
- Where contracts are disclosed, but are not easily accessible, the multi-stakeholder group could consider posting them on the EITI website. The multi-stakeholder group may wish to consider opportunities for linking this information to revenue and other data in the EITI Report.

4. In order to be useful and contribute to public debate, the EITI Report must be comprehensible (Requirement 6.1.c). Where contracts are published, the multi-stakeholder group may wish to review capacity building activities necessary to ensure effective common understanding of the contracts within the multi-stakeholder group and among other key stakeholders with a view to ensuring effective and sound use of the disclosed contract information.

3. Examples

Following the passing of the 2011 Mining Code which mandates contract transparency, the government of **Guinea** has published all mining contracts and associated agreements signed since 1958 on a dedicated website that allows for full searchability within documents and includes annotated summaries of the deals.

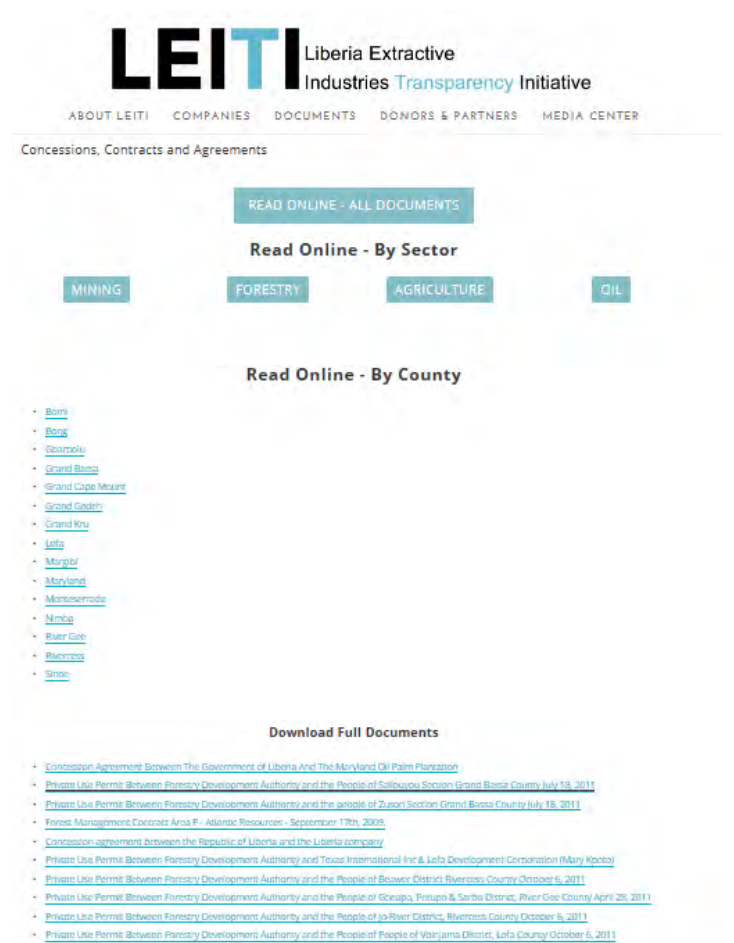


Source: Technical Commission for Review of Mining Contracts, <http://www.contratsminiersguinee.org/about/projets.html>

In **Liberia**, LEITI hosts a contracts and concession library that contains all extractive contracts signed by the government. The LEITI Act (2009) mandates LEITI to “To promote the public disclosure of contracts and concessions bearing relationship with the extraction of forest and mineral resources”.

Accordingly, the LEITI Secretariat in 2012 secured and uploaded to its website for public consumption, more than 100 concessions agreements, contracts, permits, and licenses in respect of the oil, mining, forestry, and agriculture sectors. Hard copies of these assigned rights are available at the office of the Secretariat.

The LEITI Secretariat recognizes that it remains challenging for the average citizen to understand the terms and provisions due to their complex legal nature. LEITI has therefore secured legal services experts to produce easy-to-read versions of all concessions agreements within the oil, mining, agriculture, and forestry sectors. These will summarize the fiscal terms, contract start/end dates, community benefits, and other key provisions on the agreements.



Source: LEITI, <http://www.leiti.org.lr/>

The government of **Afghanistan** has published several contracts on the website of the Ministry of Mines and Petroleum. On 26 July, President Hamid Karzai issued a [decree](#) committing the government to “publish all contracts with details” with national and international companies from the past three years, and to finalize a contract transparency plan based on “agreed international principles and with considerations of the future of the country.”

Over 200 contracts have been published so far. There are ongoing discussions within AEITI about further disclosures, including disclosure of the contract for the Aynak copper mine.

Ministry of Mines and Petroleum
Islamic Republic of Afghanistan

Enter Text To Search: Home > Contracts

Contracts

Hydrocarbons

No	Contract	Signed
1	MOM Amu Darya Process and Transparency Review Amu Darya Contract - 1 (English) Amu Darya Contract - 2 (Dari) Abstract of Amu Darya	26 Dec 2011

Minerals

Database of Mineral Contracts (English)
Database of Mineral Contracts (Dari)

No. of File	Contract	Mineral	Signed
1	Khaled Omaid Company (Dari)	Marble	21/8/1389
2	Azrat Bilal Marble Exploration Company (Dari)	Marble	3/12/1387
3	Rahmat Fazl Construction Company (Dari)	Marble	28/8/1384

Farman Balk Exploitation and Processing

Source: Ministry of Mines and Petroleum, Afghanistan <http://mom.gov.af/en/page/1384>

For further information, please see:

- <http://www.resourcecontracts.org/>
- <https://strikingpoverty.worldbank.org/c121031>
- <http://www.contractroadmap.org/>
- <http://openoil.net/contracts-booksprint>
- <http://www.revenuewatch.org/publications/contracts-confidential-ending-secret-deals-extractive-industries>
- www.open-contracting.org
- http://www.eisourcebook.org/642_5PolicyLegalandContractualFramework.html

This note has been issued by the EITI International Secretariat to provide guidance to implementing countries on meeting the requirements in the EITI Standard. Readers are advised to refer to the EITI Standard directly, and to contact the International Secretariat to seek further clarification. Contact details can be found at www.eiti.org

Guidance note 8: MSG oversight of the EITI reporting cycle

1. Summary

The EITI requires effective oversight by the multi-stakeholder group (MSG) (requirement 1). A core function of the MSG is to oversee regular EITI reporting. Requirements 2-6 of the EITI Standard focus on the timeliness, contextual information, comprehensiveness, credibility and dissemination of EITI Reports (see Box 1). Requirement 7 focuses on lessons learned and renewing the EITI process. This note provides guidance to the MSG on some of the key challenges involved in overseeing the EITI reporting cycle, drawing on insights from implementing countries. The note also highlights additional guidance materials that MSGs may wish to review in more detail.

Box 1 – The EITI Requirements

The EITI requires:

1. Effective oversight by the multi-stakeholder group.
2. Timely publication of EITI Reports.
3. EITI Reports that include contextual information about the extractive industries.
4. The production of comprehensive EITI Reports that include full government disclosure of extractive industry revenues, and disclosure of all material payments to government by oil, gas and mining companies.
5. A credible assurance process applying international standards.
6. EITI Reports that are comprehensible, actively promoted, publicly accessible, and contribute to public debate.
7. The multi-stakeholder group to take steps to act on lessons learned and review the outcomes and impact of EITI implementation.

Source: EITI Standard, page 10

The guidance note is structured around a stylised “EITI reporting cycle” (see figure 1). It is important to emphasise that this model does not seek to capture all of the objectives, decisions and activities that the MSG will undertake related to EITI reporting. In many cases, EITI implementation will deviate from this model. Nevertheless, the model is a useful reference point for highlighting some of the key steps in the process, and common challenges encountered in implementing countries. Readers are advised to refer to the EITI Standard to verify the detailed requirements that need to be satisfied in order to achieve and maintain compliance.

2. Guidance

Figure 1 presents a simplified EITI reporting cycle, outlining 10 key steps (see figure 1). The guidance below addresses each step in turn.

Figure 1 – Simplified EITI reporting cycle



Step 1 – Establishing EITI objectives and agreeing the EITI workplan

Requirement 1.4 of the Standard requires that the multi-stakeholder group maintains a current workplan, fully costed and aligned with the EITI reporting and Validation deadlines established by the EITI Board. The workplan must set EITI implementation objectives that are linked to the EITI Principles and reflect national priorities. The EITI workplan forms the foundation for implementing the EITI and ensuring that implementation activities are targeted to deliver the results desired by stakeholders. Based on the EITI Standard and discussions about challenges and priorities for the extractive industries, the multi-stakeholder group, in consultation with key stakeholders, should develop a workplan that sets out why the EITI is being implemented and what issues the EITI process will seek to address. The EITI is relevant in different ways in different countries. It is implemented to address specific concerns about corruption, lack of trust, effective natural resource management, including revenues allocations, or to attract foreign direct investment. In order for EITI Reports to contain information that is relevant to the broader objectives for EITI implementation, these objectives and associated activities need to be clearly spelled out and linked to the EITI reporting cycle. A *Guidance note on developing an EITI workplan* is available from the EITI International Secretariat.

Step 2 – Preliminary scoping

Scoping work aims to identify what the EITI Report should cover in terms of revenue streams, companies and government entities that should participate in the reporting process and other preparatory work necessary to ensure that the EITI report is timely, comprehensive, reliable and comprehensible. Preliminary scoping provides

the basis for developing the terms of reference for the Independent Administrator, the firm hired to conduct the reconciliation (see step 3). It commonly involves looking at issues such as:

- the fiscal period to be reported;
- the contextual information that should be included in the EITI Report;
- determining which revenue streams from oil, gas and mining are significant, and consequently which companies and government entities should be required to report; and
- reviewing the types of assurances that are needed for ensuring that the data submitted by reporting entities is credible..

In some cases, scoping may investigate certain issues or challenges in more detail with a view to identifying options or solutions for consideration by the multi-stakeholder group. It may also include reviewing any existing systems for example on disclosures of license holders, production data or information about revenues from the extractive sector with a view to ensuring that the EITI draws on such systems where available, or is used as a tool for improving systems where needed.

One issue that requires clear MSG agreement relates to who produces the various sections of the EITI report. In the majority of cases to date, MSGs have tasked the Independent Administrator with preparing the entire EITI Report. It is however becoming more common that the multi-stakeholder group produces a descriptive part with information about the sector and key summary data, with the Independent Administrator's reconciliation report attached. The EITI Standard now requires a significant amount of contextual information (requirement 3). The multi-stakeholder group should agree the procedures and responsibilities for the preparation of the contextual information for the EITI Report, ensuring that all the information and analysis is clearly sourced and attributed.

An increasing number of countries conduct formal scoping studies for this purpose. Implementing countries that have already produced one or several EITI Reports also need to regularly revisit the scope of EITI reporting to reflect changes in workplan objectives, industry structure, fiscal regimes and revenue fluctuations. MSGs are advised to review the scope ahead of each reporting cycle, including reviewing any recommendations from the Independent Administrator and the Validator related to scoping issues. A *Checklist for establishing the scope of the EITI Report* and *template terms of reference for scoping studies* are available from the EITI International Secretariat.

Step 3 – Agree terms of reference for the Independent Administrator

The Terms of Reference sets out the work to be undertaken by the Independent Administrator. It is typically attached to the contract between the Independent Administrator and the government. It is a requirement the multi-stakeholder group (MSG) approves the Terms of Reference (Requirement 5.2). The EITI Board has agreed a template Terms of Reference. It includes "agreed upon procedures" for key steps in the reporting process, including:

- agreeing the scope of EITI reporting,
- the development of reporting templates/forms,
- the need for supporting documentation to assure the credibility of the data,
- the procedure for data collection; and
- the investigation of discrepancies in accordance with the EITI requirements.

The Board has developed these procedures to promote greater consistency and reliability in EITI reporting. Utilisation of the template does not guarantee compliance. The MSG needs to ensure that the reporting process is rigorous, comprehensive and reliable.

The Board also recommends that the process relies as much as possible on existing procedures and institutions, i.e., so that the EITI process draws on, complements and critically evaluates existing data collection and auditing systems. In this way, the EITI process has the potential to generate important recommendations to strengthen other oversight systems.

The template enables the MSG to list additional objectives and activities to be undertaken by the Independent Administrator in accordance with the MSG's workplan. The EITI International Secretariat can provide further advice on completing the template.

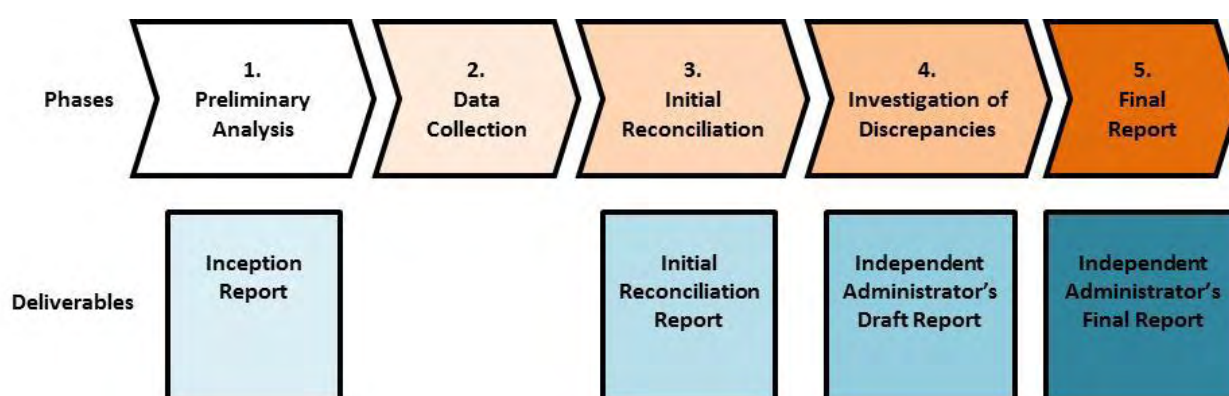
Step 4 – Appointment of the Independent Administrator

It is a requirement that the Independent Administrator is perceived by the MSG to be credible, trustworthy and technically competent (Requirement 5.1). In addition to approving the Terms of Reference (Requirement 5.2), it is recommended that the MSG agrees the procedure for procuring and contracting the Independent Administrator. Implementing countries have often encountered delays in the procurement process. It is recommended that the MSG investigates in advance the procurement procedures and time needed for hiring the Independent Administrator and that this timeline is reflected in the EITI workplan. The MSG is also advised to monitor the process closely, and to take steps to address delays.

Step 5 – Confirmation of scope and reporting procedures (Inception Report)

The template terms of reference for the Independent Administrator sets out five phases of work (see figure 2).

Figure 1 – Overview of the work and deliverables from the Independent Administrator



The objective of the first phase of work is to confirm the scope of the EITI reporting process (drawing on the work done at step 2 above), the reporting templates, data collection procedures, and the schedule for publishing the EITI Report. The findings from this first phase should be documented in an inception report produced by the Independent Administrator in consultation with the MSG. The report should include:

- Details on how contextual information will be incorporated into the EITI Report.

- An overview of the proposed scope of the reporting process, including a proposal on an appropriate definition of materiality and associated thresholds.
- A list of the entities that will be asked to report.
- The reporting templates to be completed by the reporting entities.
- Details on the assurances and supporting documentation to be requested from reporting entities.
- The data collection and reconciliation procedures, including appropriate training and guidance to reporting entities.
- A timeframe for finalisation of the EITI Report.

Where necessary the inception report should also highlight any unresolved issues or potential barriers to effective implementation, and possible remedies for consideration by the MSG. The MSG should review the Independent Administrator's inception report and approve the proposed scope, data collection and reconciliation procedures prior to the commencement of data collection. The MSG may wish to make the inception report publicly available.

Step 6 – Data collection, verification and reconciliation

The second and third phases of work undertaken by the Independent Administrator are data collection and initial reconciliation. The most common procedure for data collection is that the Independent Administrator is mandated to distribute the reporting templates and collect the completed forms (and associated supporting documentation) directly from the participating reporting entities. Where an alternative approach is proposed - e.g. where a national secretariat assists with data collection, or where the data is collected through existing reporting mechanisms – there should be consultations with the Independent Administrator to ensure that there are appropriate procedures in place to protect the integrity of the process. The MSG should work with the Independent Administrator to ensure that the request for data includes appropriate guidance and advice on where to seek additional information and support.

The Independent Administrator then compiles a database with the data provided by the reporting entities, and prepares an initial reconciliation report based on the reported (unadjusted) data for consideration by the MSG. This is an important opportunity to review whether there has been full government disclosure of extractive industry revenues and disclosure of all material payments to government by oil, gas and mining companies in accordance with the agreed scope (requirement 4).

Step 7 – Review of the draft EITI Report

The Independent Administrator is mandated to contact the reporting entities in order to clarify any discrepancies in the reported data. The Independent Administrator then prepares a draft Report. The MSG is advised to ensure that the report:

- describes the methodology adopted for the disclosure and reconciliation of company payments and government revenues, and demonstrates the application of international professional standards
- includes a description of each revenue stream, related materiality definitions and thresholds (Requirement 4.1).
- includes an assessment of whether all companies and government entities within the agreed scope of the EITI reporting process provided the requested information Requirement 5.3(d).

- documents whether the participating companies and government entities had their financial statements audited in the financial year(s) covered by the EITI Report.
- comprehensively discloses and reconciles the information submitted by the reporting entities, identifying any discrepancies.
- includes an assessment from the Independent Administrator on the comprehensiveness and reliability of the data presented, including an informative summary of the work performed by the Independent Administrator and any limitations of the assessment provided.
- indicates the coverage of the reconciliation exercise.

Where previous EITI Reports have recommended corrective actions and reforms, the MSG is advised to ensure that the Independent Administrator comments on the progress in implementing those measures (Requirement 5.3(e)). If specified in the terms of reference, the MSG should consider any recommendations from the Independent Administrator for strengthening the reporting process in the future.

Step 8 – Approval and publication of final EITI Report

The MSG should endorse the EITI Report prior to its publication. Where the MSG agrees to include additional comments by key stakeholders in the EITI Report the authorship of these additional comments should be clearly disclosed.

Step 9 – Dissemination and promoting public debate

The MSG must ensure that the EITI Report is comprehensible, actively promoted, publicly accessible and contributes to public debate (requirement 6.1). The MSG is also encouraged to make EITI Reports machine-readable, and to code or tag EITI Reports and data files so that the information can be compared with other publicly available data.

Step 10 – Review and annual activity report

Requirement 7.2 states that the MSG is required to review the outcomes and impact of EITI implementation on natural resource governance, and to publish annual activity reports (requirement 7.2(a)). The objective of the activity report is to communicate efforts undertaken to meet and/or maintain compliance with EITI requirements, including progress in achieving the objectives set out in the workplan and to document the impact of the EITI. It should also document any recommendations from the Independent Administrator and Validator (where applicable) and describe actions undertaken by the MSG to act on such recommendations. A *Guidance note on annual activity reports* is available from the EITI International Secretariat.

3. Further guidance

As noted above, readers are advised to refer to the EITI Standard to verify the detailed requirements that need to be satisfied in order to achieve compliance. (**EITI Standard:** <http://eiti.org/document/standard>)

The Secretariat has also produced a wide range of guidance notes covering many of these topics highlight above (**Guidance notes:** <http://eiti.org/document/guidance-notes>)

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Guidance note 9: Suggested checklist for establishing the scope of EITI Reporting

1. Summary

In order to be useful, EITI Reports must be timely, comprehensive, reliable and comprehensible. One of the most common challenges with EITI implementation to date has been to ensure that the EITI Report provides a comprehensive account of payments and revenues. A related concern is demonstrating that the figures in the EITI Report are reliable, i.e., based on credible assurance process applying international standards. These issues have often been a barrier to achieving compliance. Determining the scope of EITI reporting is therefore one of the key issues that multi-stakeholder groups need to consider before producing an EITI Report. It includes establishing which revenue streams should be covered, which companies and government entities should participate in the reporting process, what assurances are needed from companies and government entities to ensure that the data submitted is reliable etc. This guidance note suggests a checklist of issues that the multi-stakeholder group may wish to consider as it undertakes this work. It should be noted that the checklist is not intended to be exhaustive and the MSG is advised to consult the EITI Standard as the definitive reference regarding the EITI requirements.

2. Background

Scoping work aims to identify what the EITI Report should cover in terms of revenue streams, companies and government entities that should participate in the reporting process, and other preparatory work undertaken by the multi-stakeholder group (often with the support of a national EITI Secretariat and/or external consultants) necessary to ensure that the EITI report is timely, comprehensive, reliable and comprehensible. It often leads to a “scoping report” that informs the work to be undertaken by the Independent Administrator (the firm hired to conduct the reconciliation). It commonly involves looking at issues such as the fiscal period to be reported, the contextual information that should be part of the EITI Report, reviewing the types of assurances that are needed for ensuring that the data submitted by reporting entities is credible, determining which revenue streams from oil, gas and mining are significant, and consequently which companies and government entities should be required to report. In some cases, scoping may investigate certain issues or challenges in more detail with a view to identify options or solutions for consideration by the multi-stakeholder group.

EITI implementing countries are required to consider scoping questions in developing and revising their workplans (EITI Requirement 1.4-c-ii). Early scoping considerations are particularly important for new EITI Candidates, which are required to publish the first EITI Report within 18 months of attaining Candidate status. An increasing number of countries conduct scoping studies for this purpose. Implementing countries that have produced one or several EITI Reports also need to regularly revisit the scope of EITI reporting to reflect changes in workplan objectives, industry structure, fiscal regimes and revenue fluctuations. It is common to review the scope on an annual basis, at the outset

of each reporting cycle. Thorough scoping will also enable the MSG to agree clear terms of reference for the Independent Administrator. One of the first tasks that the Independent Administrator will undertake is to review the scope agreed by the multi-stakeholder group and propose modifications where relevant. This ensures that there is a common understanding between the multi-stakeholder group and the Independent Administrator with regards to the work that needs to be undertaken by each party in preparing the EITI Report. As part of the scoping work, the MSG is encouraged to review any existing disclosure mechanisms related either to the contextual information or to information about revenues from the sector, and identify whether the EITI can draw on or strengthen such systems with regards to EITI reporting.

3. Checklist for establishing the scope of EITI reporting

The following checklist is intended to guide multi-stakeholder groups in establishing the scope of EITI reporting. Addressing these questions will help ensure that the multi-stakeholder group has an agreed position on the scope of the report prior to engaging the independent administrator and developing the reporting templates. The multi-stakeholder group is encouraged to document the process, so that the information is readily available during validation. Multi-stakeholder group are also encouraged to make scoping decisions publicly available to raise awareness and engage the stakeholders outside the MSG in these discussions.

Linking the scope of the EITI Report with workplan objectives

Has the multi-stakeholder group ...

- ☐ reviewed the objectives and activities set out in the workplan to ensure that the scope of the EITI report is in line with the MSG's overall objectives?
- ☐ considered extending the detail and scope of the EITI report to issues such as revenue management and expenditure (3.7-3.8), discretionary social expenditures (4.1.e), ad-hoc sub-national transfers (4.2.e), beneficial ownership (3.11) and contracts (3.12)?

Timeliness

Has the multi-stakeholder group ...

- ☐ agreed the fiscal period to be covered in the report (requirement 2)?

Context

Has the multi-stakeholder group ...

- ☐ reviewed the legal framework governing the extractive industries (requirement 3.2)?
- ☐ developed a good understanding of the extractive resources and industries in the country and its contribution to the economy (requirements 3.3 and 3.4)?
- ☐ identified timely, comprehensive and reliable sources of information about production and exports (requirement 3.5)?
- ☐ investigated the role of any state-owned enterprises in the extractive sector, including the financial relationship with the government, quasi-fiscal expenditures, and government ownership in oil, gas and mining companies (requirement 3.6)?

- ☐ considered how extractive industry revenues, whether cash or in-kind, are recorded in the national budget (requirement 3.7)?, and opportunities for reporting on expenditures and revenue management as encouraged in requirement 3.8?
- ☐ investigated the timeliness and comprehensiveness of the available information about license holders and license allocations as per requirement 3.9 and 3.10?
- ☐ considered the feasibility of disclosing information about the beneficial owners of extractive companies operating in the country (requirement 3.11)?
- ☐ explored the government's policy on contract disclosure and considered contract transparency as encouraged in requirement 3.12?
- ☐ agreed who should compile the contextual information to be included in the EITI Report?

Comprehensiveness

Has the multi-stakeholder group ...

- ☐ reviewed the fiscal regime and other relevant revenue streams applicable to the extractive sector, with reference to EITI Requirement 4.1, including revenues from the sale of the government's share of production or oil, gas and minerals received in-kind, social payments, transit payments, infrastructure provisions and other barter deals?
- ☐ considered transactions between government entities and state-owned companies (requirement 4.2.c)?
- ☐ identified whether subnational government entities receive direct payments from companies (requirement 4.2.c) and whether there exist mandatory or ad-hoc transfers between central and subnational levels of government (requirement 4.2.d)?
- ☐ reviewed existing data from the relevant fiscal period to determine the materiality of these revenue streams (requirement 4.1.a)?
- ☐ agreed a definition of materiality that stipulates which revenue streams are material and will be covered in the EITI Report (requirement 4.1.a)?
- ☐ established payment and revenue thresholds where appropriate (requirement 4.1.a)?
- ☐ identified the extractive companies that make material payments within the scope of the agreed material revenue streams (requirement 4.2)?
- ☐ identified the government entities, including subnational levels, that collect material revenues within the scope of the agreed material revenue streams (requirement 4.2)?

Data quality

Has the multi-stakeholder group ...

- ☐ investigated the prevailing auditing practices for company and government data (requirement 5.2.b)?
- ☐ considered the types of assurances that can be provided by companies and government entities to ensure a credible reporting process (requirement 5.2.c)?

Confirming scoping decisions

Has the multi-stakeholder group ...

- ☐ reviewed the legal and regulatory framework with a view to identify and remove potential barriers to disclosure, in particular where there are confidentiality provisions in contracts or legislation (requirement 4.1.c.iii)?

- documented the MSG's agreed positions on scoping considerations (requirement 1.3.g.iii), including for example summaries that can be made publically available and included in the EITI Report?
- reflected the agreed scope in the Terms of reference for the Independent Administrator?

4. Further guidance

The Secretariat has produced guidance notes covering many of these topics, including **standard terms of reference for scoping studies**. These TORs can be useful both for multi-stakeholder groups that wish to undertake this work themselves and for engaging third parties to assist in the scoping process. Examples of scoping studies are also available from the International Secretariat.

- **EITI Standard**, in particular Requirements 3, 4 and 5: <http://eiti.org/document/standard>
- **Guidance notes**: <http://eiti.org/document/guidance-notes>
- **Standard Terms of reference for scoping studies**: <http://eiti.org/document/guidance-notes>

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Guidance note 10: Sub-national reporting

Requirement 4.2(d) and (e)

1. Summary

In some countries, companies make direct payments to sub-national levels of government (e.g. regional governments, municipalities and chiefdoms). In addition, some governments also have formal or informal revenue sharing mechanisms that stipulate that a share of revenues collected by the central government from the extractive sector is transferred to sub-national government entities. These payments and transfers are often of great interest to stakeholders, particularly in discussions regarding the benefits that accrue to local communities, even if these payments may represent only a portion of total revenues at the national level. Revenues captured at local levels or mandated revenue transfers are often an important source of income for provincial or local governments. Transparency regarding these payments and transfers can be useful in checking whether transfers have indeed occurred and in holding provincial and local authorities to account.

This note provides guidance to multi-stakeholder groups (MSGs) and independent administrators on addressing these issues in accordance with the EITI Standard. It has two parts. Part 1 provides guidance on direct payments by companies to sub-national entities. The EITI Standard requires that, where these are material, direct company payments to sub-national government entities and the receipt of these payments are disclosed and reconciled in the EITI Report (Requirement 4.2(d)). Part 2 provides guidance on transfers of revenues from extractive industries between central or sub-national levels of government. Where transfers between national and sub-national government entities are mandated by a national constitution, statute or other revenue sharing mechanism, material transfers must be disclosed in the EITI Report (Requirement 4.2(e)). The detailed requirements are set out in box 1, below.

Box 1 – Coverage of sub-national reporting in the EITI Standard

Requirement 4.2 - Defining which companies and government entities are required to report

...

d) **Sub-national payments:** It is required that the multi-stakeholder group establish whether direct payments, within the scope of the agreed benefit streams, from companies to sub-national government entities are material. Where material, the multi-stakeholder group is required to ensure that company payments to sub-national government entities and the receipt of these payments are disclosed and reconciled in the EITI Report.

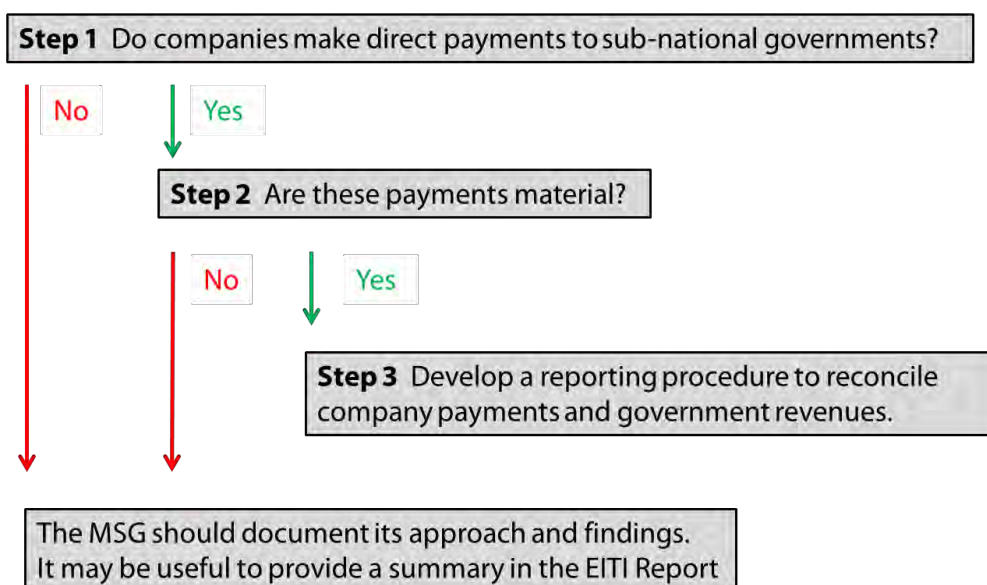
e) **Sub-national transfers:** Where transfers between national and sub-national government entities are related to revenues generated by the extractive industries and are mandated by a national constitution, statute or other revenue sharing mechanism, the multi-stakeholder group is required to ensure that material transfers are disclosed in the EITI Reports. The EITI Report should disclose the revenue sharing formula, if any, as well as any discrepancies between the transfer amount calculated in accordance with the relevant revenue sharing formula and the actual amount that was transferred between the central government and each relevant sub-national entity. The multi-stakeholder group is encouraged to reconcile these transfers. The multi-stakeholder group is encouraged to ensure that any material discretionary or ad-hoc transfers are also disclosed and where possible reconciled in the EITI Report. Where there are constitutional or significant practical barriers to the participation of sub-national government entities, the multi-stakeholder group may seek adapted implementation in accordance with Requirement 1.5.

2. Guidance

Part I: Addressing payments from companies to sub-national government entities

The Secretariat recommends a 3-step process for addressing payments from companies to sub-national government entities (see Figure 1).

Figure 1 –Addressing sub-national payments



Step 1 - Identifying direct payments from companies to sub-national governments

The MSG is advised to conduct a review and gain an understanding of:

- What taxes, fees and other payments companies are required to make to sub-national levels of government. Typical benefit streams include taxes on properties, surface/land fees, fees for usage of water or other resources. These payments may be constitutionally mandated, required by national or local legislation or regulation, or set out in a license or contract.
- Which sub-national entities receive these payments (e.g. regions, states, municipalities, district councils, chiefdoms or regional assemblies)?
- Do these entities collect the payments directly or through another agency at national/federal or another sub-national level?

Where companies make direct payments to sub-national governments, the MSG should assess the materiality of these payments relative to total government revenues, and compared to total revenues received by the sub-national entity. (see step 2). If the MSG determines that there are no such payments, this assessment should be documented. It may be useful to provide a summary in the EITI Report so that it is clear why payments from companies to sub-national entities are not addressed.

Step 2 – Assessing the materiality of direct payments from companies to sub-national entities

Where the MSG has determined that there are direct payments from companies to sub-national governments, the MSG needs to establish the materiality of these payments. The general approach set out in requirement 4.1(a) should inform this process:

In advance of the reporting process, the multi-stakeholder group is required to agree which payments and revenues are material and therefore must be disclosed, including appropriate materiality definitions and thresholds. Payments and revenues are considered material if their omission or misstatement could significantly affect the comprehensiveness of the EITI Report. A description of each revenue stream, related materiality definitions and thresholds should be included in the EITI Report. In establishing materiality definitions and thresholds, the multi-stakeholder group should consider the size of the revenue streams relative to total revenues. The multi-stakeholder group should document the options considered and the rationale for establishing the definitions and thresholds.

In some cases, the data needed to make this assessment will already be publicly available from companies, sub-national government authorities or other sources. In other cases, it may only be possible to estimate the size of the payments through consultations with stakeholders.

Where the multi-stakeholder group determines that payments from companies to sub-national entities are material these payments and revenues should be disclosed and reconciled in the EITI Report. Where the multi-stakeholder group determines that payments from companies to sub-national entities are not material, the basis for this assessment should be documented. It may be useful to provide a summary in the EITI Report

Step 3 - Disclosure and reconciliation of direct payments from companies to sub-national entities

Where the multi-stakeholder group determines that payments from companies to sub-national entities are material these payments and revenues should be disclosed and reconciled in the EITI Report. It may be useful to provide a

summary in the EITI Report. The results of the MSGs investigations (and references to supporting materials) should be reflected in the terms of reference for the Independent Administrator. The Independent Administrator will:

- Review the MSG's assessment of the materiality of direct payments from companies to sub-national entities
- Where applicable, review the MSG's proposal regarding the materiality threshold, and the entities that will be asked to report.
- Propose reporting templates for company and government, and the assurances to be provided.
- Collect and reconcile this data, and present the findings in the Independent Administrator's report.

A particular challenge relates to ensuring that all sub-national government agencies participate in the process. This may require additional outreach (including by the central government), training and capacity building.

3. Examples

Box 2 - Extractive industry-specific tax paid to local governments in Sierra Leone

Revenue Stream	Extractive Industry	Frequency of Payment	Agency Responsible for collection	Application of payment.
Reconnaissance Licence	Mining	Annual	MMMR/NRA	Consolidated Fund
Exploration Licence	Mining	Annual	MMMR/NRA	Consolidated Fund
Mining Licence	Mining	Annual	MMMR/NRA	Consolidated Fund
Surface Rent	Large/Small Scale Mining	Annual	Chiefdom/District Council/Individuals	Disbursed according to formula.
Royalty	Mining	As stipulated in Agreement.	NRA	Consolidated Fund
Corporate tax	Mining	Annual(Depends on contract)	NRA	Consolidated Fund
Agricultural Development Fund	Mining	Annual	MMMR	Mining Community for Agriculture Development
Training fees	Petroleum	Annual	Petroleum Directorate	Petroleum Directorate
Surface Rental	Petroleum	Annual	Petroleum Directorate	Petroleum Directorate
Sale of geophysical data	Petroleum	Upon request	Petroleum Directorate	Petroleum Directorate
Petroleum (Exploration)Licence	Petroleum	Annual	Petroleum Directorate	Petroleum Directorate
Diamond Exporter's licence	Mining Exports	Annual	NRA	Consolidated Fund
Diamond Exporter' Agent fees	Mining Exports	Annual	NRA	Consolidated Fund

❖ SURFACE RENT:

Surface rent (MMA 2009, part 5 section 34)

This is paid only by entities with mining licence. Surface rents are negotiated between the companies and the communities. There are basically three modes of payments.

a) Companies pay the total amount to the District council, which intend gives a portion to the relevant Chiefdom Councils.

b) The company pays surface rent to the Chiefdom Administration, which pays part to the District Council.

c) The company pays directly to district councils, chiefdom councils and individual landowners according to the formula prescribed by part 5 section 34 of the MMA,2009.

The basis of payment may either be on per km² basis or a lump sum per annum.

Frequency: Annual payment.

Disbursement. Since 2009, there has been a formula for the disbursement of surface rent.

Formula for distribution:

50% - Land owners

15% - Paramount chief.

15% - District Council

10% - Chiefdom Council

10% - Constituency development.

Source: SLEITI - <http://www.sleiti.gov.sl/UserFiles/downloads/SIERRA%20LEONE-%202ND%20RECONCILIATION%20REPORT-FINAL%20LAMIN%20BOA.pdf>

Box 3 – Extract from recommendations of the independent administrator in Sierra Leone 2008-2010 EITI Report

11.6 Surface Rent.

Finding:

The Mines and Minerals Act, 2009 (MMA2009) section 35 stipulates the payment of compensation or surface rent to owner of the land: Presently the amounts payable are determined by negotiations between the landowner and the company concerned.

Reconciliation is challenging as records are not properly kept by the District Councils and Chiefdom Administrations and payments are sometimes made in cash.

11.6.1 Recommendations:

Payment and collection may be streamlined to ensure standardization and transparency. The cost per square kilometre may be indicated in the mining lease agreements and paid to a single source. This will apply to community owned lands e.g. chiefdoms. For example an outfit within the District Council may be tasked to receive payment from the companies.

This will enhance transparency and accountability.

To ensure that payments in real terms stay constant, cost per square kilometre may be indexed to inflation.

Box 4 – Non extractive industry-specific taxes paid to local governments in Nigeria

Nigeria's NEITI reports include benefits streams both specific and non-specific to the extractive sector. The contributions to the Niger Delta Development Commission paid by the companies were reconciled, while the Withholding tax and Pay as you earn (PAYE), a payroll tax, are taxes paid by the companies to the states that are not specific to extractive companies but were considered significant and as such disclosed but not reconciled.

8.1.7 NDDC Contributions

The NDDC Act mandates all upstream companies to contribute 3% of their annual budgets to the Niger Delta Development Commission (NDDC). The amount payable is both in Naira and US Dollars. The initial contribution reconciliation carried out between NDDC's data and companies' data, together with adjustments made as a result of the reconciliation and all unresolved differences are set out in Table 8.13.

Table 8-13-Summary of Reconciliations of NDDC Contributions (Dollar)

NDDC Dollar	Initial Templates			Adjustments		Adjusted Figures		
	Govt	Company	Difference	Govt	Company	Govt	Company	Unresolved Difference
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
2009	238,860	219,305	19,555	39,574	31,453	278,434	250,758	27,676
2010	315,950	427,726	(111,775)	80,464	(60,682)	396,414	367,044	29,371
2011	507,868	429,580	78,288	(1,171)	68,479	506,698	498,059	8,639
Total	1,062,679	1,076,611	(13,932)	118,868	39,250	1,181,546	1,115,861	65,685

The explanation for the unresolved differences on Dollar Contributions to NDDC are as follows:

Table 8-25-Yearly summary of Non Reconciled Flows to States

2009	Flows to State			Plus Conversion
	US\$'000	£'000	N'000	US\$'000
WHT	3,092	4	1,128,156	10,544.04
PAYE	97,731	0	56,670,731	471,757.82

Box 5 – Example of sub-national reporting template in Mongolia

Annex 1. EITI Subnational Reporting Templates: Mongolia

Approved by joint order # 01/12/13 of Chairman of National Statistical Committee and Minister for Finance dated 2011/01/26

EITITEMPLATE-4

The report of year on taxes and fees collected in local budget from minerals and petroleum extracting and exploring company

A. CONTACT ADDRESS

Registration number									
Company name									
Location					Name				
Aimag, city									
Soum, district									
Type of entity									
Type of owning									

1. Aimag's and capital city's government office should submit the report to Mongolian Tax Administration (MTA) before February 15.
2. MTA should consolidate the report and submit to Accounting policy department of Ministry of Finance no later than March 15.
3. Ministry of Finance should check reports and send it to EITI Secretariat no later than April 15.

B. BASIC INFORMATION

1. Taxes, payments, fees and dividends collected in local budget

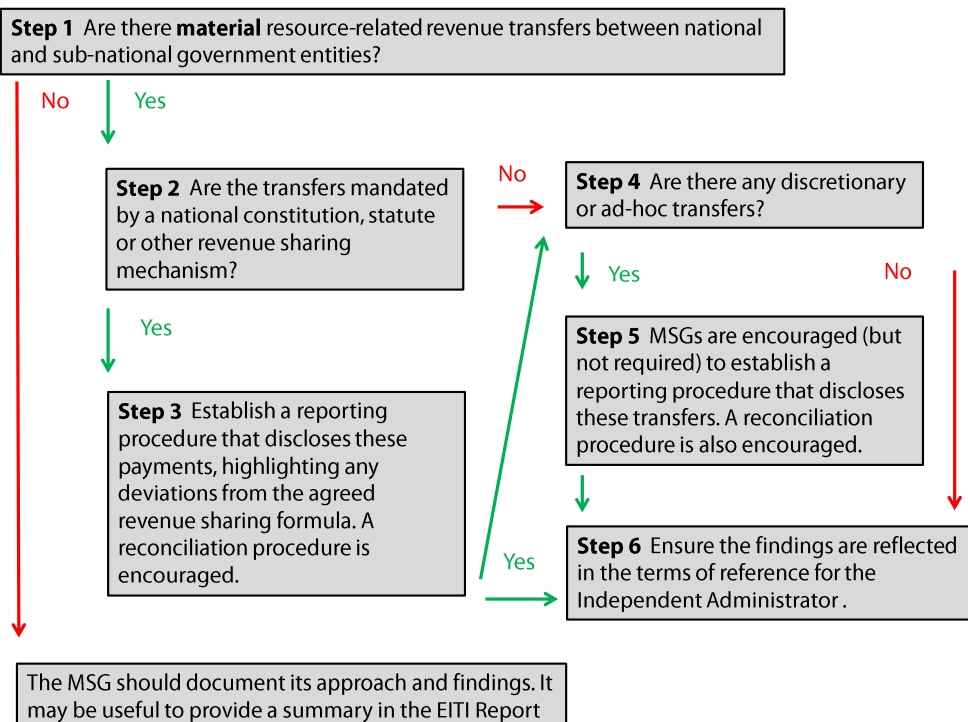
Types		Amount /000 MNT/
1.1 Taxes collected		
1.1.1	Real estate tax	
1.1.2	Tax on vehicles and self-moving mechanisms	
1.1.3	Others	

For the complete template, see Annex 1 in "Implementing EITI at the Subnational Level" – (World Bank, 2011)

Part II: Addressing transfers between national and sub-national government entities

The Secretariat recommends a 6-step process for addressing transfers between national and sub-national government entities (see Figure 2).

Figure 2 –Addressing sub-national transfers



Step 1 – Establishing mandated transfers by national constitution, statute or other revenue sharing mechanism

In identifying whether there are any transfers between national and sub-national government entities which are collected from extractive industries and are mandated by national constitution, statute or other revenue sharing mechanism, the multi-stakeholder group may find it helpful to establish:

- Whether there is any legislation, regulation or agreement that mandates transfers of resource-related revenues from the national or federal government to specific sub-national entities (e.g. in producing areas).
- If so, is there an agreed formula or procedure for determining the amount and timing of the transfers?
- Which government entity (ies) is responsible for the calculation, transfer and collection of these revenues?

Where transfers are not mandatory, but occur on an ad-hoc basis, the multi-stakeholder group is encouraged to disclose and where possible reconcile such transfers. For further information, see step 4 below.

Step 2 - Assessing the materiality of extractive industry-related transfers between national and sub-national entities

Where the MSG has determined that there are transfers between national and sub-national government entities derived from revenues from extractive industries, the MSG should conduct further scoping work to determine the materiality of these transfers.

Similar to payments and revenues, the general approach set out in requirement 4.1(a) should inform this process:

In advance of the reporting process, the multi-stakeholder group is required to agree which payments and revenues are material and therefore must be disclosed, including appropriate materiality definitions and thresholds. Payments and revenues are considered material if their omission or misstatement could significantly affect the comprehensiveness of the EITI Report. A description of each revenue stream, related materiality definitions and thresholds should be included in the EITI Report. In establishing materiality definitions and thresholds, the multi-stakeholder group should consider the size of the revenue streams relative to total revenues. The multi-stakeholder group should document the options considered and the rationale for establishing the definitions and thresholds.

In some cases, the data needed to make this assessment will already be publicly available (from government authorities or other sources). In other cases, it may only be possible to estimate the size of the transfers through consultations with stakeholders.

Where the multi-stakeholder group determines that transfers between national and sub-national government entities related to revenues from extractive industries are material, these transfers should be disclosed in the EITI Reports. Where the multi-stakeholder group determines that transfers between national and sub-national government entities derived from revenues from extractive industries are not material, the basis for this assessment should be documented. It may be useful to provide a summary in the EITI Report.

Step 3 – Establishing a reporting procedure for disclosing mandated transfers

The MSG should establish a reporting procedure for disclosing mandated transfers between national and sub-national entities that are material, highlighting any deviations from the agreed revenue sharing formula. A reconciliation procedure is encouraged. If agreed, reconciliation might follow the same steps suggested for the reconciliation of direct payments from companies to sub-national entities.

The EITI Report should disclose the revenue sharing formula, if any, as well as any discrepancies between the transfer amount calculated in accordance with the relevant sharing formula and the actual amount that was transferred between the central government and each relevant sub-national entity.

Step 4– Addressing discretionary or ad-hoc transfers

The MSG is encouraged to establish a reporting procedure that discloses discretionary or ad-hoc transfers of resource-related revenues by including this work in the terms of reference for the Independent Administrator. A reconciliation procedure is encouraged. The multi-stakeholder group should document the approach followed in addressing sub-national transfers. It may be useful to provide a summary in the EITI Report.

3 Case studies

Box 6 – Case studies from Madagascar and Peru

Peru

The 2010 EITI Report shows that 34% of total revenues from the mining and oil sectors are transferred automatically to sub-national governments in Peru. The largest contributor is the mining canon which is derived from the corporate tax paid by extractives companies. 50% of the corporate tax collected goes directly to local entities according to the following distribution: 10%, 25% and 40% to municipalities in districts, provinces and departments where the extractive activity happens, and 25% to regional governments. A similar formula is applied to mining royalties. On the other hand, hydrocarbon royalties are distributed following a comparable procedure that benefits mostly the regional government (for oil) and municipalities (for gas). Peru's EITI Reports include a detailed explanation of this regime.

The EITI Reports reconcile the figures calculated for the mining canon obtained from the disclosure of corporate tax and the applied formulas with the figures determined by the government agency in charge of administering these transfers (Office of the Prime Minister). Similar comparisons are included for the distribution of mining royalties between the aggregated (by region) disclosed royalties and the transferred figures in accordance with the Office of the Prime Minister. For the distribution of oil royalties the reports also reconcile the figures disclosed by the companies with the figures calculated by authorities. In the case of gas royalties, the distribution to the Department of Cusco, the only recipient of gas royalties, is also reconciled between the companies participating in the reconciliation and the collecting agency Perupetro.

These reconciliations in the EITI Report revealed negligible differences in the case of distribution of gas royalties, minor discrepancies in the case of the mining canon, but significant differences in the case of mining royalties.

Madagascar

An administration fee ("Frais d'administration minière") is collected by the national cadastre office ("Bureau des Cadastres Miniers") and the distributed to local governments (according to pre-fixed formula, approximately 24% of total collected fees go to local government). The 2010 EITI Report published in September 2011 showed that revenues collected on behalf of local communities at the central level were not transferred to their intended beneficiaries. The report shed light on the main issues preventing local communities from receiving their revenues. Following the publication of the report, mayors from mining affected communities protested officially to their line minister, requesting payment of those revenues. This led to an important debate¹ and further investigation showed three to four years of unpaid revenues to municipalities. The report also showed that transfers have been made to the personal accounts of local officials, as many municipalities did not have bank accounts. The debate has led to important reforms, but the issue is still challenging. The 2011 EITI Report is addressing sub-national payments in more detail.

¹ See: <http://www.eiti-madagascar.org/fr/content/frais-dadministration-mini%C3%A8re-d%C3%A9faillance-du-syst%C3%A8me-de-reversement> and <http://www.lexpressmada.com/revenu-minier-madagascar/46656-des-regions-et-des-communes-non-payees.html>

4. Examples

Box 7 – Mandatory transfers in Peru: Royalty distribution and Mining Canon

Royalties in the mining, oil and gas sectors are collected by a national authority and a share of them later distributed to local authorities (each sector following a different distribution mechanism). Additionally, the Mining Canon is the share (presently 50%) of the total corporate tax collected from extractive industries that is automatically transfers to local government and local universities.

Mining Royalty by mining concession			Mining Canon (50% Income Tax)		
%	Beneficiary	Criteria	%	Beneficiary	Criteria
20%	District municipality where the mining concession is located (50% will be invested in communities where the deposit is mined)		10%	District municipalities where the natural resources are extracted	If there is more than one municipality, in equal parts
20%	Provincial municipality where the mining concession is located	According to i) Population and ii) Unsatisfied basic needs	25%	Provincial municipalities where the natural resources are extracted	According to i) Population and ii) Unsatisfied basic needs
40%	Departmental municipalities where the mining concession is located	According to i) Population and ii) Unsatisfied basic needs	40%	Departmental municipalities where the natural resources are extracted	According to i) Population and ii) Unsatisfied basic needs
15%	Regional Government		25%	Regional Government	80% Regional Government 20% Universities
5%	State Universities where the Mining Concession is located				

Source: Peru's 2004-2007 EITI Report

Box 9 – Formula for distributing Mining Canon in Peru.

Distribution of 100 Soles (local currency) of Mining Canon

Departament	Province	District	Population	NBI	Population *NBI	District Municipality	Provincial Municipalities	Departamental Municipalities	Regional Government	Total Distributed
Departament (A)	Province (AA)	District (AAA)	10	50%	5.0	S/. 10.00	S/. 10.33	S/. 11.05		S/. 31.38
		District (AAB)	5	80%	4.0		S/. 8.26	S/. 8.84		S/. 17.10
		District (AAC)	2	50%	1.0		S/. 2.07	S/. 2.21		S/. 4.28
		District (AAD)	3	70%	2.1		S/. 4.34	S/. 4.64		S/. 8.98
	Province (AB)	District (ABA)	5	80%	4.0			S/. 8.84		S/. 8.84
	Province (AC)	District (ACA)	4	50%	2.0			S/. 4.42		S/. 4.42
Regional Government (A)									S/. 25.00	S/. 25.00
Total ABC Company Canon						S/. 10.00	S/. 25.00	S/. 40.00	S/. 25.00	S/. 100.00

Legal base in place for the periods included in this Study

Income Tax -

- D. S. N° 179-2004-EF, Texto Único Ordenado
- D. S. N° 122-94-EF y modificatorias, Reglamento del TUO.

Mining Canon -

- Ley N° 27506 (published on July 10.,2001).
- Regulated by D.S. N° 005-2002-EF (published on January 09, 2002).
- D.S. N° 003 -2003 - EF that modifies D.S. N° 005-200 2-EF- Reglamento de la Ley de Canon (published on January 09, 2003).
- D.S. N° 115 -2003-EF, modifying D.S. N° 005-2002-EF which approved the Reglamento de la Ley de Canon (published on August 14, 2003).
- Ley N° 28077 – Modification of Ley N° 27506 -Ley de Canon (published on September 26, 2003)
- D.S. N° 029 -2004-EF, modifying D.S. N° 005-2002-EF, by which the Reglamento de la Ley N° 27506, Ley del Canon was approved (published on February 17, 2004).
- Ley N° 28322 – Modification of Articles Ley N° 275 06, Ley de Canon, modified by Ley N° 28077 (published on August 10, 2004)
- D.S. N° 187 -2004-EF, modifying D.S. N° 005-2002-EF, through which the Regulations for Ley N° 27506, Ley del Canon were approved (publishe d on December 22, 2004).

Source: Peru's 2008-2010 EITI Report

Box 10 – Discrepancies in mining royalties transferred to regional governments in Peru (2010)

Table 10.1 -Transfers calculated in the reconciliation report accordance to the formula (A) and the actual figures transferred by the relevant authorities (B)

(A)				(B)			
Figures Determined for the Reconciliation Study				Official Figures - PCM			
Mining royalty beneficiary departments	Local governments of the department (1)	Regional governments	Regional Universities	Mining royalty beneficiary departments	Local governments of the department (1)	Regional governments	Regional Universities
	80%	15%	5%		80%	15%	5%
Ancash	103,280	19,365	6,455	Ancash	4,570,163	856,905	285,635
Apurímac	41,304,684	7,744,628	2,581,543	Apurímac	43,783,214	8,209,353	2,736,451
Arequipa	13,888,210	2,604,039	868,013	Arequipa	14,776,153	2,785,709	923,510
Ayacucho	57,197,955	10,724,617	3,574,872	Ayacucho	58,652,594	10,997,361	3,665,787
Cajamarca	28,674,608	5,376,489	1,792,163	Cajamarca	29,423,734	5,516,950	1,838,983
Huancavelica	6,528,706	1,224,132	408,044	Huancavelica	11,119,147	2,109,462	694,947
Huánuco	1,713,331	321,250	107,083	Huánuco	1,709,000	321,547	106,812
Junín	29,470,140	5,525,651	1,841,884	Junín	34,932,320	6,549,810	2,183,270
La Libertad	18,642,427	3,495,455	1,165,152	La Libertad	40,526,314	7,598,684	2,532,895
Lima	22,575,757	4,232,954	1,410,985	Lima	38,458,966	7,032,283	2,403,685
Moquegua	76,495,253	14,342,860	4,780,953	Moquegua	84,108,024	15,770,255	5,256,752
Pasco	32,877,877	6,164,602	2,054,867	Pasco	47,984,824	9,155,282	2,999,051
Puno	49,708,936	9,320,426	3,106,809	Puno	59,613,392	11,177,511	3,725,837
Tacna	72,577,542	13,608,289	4,536,096	Tacna	72,577,542	13,608,289	4,536,096
	(3) 451,758,706	(3) 84,704,757	(3) 28,234,919		542,235,387	101,689,401	33,889,711

Table 10.2- Discrepancies (A-B)

Differences			
Mining royalty beneficiary departments	Local governments of the department (1)	Regional governments	Regional Universities
	80%	15%	5%
Ancash	4,466,883	837,540	279,180
Apurímac	2,478,530	464,725	154,908
Arequipa	887,943	181,670	55,497
Ayacucho	1,454,639	272,744	90,915
Cajamarca	749,126	140,461	46,820
Huancavelica	4,590,441	885,330	286,903
Huánuco	-4,331	297	-271
Junín	5,462,180	1,024,159	341,386
La Libertad	21,883,887	4,103,229	1,367,743
Lima	15,883,209	2,799,329	992,700
Moquegua	7,612,771	1,427,395	475,799
Pasco	15,106,947	2,990,680	944,184
Puno	9,904,456	1,857,085	619,028
Tacna	-	-	-
	90,476,681	16,984,644	5,654,792

Source: Peru's 2008-2010 EITI Report

Box 11 – Disclosure of discretionary transfers in Peru (2005-2010) by region

(Mining Programme of Solidarity with the People -Acronym in Spanish: PMSP- ran from 2005 to 2010 and represented an important share of revenues generated by the mining sector in those years.)

No.	Region	Committed		Executed		Progress level
		Amount S/.	%	Amount S/.	%	
1.-	Ancash	482,520,072	40.62	423,638,588	48.52	88
2.-	Apurímac	714,781	0.06	706,951	0.08	99
3.-	Arequipa	269,985,570	22.73	96,984,235	11.11	36
4.-	Ayacucho	605,679	0.05	529,916	0.06	87
5.-	Cajamarca	177,937,227	14.98	151,630,278	17.37	85
6.-	Cusco	99,776,467	8.40	66,652,626	7.63	67
7.-	Huancavelica	1,663,561	0.14	1,494,679	0.17	90
8.-	Huánuco	34,997,187	2.95	30,672,012	3.51	88
9.-	Ica	8,938,645	0.74	7,134,630	0.82	80
10.-	Junín	4,533,771	0.38	4,834,247	0.55	107
11.-	La Libertad	16,836,566	1.42	16,469,985	1.87	98
12.-	Lambayeque	1,746,942	0.15	2,233,575	0.26	128
13.-	Lima	35,063,185	2.95	28,165,929	3.23	80
14.-	Lima (Callao)	966,555	0.08	832,530	0.10	86
15.-	Moquegua	4,223,693	0.36	4,101,017	0.47	97
16.-	Pasco	20,172,906	1.70	19,642,642	2.25	97
17.-	Puno	4,175,515	0.35	3,926,746	0.45	94
18.-	Tacna	22,871,065	1.93	13,413,185	1.54	59
19.-	No registrado	63,264	0.01	62,377	0.01	99
	Total	1,187,792,651	100	873,126,148	100	74%

Disclosure company by company

Since this pertains to public information, see following link for further details

<http://www.minem.gob.pe/minem/archivos/Informe036%20PMSP%20Agosto%202011.pdf>

We provide amounts Deposited, Committed and Executed in global terms, by company and by Type of Fund, accumulated in August 2011 (month of Programme closure).

Since this pertains to public information, see following link for more details

<http://www.minem.gob.pe/minem/archivos/Informe036%20PMSP%20Agosto%202011.pdf>

For further information, please see:

- <http://eiti.org/document/implementing-eiti-impact-handbook-policy-makers-and-stakeholders>
- http://www.revenuewatch.org/publications/fact_sheets/subnational-oil-gas-and-mineral-revenue-management
- http://eiti.org/files/SWG/World_Bank_SWG_Paper_Note_on_EITI_reporting_by_subnational_governments_April_2012.pdf
- <http://www.eiwatch.org/2013/09/endorsing-the-sub-national-eiti-principles-to-the-region/>
- <http://www.odi.org.uk/publications/5021-sub-national-implementation-extractive-industries-transparency-initiative-eiti>
- <http://commdev.org/enhancing-local-benefits-taking-eiti-sub-national-level>
- https://login.mailingswork.de/public/a_1593_d1CWj/file/data/2332_giz_en_2012_04_eiti_subnational_level.pdf

This note has been issued by the EITI International Secretariat to provide guidance to implementing countries on meeting the requirements in the EITI Standard. Readers are advised to refer to the EITI Standard directly, and to contact the International Secretariat to seek further clarification. Contact details can be found at www.eiti.org

Guidance note 11: Addressing taxpayer confidentiality in EITI reporting

Summary

Government entities participating in the EITI may be subject to restrictions on the disclosure of taxpayer information due to constitutional or legal taxpayer confidentiality and privacy provisions. This guidance note sets out options for addressing this issue, drawing on experience from EITI implementing countries.

Background

The EITI requires government agencies to provide a comprehensive statement on tax revenues raised from the extractive industries. All government entities receiving material revenues are required to comprehensively disclose these revenues in accordance with the agreed scope (Requirement 4.2a).

Government entities participating in the EITI may be subject to restrictions on the disclosure of taxpayer information due to taxpayer confidentiality and privacy laws. Taxpayer confidentiality and privacy laws typically provide that taxpayer information is confidential, and can only be used by the authority to administer the tax system, except as otherwise specified by law.

In some cases the government may have entered into contracts with oil, gas and mining companies that prohibit disclosure of any commercially sensitive information they contain.

Guidance

There is no one way of dealing with this issue – countries will have various legal frameworks and other agreements that may affect implementation, and will have to respond to these in different ways. Where contracts prohibit disclosure of information about tax payments, the contracting parties may be able, by mutual agreement, to amend the contract to accommodate disclosure of tax payments, or find other ways for this information to be disclosed for the purpose of the EITI process.

It is recommended that the multi-stakeholder group (MSG) conducts a review of the legal and regulatory framework to determine the specific barriers that may affect implementation of the EITI, and to explore options for resolving these issues.

In some implementing countries, tax authorities may release information in some prescribed circumstances. This may include discretionary powers subject to “public interest”, and other similar tests. The MSG should engage

directly with these agencies to explore options for accessing the necessary data. The MSG should document the options considered and the agreed approach for addressing this.

Drawing on experience from EITI implementing countries, it is suggested that the assessment considers the following options:

1. Enacting or modifying legislation and regulations

Several implementing countries have used executive orders, presidential, ministerial or similar decrees to mandate disclosure to the extent required to meet the requirements of EITI. Others have adopted or amended legislation and regulations, for example, by specifying participation in the EITI as an exemption from the usual provisions relating to taxpayer confidentiality and privacy. This has proven to be an effective approach, although the legislative process may be time consuming and may significantly delay EITI implementation.

2. Access through intermediaries / third parties

It may be possible to access the necessary data through intermediaries/third parties. A government statistical agency, auditor general, parliamentary committee, ombudsman, or other similar body may be empowered to request the necessary data and to make it available to the Independent Administrator (and to the public) with greater flexibility than the tax authority. For example, the Independent Administrator could be contracted by the government statistical agency or the auditor general, enabling the Independent Administrator to make use of that agency's access to data.

3. Data room

Government agencies may be able to make use of a "data room" (or virtual data room) for the purposes of the EITI process. Data rooms are often used by government agencies to disclose a large volume of confidential data. A traditional data room is a physically secure room (normally in the office of the organisation disclosing the data), which authorised parties (such as the EITI Independent Administrator) may visit in order to inspect and report on the various documents and other data made available. A virtual data room employs the same procedure, via a secure online portal. The EITI Independent Administrator would be bound by confidentiality provisions, and there would be restrictions on his ability to release detailed information to third parties by forwarding, copying or printing. Detailed auditing may be required for legal reasons (i.e., a record of who has seen which version of each document).

4. Taxpayer waiver

In some cases the taxpayer may choose to waive its rights to confidentiality and privacy. Several implementing countries have asked each participating company to write to the tax authority/ies requesting that their data is made available to the Independent Administrator. If this option is feasible, it has proved useful to develop a template letter with standardised language for this purpose.

5. Taxpayer waiver "work around"

In some countries, the tax authorities may still be prevented from releasing data to the Independent Administrator, even if the taxpayer authorises the agency to do so, due to constitutional and/or legislative restrictions. In these cases, a "work around" has been employed, whereby the taxpayer requests that the agency provides the taxpayer with a copy of their records, which the taxpayer then makes available to the Independent

Administrator. This approach is based on the premise that the tax payer is entitled to access a copy of their records. To safeguard the reconciliation procedure, the process may be sequenced so that the companies first provide their data to the Independent Administrator before requesting the government data. A procedure is also needed to verify that the government data has not been altered. The Australian EITI pilot utilises an electronic exchange of data using password protected files.

Case Study - Peru

The Constitution of Peru (Article 2(5)) provides for citizens' right of access to information from public entities. This is reflected in the Transparency Law No. 27806. However, the constitutional mandate provides an exception regarding information concerning taxes, as reflected in Article 85 in the Tax Code (Supreme Decree No. 135-99-EF)¹. This provides that "the amount and source of income, expenses, taxable or any other data" related to a tax payer is confidential and cannot be disclosed except for certain listed purposes (none of which apply to the EITI).

This made it challenging to access government data on income tax paid by oil, gas and mining companies. These ultimately represented 74% of total government revenues in the 2010 EITI Report. Other revenue streams such as royalties and the validity rights are considered as non-fiscal payments (pagos no-tributarios) and as a consequence no challenges were encountered in disclosing and reconciling those figures.

To address this issue, the Peruvian MSG developed a voluntary procedure whereby the companies would waive their right to confidentiality. Drawing on production data, 50 companies were identified as material and targeted for the participation in the EITI Report. Considerable time was spent working to reach out to these companies and explain the EITI process. The companies which elected to participate were invited to sign a binding legal form in which they:

1. Committed to reporting applicable revenue and tax payments;
2. Waived their confidentiality right and authorised the tax agency (SUNAT) to disclose relevant revenues; and
3. Indicated whether they elect to disclose on an aggregated or disaggregated basis.

33 companies agreed to participate in the first report. Coverage improved significantly in the second report, and Peru achieved Compliance, having demonstrated coverage of all material payments and revenues.

¹ Available (automatically translated into English)

<http://www.microsofttranslator.com/bv.aspx?from=&to=en&a=http://www.sunat.gob.pe/legislacion/codigo/libro2/titulo3.htm>

This note has been issued by the EITI International Secretariat to provide guidance to implementing countries on meeting the requirements in the EITI Standard. Readers are advised to refer to the EITI Standard directly, and to contact the International Secretariat to seek further clarification. Contact details can be found at www.eiti.org

Guidance note 12: Summary EITI Reports

Requirements 6.1.c, 6.2.a and 6.2.b

EITI Reports can be an important source of information on how a country's natural resources are managed. However, the subject matter is often complex and technical, which can be challenging to present in an understandable way, especially for non-specialists. Some early EITI Reports have proved to be difficult for citizens, journalists and other stakeholders to understand and make use of. In order to realise the benefits from the EITI, and to meet the requirements in the EITI Standard, implementing countries are advised to devote time and resources toward ensuring that the EITI Reports are readily comprehensible.

The EITI Standard requires that an EITI Report is "comprehensible, including by ensuring that it is written in a clear, accessible style and in appropriate languages" (6.1.c). The EITI Report is in most cases produced by an Independent Administrator. Where parts of the report are authored by the MSG, the national secretariat or others, this should be clearly noted. When drafting the Terms of Reference for the Independent Administrator, MSGs are advised to ensure that the EITI Report is well structured and uses clear and concise language. Further work is often needed to ensure that the report is readily comprehensible.

As a measure to further improve the accessibility of EITI Reports, the EITI Standard encourages the publication of a summary EITI Report (6.2.a). A summary report has several uses:

- As an executive summary, prefacing the full EITI Report authored by the Independent Administrator.
- Many countries have chosen to develop a summary EITI report that is printed and used as a key communication tool by itself.
- Countries that perform EITI reporting through online databases (as described in requirement 6.2.c) may opt to develop only a summary EITI Report, and to make detailed and technical data available online.

It is as important as for full EITI Reports that summary reports are reviewed and endorsed by the MSG. Trust is likely to be undermined if the interpretation agreed by the MSG in the full report is not fairly reflected in any summary. Thus it is good practice to ensure that all constituencies are consulted in the preparation of any such summary. This guidance note provides advice for national secretariats and MSGs, and presents some good practices from implementing countries. The EITI Communications Guide *Talking Matters*¹ can be consulted for further advice on message development, style and writing tips and other relevant guidance for producing a summary EITI Report.

¹ <http://eiti.org/document/talking-matters>

Requirement 6 The EITI requires EITI Reports that are comprehensible, actively promoted, publicly accessible, and contribute to public debate.

6.1 The multi-stakeholder group is required to:

c) Ensure that the EITI Report is comprehensible, including by ensuring that it is written in a clear, accessible style and in appropriate languages.

6.2 The multi-stakeholder group is encouraged to:

a) Produce brief summary reports, with clear and balanced analysis of the information, ensuring that the authorship of different elements of the EITI Report is clearly stated.

b) Summarise and compare the share of each revenue stream to the total amount of revenue that accrues to each respective level of government.

Source: The EITI Standard (11 July 2013), pp. 32-33

More than a condensation: the central tool for informing and influencing public discourse

A summary of an EITI Report will commonly include a short overview of the governance of the extractive sector, key financial information on the company payments and government receipts, a short narrative on the findings and recommendations made by the Independent Administrator.

A summary typically condenses the main information of a document to approximately 10% of the length of the original report.² The summary report:

- can be expected to attract many more readers than the full report;
- will be the central tool for informing and influencing the public debate about the state of natural resource transparency in the country;
- will be the primary vehicle for the national secretariat and the MSG to articulate what it sees as the key agreed findings and recommendations for further action; and
- may be an opportunity to engage the reader to further action.

Therefore, national secretariats and MSGs are advised to take great care to develop the key messages³ in the summary report. These messages articulate what the MSG wants its target audiences⁴ to understand.

It will often be prudent to assume that the reader of a summary report will have little or no prior knowledge of the EITI. It is therefore important to provide some contextual information about the national EITI and to limit the use of technical expressions in the summary report.

² *Talking Matters*, p. 63

³ Message development, see *Talking Matters*, pp. 28-35

⁴ Target audiences, see *Talking Matters*, p. 23

Checklist

The following checklist may be helpful when developing a summary EITI Report:

- ☐ Does it provide a concise overview of the country's extractive sector, of company payments and government revenues?
- ☐ Does the summary easily identify the key findings and recommendations from the report?
- ☐ Does it contain a mix of narrative and visuals, such as graphs, info-graphics, pictures, etc.?
- ☐ Has it been reviewed by a person not familiar with the EITI and, as far as practicable, cleaned for technical expressions that are not widely understood?
- ☐ Does it explain briefly what the EITI is and the purpose of the EITI Standard, and provide a pointer to further information?
- ☐ Does it explain how to access the rest of the EITI Report?
- ☐ Does it clearly explain if there are any unresolved discrepancies?
- ☐ Does it explain in non-technical terms or show in visual form: the revenue streams covered, the share of each revenue stream of the total amount of revenue, the share going to the respective levels of government?
- ☐ Is it clear who authored the summary report?
- ☐ It may be useful to consider a quote or foreword from a Minister or government official, e.g., the EITI champion or the Chair of the MSG.
- ☐ Does the summary highlight where the report has gone beyond the minimum requirements of the EITI Standard with a description of which elements were included and why?
- ☐ Does the summary point to places where more information can be found: contact information, a website, reference to complementary reports and other relevant information?

Good practices

Good practice 1: Short text and simple language for a concrete summary

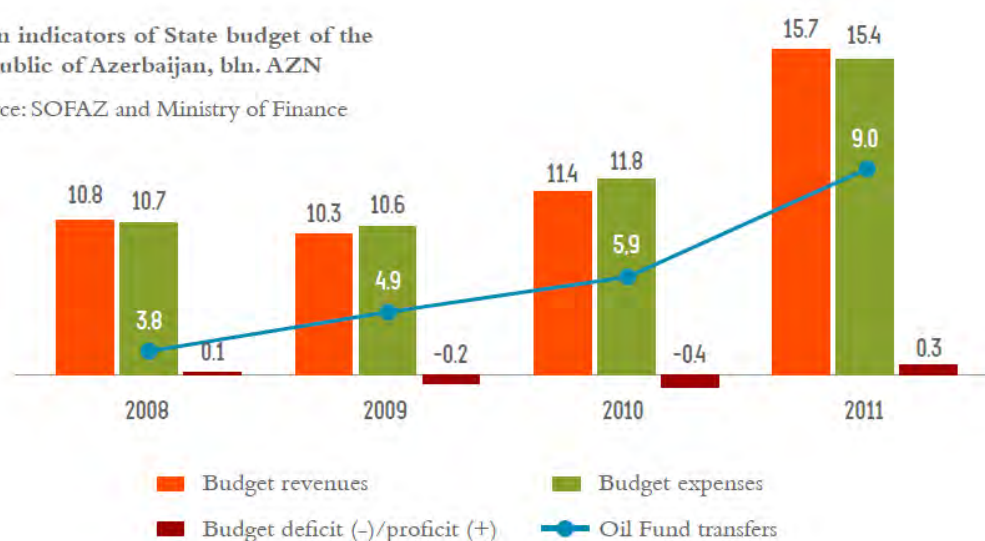
Tanzania⁵ produced a summary report for the second EITI Report covering the financial year 2010. This summary presented an explanatory introduction of the EITI and about the importance of transparency followed by short description of the data that was reconciled.

Good practice 2: Visualize the information by using graphs

Azerbaijan 2011 EITI Report uses visualizations to explain the findings of the EITI Report and data relevant to the management of the natural resource sector. The graph below illustrates the relationship between the transfers made from the Oil Fund and the national budget revenues and expenses.

Main indicators of State budget of the Republic of Azerbaijan, bln. AZN

Source: SOFAZ and Ministry of Finance



Source: [Azerbaijan 2011 EITI Report](#)⁶, page 11

Good practice 3: Contextualizing financial information

The [Nigeria 2009-2011 Oil & Gas EITI Report](#)⁷ offers a summary table of the financial values received by the government, between 2009 and 2011, detailed by tax category. This table is followed by a concise explanatory remark indicating an analysis of the financial flows.

⁵ See *Talking Matters*, p. 64.

⁶ <http://eiti.org/files/Azerbaijan-2011-EITI-Report.pdf>

⁷ http://eiti.org/files/NEITI-EITI-Core-Audit-Report-Oil-Gas-2009-2011-310113-New_4.pdf

[illegible]

“1.5.1 Analysis of Financial Flows

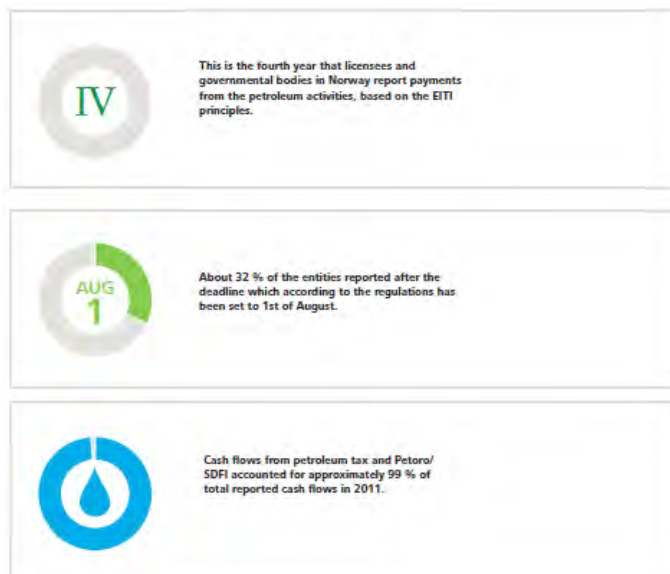
The total Financial Flows to the Federation and other government entities during the years 2009 to 2011 under review is \$143.5billion, (a decrease of 4% on the 2006-2008 audit total of \$148.8billion). The decrease was largely due to a 50% reduction (from \$60 billion to \$30 billion) in 2009 arising from a drop in the applicable average oil price (from \$100 per barrel in 2008 to \$63 in 2009) despite fairly consistent production volumes. The increase in average oil prices in 2010 and 2011 (from \$80 to \$112 per barrel) led to increased financial flows observed in the subsequent years with a total flow of \$68billion in 2011.”

Source: Page 5, [The Nigeria 2009-2011 Oil & Gas EITI Report](#))

Good practice 4: Visualization of figures and the reconciliation process

The summary for the [2011 EITI Report in Norway](#) includes a brief explanation of the reconciliation process with visuals. In few lines and in a very interactive manner, the summary text indicates the amount of companies that reported according to the established deadline in the Norwegian EITI Law, level of discrepancies, if the discrepancies were resolved and contextualized the financial flows.

Executive summary



Source: Page 4, executive summary of the [2011 EITI Report in Norway](#)