



EITI – BEYOND THE BASICS

December 2008

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Glossary and Abbreviations

Administrator	An independent audit company hired as part of an EITI process to reconcile and in some cases audit figures provided by extractive industry companies and government agencies which receive revenues from those companies.
Aggregation	The process by which payments by individual companies to a government are combined so that the report which is published shows the total for each revenue stream but not for each company.
Disaggregation	The process by which the details of company payments and government revenues are published in a manner which allows the contribution made by individual companies to be identified.
EITI	Extractive Industries Transparency Initiative
Extractive Industries	The oil, gas, and mining sector. The primary difference between the extractive industries and other natural resources like forestry is that extractives are non-renewable.
Validation	A process whereby a country implementing the EITI has its EITI program measured against a set of internationally agreed indicators. The validation process is used to determine which countries are either (i) not implementing EITI; (ii) are EITI “candidate countries”; or (iii) are “EITI compliant countries.”

Acknowledgements

RWI commissioned this report in response to a growing awareness that countries are adapting their EITI processes in many interesting and exciting ways which have not yet been captured and documented in one place. Through numerous RWI discussions at the implementing country level, it became clear that many EITI stakeholders—current and potential—do not realize that that they are not only ‘allowed’ but indeed encouraged to go beyond EITI’s minimum criteria. RWI hopes that in documenting and sharing these different EITI innovations, other countries may be similarly inspired to go above and beyond ‘basic’ EITI and develop more comprehensive programs suited to local needs.

This report was written for RWI by a team from S.E.B. Strategy Limited. The lead author is Sefton Darby¹ and significant contributions were made by Kristian Lempa and Anna Taylor. RWI is very grateful to Sefton and his team for their skilful preparation of this comprehensive report on a very tight timeline. RWI is also grateful to David Murray for early work that contributed to this final report, and to our friends at the EITI secretariat for their thoughtful review and comments. Finally, RWI would like to thank Svetlana Tsalik for expertly editing this report for publication. Any comments on this report should be sent to rwi@revenuewatch.org.

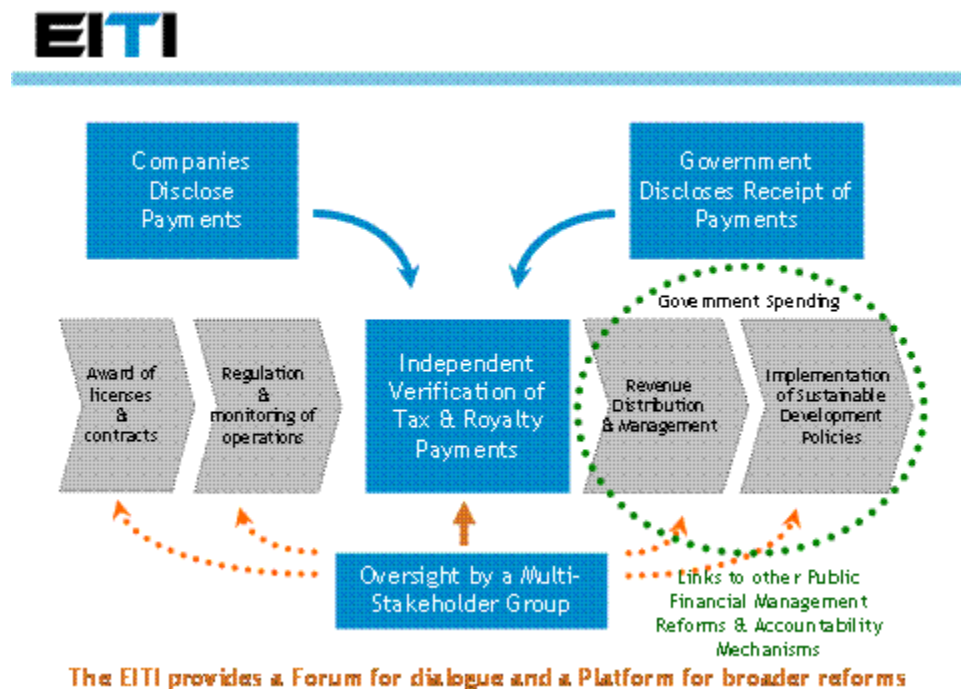
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Foreword

The Extractive Industry Transparency Initiative (EITI) is becoming an important platform for change. As the global minimum standard for revenue disclosure, it uniquely combines transparency (in the form of the EITI report) with accountability (the multi-stakeholder group). The initiative is robust yet flexible, allowing each implementing country to shape its own process according to its needs. Every implementing country implements the EITI in different ways. Some require total disaggregation of revenue information; some have set expansive standards for materiality; some include sectors beyond oil, gas and mining; some seek to include transparency of both contracts and operations; and some seek to include transparency of expenditures. But all use the multi-stakeholder oversight model to reach decisions about these issues and to monitor their impact. The diagram below, illustrating the core EITI in blue, shows that the EITI, even when implemented according to our global minimum requirements, often becomes a stepping stone to broader reforms.

Diagram 1



No one is better situated to describe possible improvements to the EITI and examples of countries exceeding the minimum requirements than Sefton Darby. He has been part of the EITI journey from its earliest days. He has worked with many implementing countries to determine how best to use our minimum requirements and adapt them to national needs and circumstances. The Revenue Watch Institute has rapidly grown into a formidable resource in supporting civil society and other actors in their efforts to ensure responsible resource management. We are grateful for the support of the implementation of the EITI that the Revenue Watch Institute is providing around the world. We hope that other stakeholders will be inspired by this report to make their own recommendations on how the EITI can be expanded and improved.

Like the oversight groups at the national level, the International Conference and Board of the EITI is itself a multi-stakeholder body that draws on voices from the crucial triumvirate: government, industry and civil society. It is our collective responsibility to enrich the debate and improve the initiative for the benefit of the billions of people around the world who do not sufficiently benefit from the wealth of their country's natural resources.

Jonas Moberg
Head of the International Secretariat
Extractive Industries Transparency Initiative

1. Introduction

The Extractive Industries Transparency Initiative (EITI) was launched in 2002 as an international initiative aimed at improving transparency and accountability in countries rich in non-renewable extractive resources—oil, gas, and minerals. Although these countries have great potential because of their resources, numerous studies have shown that many of them suffer from lower economic growth, more corruption, and more conflict than countries without these resources.

When a country implements EITI it commits to regularly publish an independently collated statement of what payments are being made by oil and mining companies to governments, and what revenues are being received by a government from those companies. It is also committing to ensure that the management of an EITI program is overseen by a multi-stakeholder steering group consisting of government, civil society, and extractive company representatives.

Although the EITI has minimum standards, implementing countries have taken very different approaches to adopting the initiative. Some countries have stuck rigorously to the basic EITI standards, while others have built on those standards to develop more transparent EITI programs. Some countries, for example, have chosen to audit companies as part of their EITI programs. Others have extended EITI to encompass companies involved in other sectors than oil, gas, and mining. Some have published disaggregated EITI reports, which identify the contributions made by each operating company, rather than aggregating that information in a report that doesn't specify the source of particular payments.

This report intends to show people involved in implementing EITI programs that the initiative's minimum criteria are not an end, but a starting point for improving extractive sector governance. In virtually all EITI countries, the basic EITI standards have been augmented to create a more intensive transparency program tailored to each particular country. It is the task of each country's multi-stakeholder steering group to define the scope of their country's EITI program, using the experience and examples of EITI programs in other countries to help guide their work.

This report outlines the key areas where EITI can be customized, and different approaches be taken. It also provides case studies of the options taken by different countries and makes recommendations on how to develop an EITI program that goes “beyond the basics.”

1.1 What is EITI and where is it being implemented?

EITI's standards are evolving and becoming more clearly defined under the oversight of the EITI Board (supported by the International EITI Secretariat).² This evolutionary approach to policy has been heavily

² More information on EITI can be found at www.eitransparency.org. The key statements of guidance and policy for EITI are the *EITI Sourcebook* and the *EITI Validation Guide* – both available on the EITI website at <http://www.eitransparency.org/document>. A number of guides also exist for each of the key EITI stakeholders:

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influenced by the experiences of the countries implementing the EITI, some of which are also represented on the Board.

The EITI Criteria are the most succinct statement of core EITI standards and clearly define what it means to “do EITI” at the most basic level:

1. Regular publication of all material oil, gas and mining payments by companies to governments (“payments”) and all material revenues received by governments from oil, gas and mining companies (“revenues”) to a wide audience in a publicly accessible, comprehensive and comprehensible manner.
2. Where such audits do not already exist, payments and revenues are subjected to a credible, independent audit, applying international auditing standards.
3. Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards. The administrator’s opinion regarding that reconciliation, including any discrepancies that may be identified, is then published.
4. This approach is extended to all companies, including state-owned enterprises.
5. Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate.

A public, financially sustainable work-plan for all the above is developed by the host government, with assistance from the international financial institutions where required. The work plan includes measurable targets, a timetable for implementation, and an assessment of potential capacity constraints.

In order to determine how well a country is progressing towards meeting those criteria, the EITI Validation Framework sets out a number of indicators against which an implementing country is assessed by an independent validator to determine whether it is an “EITI Candidate Country” (i.e. in the process of implementing) or an “EITI Compliant Country” (i.e. meets all of the validation indicators). A summary of the validation indicators is attached as **Annex A**.

for governments the best guidance is the World Bank’s *Implementing the EITI – Applying Early Lessons from the Field* available at <http://go.worldbank.org/NQH23ITFP0> ; civil society groups should refer to the RevenueWatch Institute’s *Drilling Down – The Civil Society Guide to Extractive Industry Revenues and the EITI* available at <http://www.revenuwatch.org/news/publications/drilling-down.php> ; and extractive industry companies can refer to the *EITI Business Guide* published by the International EITI Secretariat and the International Business Leaders Forum, available at <http://www.eitransparency.org/document/businessguide> .

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While the minimum criteria have always been the essential baseline for what it means to be “doing EITI,” they are exactly that—a common departure point from which countries can move on to elaborate more country-specific approaches that address the specific governance and management challenges facing their extractive industries. The EITI London Conference 2005 established a high-level international advisory group (IAG) to guide proposals on the future of the EITI. On the issue of minimum criteria the IAG stated clearly that “participating countries need to meet the criteria or, if possible, exceed them, to be considered to be successfully implementing EITI.”³ As the recent guide *Implementing the Extractive Industries Transparency Initiative: Applying Early Lessons from the Field* points out, experience has shown that “countries with more extensive EITI programs have produced higher quality EITI reports and have tended to benefit more from EITI in the long run. More information, as long as it is presented in an understandable manner, is ultimately better.”⁴

At the time of this writing, there are 23 EITI candidate countries. While none of these countries has yet been assessed as being EITI compliant (because guidance on implementing a validation program has only recently been produced), ten countries have produced some form of EITI report.

Azerbaijan*	Cameroon*	Cote d’Ivoire
Democratic Republic of Congo	Equatorial Guinea	Gabon*
Ghana*	Guinea*	Kazakhstan*
Kyrgyz Republic*	Liberia	Madagascar
Mali	Mauritania*	Mongolia*
Niger	Nigeria*	Peru
Republic of Congo	Sierra Leone	Sao Tome e Principe
Timor-Leste	Yemen	

Countries marked with an asterisk (*) have produced one or more EITI reports.

³ Final Report of EITI International Advisory Group, September 2006, <http://eitransparency.org/UserFiles/File/iaggeneral/iagfinalreport.pdf>, page 12.

⁴ *Implementing the Extractive Industries Transparency Initiative: Applying Early Lessons from the Field*, http://siteresources.worldbank.org/INTOGMC/Resources/implementing_eiti_final.pdf, page 26.

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1.2 What are the benefits of EITI? Why go beyond the basic standards?

A successful EITI program is built on the self-interest of all stakeholder groups involved in the EITI process. Therefore, it's important that all stakeholders understand the benefits of EITI, which include the following:

- The issue of payments to governments is often characterized by suspicion and tension. Creating a regular public forum for disclosing and discussing extractive payments and receipts can alleviate suspicions and build trust between the public, government and private sector.
- EITI programs are often the only place where government officials, companies, and civil society groups meet regularly and jointly manage a process. This multi-stakeholder process has been shown to improve the level of understanding and trust between sometimes antagonistic stakeholders.
- By publishing details of their payments to producing countries, extractive industry companies can mitigate long-term political risks for themselves by creating greater good will in the countries where they operate.
- Investors prefer to do business in stable, well-governed operating environments, where they don't have to fear that corruption or management irregularities will put their operations and profits at risk. Undertaking EITI is a clear signal to international investors that a country is serious about transparency and good governance.
- EITI reports provide a unique snapshot of revenue assessment and collection processes. Many countries have found the reports very useful in identifying inefficiencies and reforming their extractive sector management. Improving these processes can help increase revenues accruing to a country, and a greater government capacity to monitor industry operations.
- By creating a culture of public scrutiny around company payments and government revenues, an EITI program can make it more difficult for corruption to occur.
- EITI programs provide a clear role for civil society and the broader public in holding their governments accountable.

The EITI's success lies in its legitimacy and acceptance by all key stakeholders—governments, companies, civil society organisations, and investors. This also means that EITI's standards are, at their core, negotiated ones: the minimum criteria that all stakeholders can agree upon. Nonetheless, they should be viewed as a departure point, rather than an end in themselves, when it comes to crafting a country's EITI program.

It is extremely important to note that even the most basic of EITI programs is better than no program at all. The experience of many countries implementing the EITI is that sometimes it's best to start with a

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basic EITI program to which all stakeholders agree, and then—once greater trust and sufficient capacity has been built among the different stakeholder groups—to develop a stronger program.

One of EITI’s most fundamental principles is the notion of country ownership—that the initiative is country-led and encourages innovation and adaptation by implementing countries. This report highlights the many ways in which countries have tailored EITI to suit their particular challenges.

There are three main reasons why countries have chosen to implement different kinds of EITI programs. First, countries have felt the need to shape EITI to fit their specific conditions. EITI’s standards are an attempt at establishing a globally-acceptable standard for all countries rich in oil, gas, or mineral resources. By necessity they are broad enough to be applied in all countries—regardless of the political, economic, and cultural practices and institutions in a country, what kind of resources it has, who owns and extracts those resources, how the government manages the sector, and how the benefits are distributed. Ensuring that EITI criteria are appropriately applied in different local contexts requires some adaptation.

Indeed, the initiative was designed to encourage adaptation to national needs and to be “owned” by the stakeholders in each implementing country. As the EITI sourcebook notes, “at the EITI London Conference 2005, participants in the EITI endorsed the [minimum] criteria but also encouraged countries to go beyond these minimum requirements where possible.”⁵ EITI’s minimum criteria are the essential starting point for any country program, but many countries have adapted them to deliver broader transparency and accountability programs that are relevant to their country contexts.

Second, within EITI guidelines, there are numerous areas where countries are given choices about how to interpret EITI policy and implement their EITI programs. A country following the guidance provided by the EITI Source Book and the EITI Validation Guide can develop either a basic transparency program, which simply discloses existing data in a more understandable manner as in Azerbaijan, or an EITI program which discloses data in a high degree of detail, as in Mongolia. They can do so for only the main non-renewable extractive industry, as in Ghana with mining, or can elaborate the program to cover renewables, as Liberia’s program has done with forestry. They can cover only the numbers--tallying payments made and received--or examine the processes by which payments are made and collected as well as the physical production of resources, as Nigeria has done. Countries have used the EITI guidelines to develop different kinds of EITI programs that meet the basic criteria, but surpass it to reflect the consensus of local stakeholders and the reality of each country.

Diagram 2 shows three different models of EITI implementation. The first two models (“basic” and “extensive”) are different ways of implementing the EITI within existing EITI policy. The third model (“beyond”) shows a model of EITI which is being implemented in some countries, but which contains elements that are not presently covered by EITI policy.

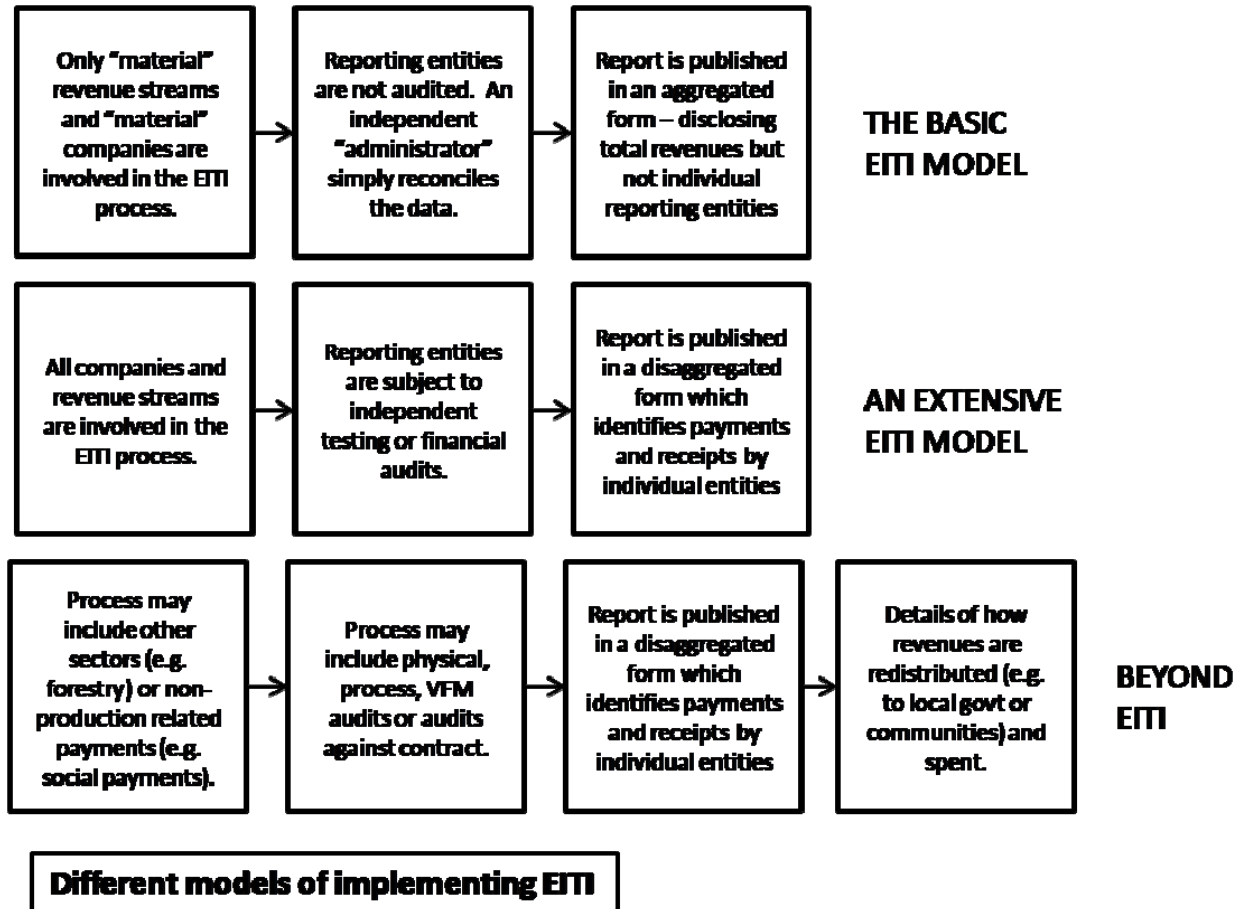
Third and finally, EITI “basic” focuses on only one aspect of the cycle of effective natural resource governance—namely, revenue transparency. There are many other aspects of effective sector

⁵ EITI Sourcebook, March 2005, <http://eitransparency.org/document/sourcebook>, page 57.

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management which can benefit from greater transparency and accountability. Some countries have chosen to incorporate their EITI programs within a broader program of sector and governance reform that addresses earlier and later stages of the extractive value chain. **Diagram 2** shows the variety of governance issues which must be addressed to ensure that natural resources are managed effectively and sustainably.

Diagram 2

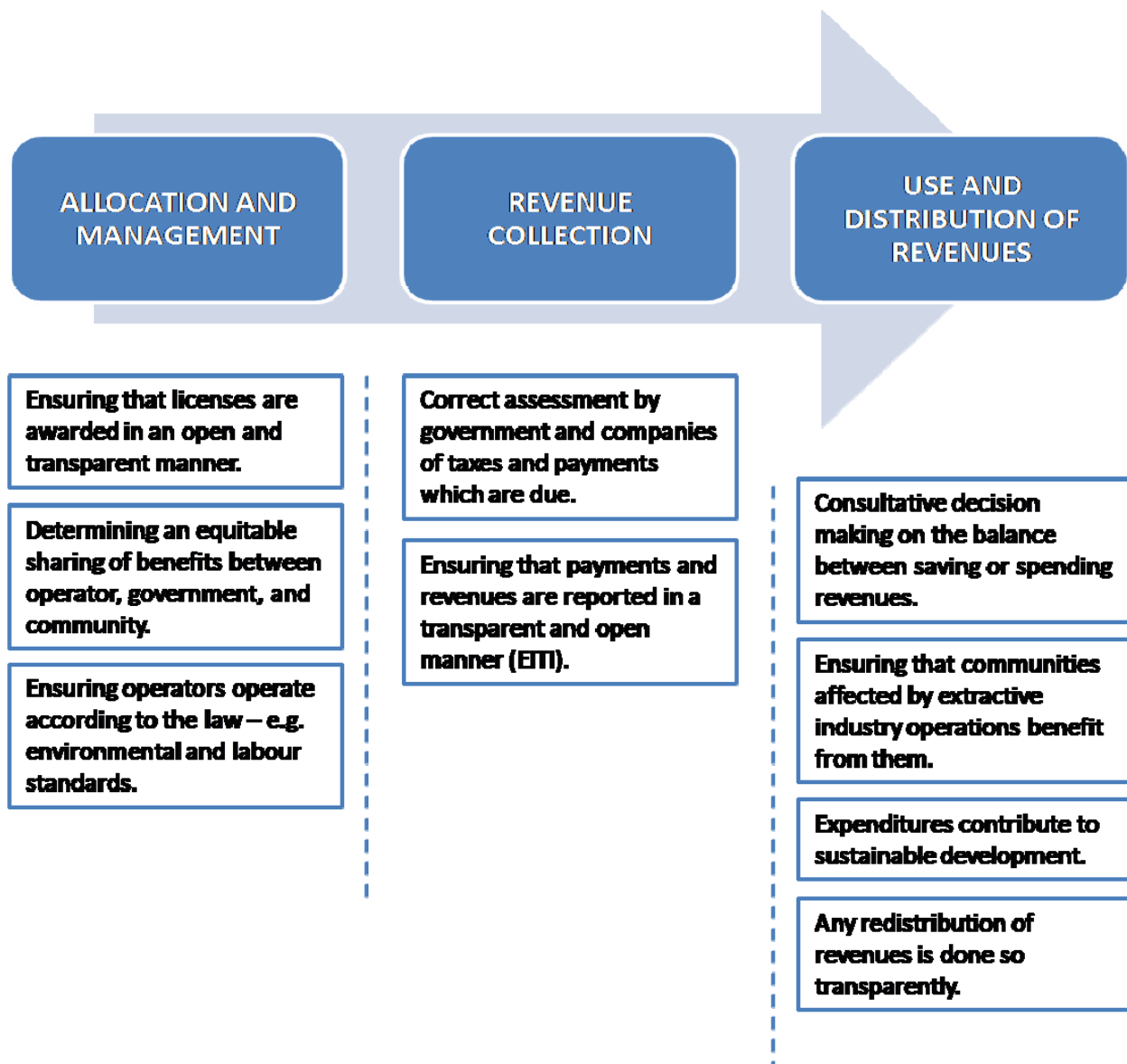


The fundamental point is this: implementing EITI is a positive start to improving transparency and accountability in countries rich in oil, gas, and minerals, but it should be seen as precisely that—a start, not an endpoint. Countries wishing to improve natural resource governance should consider implementing EITI programs which take into account country-specific needs, assume an ambitious interpretation of EITI policy, and address other areas of sector management. The more rigorous the EITI program and any broader program of reform within the sector, the greater the chance that a country will properly benefit from its natural resources and avoid the risks of corruption, conflict, and poverty which are often associated with these resources.

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That said, countries should design their programs with capacity (including financial capacity) constraints in mind, and stage their innovations accordingly to ensure that at minimum, basic EITI compliance is achieved. More expansive programs often require additional government resources and technical assistance, and in certain contexts, such as post-conflict settings, it may be best for countries to enter the process more slowly, and start with a simpler, more focused EITI program before building it up. But even in these cases, certain innovations, such as disaggregated reporting, come at no additional financial cost, while others, like sub-national reporting, may actually contribute to strengthening local governments in countries like the Democratic Republic of Congo and Peru. It is up to each country to decide what kind of EITI program best suits its needs and goals for extractive sector governance, while being mindful that different innovations can entail additional costs and challenges.

Diagram 3: Governance Issues in Managing Extractive Industries



2. Implementing a robust EITI program

This section identifies four areas where countries implementing EITI face choices that will make the program more or less transparent: (1) the choice over which companies and payments to include in reporting; (2) whether the data will be simply reconciled or subject to a higher level of audit; (3) whether the data will be aggregated for all companies or reported for individual companies; and (4) what practices will be adopted for communication with the public.

2.1 Issues of materiality: which payments, which companies?

EITI policy⁶ provides some flexibility in determining which revenue streams and which companies are involved in an EITI process. This flexibility derives from the concept of “materiality”—that is, that only significant (material) companies and payments need to be included in an EITI program. Unfortunately, materiality is not strictly defined in EITI policy, and thus this issue is negotiated on a country-by-country basis. While this is useful from a country-flexibility perspective, it raises the risk that without a defined materiality standard, some countries’ EITI programs may omit major companies or large revenue streams, as has been the case in Kazakhstan (in the case of companies) and Azerbaijan and Gabon (in the case of revenue streams)⁷. It’s important for stakeholders involved in designing an EITI program to ensure that their definition of materiality only excludes extremely small revenue sources or very small companies. Ideally, an EITI report should cover all revenues and companies which contribute 98- 99% of total revenues in the case of the oil sector and more than 80% in the case of the mining sector.⁸

Some countries, such as Kazakhstan, have chosen to include all of their production-related revenue streams in their EITI programs, while others have chosen to include only those payments which are deemed material. Similarly, some countries, such as Nigeria, have chosen to mandate participation of all companies—regardless of size—while others have either taken a voluntary approach to company

⁶ Throughout this report the term “EITI policy” refers to those EITI standards agreed at an international level. Those standards can be found in three places: in the *EITI Sourcebook (2005)*, the *EITI Validation Guide (2006)*, and a series of EITI Policy Notes issued by the EITI Board from 2007 onwards, details of which can be found on the EITI website at www.eitransparency.org

⁷ Gabon’s EITI reports reported the total income from the government’s share of production but did not include details of how much oil was sold in order to generate that income. Azerbaijan’s reports, on the other hand, report the physical amount of oil and gas received by the government but not the value of that production once it is monetised. While it can be difficult to address this issue because of the different grades of oil and gas in different countries, there is a risk that not seeking to compare physical production share with income will lead to the omission of some revenue streams to the government.

⁸ Virtually all oil companies are “material” and thus a very high level of materiality is acceptable. In mining countries, on the other hand, there are often many very small companies which individually may only contribute minimal amounts to government revenues, but which collectively might represent a significant proportion of mining related revenues

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participation (i.e. only those companies which wish to report are obliged – which violates the EITI minimum standard) or have only mandated that “material” companies report. Producing a good EITI report is, however, not simply a case of ensuring that all companies report all payments. While it is reasonable to expect all oil or gas companies in an EITI process to report, mining countries often have many very small companies, and it’s often more logical to focus resources on ensuring the accuracy of reports provided by major companies. In Mongolia, for example, the materiality level was set at 200m tugrug (approximately US\$170,000) in payments to the government. Twenty-five companies made payments of at least this amount to all levels of government, and thus were included in the EITI process. In the Democratic Republic of Congo the EITI process has begun by focusing on the copper and cobalt mines in the Katanga region, which at present are the only industrial extractive mining operations in the country which contribute more to the national treasury than the artisanal (informal) extraction of diamonds or gold.

Similarly, where resources for carrying out the EITI process are limited, it may make sense to focus only on those revenue streams which contribute a significant amount of revenues. In determining which approach to take, best practice from implementing countries suggests that the following issues should be considered:

- Company and revenue stream materiality levels should be set at a level which ensures that almost all revenues (e.g. 98-99% in the oil sector, 80% or more in the mining sector) are captured by the EITI report.
- The decision on what constitutes a material revenue stream and a material company should be made by the multi-stakeholder steering group overseeing the EITI process.
- The government should clearly indicate what percentage of overall revenues from the extractive industries is being provided by those companies.
- Any materiality levels for companies and revenue streams should be regularly reviewed to ensure that no significant payments or new companies are omitted from the process.

Case Study 1: Revenue stream and company materiality in Ghana and Kazakhstan

In Kazakhstan’s EITI report all revenue streams—except for social or voluntary payments—are included. The report covers more than 30 different revenue streams covering direct and indirect taxes as diverse as corporate income tax, bonuses, royalties, revenues from profit oil, fees and penalties, land taxes, etc.⁹ Ghana, on the other hand, has chosen to include reporting of only six revenue streams, including licence payments, mineral royalties, and corporate income tax.¹⁰ These revenues streams, however, account for the vast majority of revenues received.

In Ghana the EITI report for payments and revenues in 2004 only covers eight mines run by five companies, but the report clearly states that payments from these companies constitute 99% of all minerals royalties, and that royalties in turn accounted for 89% of revenues received from those companies. (The remaining 11% came from licence payments, property rates, ground rents, corporation tax, and dividends—which were also included in the report.) In Kazakhstan, company participation in EITI is completely voluntary and this means that some very significant companies have not been included in the EITI report. This approach is contrary to the EITI criteria and validation indicators, and until it is changed, it is not likely that Kazakhstan will be found “EITI compliant.”

The different approaches taken by Kazakhstan and Ghana to revenue stream and company materiality show that the most important consideration in designing EITI programs is not necessarily ensuring that *all* revenue streams and *all* companies participate, but rather, that those revenue streams and companies which contribute the vast majority of revenues are included. The credibility of Kazakhstan’s extremely extensive reporting templates is severely undermined by its voluntary approach to company participation in the initiative. Ghana on the other hand, by targeting the most important revenue streams and companies, has actually produced much more useful and comprehensive EITI reports.

2.2 Reconciliation or audit?

The quality of the data which is provided by companies and governments as part of an EITI process can vary considerably. EITI policy states that all data provided by reporting entities should be audited according to “international standards.” Unfortunately, which standards are meant remains undefined, and particularly little attention has been paid to what auditing standard should be met by reporting government agencies. Furthermore, in most countries implementing the EITI there is a mixed level of auditing standards among extractive industry companies. Some companies may already be audited to international standards, while others—often smaller local companies—may not be.

⁹ See www.eiti.kz

¹⁰ See www.geiti.gov.gh

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This erratic approach to audit standards and whether the EITI process involves a reconciliation of existing data or an actual audit is a very significant issue. The absence of standards for government reporting means that administrators hired to produce an EITI report consistently encounter absent, incomplete, or inaccurate government data. It is also common for administrators to have to reconcile company accounts, which are most commonly reported on an accruals basis, with government accounts, which are reported on a cash basis. Finally, if company reports are not, at a minimum, signed off by company auditors, then there is absolutely no external reassurance that the data provided by companies is accurate.

Because of the lack of strong policy on this issue, it is very important for stakeholders involved in EITI programs to be aware of what the options are for collating company payment and government revenue data. In practice, four different approaches have been developed in EITI countries to address this issue:

- In some countries, such as Azerbaijan and Kazakhstan, companies and government agencies simply submit details of their payments and revenues to an independent audit company which carries out a reconciliation of the numbers. Company and government reports are not required to be audited to any particular standard and their statements are not signed off by other auditors. Hence there is no assurance that the information is correct. This is the weakest approach to gathering EITI data, and unless it has been agreed by the multi-stakeholder group this approach may be considered as not being enough to meet EITI validation standards. While it is better than nothing, stakeholders should try to negotiate a higher standard of data collection and reconciliation.
- Some countries require the auditors of each company to declare that the company's EITI report is consistent with its previously audited reports. In Mauritania a partial approach was taken, with the two largest contributors, SNIM and Woodside Petroleum, providing certifications from company auditors. In Cameroon companies were asked to submit their EITI reports alongside their annual audited financial reports. This approach is a significant improvement on the simple "reconciliation only" approach described above, and it is a cost-effective way of adding credibility to an EITI process. Although there will be a small cost in getting audit companies to give their assurance to company EITI reports, involving other audit companies adds far greater certainty to the accuracy of company EITI reports.
- The next approach, which is used in Gabon, is that the major operating companies (in Gabon's case, Total, Shell, and Comilog) are audited as part of the EITI process, while smaller companies are simply able to submit statements of their payments.
- The final approach, which has been used in Nigeria, is to carry out a process which comes very close to a full financial, physical, and process audit of payments and revenues, discussed in the case study below. Nigeria has used the EITI process to not only determine what has been paid, but to also gauge whether what should have been paid, actually was.

Case study 2: EITI reports in Nigeria

The government of Nigeria committed to the EITI in 2004 and has gone on to develop an EITI program which involves annual fiscal, physical, and process audits of the entire oil and gas sector. Thus far, audits have been carried out for the years 1999-2004. The audits found that while company payments were reasonably close to revenue received by the government, there was little attempt to reconcile physical production data with financial flows—i.e. little was being done to ensure that production-related taxes were being assessed by both companies and government agencies. Moreover, the audits identified a number of areas in which very poor communication between government agencies was leading to ineffective monitoring and regulation of oil and gas companies operating in Nigeria. Finally, these reports identified that revenue was potentially being lost by the government's over-dependence on companies' self-assessment of taxes.¹¹

Whether countries adopt a process based on a reconciliation of numbers or a partial or full audit of company statements is one of the most important issues in ensuring that the EITI report is both credible and useful. A program which simply reconciles numbers provided by each company and government agency is less useful and reliable, unless each reporting entity can prove that its numbers have been scrutinised by a credible and independent body. Furthermore, without access to fully audited data, administrators appointed to reconcile EITI data have sometimes struggled to determine the accuracy of returns or to explain discrepancies.

Case Study 3: EITI reports in Ghana

Since committing to the EITI in 2003, Ghana has produced reports which cover payments and revenues made in 2004 and 2005. The scope of the administrator's work includes:

- Reconciling company payments to government.
- Ascertaining the accuracy of company self-assessments and government assessments of minerals royalties and checking to ensure that they are consistent with governing regulations and legislation. This includes comparing data on physical production with a company's financial accounts.
- Reviewing company capital expenditures and operating costs in order to ensure that companies are correctly stating their taxable profits.

The reports also examine how revenues are redistributed to local governments, a topic discussed further in Chapter 3 of this report.

¹¹ A summary of these audits can be found at <http://www.neiti.org.ng/files-pdf/ExecutiveSummaryFinal-31Dec06.pdf>

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Finally, it is worth mentioning the important role that state-owned companies play. The state owned company (SOC) should, ideally, be represented on the multi-stakeholder steering group, and members of the steering group should ensure that the SOC is fully engaged in the EITI process. In many countries, an SOC acts either as the sole operator of some fields or deposits, or is a joint-venture partner in many operations in the country. In some countries, SOCs both make payments to the government and receive payments on behalf of the government from other companies. For this reason, greater transparency in the operations of state-owned companies can have a particularly beneficial effect. In the Democratic Republic of Congo, for example, an audit--albeit separate from the EITI program--is underway for the state-owned company Gecamines, which operates in partnership with most of the foreign investors in copper and cobalt mining in the province of Katanga.

2.3 Aggregated or disaggregated disclosure?

EITI policy is neutral on the issue of whether EITI reports should be published in an aggregated or disaggregated format. Aggregated reports provide details of the total amounts of each revenue stream received from all companies. Disaggregated reports detail the revenues being paid by each individual company. Of the ten countries which have produced some form of EITI report, six--Azerbaijan, Cameroon, Gabon, Kazakhstan, the Kyrgyz Republic and Mauritania--have published aggregated reports. The remaining four countries--Ghana, Guinea, Mongolia and Nigeria--have produced disaggregated reports. Liberia is expected to follow suit.

The issue of aggregation and disaggregation is one of the most controversial issues in EITI implementing countries and among the companies which support the EITI process. Some companies have developed policies favoring disaggregated reporting, while other companies have always favored aggregated reporting. Some governments and companies argue that contractual confidentiality clauses prevent them from individual disclosure (although governments can easily exempt companies from confidentiality requirements, as was done in Nigeria). Some companies have claimed that disaggregated disclosure would shift the focus of EITI from governments to companies. Further, various stakeholders argue that disaggregated figures are essentially meaningless unless the reader of a disaggregated report properly understands the nature of the oil field or mineral deposit, the fiscal system, and the cost of establishing and managing an extractive industry operation.

These arguments are, however, difficult to sustain. First, confidentiality clauses in contracts can be waived if both parties agree to disclose the information; disclosure is an issue of the willingness of the company and the government, not an issue of whether a contract allows it or not. Second, EITI has always been a process that emphasizes both company and government disclosure. Third, while it is true that company payments vary according to the geological complexity of a deposit, the fiscal system, and the cost of establishing and maintaining a mine or field, these complexities should not be used as an argument against disclosure, but rather as a cause for educating all interested parties on how the extractive industries and the accompanying fiscal regime work. More information allows the government and citizens of a country to better understand the individual role and contribution of each

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company to its overall economy. Along these lines, aggregation of company payments makes it impossible to discern the role of the state companies' contribution to the national economy, and thus reduces greatly the transparency of the whole EITI exercise.

Finally, perhaps the greatest risk in adopting an aggregated reporting approach is that while the majority of companies and government agencies may provide comprehensive and honest EITI reports to the administrator or auditor, a small number of companies may provide information which differs significantly from that which the government provides. This would create a situation in which a small number of companies or government agencies providing inaccurate information would discredit the entire EITI process, including the information provided by companies and government agencies which had reported accurately. Disaggregated reporting thus serves as insurance for companies and government agencies that their diligent participation in EITI is recognized. Publishing disaggregated information is a good way for all parties to prove their commitment to transparency, and to ensure that scrutiny is focused on how those revenues are then spent by the government.

Because companies have such different views on this issue, the most effective way to promote disaggregated reporting is to persuade the government– which is the other partner in all resource extraction contracts– that disaggregation is the best approach. Many companies are content to follow a disaggregated approach so long as the government makes it mandatory for all the company and government agency reports to be published, so that no one company or government agency is seen to be at a disadvantage to others in terms of the information being disclosed.

Case study 4: Disaggregated reporting in Mongolia

The EITI report for the 2006 financial year in Mongolia not only provides summary information on a company-by-company basis, but actually provides individual detailed reports on all payments made by 25 different companies, receipts from the government for each of those companies, and any discrepancies that have occurred, along with explanations of those discrepancies. The report then provides a detailed set of findings regarding each company's payments, as well as a description of any issues encountered by the administrator in reconciling the company and government payments for each individual company.¹²

¹² See <http://eitimongolia.mn/index.php?mcmodule=files> for copies of this report.

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2.4 Communications and disclosure

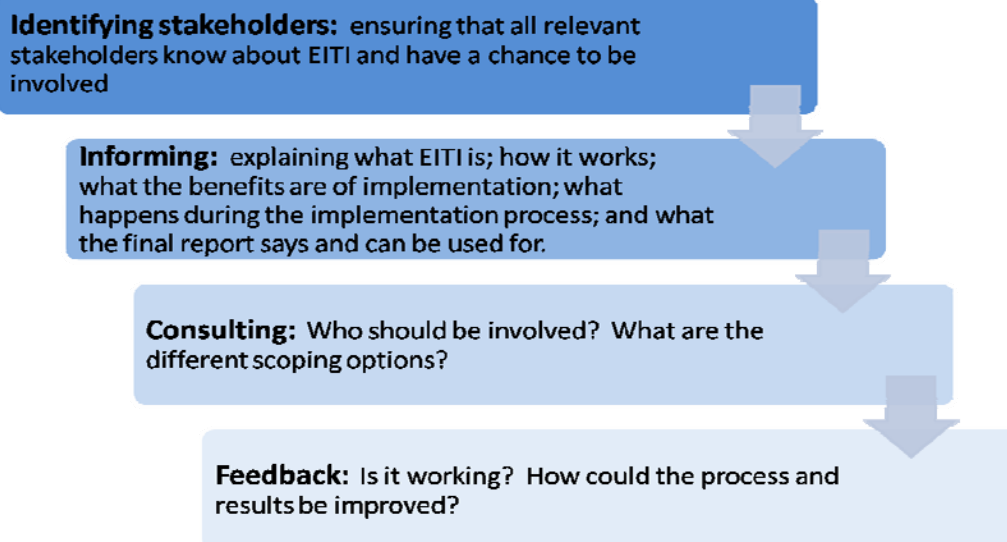
The production of an EITI report is only useful if its production process and content is well communicated to the public. This is not only important for ensuring the effectiveness of the EITI process, but also because almost half of the EITI validation indicators require some sort of communications process. The following EITI validation indicators all require some form of communications activity or program:

- Criteria 1: Publication of payments and revenues.
- Criteria 5: Involvement of civil society.
- Criteria 6: A publicly available, financially sustainable work plan.
- Validation indicator 4: Publication of the work plan.
- Validation indicator 5: Establishing a multi-stakeholder group.
- Validation indicator 6: Engaging civil society.
- Validation indicator 7: Engaging companies.
- Validation indicator 9: Agreeing on reporting templates.
- Validation indicator 11: Ensuring that all companies will report.
- Validation indicator 18: Public dissemination of EITI reports.
- Review indicator: Have lessons been learned from the early rounds of reporting?

Communications is therefore not simply a line in a work plan or an optional consideration for EITI programs, but an essential part of the EITI process. It is impossible for a country to become EITI compliant without a good communications program.

Most people think of communications simply as a process whereby knowledge is passed or explained, but as **Diagram 4** shows, a good communications program has many functions.

Diagram 4: Kinds of communications



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Many EITI programs have been very good at communicating EITI through websites, reports, and conferences. Nonetheless, there are instances of EITI programs which are weakened by not involving all necessary stakeholders, or failing to adequately consult with those stakeholders who have been included. There are also many countries in which extremely valuable EITI reports have been produced, but have not been used by stakeholders with a direct responsibility for managing or monitoring the oil or mining sector. In these circumstances, poor communication becomes one of the most important factors in the ongoing failure of countries to properly benefit from their resources.

There are, however, some good examples of communications programs in EITI countries. Cameroon, Kazakhstan, Liberia, and Nigeria have all developed communications strategies¹³ to help them identify barriers to their EITI programs and to shape communications activities to address those barriers.

Case study 5: Communications in Kazakhstan

The National Stakeholder Council on EITI in Kazakhstan has taken two key steps to strengthen their communications program. First, a series of conferences on the EITI is being held in different parts of the country—something particularly important in Kazakhstan, which is an extremely large country, and where varied extractive industry operations are carried out in different parts of the country. Before these conferences began, virtually all discussions on the EITI had taken place in the capital city of Astana and the main commercial city of Almaty, but not in regions where oil and mining operations are actually situated. Carrying out these conferences has raised the profile of the initiative across the country, and has allowed people to help shape the initiative itself. It has, for example, helped create more pressure for mining payments and revenues to be included in the Kazakhstan EITI process, which has thus far only dealt with the oil and gas sector. It has also created pressure on companies which haven't already signed up to the EITI process to do so. Second, a professional public relations firm was hired to develop a communications strategy for the initiative, not only identifying the best ways of communicating EITI to a broad audience, but also of determining how to ensure that EITI involves and influences key stakeholders from all sectors.

Further guidance on communicating the EITI will be available from the International EITI Secretariat, which is in the process of finalizing a communications guide for those involved in implementing the initiative.

¹³ The Nigerian EITI strategy is available at <http://www.neiti.org.ng/files-pdf/NEITI%20Communications%20Strategy.pdf>

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Table 2: Summary of approaches to EITI reporting in different countries

Country	Reconciliation / Audit	Sub-national reporting	Aggregation / Disaggregation	Other issues
Azerbaijan	Reconciliation	No	Aggregated	While the report is aggregated, the largest oil company, BP, publicly discloses its individual company EITI report.
Cameroon	Reconciliation but companies submit audited accounts alongside EITI reports.	No	Aggregated but some disaggregation of data on the national oil company	Communications strategy in place.
Gabon	Mixture—mainly a reconciliation process but the reports of the three largest companies are audited.	No	Aggregated	
Ghana	Reconciliation with testing of data in some areas.	Yes	Disaggregated	<p>Reconciled physical production data with royalties calculations.</p> <p>Carried out some elements of a process audit to assess effectiveness of revenue assessment, collection and redistribution system.</p> <p>Looked at budgets of sub-national governments to determine the utilization of mining revenues.</p>
Guinea	Reconciliation	Yes	Disaggregated	Only a summary report is available at present. Report disaggregates payments by company, but not by payment type.
Kazakhstan	Reconciliation	No	Aggregated	Company participation voluntary, so report is not complete. Is due to include

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				both oil and mining in future reports. Communications strategy is being developed.
Kyrgyz Republic	Reconciliation	No	Aggregated	Report is not reconciled by an independent audit company and discrepancies are not explained.
Mauritania	Reconciliation but auditors of two largest companies certify their EITI statements.	No	Aggregated	EITI reports of two largest companies are certified by their own auditors. Payments by state-owned mining company are disaggregated.
Mongolia	Reconciliation	Yes	Disaggregated	Substantial discrepancies identified in the report have been passed to the auditor general for further investigation.
Nigeria	Audit	No	Disaggregated	Includes physical and process audits in addition to financial audit. Communications strategy in place.

3. Building on the EITI

EITI's basic methodology is simple for a reason: it is a focused, flexible set of criteria that is easy to adopt and implement, and achieves the essential goal of basic revenue transparency. This simple structure makes EITI the central foundation for each country to build upon as they see fit. As noted in the introduction, several EITI-implementing countries have designed EITI programs which go beyond the minimum requirements of EITI policy. Most of these innovations still focus on revenue transparency issues, but expand the principles of EITI to other companies, sectors, transactions, and government entities. For each new layer added, the international community learns more about how extractive sector governance is best improved in varied circumstances.

Although Indonesia stands to gain from joining EITI, the initiative also stands to gain from Indonesia's joining. EITI has done an excellent job around the world in keeping track of the financial flows associated with the energy and mining sectors, but the initiative has made fewer innovations in terms of keeping track of volumes of commodities which companies sometimes convey to governments in lieu of taxes. Such volumes comprise approximately 80percent of Indonesia's energy and mining revenue.

It would be fitting if Indonesia, the modern birthplace of the Production Sharing Contract, could develop a method for and best practice in keeping track of volumes of oil and gas shared by producers with government.

Another opportunity for Indonesian innovation under the umbrella of EITI would be to develop a method for keeping track of resource revenues shared by the central government with local ones. African development success story Ghana, with its compact gold mining sector, was the first EITI state to keep track of local revenue sharing schemes. But much work remains to be done, and Indonesia is in a clear position to become a long-term world leader in this area.

Peter Eigen, EITI Chairman, in a *Jakarta Post* Op-Ed, November 29, 2007

The overarching goal of EITI as articulated by the International Advisory Group and EITI Board is to mainstream EITI as a global norm of revenue transparency that will become the standard operating procedure for all countries and companies. Eventually, EITI seeks to put itself “out of business,” by integrating its principles into the systems and practices of all stakeholders.

With this in mind, countries should note that their EITI innovations play a dynamic role in this global mainstreaming process. By expanding the basic EITI principles of revenue transparency to additional extractive sectors, transactions and entities, and by legislating EITI principles into law, countries are directly contributing to the establishment of an increasingly robust global norm.

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3.1 Including non-production related payments

EITI policy only calls for disclosure of revenues from the direct production of oil, gas, or mining. This unfortunately means that some indirect payments by companies are omitted. In many countries, company “social payments,” which are sometimes known as corporate social responsibility payments, are omitted from EITI programs, even though these payments are often

- (i) significant;
- (ii) tax-deductible expenditures which therefore reduce production-related tax liability; and
- (iii) are sometimes negotiated in lieu of normal production-related payments (i.e. a government agrees to reduce a tax or royalty rate in return for a company providing payments, goods, or services directly to the country or to the communities where they operate).

The issue of social payments remains inadequately resolved in most EITI countries. Some stakeholders claim it is difficult to resolve because where payments are made “in kind”—when a company provides goods or services rather than a financial payment—it can be complicated to place a value on those goods and services, and there is often no receiving entity which can provide comparative data. Even when such payments are financial, they are often made to sub-national governments which have substantially less capacity to engage in an EITI process. Mongolia’s EITI report, for example, notes the extreme difficulties faced by the administrator compiling the EITI report in verifying with local governments the payments which companies claimed to have made.

Despite its inherent complications, for the reasons listed above, the issue of social payments does need to be addressed. Not only are these payments often substantial, they are also particularly susceptible to corrupt behaviour. If payments are made in-kind (such as cars, schools, medical clinics, buildings, etc.), it may be difficult for the recipient organization to place an exact value on it, but the value of those in-kind payments will have been recorded by the company.

At a minimum, people involved in implementing EITI programs should encourage the declaration of all social payments by companies, even if they cannot be reconciled. An attempt at this is being made in the Democratic Republic of Congo, where the Ministry of Mines has asked companies to publish details of payments to government which are not related to production, including taxes on cars, buildings, salaries to expatriates, and road fees.¹⁴

¹⁴ This kind of reporting is particularly important in the Democratic Republic of Congo. In a recent contract signed between the Government of the Democratic Republic of Congo and the Chinese Government, for example, the Chinese company responsible for developing a copper mine will not be required to make any production related payments until it completes an extensive program of road, rail, medical clinic, hospital, and university construction worth billions of dollars.

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3.2 Including non-extractive industry companies and sectors

In a small number of EITI programs, companies not directly involved in upstream (production) extractive industry operations have been included in the EITI process. Countries have felt it necessary to look at these companies because they often contribute significant revenues, but also because in many cases it is difficult to determine the true value of payments to a government if other companies are not included.

“Regarding transactions that go beyond exploration and production, certain (though not all) countries have included such revenues in the scope of EITI (for example, payments by an oil refining company). Although including these revenues is a complex undertaking and not required by EITI Criteria, a country may find it useful to cover these ‘downstream’ oil, gas, and mining transactions in order to gain a better understanding of overall sector financial flows, and possibly to obtain a better understanding of the link between the value of downstream transactions and original, upstream transactions.”

Implementing the Extractive Industries Transparency Initiative: Applying Early Lessons from the Field, pages 36-37.¹⁵

State-owned oil refining and marketing companies, for example, are not directly involved in the actual production of oil, but are responsible for adding value to the government’s production share, and selling the oil both domestically and internationally. In Cameroon, transfers of oil between the state-owned oil company and the state-owned refining company were also included in the EITI process. In Liberia the EITI process will include, in addition to the mining and oil sectors, companies involved in the forestry sector.¹⁶

3.3 Use and distribution of revenues

EITI has primarily focused on the transparency of extractive industry revenues rather than on how those revenues are used. The rationale behind this has been two-fold. First, the number of revenue transactions is much smaller than the number of expenditure transactions, and thus a lot of transparency can be “gained” by focusing on a relatively small and concentrated number of transactions between a government and a limited number of companies. Second, extractive industry companies, one of the major EITI stakeholders, often feel that they should have no role in monitoring government expenditures.

Increasingly, however, there is demand for both governments and companies to show how the extractive industries are materially benefiting those communities affected by their operations. In three countries, Ghana, Guinea, and Mongolia, the EITI reports have included not only payments made to the

¹⁵ *Implementing the Extractive Industries Transparency Initiative: Applying Early Lessons from the Field*, World Bank Group, April 2008, http://siteresources.worldbank.org/INTOGMC/Resources/implementing_eiti_final.pdf, pages 36-37

¹⁶ See <http://www.eitiliberia.org/>

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national government, but also payments to local governments. In some cases the revenues are collected by the central government and then redistributed to sub-national governments, and in other cases payments are made directly to sub-national governments by the companies. In the Guinea EITI report a summary figure of payments to local governments is provided for each company. In Mongolia's report, details are provided about companies' voluntary "donations" to sub-national governments.

Case study 6: Sub-national reporting in Ghana

In Ghana the EITI process has been extended to include any payments made directly or indirectly to sub-national governments, such as local councils and district assemblies. Payments to this level of government are often very important in countries where mining rather than oil predominates, because mines have a large and visible impact on local communities. Citizens in those communities are often more concerned with payments to their local government than with those made at the national level.

The Ghana EITI reports have traced the 9% of overall mineral royalties payments which are collected by central government and then redistributed to the local and traditional authorities in mining regions. The reports found that not only were there often very substantial delays in transferring this share of royalty payments (in one case almost a year elapsed between the payment of a royalty by a company and the local authority receiving their share of that payment) but that some authorities were then using these revenues on recurrent expenditures (running costs) rather than directly addressing the development needs of the communities affected by mining.

Case study 7: Decentralization of the EITI process in the Democratic Republic of Congo

In the Democratic Republic of Congo (DRC), a country roughly the size of Western Europe but with severely limited infrastructure, the national EITI committee has decided to decentralize the EITI process. The work-plan envisions creating five local offices in natural resource rich provinces to bridge the large infrastructure gaps between the centers of extraction and the capital city of Kinshasa.

There are two main reasons the national EITI committee in the DRC has decided to adopt this approach. First, the local EITI offices will enable the initiative to develop tailor-made local communication and capacity building programs. The offices will link these local programs and will assist the national secretariat in implementing the EITI in its designated region, so that EITI is no longer an issue discussed only in Kinshasa. Second, these regional offices will serve as focal points for the independent administrator in contacting both the provincial tax administration and the companies active in that region.

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3.4 Providing regulatory or legislative backing to the EITI process

There has been much confusion over whether EITI is a “mandatory” or a “voluntary” initiative. Insofar as it does not mandate any country to join, or force any company to make declarations in every country in which they operate, EITI is a voluntary initiative. The EITI Principles and Criteria do, however, clearly state that every country implementing the EITI should ensure that all, or at least all material, companies operating in a country are involved in the initiative. Hence, the EITI could be characterized as being an “internationally voluntary but nationally mandatory” initiative. Once a country formally decides to implement EITI, all parties within that country are bound by the process.

EITI policy does not require regulation or legislation to ensure that all companies report. Nevertheless, many countries have felt the need to pass regulations or legislation to ensure that the EITI process is able to go forward. Decrees, regulations, or legislation on EITI have the advantage of:

- Ensuring that all companies and government entities report as part of the EITI process, and not simply those who choose to.
- Providing legitimacy and funding to EITI stakeholder groups, secretariats, and the audit companies appointed to carry out EITI reconciliations or audits.
- Ensuring EITI continuity from government to government. Regulations or legislation can help to ensure that transparent reporting is something which becomes a normal part of government business, regardless of who is in power.

Some countries have managed to sustain their EITI programs without any changes in regulations or legislation. If this can be achieved, and the stakeholder group is confident that the EITI is well-enough entrenched to survive political changes, then continuing with a voluntary approach may save substantial time. There are even some advantages to this voluntary approach in that it enables the scope of an EITI program to be expanded without requiring regulatory or legislative changes.

If, however, there is erratic cooperation by companies or government agencies, then legislation mandating EITI provides protection to those companies and agencies which are complying with the initiative, but which are undermined by the lack of cooperation from others. It is important to note, however, that any proposed legislation or regulation needs to guarantee the multi-stakeholder oversight of the EITI process, and should not be used as an excuse for excluding civil society groups from the decision-making process.

Case study 8: Amending the law on subsoil use in Kazakhstan

In Kazakhstan the law on subsoil use was amended to require that any company signing a contract for the development of hydrocarbon or mineral resources must also commit to EITI by becoming a signatory to the Kazakhstan Memorandum of Understanding on EITI. Unfortunately, this change in the law does not require companies with prior contracts to make this commitment, and full company participation in Kazakhstan EITI remains unachieved.

Case study 9: The Nigeria EITI Act

In 2007, the Federal Government of Nigeria passed an act specifically focused on its EITI programme. The Act¹⁷:

- Defines the work of the initiative.
- Outlines the governance mechanisms of the initiative, such as how the national stakeholder group is constituted; how the chairman and executive secretary of the initiative are appointed, etc.
- Mandates the participation of all relevant company and government agencies in EITI and provides the audit company appointed to produce EITI reports with access to their financial records.
- Provides for criminal sanctions against individuals or organisations which refuse to comply with the Act.

¹⁷ A copy of the Act can be found at <http://www.neiti.org.ng/files-pdf/neitiact.pdf>

4. Conclusions

The key message of this report is that those involved in implementing or overseeing EITI programs should not be afraid to shape and build upon the basic EITI standards according to their own circumstances. Basic EITI standards are useful for providing the minimum which a country must do in order to become EITI compliant, but are only a starting point. The benefits of EITI—effective sector management; increased revenues; improved governance; indicators of a better investment climate—are likely to accrue to those countries which implement more robust EITI programs, rather than those which choose a minimal program driven mainly by concerns about reputation. Stakeholders involved in the EITI process should push for a program which delivers as much relevant information as possible.

Since the EITI began, its policies at the international level have been shaped by country experience, and while all implementing countries now need to meet the validation criteria, innovations and additions to programs above and beyond the minimum criteria are actively welcomed. Stakeholders at the international level realize that EITI has succeeded thus far due to the customization and shaping of the program by stakeholders addressing the issues that are most relevant to their own countries. It is the lessons learned by implementing countries that will likely be taken into account in the evolution of international EITI policy.

This report has shown that there are numerous examples of countries that are implementing EITI programs that go beyond the basic criteria. The next key challenge for these countries and their supporters is ensuring that their innovations are not restricted to the innovating country, but that their example is used to encourage other EITI implementers to adopt the groundbreaking steps that can strengthen their own EITI programs.

ANNEX A

THE EITI VALIDATION INDICATORS

The EITI Validation Guide sets out 20 validation indicators to measure the progress of countries implementing EITI. Those indicators marked with an asterisk (*) have a detailed indicator assessment table provided in the EITI Validation Guide. A full copy of the Validation Guide as well as guidance on how the validation process works can be found at <http://www.eitransparency.org/eiti/implementation/validation>.

Sign Up

1. Has the government issued an unequivocal public statement of its intention to implement EITI?
2. Has the government committed to work with civil society and companies on EITI implementation?
3. Has the government appointed a senior individual to lead on EITI implementation?
4. Has a fully costed work plan been published and made widely available, containing measurable targets, a timetable for implementation and an assessment of capacity constraint (government, private sector and civil society)?*

Preparation

5. Has the government established a multi-stakeholder group to oversee EITI implementation?*
6. Is civil society engaged in the process?*
7. Are companies engaged in the process?*
8. Did the government remove any obstacles to EITI implementation?*
9. Have reporting templates been agreed [upon]?*
10. Is the multi-stakeholder committee content with the organization appointed to reconcile figures?*
11. Has the government ensured that all companies will report?*
12. Has the government ensured that company reports are based on accounts audited to international standards?*

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13. Has the government ensured that its own reports are based on accounts audited to international standards?*

Disclosure

14. Were all material oil, gas and mining payments by companies to government (“payments”) disclosed to the organization contracted to reconcile figures and produce the EITI report?

15. Were all material oil, gas and mining revenues received by the government (“revenues”) disclosed to the organization contracted to reconcile figures and produce the EITI report?

16. Was the multi-stakeholder group content that the organization contracted to reconcile the company and government figures did so satisfactorily?

17. Did the EITI report identify discrepancies and make recommendations for actions to be taken?

Dissemination

18. Was the EITI report made publicly available in a way that was:

- publicly accessible,
- comprehensive, and
- comprehensible?*

Company validation

How have oil, gas, and mining companies supported EITI implementation?*

Review

What steps have been taken to act on lessons learned, address discrepancies and ensure EITI implementation is sustainable?*