

EITI and Parliamentary Oversight of Oil, Gas and Mining Revenues

KEY MESSAGES

- The 2013 Extractive Industries Transparency Initiative (EITI) Standard has robust requirements that improve transparency and accountability in the oil, gas and mining sectors. This is essential for members of parliament (MPs) who seek to effectively monitor natural resource revenues.
- Engaging with the EITI informs MPs' oversight and lawmaking activities, and allows them an additional avenue through which to raise constituent concerns.
- Each EITI member country must form a multi-stakeholder group (MSG). MPs may want to seek membership in this group.
- The cases of Liberia and Yemen show that countries benefit from parliamentary participation in the MSG. In countries where parliamentary membership in the MSG is not possible, there are several other strategies that MPs can use to reap the benefits of the EITI.

INTRODUCTION

Members of parliament (MPs) require robust information about oil, gas and mineral revenues in order to effectively monitor government management of these resources in the public interest and to fully understand the origin of the revenues that enter (or in some cases fail to enter) the national budget. As demonstrated in countries like Liberia, when well implemented, the Extractive Industries Transparency Initiative (EITI) can provide this kind of information to MPs, as well as to the wider public and serve as a catalyst for improved revenue collection and sector reform.

THE ROLE OF THE EITI IN EXTRACTIVE TRANSPARENCY

Two-thirds of the world's poorest people live in countries that are rich in natural resources. With effective, responsible governance, revenues from the extraction of these resources can deliver development gains. Transparency is an essential part of this equation. It allows MPs to determine whether the country has secured a fair share of the resource revenues, and empowers citizens and their representatives to ask questions about how the government is using the revenues.

During the last few years the transparency movement has made big strides in pushing for the disclosure of data on revenues generated by oil, gas and mineral extraction. This was the original objective of the EITI initiative when it launched in 2003. However, there has been growing consensus that using transparency to increase accountability requires a comprehensive understanding of how extractives generate value for the country.

Reflecting these global advances, the EITI launched a new standard in 2013 which requires more robust reporting by participating countries. For instance, the Standard requires transparency in several areas, including licensing procedures and agreements; legal frameworks; state-owned oil, gas and mining company expenditures; and the distribution of revenue to sub-national governments. All of this information is crucial to understanding the systems that generate resource revenues.

Furthermore, the EITI, which is a voluntary initiative, is complemented by mandatory reporting requirements that obligate companies registered or trading in the United States (via the Dodd-Frank Act) and the European Union (via the EU Accounting and Transparency Directives) to disclose their payments in all countries of operation, regardless of whether the countries are EITI members.

Despite these positive developments, there is room for improvement. Around 80 percent of the 58 resource-rich countries included in the Resource Governance Index,¹ a global assessment of the governance in the oil, gas and mining sector, do not meet satisfactory governance standards and more than half fail to disclose any meaningful information about the extractive sector.

During the last few years the transparency movement has made big strides in pushing for the disclosure of data on revenues generated by oil, gas and mineral extraction.

THE EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI)

EITI is an international initiative to improve transparency and accountability in the oil, gas and mining sectors. Countries voluntarily apply for candidacy and must meet a number of minimum requirements to obtain and preserve the status of compliance with the initiative. By August 2014, 29 countries had become compliant, and 17 more were candidates.²

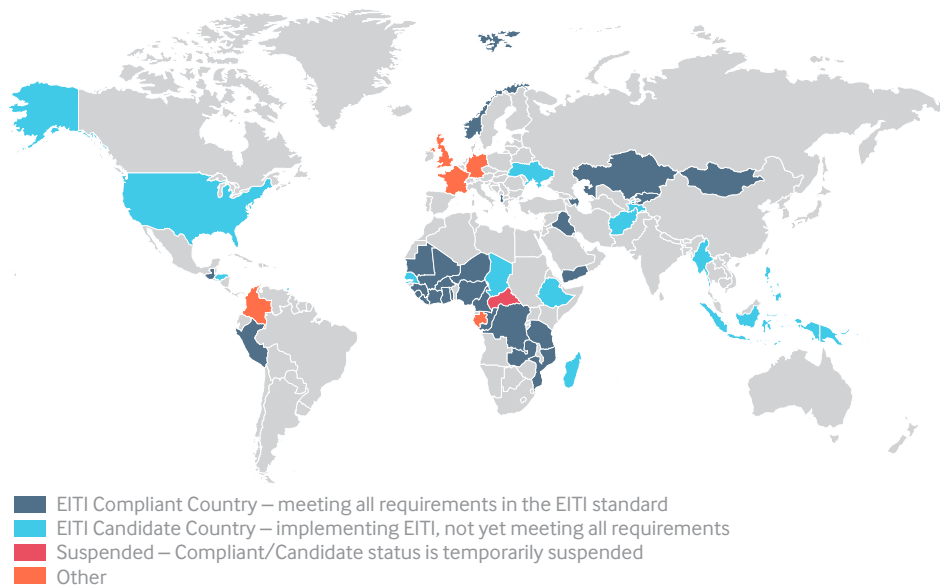


Figure 1. EITI countries

Source: EITI Secretariat.

1 Natural Resource Governance Institute, 2013 Resource Governance Index, pg. 7, available at <http://www.resourcegovernance.org/rgi>.
 2 www.eiti.org/countries.

In countries participating in EITI, oil, gas and mining companies must publish what they pay to governments, and governments must publish what they receive. An independent administrator then reconciles these figures, and investigates any discrepancies. Implementing countries also disclose information on licenses and license allocations, in-kind revenues, mandated social expenditures, subnational payments, transportation revenues, and production data. The EITI also encourages the disclosure of contracts, and the release of information that identifies the real, ultimate owners of extractive companies (rather than just company names).³

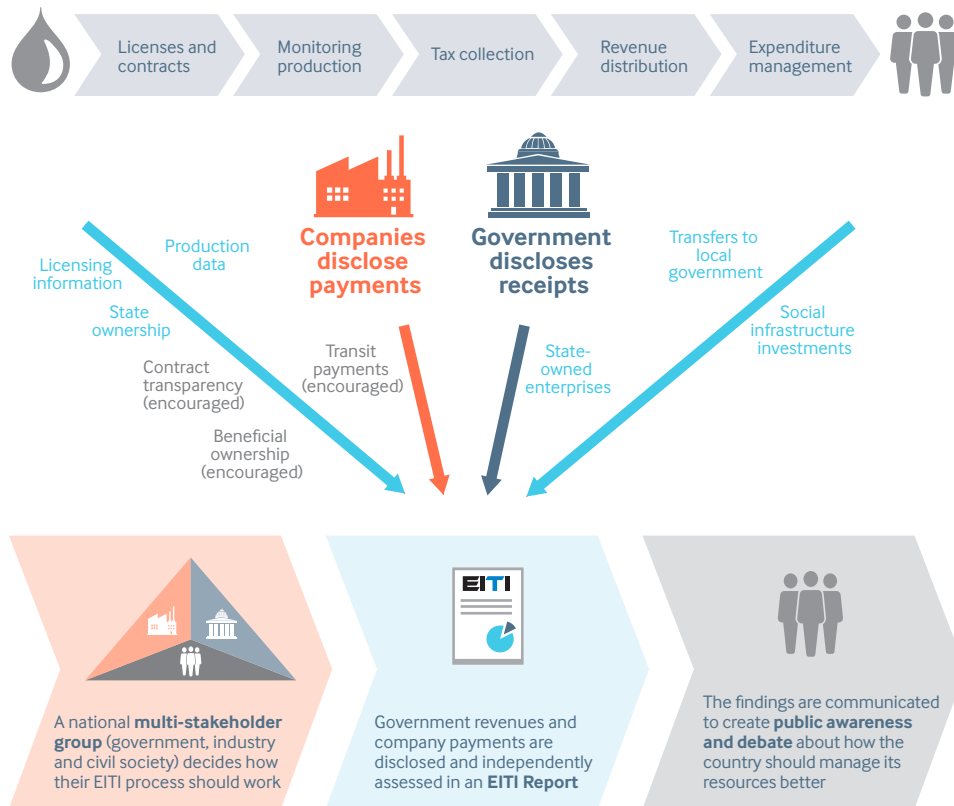


Figure 2. The EITI Standard

Each EITI member country forms a multi-stakeholder group (MSG) including representatives from civil society, industry and government to oversee the EITI process and the production of the reports that document it. This group must ensure that the national EITI addresses the key policy challenges the country faces in managing its extractive industries. MPs may want to seek membership in the MSG.

THE EITI IN MYANMAR

Myanmar was accepted as a candidate country on 2 July 2014, at the EITI International Board meeting in Mexico. This candidacy is timely, as it follows an opaque process by which the Myanmar ministry of energy awarded 16 onshore oil and gas blocks in October 2013 and another twenty offshore blocks in March 2014. Moreover, some projects, including the Shwe gas pipeline and the Chinese-owned copper mine in Sagaing region have led to public mistrust, in large part due to concerns about social and environmental impacts, but also because of lack of consultation and transparency.

³ EITI Standard, pg. 8, available at: http://eiti.org/files/English_EITI%20STANDARD_11July_0.pdf.

At the end of 2012, President Thein Sein issued Presidential Decree 99/2012, which publicly and officially launched the EITI initiative in Myanmar. The Centre for Economic and Social Development of the Myanmar Development Resource Institute (MDRI-CESD) was designated to assist government and other stakeholders with implementation of EITI and serve as the main coordinator of awareness-raising efforts.

Subsequently, in February 2014, the multi-stakeholder group was formed to oversee the implementation of EITI in Myanmar. The MSG consists of six representatives from the government, six from industry, and nine from civil society. Civil society organizations selected their representatives through the newly established Myanmar Alliance for Transparency and Accountability (MATA). To date, MPs are not members of the MSG.

The deadline for Myanmar's first EITI report is January 2, 2016, and by January 2017 the country must undergo its first "validation," which is the external and independent process that serves to assess country performance against the EITI Standard. Myanmar must also conduct a legal review and determine how to address any legal obstacles to EITI implementation. The MSG is considering requesting a second presidential decree on EITI, which could include, among other elements, amendments to certain laws to enable EITI implementation.

If implemented in a robust manner, the EITI has the potential to bring many benefits to Myanmar's extractive sector governance. The EITI Standard encourages the disclosure of any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals. Disclosing contracts and licenses is one of the most important steps that Myanmar could take to promote more effective management of its extractive resources. Contract transparency encourages constructive relationships between citizens, companies and governments, which can reduce conflict and facilitate stability in the sector. It helps set realistic expectations about the terms of and timelines for extraction, which in turn facilitates accurate government revenue collection and forecasting. Additionally, the disclosure of contracts provides the MSG enhanced opportunities to monitor adherence to obligations, which in turn encourages all parties to act accountably in project implementation. The EITI Standard also encourages countries to maintain a public register of beneficial ownership details of the companies that bid for, operate, or invest in extractive assets. Given concerns that have arisen regarding the opacity of processes for allocating ownership and control of Myanmar's natural resources, implementation of the new EITI Standard would allow citizens to discern who controls the country's assets, and enable government to advance its transparency and good governance goals.

Disclosing contracts and licenses is one of the most important steps that Myanmar could take to promote more effective management of its extractive resources.

BENEFITS OF ENGAGING WITH THE EITI

Parliaments play an essential role in working to ensure that oil, gas and mining resources benefit the public interest. EITI can help MPs perform this role, but only if it is well executed. Past experience from around the world shows that EITI can be a valuable tool for oversight and reform, or it can be a superficial "box-ticking" exercise. MPs have a direct interest in ensuring that the former rather than the latter occurs in their country, so that EITI can help them fulfil their oversight and budgetary responsibilities.

The EITI and the information that it produces can offer many benefits to MPs, such as:

- **Informing oversight.** EITI reports identify governance weaknesses, which helps MPs to monitor how well government is managing the oil, gas or mining sector. Many EITI reports identify discrepancies between company payments and government receipts; process weaknesses such as in the collection of taxes or allocation of licenses; and sources of revenue loss like unpaid debts. Through inquiries and other methods, MPs can then call on the government to address these problems and track progress made.
- **Informing sector lawmaking.** Parliaments must propose, review and amend legislation that governs the oil, gas and mining sectors. These decisions should take into account the specificities of the sector—information which is often difficult to come by. EITI reports can shed light on which companies dominate the industry; the role of state-owned companies; the sources of revenues and who collects them; as well as the current governance shortcomings. These are all factors that should inform lawmaking.
- **Informing annual appropriation decisions.** In resource-dependent countries, budgetary decisions should be informed by a strong understanding of the oil, gas and mineral revenues that dominate state accounts. EITI reports, particularly if detailed and maintained regularly over time, can explain the origin of revenues and how they are likely to vary from year to year.
- **Raising constituent concerns.** Beyond using the information and recommendations from EITI reports to strengthen fiscal scrutiny and inform national lawmaking, the Standard gives legislators an opportunity to bring the concerns of their constituents to the EITI for further investigation. Participation in the EITI multi-stakeholder group can help parliament to fully embed EITI in its involvement in oil, gas and mining sector oversight.

Participation in the EITI multi-stakeholder group can help parliament to fully embed EITI in its involvement in oil, gas and mining sector oversight.

STRATEGIES FOR MPS WISHING TO ENGAGE WITH THE EITI PROCESS

Parliaments can use their legislative and political power to constructively engage with the EITI process. Below are a series of possible actions MPs can take at each step of the EITI process. Further actions can be found in Appendix B of the *EITI Guide for Legislators* (www.eiti.org/files/MP_EITI_Guide.pdf).

- **Preparation:** promote full engagement by civil society and companies in the MSG; encourage government to address obstacles to civil society and company participation in the MSG; seek parliamentary membership in the MSG; track whether the country is implementing the “encouraged” as well as the required elements of the new EITI Standard; ensure the EITI covers key public concerns; monitor whether the EITI receives adequate financial resources to discharge its mandate.
- **Disclosure and review:** hold public hearings to discuss the report’s findings; seek government action through parliamentary questions; produce committee reports highlighting areas for government action.
- **Dissemination:** ensure the EITI report is made public; coordinate efforts with civil society; conduct committee-based outreach on EITI.

Validation: hold public hearings on report findings to encourage government to carry out validation; request copies of the validation report; compare report to issues identified through previous oversight of EITI.

In addition, MPs can leverage their powers to build a robust EITI standard. In particular, MPs can follow the examples of Liberia and Nigeria by enshrining the process in law to guarantee that EITI survives changes in government and is integrated in the budgeting and auditing processes. Legislating EITI also helps with data collection, as companies and government agencies are legally compelled to provide information to the EITI.

MPs can follow the examples of Liberia and Nigeria by enshrining the process in law to guarantee that EITI survives changes in government and is integrated in the budgeting and auditing processes.

Lessons learned from Yemen and Liberia about parliamentary engagement with the EITI

Only eight candidate and compliant EITI countries—of a total of 46—had members of parliament in their MSGs as of July 2014. Here are some of the lessons learned from two of them—Liberia and Yemen:

- MPs can and should make full use of their legislative powers to seek reform of the oil, gas and mining sectors through the EITI. MPs from Yemen and Liberia adopted a number of strategies to facilitate EITI reporting, enable wider access to information and share findings with constituents. When EITI reports uncovered governance failures, MPs sought remedial action by informing ministers and by initiating reforms.
- When accessed by parliaments, EITI reports have strengthened accountability. In particular, the reports have provided MPs with the regular and reliable information they need to oversee EITI performance and compliance with the initiative by both the government and extractive companies.
- Active membership in the EITI MSG gives MPs a better understanding of extractive sector issues and developments, as well as a forum to intervene when necessary. The benefits of increased access to information, progressive learning and networking opportunities that come with MSG membership outweigh the costs in terms of dedicated time and effort.
- Legislation and regulations can help institutionalize and sustain the EITI at the country level, as well as bolster parliamentary support. However, clear rules for the appointment of the parliamentary MSG members and regular rotation are necessary to ensure a meaningful representation of all voices in parliament.
- MPs who serve on MSGs might be more effective when they bring solid knowledge of, and experience in, the extractive sector. This is all the more important when MPs cannot rely on support from parliamentary administration.

DISCUSSION QUESTIONS FOR MPs

- Has the multi-stakeholder group been established? Is it equipped to perform its mandate?
- Is the legislature represented in the multi-stakeholder group? If not, did parliament or its relevant committee discuss joining EITI?
- Do the objectives the EITI work plan objectives reflect national extractive sector policy priorities, and is the EITI process producing information that is relevant to decision-making on these issues?

- Have all government entities that manage revenues and companies that make payments disclosed information to the EITI administrator? Did any of them fail to report?
- Does the EITI report disclose payments received from each company for each extractive project according to EITI best practices? If not, has the government provided a reason?
- Is the data in the report audited to international standards? For instance, did companies' external auditors certify company declarations? If not, why not?
- How much has my country earned in total? How does that compare to neighboring countries that produce the same hydrocarbons or minerals? Are there circumstances that might explain any differences?
- Does the report include information about quantities produced and sale prices? If so, what percentage is my country earning from the total value of sales?
- Does the report highlight unresolved discrepancies? If so, has the government taken steps to address them?
- Do the figures in the report match the information available in the national budget?
- Has the report been widely publicized and submitted to parliament for debate?
- Has the parliament or relevant committee followed up on the recommendations made in the report?
- Does the government intend to submit an EITI law? If so, does it contain EITI best practices (e.g., contract transparency)? If not, can parliament introduce a draft bill or amend existing oil or mineral laws to facilitate best practice in EITI implementation?

FURTHER READING AND ENGAGEMENT

- Read more information on the progress of Myanmar's candidature at <http://eiti.org/Myanmar> or the MSG website at <http://myanmareiti.org/>. For more general information on EITI please refer to www.resourcegovernance.org/issues/eiti and www.eiti.org/.
- Read the EITI case study in full at www.resourcegovernance.org/publications/eiti-parliamentary-tool-extractive-sector-governance-liberia-and-yemen.
- Read the EITI Guide for Legislators at www.eiti.org/files/MP_EITI_Guide.pdf.
- For more information on parliaments and extractives visit www.resourcegovernance.org/parliaments.

ABOUT THE SERIES

Technically complex and often opaque, the oil, gas and mining industries require legislation and informed, effective oversight. To ensure gains from the sector are maximised, NRGi provides background information on crucial areas for parliamentary engagement. These parliamentary briefs are available at revenuewatch.org/parliaments

The Natural Resource Governance Institute, an independent, non-profit organization, helps people to realize the benefits of their countries' oil, gas and mineral wealth through applied research, and innovative approaches to capacity development, technical advice and advocacy.
Learn more at www.resourcegovernance.org



Oil, gas and mining for development